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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

Tobacco and Other Smoking Products (Vaping Goods) Amendment Bill 2025

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
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TOBACCO AND OTHER SMOKING PRODUCTS (VAPING GOODS) AMENDMENT BILL 2025

The Tobacco and other Smoking Products (Vaping Goods) Amendment Bill 2025 (Bill) is **not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the Human Rights Act 2004. The Bill is considered to contain minor and technical amendments to align ACT laws with Commonwealth laws that are adopted in and applied to the ACT.

OVERVIEW OF THE BILL

The Bill responds to and remedies inconsistencies between national reforms made by the Commonwealth *Therapeutic Goods Act 1989* (TG Act) and the *Tobacco and Other Smoking Products Act 1927* (TOSP Act) in relation to vaping goods. The inconsistency between the TG Act and the TOSP Act has created uncertainty in relation to the legal requirements that apply to the sale of vaping goods in the ACT.

The purpose of the Bill is to align ACT legislation with amendments to the TG Act by the Commonwealth Government, which commenced on 1 July 2024. These reforms complement national changes to broader regulations that commenced from 1 January 2024 and implemented a single consistent framework that applies nationally to regulate the importation, domestic manufacture, supply, commercial possession and advertisement of all vaping goods (Commonwealth Reforms)¹.

The Bill aligns relevant ACT laws with the Commonwealth Reforms to enable the supply of vaping goods for genuine therapeutic purposes while ensuring the sale of recreational vaping goods in the ACT is prohibited. The Bill achieves this by introducing the terms ‘vaping good’ and ‘therapeutic vaping good’ and a revised definition of ‘prohibited smoking product’. By differentiating between a ‘vaping good’ and a ‘therapeutic vaping good’, the Bill ensures that if a person has a genuine need to vape for therapeutic purposes, they can access vaping goods. The Bill also amends the existing definition of ‘personal vaporiser’ and ‘personal vaporiser product’ so that certain products not intended to be prohibited (such as shishas or hookahs) are not captured by the prohibition but are still regulated as smoking products as they currently are under the TOSP Act.

Health risks associated with smoking and therapeutic vaping goods as smoking cessation support

Vaping devices, also known as e-cigarettes, are battery-operated devices that heat liquids or salts containing chemicals (called ‘e-liquid’) to produce an aerosol that users inhale (a process known as vaping). Vaping goods include vaping devices and vaping accessories and vaping substances intended to be used with a vaping device.

Prior to commencement of the Commonwealth Reforms, vaping use had been rising in young people. In 2022, 28.7 per cent of 18-24 year-olds in the ACT reported daily or occasional use of e-cigarettes², compared to 7.1 per cent of all adults. Aboriginal and Torres Strait Islander

¹ [Therapeutic Goods and Other Legislation Amendment \(Vaping Reforms\) Act 2024 \(Cth\)](#)

² ACT Health: 2021 ACT General Health Survey Statistical Report. <https://health.act.gov.au/sites/default/files/2023->

young people³ and LGBTIQ+ young people are known to use smoking products at a higher rate than their peers⁴, so although specific local data is not available, it is possible that prior to commencement of the Commonwealth Reforms young people in these groups were also using vaping goods at a higher rate in the ACT. Given the Commonwealth Reforms primarily commenced on 1 July 2024, with some provisions having come into effect on 1 October 2024, the impact of those reforms on the rates of use of smoking and vaping goods in the Territory is not yet known. However, early qualitative data from a national study suggests that the importation ban from 1 January 2024 led to reports of decreased ease of access to vaping goods by young people⁵.

Vaping is understood to cause both short- and long-term health effects. Short-term effects of vaping include acute lung damage and nicotine dependence⁶. While long-term health effects of vaping use are still to be determined, there is evidence that vaping outside of the therapeutic context acts as a gateway to tobacco smoking, meaning that people who have vaped have increased risk of subsequently taking up tobacco smoking⁷. The harms to people from smoking are very well established. Smoking increases the risk of cardiovascular disease, cancer, chronic lung diseases and diabetes and a range of other conditions. Smoking is the leading cause of preventable disease and death in Australia and up to two thirds of people who smoke long-term will die of a smoking-related disease⁸.

Where vaping goods are sold outside of the therapeutic context (for example on the black market, or through retail outlets prior to the Commonwealth Reforms) they have been found to almost always contain nicotine, even when not labelled as such⁹. Nicotine exposure, regardless of how it occurs, is known to alter the structure and function of the adolescent brain, impacting planning, decision-making, learning, memory, emotional regulation, and increased susceptibility to other drugs¹⁰. Further, prior to the Commonwealth Reforms, vaping goods were often intentionally marketed towards children and young people through a range of

[05/2021%20ACT%20General%20Health%20Survey%20Statistical%20Report_0.pdf](#)

³ Greenhalgh, EM, Maddox, R, van der Sterren, A, Knoche, D, & Winstanley, MH. 8.4 Smoking among Aboriginal and Torres Strait Islander children and teenagers. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2021. Available from: <http://www.tobaccoaustralia.org.au/8-4-smoking-among-aboriginal-and-torres-strait-isl>

⁴ Jenkins, S, Greenhalgh, EM, & Scollo, MM. 9.A.6 Lesbian, gay, bisexual, trans, queer and intersex (LGBTIQ+) people. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2022. Available from: https://www.tobaccoaustralia.org.au/chapter-9-disadvantage/in-depth/9a6_lesbian-gay-bisexual-trans-queer-and-intersex-LGBTIQ-people

⁵ Chapman, L. & Freeman, B., (2024). GenVape 'Policy' Workshop (unpublished data), Oceania Tobacco Control Conference 2024, Gold Coast, Australia.

⁶ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022

⁷ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022

⁸ Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2019

⁹ CBRC analysis of TGA Laboratories testing report, Therapeutic Goods Administration (1 March 2022). Testing of nicotine vaping products. Australian Government, Department of Health. (Accessed 1 May 2023)

¹⁰ Akehurst, M., & Bittoun, R., (2023). Nicotine and the brain [Fact sheet]. ResearchOnline@Avondale. https://research.avondale.edu.au/oer_materials/5

promotional strategies, including flavouring, cartoons and celebrity endorsements. Advertisements often promote vaping as being fun, cool and safer than tobacco cigarettes¹¹.

Prior to the Commonwealth Reforms, children and young people were proportionally the highest users of vaping goods¹², with 18-24-year-olds, 25-29-year-olds and 14-17-year-olds showing highest levels of use nationally in that order¹³. This high use of vaping goods in young people can be at least partially explained by minors having previously reported easy access to vaping goods purchased by other people or purchasing them from (non-pharmacy) retailers, online or via social media.¹⁴ Accordingly, access to appropriate cessation supports for young people is critical to reduce potential harms from the restriction of access to vaping goods, including the risk of e-cigarette users switching to conventional tobacco smoking.

The ACT Legislative Assembly in March 2024 agreed that the ACT Government would investigate what information and support services needed to be enhanced or implemented to support young people and the broader ACT community to reduce the harm caused by vaping and nicotine dependence, including consulting on young people's unique needs and co-designing solutions, culminating in a Minister-led roundtable exploring solutions to support young people to seek and receive cessation support. To support the implementation of the Commonwealth Reforms, the Commonwealth Government committed to providing \$29.5 million over four years to increase and enhance smoking and vaping cessation support, including boosting state and territory Quitlines and other quit services, and redeveloping and modernising the My QuitBuddy App. Additionally, the ACT Government is working with the Commonwealth Government to recommission the ACT's Quitline service to include digital youth-focused support options, and to pilot a new youth-targeted vaping cessation and nicotine dependence service in the ACT.

While vaping is known to have negative health impacts, for those people who already smoke, or who already have an addiction to nicotine (e.g. by smoking non-therapeutic vaping products), therapeutic vaping products can offer benefit for smoking and vaping cessation and management of nicotine withdrawal, particularly for consumers who have been unsuccessful in quitting smoking or vaping using first line approaches. Continued access to these products via therapeutic pathways can reduce the harm experienced by people from nicotine withdrawal and support smoking or vaping cessation, promoting the current and future health of this cohort overall. The supply of therapeutic vaping products is highly regulated – this is detailed further below in relation to the current legislative framework.

¹¹ Greenhalgh, EM, & Scollo, MM. 18.2 Advertising and promotion of e-cigarettes. In Greenhalgh, EM, Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2023. Available from: <http://www.tobaccoinaustralia.org.au/chapter-18-e-cigarettes/18-2-advertising-and-promotion>.

¹² Wakefield, M., Haynes, A., Tabbakh, T., Scollo, M. and Durkin, S., 2023. Current vaping and current smoking in the Australian population aged 14+ years: February 2018-March 2023. *Melbourne: Centre for Behavioural Research in Cancer, Cancer Council Victoria*

¹³ Australian Institute of Health and Welfare (AIHW) 2024, *Young people's use of vapes and e-cigarettes*, viewed 9 May 2024, <https://www.aihw.gov.au/reports/smoking/young-peoples-vapes-e-cigarettes>

¹⁴ Watts, C., Egger, S., Dessaix, A., Brooks, A., Jenkinson, E., Grogan, P. and Freeman, B. (2022), Vaping product access and use among 14–17-year-olds in New South Wales: a cross-sectional study. *Australian and New Zealand Journal of Public Health*, 46: 814-820. <https://doi.org/10.1111/1753-6405.13316>

The current legislative framework for vaping goods

On 21 June 2024, the Commonwealth Government passed the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Act 2024* to give effect to the Commonwealth Reforms. The Commonwealth Reforms came into effect on 1 July 2024 and amended the TG Act and other related Commonwealth Acts to ban the importation, domestic manufacture, advertisement, supply, and commercial possession of disposable single use and non-therapeutic vapes used outside a Therapeutic Goods Administration (TGA) pathway.

The Commonwealth Reforms achieved the ban on vaping goods by introducing a range of new offences and civil penalty provisions relating to vaping goods (subject to exceptions) and enhanced existing compliance and enforcement powers in the TG Act in relation to vaping goods. However, they preserved legitimate patient access to therapeutic vaping goods through registered pharmacists, medical practitioners or nurse practitioners for smoking cessation and the management of nicotine dependence (detailed further below).

The Commonwealth 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. Consistent with the objects of the TG Act at section 4(2), the Commonwealth Reforms are not intended to operate to the exclusion of other laws, to the extent the law is capable of operating concurrently with the TG Act.

Jurisdictions adopt and apply the TG Act as a state or territory law (known as corresponding laws) as part of a federal cooperative scheme. The ACT applies the TG Act as a law of the Territory under the *Medicines, Poisons and Therapeutic Goods Act 2008* (MPTG Act).

The Commonwealth Reforms regulate vaping goods under the TG Act which can now only be supplied for therapeutic purposes by registered pharmacists, medical practitioners or nurse practitioners as authorised under corresponding laws, thereby necessitating the reciprocal reform of complementary laws in state and territory jurisdictions to align with the TG Act.

The ACT currently regulates vaping goods (currently referred to as 'personal vapouriser' under the TOSP Act) as a smoking product under the TOSP Act, regardless of whether they are supplied for therapeutic purposes (or not) and are subject to the same controls as conventional tobacco products. This means vaping goods, including vaping substances, vaping accessories and vaping devices may currently only be sold by licensed tobacco retailers. These products can also only be sold subject to the broader requirements of the TOSP Act. This includes that vaping goods must not be sold to or purchased by anyone under the age of 18 (see sections 14 and 15).

As a result of the Commonwealth Reforms, therapeutic vaping goods can be supplied under the TG Act (and therefore under the MPTG Act), however it is currently an offence under the TOSP Act to supply vaping goods without a valid tobacco licence. Until such time as the TOSP Act is amended, the TOSP Act will continue to regulate therapeutic vapes as a smoking product and require pharmacists supplying therapeutic vaping goods to hold a tobacco licence. Further, until the TOSP Act is amended, the sale and purchase of therapeutic vaping goods to people under the age of 18 will continue to be prohibited, even where the person has a valid prescription. This creates inconsistencies and unintended consequences between the Commonwealth and ACT regulatory frameworks.

Therapeutic vaping goods

The Commonwealth Reforms have been followed by complex changes to how nicotine may be prescribed and supplied as a medicine within a therapeutic environment. Overall, access to therapeutic vaping goods may only occur in limited and clinically appropriate circumstances. The main mechanism through which this occurs is through changes to the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (**Poisons Standard**).

Following the Commonwealth Reforms, as of 1 October 2024, the Poisons Standard was updated to specify the supply of nicotine in therapeutic vaping goods for smoking cessation or the management of nicotine dependence, as follows:

- As a Schedule 3 (pharmacy only medicine), if the following requirements are met:
 - (a) for supply to persons aged 18 years and over; and
 - (b) the pharmacist requests and sights evidence of the patient's identity and age; and
 - (c) the pharmacist provides professional advice to the patient on alternative cessation supports and therapies, appropriate dose and frequency depending on age, weight and severity of condition, length of treatment, suitable titration, and interactions with other medicines; and
 - (d) the pharmacist provides contact details about smoking cessation support services to the patient; and
 - (e) the quantity of the goods does not exceed the quantity that is reasonably required for a patient's therapeutic use for 1 month and that quantity is supplied to the patient only once in a month; and
 - (f) the concentration of nicotine in the goods does not exceed 20 mg/mL,

(Poisons Standard, Schedule 3).

- As a Schedule 4 Prescription only medicine when supplied to individuals aged under 18 years, or where the concentration of nicotine exceeds the threshold for the vaping good to be supplied under Schedule 3 (Poisons Standard, Schedule 4).

The Royal College of General Practitioners has also published detailed clinical guidance around the circumstances where it is appropriate to prescribe a nicotine therapeutic vaping good (i.e. as a Schedule 4 medicine)¹⁵. This detailed guidance provides that for people who want to quit but have failed to achieve smoking or vaping cessation with first-line therapy (a combination of behavioural support and TGA approved pharmacotherapy), it may be reasonable to prescribe therapeutic vaping goods in conjunction with behavioural support. The guide contains a range of information and circumstances where such a prescription is and is not clinically indicated.

There are also a broad range of protections, requirements and regulations around the nature of therapeutic vaping goods – which are different from products which might have, prior to the Commonwealth Reforms, been acquired through tobacco retailers or might be acquired

¹⁵ Royal Australian College of General Practice, *Supporting smoking & vaping cessation: A guide for health professionals Guidance on smoking and vaping cessation support related to changes to Australia's vaping regulation*, 2024

outside of pharmacy settings. Currently there are no therapeutic vaping goods approved by the TGA in the Australian Register of Therapeutic Goods, which means even these medicines have not been assessed by the TGA for safety, quality and efficacy, and are therefore ‘unapproved’ medicines.

To allow practitioners to prescribe unapproved medicines, including unapproved therapeutic vaping goods, the TGA provides Authorised Prescriber and Special Access Scheme pathways. These pathways require a prescriber to notify or obtain approval from the TGA when prescribing unapproved therapeutic vaping goods. Furthermore, medical practitioners and nurse practitioners may only prescribe therapeutic vaping goods where those products have been notified by a product sponsor to comply with various quality standards for therapeutic goods in Australia. These quality standards include requirements around accurate labelling (including ingredients lists, and warning statements), packaging which is child-resistant, and requirements around the ingredients the products may contain and the flavours in which they are available¹⁶.

A list of notified therapeutic vaping products is published online by the TGA and may be referred to by prescribers and pharmacists when deciding on the particular therapeutic vaping good to prescribe to patients¹⁷. Pharmacies may only supply therapeutic vaping goods where those products comply with the minimum quality standards.

Amendments to the TOSP Act and other related Acts

The Bill amends the TOSP Act to align with the Commonwealth Reforms. The Bill prohibits the sale of vaping goods generally, while ensuring legitimate patient access to therapeutic vaping goods is available.

The Bill achieves this by creating a new definition for ‘vaping good’ and ‘therapeutic vaping good’ (see new section 3C) and identifying vaping goods (other than a therapeutic vaping good) as a ‘prohibited smoking product’ (see new section 3D). By adopting the TG Act definition of ‘vaping good’, the Bill ensures consistency of language between Commonwealth and other state and territory jurisdictions. The term ‘vaping good’ is also consistent with accepted terminology as used in the community, ensuring clarity and transparency. To allow for genuine therapeutic access to vaping goods, a definition of ‘therapeutic vaping good’ will create a carveout from the prohibition on the sale of vaping goods, to exclude vaping goods which are supplied consistently with the TG Act (see new section 3C(1)). The reference to the TG Act in the definition of ‘therapeutic vaping good’ ensures that the therapeutic pathways for supplying and accessing therapeutic vaping goods in the TG Act are applicable in the Territory. This will resolve inconsistencies resulting from the Commonwealth Reforms and establish a complementary and concurrent framework that clearly prohibits the non-therapeutic supply of vaping goods as a prohibited smoking product.

In addition, the Bill ensures additional smoking products can be considered a prohibited smoking product by regulation if the product, or the smoke of the product, has a distinctive fruity, sweet or confectionary-like character; or if the product is attractive to children. This amendment seeks to protect children and respond to the rapidly evolving market of vaping

¹⁶ <https://www.tga.gov.au/resources/resource/reference-material/product-standards-unapproved-therapeutic-vapes>

¹⁷ [Notified vape list: goods for smoking cessation or nicotine dependence | Therapeutic Goods Administration \(TGA\)](#)

goods, which often seeks to evade regulation through novel product development (see new section 3D).

The Bill also amends the term ‘personal vaporiser’ to ensure certain smoking products (such as shishas and hookahs) remain regulated as intended under the TOSP Act and are not inadvertently captured by the prohibition on the sale of vaping goods.

The Bill will also make consequential amendments to related drug and smoking Acts within the ACT to align with the amended terminology of ‘vaping good’ in order to ensure vaping goods and products that emit vapour are still within scope of smoke-free controls under the *Smoke-Free Public Places Act 2003* and the *Smoking in Cars with Children (Prohibition) Act 2011*, regardless of their therapeutic status. The Bill will also make minor technical amendments to related drug and smoking Acts within the ACT to modernise language used in provisions and insert accompanying notes (where relevant) in accordance with contemporary legislative drafting practice.

CONSULTATION ON THE PROPOSED APPROACH

Key stakeholders, including ACT Government agencies were engaged throughout the development of the Bill. Consultation also occurred with the Australian Government Department of Health and Aged Care on amendments to the TG Act to ensure consistency between these and the objectives of the Bill.

CLIMATE IMPACT

The Bill will not have any impact on the climate or the environment.

CONSISTENCY WITH HUMAN RIGHTS

The proposed amendments have been carefully considered in the context of the objects of the *Human Rights Act 2004* (HR Act). No material limitations on human rights have been identified by this Bill, as is required to be considered by section 28 of the HR Act. The Bill promotes, supports and strengthens protection of several rights under the HR Act.

Rights Promoted

This Bill promotes the following rights under the HR Act:

- Section 8 – Right to equality and non-discrimination
- Section 9 – Right to life
- Section 11 – Right to protection of the family and children

Section 8 – Right to equality and non-discrimination

Section 8 of the HR Act provides that everyone is entitled to enjoy their rights without discrimination of any kind and that everyone is equal before the law and entitled to the equal protection of the law without discrimination.

While the Commonwealth Reforms and scheduling of nicotine in the Poisons Standard allow people under the age of 18 to access vaping goods with a prescription, the TOSP Act currently prohibits that sale to under 18s (see sections 14 and 15). This means that although national clinical guidelines indicate the circumstances in which a medical practitioner may prescribe a

vaping good to people under 18 and where access to therapeutic vaping goods is clinically indicated, there is currently no legal avenue for people under the age of 18 to access those products. Therefore, the current regulatory framework has a discriminatory impact for all people under the age of 18 who, because of their age, are unable to access products which may be clinically necessary to mitigate risks to their health – such as support for nicotine dependence.

This discriminatory impact is exacerbated by the fact that people under the age of 18 years have relatively higher rates of vaping use, and therefore a potential higher need for therapeutic alternatives such as therapeutic vaping goods. Further, there may be discriminatory impacts for Aboriginal and Torres Strait Islander young people and LGBTIQ+ young people, who are known to use smoking products at a higher rate than their peers (although data is not yet available to confirm if this is the case with e-cigarettes), and therefore are also more likely to need access to or benefit from the use of therapeutic vaping goods for vaping cessation.

For some people, access to vaping cessation supports – including therapeutic vaping goods – may be necessary to support that person through smoking or vaping cessation or minimise the harm associated with nicotine withdrawal. Under the TG Act, therapeutic supply of vaping goods can only occur in clinical and pharmacy settings, and this supply and access is heavily regulated, as set out in detail above. In particular, for people under the age of 18, these products are only available with a prescription from a medical or nurse practitioner.

The Bill will carve out ‘therapeutic vaping good’ (i.e. vaping goods supplied in a way consistent with the TG Act) from the definition of a ‘vaping good’, meaning these products will not be a ‘prohibited smoking product’ under the TOSP Act. This will in turn allow young people to access therapeutic vaping goods via prescription pathways and mitigate the discriminatory impact of the current regulatory approach. As with any other medicine or product subject to a prescription or regulated by the TG Act and the MPTG Act, access to therapeutic vaping goods through prescription pathways will occur only where access is clinically appropriate, and that access will be under health practitioner supervision.

The proposed amendments therefore enable genuine therapeutic access to vaping goods to occur in a regulated environment. This mitigates the discriminatory impact of the application of sections 14 and 15 of the TOSP Act and promotes the right to be free from discrimination for people under the age of 18, and the potential discriminatory impact of these same provisions on Aboriginal and Torres Strait Islander young people and LGBTIQ+ young people.

Section 9 – Right to life

Section 9(1) of the HR Act recognises that everyone has the right to life and that no-one may be arbitrarily deprived of life. The right to life requires the ACT Government to safeguard life where there may be a real and immediate direct or indirect risk to life.

Where a government is aware of a real and immediate risk to life, they must take reasonable action to protect individuals, including an obligation to take reasonable measures to safeguard against identifiable risks to life, including to protect people in the ACT against the harm caused by tobacco and non-therapeutic vaping goods. Vaping increases the risk of smoking uptake

by approximately threefold¹⁸. The harms to people from smoking are very well established. Smoking increases the risk of cardiovascular disease, cancer, chronic lung diseases and diabetes and a range of other conditions. Smoking is the leading cause of preventable disease and death in Australia and up to two thirds of people who smoke long-term will die of a smoking-related disease.¹⁹ The nicotine inhaled from smoking and vaping can lead to dependence and impact on adolescent brain development.²⁰

By excluding 'therapeutic vaping good' from being a 'prohibited smoking product' and therefore from the TOSP regulatory framework, the Bill promotes pathways to allow for the therapeutic supply of vaping goods under the TG Act (as adopted by the MPTG Act) to aid in withdrawal from tobacco smoking or vaping or nicotine dependence. Once the Bill is passed, pharmacies will no longer be required to be licenced as a tobacco retailer to be able to supply therapeutic vaping products (as is currently required by Part 7 of the TOSP Act). For people under the age of 18 years, the Bill will also remove the legal prohibitions on this supply under the TOSP Act, opening the pathways for supply and access of therapeutic vaping goods to be utilised, as intended by the Commonwealth Reforms. The Bill therefore increases the attainable standard of health for those with nicotine dependency and promotes the right to life.

Access to appropriate smoking or vaping cessation supports helps people to avoid the long-term serious health consequences associated with smoking and vaping. The detailed regulation of therapeutic vaping goods (as outlined above) specifies the limited clinical circumstances where these products may be supplied. Therefore, the health benefits for people accessing therapeutic vaping goods for smoking or vaping cessation support and nicotine dependency management are enshrined as these products are intended to be supplied for these genuine therapeutic purposes only. In particular, where therapeutic vaping goods are supplied as a pharmacist-only medicine, pharmacists must provide the products only for the purposes of smoking or vaping cessation or the management of nicotine dependence, and where the pharmacist has provided professional advice to the patient on alternative cessation supports and therapies, appropriate dose and frequency are also considered. These controls are akin to those in place for other pharmacist-only and prescription medicines which aim to mitigate the risks of supply occurring outside of clinically appropriate circumstances.

Where access to therapeutic vaping goods occurs as a prescription-only medicine, the TG Act (as adopted by the MPTG Act) requires that the supply of vaping goods is "for use for smoking cessation, management of nicotine dependence, or another indication determined by the Minister" (TG Act, section 41QB(11)). There is also detailed clinical guidance available to medical practitioners around the circumstances in which it is clinically appropriate to prescribe therapeutic vaping goods²¹. As such, it is intended that vaping goods would only be supplied or prescribed where they would provide a genuine health benefit to the individual, thereby

¹⁸ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022

¹⁹ Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2019

²⁰ Yuan, M., Cross, S.J., Loughlin, S.E. and Leslie, F.M., 2015. Nicotine and the adolescent brain. *The Journal of physiology*, 593(16), pp.3397-3412.

²¹ Royal Australian College of General Practice, *Supporting smoking & vaping cessation: A guide for health professionals Guidance on smoking and vaping cessation support related to changes to Australia's vaping regulation*, 2024.

protecting and enhancing the health, safety and wellbeing of an e-cigarette user or person experiencing nicotine or smoking or vaping addiction and consequentially promoting their standard of health and right to life.

Section 11 – Right to protection of the family and children

Section 11(1) of the HR Act provides that the family is the natural and basic group unit of society and is entitled to be protected by society. This requires the ACT Government to support parents to exercise responsibility for protecting their children. Section 11(2) of the HR Act provides that every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. This right also requires that the best interests of the child be taken into account, which includes the protection of a child's health.

Evidence from prior to the Commonwealth Reforms suggested that children and young people represented a large percentage of those consuming vaping goods in Australia and that people under 25 (including 14-17 year-olds) are the only cohort nationally recording an increase in smoking or vaping rates²². This group may therefore have a higher risk of nicotine dependence, and a consequential greater need to ensure appropriate access to therapeutic support for vaping cessation and nicotine dependency management – including for therapeutic vaping goods where they are clinically indicated for vaping cessation or nicotine dependence. Access to appropriate vaping cessation or nicotine dependency support may help break the cycle of addiction to nicotine for children and young people and may mitigate the risks of children with nicotine dependency taking up tobacco smoking in future.

As a result of the Commonwealth Reforms as well as the TOSP Act prohibitions on the sale and purchase of all smoking products by people under the age of 18 (see sections 14 and 15, TOSP Act), there may be risks posed to the health of young people. For example, access to a therapeutic vaping good (obtained on prescription for young people under the age of 18) might be necessary to provide time-limited nicotine dependency management or vaping cessation support for an individual who was highly dependent and for whom other alternatives have been ineffective. Given the necessity for a prescription and the consistency with the clinical guidance around prescribing therapeutic vaping goods, this would occur only under the close supervision of a clinician – as such, mitigating the risks associated with vaping and instead promoting the health benefits for children.

Furthermore, the right to protection of family by supporting parents or caregivers to exercise responsibility for protecting their children is promoted as the Bill will enable parents or caregivers to support their children to access therapeutic vaping goods where there is a clinical need for this kind of therapeutic support. By ensuring parents or caregivers can reasonably support their children to legally access therapeutic vaping goods, this enhances the ability of parents to care for their children thereby preserving and enhancing family relations. It will also discourage parents or caregivers from accessing non-therapeutic vapes from the black market that are not properly labelled and where there is often no honest disclosure of the contents of the substances that form these vaping goods.

²² Wakefield, M., Haynes, A., Tabbakh, T., Scollo, M. and Durkin, S., 2023. Current vaping and current smoking in the Australian population aged 14+ years: February 2018-March 2023. *Melbourne: Centre for Behavioural Research in Cancer, Cancer Council Victoria*

The Bill also promotes the right of children to protection through broadening the categories of smoking products which may be declared a prohibited smoking product under new section 3D (which will replace the existing section 21). Section 3D will allow products to be prescribed by regulation as prohibited smoking goods if the product or the smoke of the product has a distinctive fruity, sweet or confectionary-like character, or if the product or its packaging may be attractive to children. Unlike smoking products currently prohibited under current section 21 of the TOSP Act, a prohibited smoking product which is prescribed under regulation in the proposed section 3D need not meet both the 'flavour' and 'packaging' criteria and only requires satisfying one of the two criteria. This will allow greater scope and flexibility in the kinds of smoking products which may be considered as prohibited smoking products on the basis that they are a type of product marketed or designed to be attractive to children. In the same way that cigarette use is associated with an increased risk of tobacco smoking uptake, smoking products which are marketed to children can normalise smoking behaviours and lead to an increased likelihood of future smoking in young people.

The right to protection of children is therefore promoted by ensuring that the power to prescribe products by way of regulation as prohibited smoking products is sufficiently broad and adaptable to allow products designed to appeal to children to be prohibited. This will help to ensure that fewer children start smoking in the first place, which will reduce the overall long-term harm to the community caused by smoking products in the future.

TOBACCO AND OTHER SMOKING PRODUCTS (VAPING GOODS) AMENDMENT BILL 2025

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **TOBACCO AND OTHER SMOKING PRODUCTS (VAPING GOODS) AMENDMENT BILL 2025**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Tara Cheyne MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This is a technical clause and sets out the name of the Act as the *Tobacco and Other Smoking Products (Vaping Goods) Amendment Act 2025* (the Act).

Clause 2 Commencement

This clause provides that the Act will commence on the day after its notification day, which differs from the automatic commencement date as the notification day (Legislation Act, s. 75(1)).

Clause 3 Legislation amended

This clause identifies that the Act amends the *Tobacco and Other Smoking Products Act 1927* and consequentially makes technical amendments to other Acts, including the *Drugs of Dependence Act 1989* and the *Smoking in Cars with Children (Prohibition) Act 2011* and the *Medicines, Poisons and Therapeutic Goods Act 2008*.

Clause 4 Legislation repealed

This clause identifies that the *Tobacco (Prohibited Smoking Products) Declaration 2011 (No 1)* (NI2011-584) is repealed.

Clause 5 Meaning of smoking product Section 3A, definition of smoking product, new paragraph (d)

This clause inserts a sub-section to the existing section 3A to amend the meaning of 'smoking product' to also include 'a vaping good other than a therapeutic vaping good'.

Clause 6 Section 3B

This clause substitutes section 3B and inserts new section 3C and 3D.

Section 3B - Meaning of personal vaporiser and personal vaporiser related product

This clause amends section 3B to modify the definition of the term 'personal vaporiser' and 'personal vaporiser related product'. The term 'personal vaporiser' is modified as no longer including a device that has either a battery or electric heating element component and is now defined as a device that need only be made for the purpose or apparent purpose of delivering a substance into a person's body when the person inhales through the device and has a cartridge or container to store a substance. The term 'personal vaporiser' and 'personal vaporiser related product' is also clarified to not include a 'vaping good' as this is intended to be regulated by the new section 3C.

Section 3C - Meaning of therapeutic vaping good and vaping good

The addition of section 3C defines the term 'vaping good' and 'therapeutic vaping good'. This addition aligns with the amendment made in clause 5 and will align the definition of vaping good under the TOSP Act with the TG Act, by referencing the definition of vaping good as defined by section 41P(1) of the TG Act.

Importantly, this section also defines the term 'therapeutic vaping good' to differentiate a vaping good which is supplied consistently with the TG Act from recreational vaping goods.

This is intended to ensure that the therapeutic pathways under the TG Act, are applicable in the Territory and allow the supply of vaping goods for therapeutic purposes.

Section 3C(2)(a) provides that the definition of ‘vaping good’ does not include a device designed to be used to deliver oxygen to an individual’s body. This is intended to describe devices such as an oxygen tank that is used to treat patients who suffer from respiratory conditions, as well as a self-contained breathing apparatus, such as that used by SCUBA divers or by fire fighters or workers in some hazardous environments.

Section 3C(2)(b) provides that the definition of vaping good does not include drug pipes, as these devices are dealt with under the *Criminal Code 2002*.

Section 3D - Meaning of prohibited smoking product

The addition of section 3D effectively replaces section 21 which defines ‘prohibited smoking product’. This clause amends the meaning of ‘prohibited smoking product’ by specifying it as a vaping good other than a therapeutic vaping good or a smoking product prescribed by regulation and then lists the conditions where a regulation may prescribe a smoking product as a prohibited smoking product.

Section 3D is intended to allow a regulation to prescribe a product as a vaping good if either of the conditions at (2) (a) or (b) are met. This section also clarifies that ‘smoke’ also includes vapour to capture the ambit of vaping goods that may be prescribed by regulation.

Clause 7 Prohibited smoking products Section 21

This clause removes section 21 which defines a ‘prohibited smoking product’ as this definition is subsumed into the new section 3D (see clause 6).

Clause 8 Prohibition on sale of prohibited smoking product Section 22 (2)

This clause amends the offence provision section 22 to align the offence with the changes made to the definition of ‘prohibited smoking product’ (see clause 6).

Clause 9 Retail tobacconist must obtain smoking products from licensed wholesaler Section 67 (4) and (5)

This clause removes a defence and associated definitions to the offence of a holder of a retail tobacconist’s licence obtaining a smoking product from someone who is not the holder of a wholesale tobacco merchant’s licence. The defence removed relates to the sale of personal vaporisers by community pharmacies. Given the addition of the definition of ‘therapeutic vaping good’, which are vaping goods that are supplied consistently with the TG Act, this defence is no longer required.

Clause 10 Dictionary, new definitions

This clause adds definitions to the Dictionary of the Act for a ‘prohibited smoking product’ and defines this term by reference to section 3D, as well as ‘vaping good’ and ‘therapeutic vaping good’ which defines the terms by reference to section 3C, thereby linking and defining the relevant terms with the relevant sections of the Act.

Schedule 1 - Consequential Amendments

Part 1.1 Drugs of Dependence Act 1989

Clause [1.1] Section 171AB (4), definition of *smoke cannabis*, paragraph (b) (ii)

This clause amends part of sub-section 171AB(4)(b)(ii) of the *Drugs of Dependence Act 1989* by adding 'vaping good' to the term so that the sub-section reads "a personal vaporiser or vaping good that contains cannabis and that is activated."

Clause [1.2] Section 171AB (4), definition of *smoking cannabis*, new example

This clause inserts an additional example 'a vaping good' to the types of 'devices' referred to in sub-section 171AB(4)(a).

Clause [1.3] Section 171AB (4), new definition of *vaping good*

This clause inserts the definition of 'vaping good' by reference to the definition of 'vaping good' as found in the new section 3C of the TOSP Act.

Part 1.2 Smoke-Free Public Places Act 2003

Clause [1.4] Section 3, note 1

This clause replaces existing note 1 in section 3 of the *Smoke-Free Public Places Act 2003* to explain signpost definitions and modifies the existing signpost definition example of 'smoking product' to the example of 'gaming area'.

Clause [1.5] Section 5B

This clause amends section 5B to broaden and clarify the definition of 'smoke' as 'smoke from an ignited tobacco product or herbal product' or 'vapour from an activated personal vaporiser or vaping good' and to clarify that a person also smokes when a person draws or inhales vapour or where a person holds or controls a smoking product while it is ignited or activated.

This clause also adds sub-section 5B(4) to define 'herbal product', 'personal vaporiser', 'tobacco product', and 'vaping good' with reference to the appropriate definitions as found in the TOSP Act and defines 'smoking product' to include all of the above terms contained in sub-section 5B(4).

Clause [1.6] Dictionary, definitions of *personal vaporiser* and *smoking product*

This clause removes the term 'personal vaporiser' within the Dictionary provisions of the *Smoke-Free Public Places Act 2003* as it is a redundant term no longer employed in the legislation and removes the term 'smoking product' as it is now defined in sub-section 5B(4).

Part 1.3 Smoking in Cars with Children (Prohibition) Act 2011

Clause [1.7] Section 6

This clause amends section 6 of the *Smoking in Cars with Children (Prohibition) Act 2011* in essence to mirror the amended section 5B of the *Smoke-Free Public Places Act 2003*.

As such, this clause amends section 6 to broaden and clarify the definition of ‘smoke’ as ‘smoke from an ignited tobacco product or herbal product’ or ‘vapour from an activated personal vaporiser or vaping good’ and to clarify that a person also smokes when a person ‘draws or inhales smoke or vapour’ or where person holds or controls a smoking product while it is ignited or activated.

This clause also inserts sub-section 6(3) to define ‘herbal product’, ‘personal vaporiser’, ‘tobacco product’, and ‘vaping good’ with reference to the appropriate definitions as found in the TOSP Act and defines ‘smoking product’ to include all of the above terms contained in sub-section 6(3).

Clause [1.8] Dictionary, definitions of *personal vaporiser* and *smoking product*

This clause removes the term ‘personal vaporiser’ within the Dictionary provisions of the *Smoking in Cars with Children (Prohibition) Act 2011* as it is a redundant term no longer employed in the legislation and removes the term ‘smoking product’ as it is now defined in sub-section 6(3).

Schedule 2 Technical amendments

Part 2.1 Medicines, Poisons and Therapeutic Goods Act 2008

Clause [2.1] Section 14, definition of regulated therapeutic good, paragraph (a) (iii)

This clause makes a technical amendment to the meaning of ‘regulated therapeutic good’ in section 14 of the *Medicines, Poisons and Therapeutic Goods Act 2008* by removing the term ‘therapeutic device’ from sub-section 14(a)(iii), as that term is no longer used by the TG Act.

Clause [2.2] Section 15 (2)

This clause makes a technical amendment to sub-section 15(2) of the *Medicines, Poisons and Therapeutic Goods Act 2008* by substituting with a provision clarifying the way in which the poisons standard takes effect in the ACT with respect to ‘medicines and poisons standards’ as defined in sub-section 15(1), to reflect updates to the TG Act.

Clause [2.3] definition of current poisons standard

This clause makes a technical amendment to section 15(3) of the *Medicines, Poisons and Therapeutic Goods Act 2008* by inserting the definition of ‘current poison standards’ with reference to s. 52A(1) of the TG Act in order to update a cross-reference to the TG Act.

Clause [2.4] Section 108 (4)

This clause makes a technical amendment to section 108(4) of the *Medicines, Poisons and Therapeutic Goods Act 2008* by substituting the words ‘made of the medicines and poisons inspector under subsection (1) if the inspector—’ with the words ‘under subsection (1) if the medicines and poisons inspector—’. This amendment clarifies the wording of sub-section 108(4) to avoid the impression that a medicines and poisons inspector could make a requirement of themselves under sub-section 108(1).

Part 2.2 Tobacco and Other Smoking Products Act 1927

[2.5] Section 14 (2), new note

This clause amends section 14(2) of the TOSP Act by inserting a new note to direct readers to section 59 of the *Criminal Code 2002* and to clarify that the defendant has a legal burden in relation to the matters mentioned in section 14(2). This is a technical amendment to align with modern legislative drafting practices.

[2.6] Section 23 (4), new note

This clause amends section 23(4) by inserting a new note to direct readers to section 58 of the *Criminal Code 2002* and to clarify that the defendant has an evidential burden in relation to the matters mentioned in section 23(4). This is a technical amendment to align with modern legislative drafting practices.

[2.7] Section 25A (2), new note

This clause amends section 25A(2) by inserting a new note to direct readers to section 59 of the *Criminal Code 2002* and to clarify that the defendant has a legal burden in relation to the matters mentioned in section 25A(2). This is a technical amendment to align with modern legislative drafting practices.

[2.8] Section 28 (3), new note

This clause amends section 28(3) by inserting a new note to direct readers to section 58 of the *Criminal Code 2002* and to clarify that the defendant has an evidential burden in relation to the matters mentioned in section 28(3). This is a technical amendment to align with modern legislative drafting practices.

[2.9] Sections 33, 35 and 36

This clause makes a technical amendment to sections 33, 35 and 36 by substituting the words ‘him or her’ with ‘their’ to align with modern legislative drafting practices and to modernise references to denominations of gender.

[2.10] Section 36 (1) and (2)

This clause makes a technical amendment to section 36(1) and (2) by substituting the words ‘he or she’ with ‘they’ to align with modern legislative drafting practices and to modernise references to denominations of gender.

[2.11] Sections 37 and 38

This clause makes a technical amendment to sections 37 and 38 by substituting the words ‘his or her’ with ‘their’ to align with modern legislative drafting practices and to modernise references to denominations of gender.

[2.12] Section 38 (2) (b) and (3) (a)

This clause makes a technical amendment to section 38 by substituting the words ‘he or she’ with ‘they’ and consequential adjustments to the language to align with modern legislative drafting practices and to modernise references to denominations of gender.

[2.13] Sections 39, 46 and 54

This clause makes a technical amendment to section 38 by substituting the words ‘his or her’ with ‘their’ to align with modern legislative drafting practices and to modernise references to denominations of gender.

[2.14] Section 62 (3), new note

This clause amends section 62(3) by inserting a new note to direct readers to section 59 of the *Criminal Code 2002* and to clarify that the defendant has a legal burden in relation to the matters mentioned in section 62(3). This is a technical amendment to align with modern legislative drafting practices.

[2.15] Sections 67 (3), new note

This clause amends section 67(3) by inserting a new note to direct readers to section 59 of the *Criminal Code 2002* and to clarify that the defendant has a legal burden in relation to the matters mentioned in section 67(3). This is a technical amendment to align with modern legislative drafting practices.

[2.16] Section 71 heading

This clause makes a technical amendment which replaces the heading of section 71 which refers to ‘unlicensed persons’ to instead refer to ‘unlicensed people’ in order to update language in line with modern legislative drafting practice.

[2.17] Section 71 (1)

This clause makes a technical amendment to section 71(1) by substituting the words ‘he or she’ with ‘they’ to align with modern legislative drafting practices and to modernise references to denominations of gender.