

# CLAUSE NOTES

## *Public Health Amendment (Vaping) Bill 2024*

### **Part I - Preliminary**

- Clause 1** The Short Title states that the Act is to be cited as the *Public Health Amendment (Vaping) Act 2024*.
- Clause 2** This clause provides for the Act to commence on 1 October 2024 or on Royal Assent, whichever is later.
- Clause 3** References to the “Principal Act” in this Act are with respect to the *Public Health Act 1997*.

### **Part 2 – Public Health Act 1997 Amended**

- Clause 4** This clause amends section 3 of the Principal Act.
- This subclause amends the definition of *exempt device* to clarify that vaping goods within the meaning of the *Therapeutic Goods Act 1989* (Cth) cannot be considered an *exempt device* under the Principal Act and can be personal vaporiser product, and therefore a smoking product, under the Principal Act’s regulatory regime.
- Clause 5** This clause amends section 69A of the Principal Act by excluding retailers of personal vaporiser products from the requirement to comply with subsections 69A(1) and 69A(2) (Information relating to smoking products).
- The effect of this amendment is that pharmacists and their employees are not required to provide specified information, an approved notice, or approved notices when selling a personal vaporiser product.

## **Clause 6**

This clause amends section 74A by:

- renumbering the section as subsection 74A(1); and
- inserting a new subsection 74A(2).

It is an offence under section 74A for any person to sell personal vaporiser product without a smoking product licence. This new subsection 74A(2) is inserted to exempt wholesalers (holding a licence under section 16(1)(b) of the *Poisons Act 1971*) who sell personal vaporiser products to pharmacy businesses that hold a smoking product licence authorising them to sell personal vaporiser products to consumers.

It is noted that any wholesalers of personal vaporiser product who do not meet the mandatory pre-requisites to hold a smoking product licence for the sale of that product will have their licence, to the extent that it authorises the sale of the personal vaporiser product, voided by clause 14 of this Act.

## **Clause 7**

This clause repeals section 74B of the Principal Act, and substitutes it with a new section 74B.

This new section 74B:

- provides that only an owner of a pharmacy business (within the meaning of the *Pharmacy Control Act 2001*) may apply to for a licence to sell personal vaporiser products; and
- provides that a person over the age of 18 may apply for a licence to sell tobacco products.

The new subsection 74B(3) substantially maintains the requirements set out in the previous subsection 74B(2) for an application for a smoking product licence to be in an approved form and accompanied by a fee to prescribed by regulation.

Paragraph (b) of the new subsection 74B(3) adds an additional requirement for an application for a smoking product licence to specify whether the application is for selling tobacco product or personal vaporiser product.

## Clause 8

This clause amends section 74C of the Principal Act.

### Subclause 8(a)

This subclause inserts a new subsection 74C(2)(ab), which sets out three new mandatory criteria that an applicant for a licence to sell personal vaporiser products must satisfy.

All three criteria must be satisfied in addition to the other pre-existing criteria set out in subsections 74C(2)(a) and 74C(2A).

The effect of this amendment is that an applicant for a licence to sell personal vaporiser product must:

- be the owner of a pharmacy business (within the meaning of the *Pharmacy Control Act 2001*);
- only sell the personal vaporiser product from the “pharmacy business premises” relating to that pharmacy business which is registered under the *Pharmacy Control Act 2001*.

### Subclause 8(b)

This subclause replaces subsection 74C(2AB) and sets out two circumstances where a smoking product licence application must be refused.

An application must be refused if:

1. The applicant already holds a smoking product licence for a different smoking product. For example, an application by a person (who already holds a licence to sell tobacco products) for a licence to sell personal vaporiser product must be refused.
2. It relates to tobacco products and the applicant intends to sell those products from a premises that forms part of a pharmacy business premises that is registered under the *Pharmacy Control Act 2001*.

### Subclause 8(c)

This subclause inserts a new subsection 74C(4A) which provides a new head of power for the Minister to prescribe, by regulation, standard licence conditions that must form the minimum conditions of smoking product licences or a class of smoking product licence.

### Subclause 8(d)

This subclause inserts a new subsection 74C(5A) which gives the Director of Public Health a new discretionary power to make

enquiries from specified bodies or any other body prescribed by regulation when determining an application for a licence to sell personal vaporiser product.

The specified bodies are the Tasmanian Pharmacy Authority, any relevant registration board within the meaning of the *Pharmacy Control Act 2001*, and the Australian Health Practitioner Regulation Agency, established under section 23 of the *Health Practitioner Regulation National Law (Tasmania)*, or any other prescribed body or entity.

**Clause 9**

This clause amends section 74D by inserting a new subsection 74D(ba).

This new subsection requires the Director to, upon granting an application for a smoking product licence, specify on the licence any standard minimum conditions prescribed by the Minister which apply to that licence.

**Clause 10**

This clause amends section 74F by inserting a new subsection 74F(3A) that prevents the Director from granting an application for the renewal of a smoking product licence for two sets of circumstances.

If the application for renewal relates to personal vaporiser products, the Director must not grant the application if:

- the applicant is no longer the owner of a pharmacy business (within the meaning of the *Pharmacy Control Act 2001*); or
- the “pharmacy business premises” relating to that pharmacy business is no longer registered under the *Pharmacy Control Act 2001*.

If the application for renewal relates to tobacco products, the Director must not grant the application if the applicant intends to sell those products from a premises that forms part of a “pharmacy business premises” that is registered under the *Pharmacy Control Act 2001*.

**Clause 11** This clause amends section 74G by inserting a new subsection to create an exemption to the discretionary power of the Director to vary the conditions of a smoking product licence.

The effect of this clause is that any standard licence conditions prescribed by the Minister by regulation cannot be varied by the Director.

**Clause 12** This clause inserts a new section 74HA into the Principal Act which provides for the voiding of smoking product licences where the licensee no longer meets the mandatory pre-conditions.

The effect of the new section is confined to smoking product licences relating to personal vaporiser products.

The new section makes provisions that a smoking product licence relating to personal vaporiser products becomes void if

The new section also makes further provisions that a licence that becomes “void” under this section:

- ceases to have effect on becoming void and has no value; and
- is not subject to review under section 160A of the Principal Act.

**Clause 13** This clause amends section 74J(2) of the Principal Act.

Section 74J(2) provides a list of details that are required to be recorded in the register of smoking product licences.

The effect of this clause is that information about the smoking product to which each licence relates will be an additional detail to be recorded in the register for each issued licence.

### **Part 3 – Effect of Commencement of Act**

#### **Clause 14**

This clause inserts a new section 74LA to effect transitional changes to existing smoking product licences issued prior to the commencement of the Act.

#### Licences to sell both tobacco and personal vaporiser products

Pre-existing licences (which were issued prior to the commencement of the Act) for selling both tobacco and personal vaporiser products will be taken to have been issued to sell *either* tobacco or personal vaporiser products.

If a licence holder is not the owner of a pharmacy business (within the meaning of the *Pharmacy Control Act 2001*), their pre-existing licence will be taken to have been issued to sell only tobacco products.

If a licence holder is the owner of a pharmacy business (within the meaning of the *Pharmacy Control Act 2001*), their pre-existing licence will be taken to have been issued to sell only personal vaporiser product.

#### Licences to sell only personal vaporiser products

A pre-existing licence issued to only sell personal vaporiser product will be voided, upon commencement of the Act, if the holder of the licence is not owner of a pharmacy business, within the meaning of the *Pharmacy Control Act 2001*.

#### Licences to sell only tobacco products

A pre-existing licence issued to only sell tobacco product that is in force immediately before the commencement of the Act is to remain unchanged.

### **Part 4 – Repeal of Act**

#### **Clause 15**

This clause repeals the Act one year after all amendments have been incorporated into the Principal Act.