

## EXPLANATORY STATEMENT

### *Therapeutic Goods Act 1989*

#### *Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017*

The object of the *Therapeutic Goods Act 1989* (the Act) is to establish and maintain a national system of controls for the quality, safety, efficacy/performance and timely availability of therapeutic goods that are used in Australia or exported from Australia. The Therapeutic Goods Administration (the TGA), which is part of the Department of Health, is responsible for administering the Act.

The *Therapeutic Goods Amendment (2016 Measures No.1) Act 2017* (the Amendment Act) amended the Act to, in particular, support the implementation of several key recommendations of the Expert Panel Review of Medicines and Medical Device Regulation (the Review) agreed to by the Australian Government in its response to the Review. The Expert Panel was established to, principally, identify areas of the regulation of medicines and medical devices which could be streamlined while maintaining the safety and quality of therapeutic goods in Australia, and made 58 recommendations. The Australian Government supported 56 of the 58 recommendations for reform. The Amendment Act addressed a first tranche of these recommendations.

One of the reforms supported by the Amendment Act was to enable health practitioners to supply certain unapproved therapeutic goods – principally those with an established history of use in similar overseas countries, or in Australia through the existing provisions allowing access to unapproved therapeutic goods – to their patients by way of notification to the TGA, rather than (as would otherwise be the case) requiring pre-approval. For medicines, this involved the insertion of new subsections 19(7A) to (7H) in the Act.

Subsection 19(7A) of the Act provides that the Minister may, by legislative instrument, make rules authorising any health practitioner who is included in a specified class of health practitioners to supply:

- (a) specified therapeutic goods for use in the treatment of humans; or
  - (b) a specified class of such goods;
- to the class or classes of recipients specified in those rules, so long as:
- (c) the goods are supplied in the circumstances specified in those rules; and
  - (d) the conditions (if any) specified in those rules are satisfied.

The Rules therefore specify classes of health practitioners, therapeutic goods, classes of recipients, circumstances and conditions and set out the relevant authorisations, for the purposes of subsection 19(7A). One such condition is that the health practitioner must ensure that the medicine is supplied in accordance with good medical practice – more detail on the meaning of this term is set out in the explanation of the effect of section 4 of the Rules in the Attachment.

Subsection 19(7B) of the Act provides that, in making rules under subsection (7A), the Minister must comply with:

- (a) such requirements (if any) as are prescribed by the regulations; and
- (b) such restrictions (if any) as are prescribed by the regulations; and
- (c) such limitations (if any) as are prescribed by the regulations.

Following the enactment of the Amendment Act, the *Therapeutic Goods Legislation Amendment (2017 Measures No. 1) Regulations 2017* amended the *Therapeutic Goods Regulations 1990* (the Regulations) to add a provision (subregulation 12B(5)) setting out, for the purposes of paragraph 19(7B)(b) of the Act, restrictions precluding the Minister from authorising in the new instrument the supply of any medicines that contain a substance in Schedules 8 (Controlled Drug), 9 (Prohibited Substance) or 10 (Substances of such danger to health as to warrant prohibition of sale, supply and use) of the Poisons Standard (a copy of the current Poisons Standard can be found at [www.legislation.gov.au](http://www.legislation.gov.au)). This has been complied with, and the Rules do not authorise the supply of any medicines containing these substances.

Subsection 19(7C) of the Act imposes a requirement for a health practitioner to notify a supply of goods under rules made under subsection 19(7A) to the Secretary after the health practitioner has supplied those goods. The health practitioner must do so in accordance with subsection 19(7D) of the Act (principally, this relates to ensuring that the notification contains the information prescribed in the regulations for the purposes of subsection 19(7D) – e.g. the practitioner’s name, and the medical condition for which the medicine was supplied to the patient).

The Rules are made for the purposes of subsection 19(7A), and comply with subregulation 12(5B) of the Regulations.

Details of the Rules are set out in the [Attachment](#).

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Therapeutic Goods (Authorised Supply of Specified Medicines) Rules 2017 commenced on 3 July 2017 (the 3 July 2017 Rules). This instrument replaces the 3 July 2017 Rules with replacement Rules - i.e. the Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017 - that incorporate the following changes compared to the 3 July 2017 Rules:

- (a) the amendment of a small number of typographical errors;
- (b) the clarification of the intended product(s), route(s) of administration and indication(s) for a small number of entries; and
- (c) the addition of a further 29 medicines that meet the criteria of established history of use as per the policy previously consulted on for the 3 July 2017 rules.

## **Consultation**

Extensive stakeholder consultation was undertaken with consumers, industry and health professionals as part of the Review. A public consultation on the proposed changes to introduce a new, streamlined pathway to access unapproved therapeutic goods considered to have an established history of safe use was also completed, in the lead up to the making of the 3 July 2017 Rules. During that consultation, stakeholders were advised of the process for adding and removing items from the Rules, including in particular that from time to time products may be added to, or removed from, the instrument, and that this may not always be preceded by consultation. As such, the main changes that are incorporated in this instrument as compared to the 3 July 2017 Rules have not been specifically consulted on. As these changes principally add a number of new products that can be supplied by medical

practitioners to their patients by notification, without the need for pre-approval, this will result in greater flexibility and ease of access for both patients and health practitioners.

Other changes concerned are minor and machinery in nature and principally relate to clarifications and the removal of unintended errors.

Authority: Subsection 19(7A) of the  
*Therapeutic Goods Act 1989*

**Details of the *Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017***

**Section 1 – Name**

This section provides for the Rules to be referred to as the *Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017*.

**Section 2 – Commencement**

This section provides for the Rules to commence the day after they are registered.

**Section 3 – Authority**

This section provides that the Rules are made under subsection 19(7A) of the *Therapeutic Goods Act 1989*.

**Section 4 – Authorisation to supply medicines**

This section sets out the relevant authorisations.

The therapeutic goods that may be supplied under the Rules are medicines containing only the active ingredient, or ingredients, specified in an item in table 1, in the strength or concentration (if any), and the dosage form, specified in that table item.

Subsection 4(1) provides that a health practitioner of the kind specified in an item in table 1 is authorised to supply the medicine covered by that table item to a patient of the health practitioner.

Subsection 4(2) provides that another health practitioner is authorised to supply the medicine to a patient of the first health practitioner if requested to do so by the first health practitioner.

In both cases, the supply must be for an indication specified in the relevant table item and the medicine must be for administration through the route of administration mentioned in the relevant table item.

The supply of a medicine under the Rules is subject to conditions. In the case of supply by a health practitioner to their own patient, the health practitioner must inform the patient (or a parent or guardian of the patient) that the medicine is not on the Register, must receive informed consent, and must supply the medicine in accordance with good medical practice.

The TGA document titled *Special Access Scheme Guidance for health practitioners and sponsors*, published in September 2017, which includes guidance on the supply of unapproved goods under these Rules, explains that ‘good medical practice’ refers to a series of standards that health practitioners should adhere to when treating patients. These standards are generally patient-centred and comprise ethical and professional benchmarks expected by a health practitioner’s professional peers, as well as the community. For example, registered medical practitioners operate in accordance with the principles in the Medical Board of Australia’s ‘*Good Medical Practice: A Code of Conduct for Doctors in Australia*’, and dental practitioners would be expected to comply, in most cases, with the Dental Board of Australia’s ‘*Code of Conduct for registered health practitioners*’.

Given the above, it is expected that health practitioners in particular, and patients, would be familiar with, and understand, the meaning of this term.

The health practitioner supplying the medicine (whether under subsection 4(1) or (2)) must notify the TGA, and the sponsor of the medicine, if the health practitioner becomes aware of any adverse event suffered by the patient or any defect in the medicine.

Subsection 4(3) provides that notification must be in accordance with reporting guidelines set out in the document titled *Special Access Scheme Guidance for health practitioners and sponsors*, published in September 2017. In accordance with subsection 14(2) of the *Legislation Act 2003*, this document is incorporated as in force at the commencement of the Rules. The document is freely available on the TGA website ([www.tga.gov.au](http://www.tga.gov.au)).

## Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### **Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017**

The Rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Rules are made under subsection 19(7A) of the *Therapeutic Goods Act 1989* (the Act). They take effect on 3 July 2017.

The *Therapeutic Goods Amendment (2016 Measures No.1) Act 2017* (the Amendment Act) recently amended the Act to, in particular, support the implementation of several key recommendations of the Expert Panel Review of Medicines and Medical Device Regulation (the Review) agreed to by the Australian Government in its response to the Review (see [www.tga.gov.au](http://www.tga.gov.au)). The Expert Panel was established to, principally, identify areas of the regulation of medicines and medical devices which could be streamlined while maintaining the safety and quality of therapeutic goods in Australia, and made 58 recommendations. The Australian Government supported 56 of the 58 recommendations for reform, and the Amendment Act addressed a first tranche of these recommendations.

One of the reforms supported by the Amendment Act was to enable health practitioners to supply certain unapproved therapeutic goods – principally those with an established history of use in similar overseas countries – to their patients by way of notification to the TGA, rather than (as currently) requiring pre-approval. For medicines, this involved the insertion of new subsections 19(7A) to (7H) in the Act

The Rules are made for the purposes of subsection 19(7A) and authorise health practitioners included in a specified class of health practitioners to supply specified therapeutic goods to specified classes of recipients.

The Rules first commenced on 3 July 2017. This instrument replaces the version of the Rules that commenced on 3 July 2017, with replacement Rules i.e. the Therapeutic Goods (Authorised Supply of Specified Medicines) Rules September 2017 that incorporate the following changes compared to the 3 July 2017 Rules:

- (a) the amendment of a small number of typographical errors;
- (b) the clarification of the intended product(s), route(s) of administration and indication(s) for a small number of entries; and
- (c) the addition of a further 29 medicines that meet the criteria of established history of use as per the policy previously consulted on for the 3 July 2017 rules.

#### **Human rights implications**

The Rules do not engage any of the applicable rights or freedoms.

#### **Conclusion**

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

**Larry Kelly, delegate of the Minister for Health**