

Misuse of Drugs Amendment Bill (No 3)

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Misuse of Drugs Amendment Bill (No 3) and recommends by majority that it be passed with the amendments shown.

Introduction

The bill as introduced amends two main areas of the Misuse of Drugs Act 1975 (the principal Act) and the Misuse of Drugs Amendment Act 1978 (the amendment Act). The bill allows presumption of supply matters to be amended by Order in Council, subject to an affirmative resolution procedure. It also amends the presumption of supply quantity for methamphetamine, and adds a Ministry of Justice official to the membership of the Expert Advisory Committee on Drugs.

The bill will also create new offences of importing and exporting precursor substances, create powers of search and seizure without warrant for ephedrine and pseudoephedrine, and allow controlled deliveries of precursor substances.

We recommend the addition of a new Part 3 to the bill, covering restricted substances. This Part is based on our consideration of Supplementary Order Paper No 298 (the SOP), in the name of the Hon Jim Anderton, which was referred to us by the House on 9 November 2004.

The SOP arose out of recommendations made by the Expert Advisory Committee on Drugs after its consideration of a single substance, BZP (benzylpiperazine). The Expert Advisory Committee on Drugs was concerned that there was no appropriate classification in the principal Act for substances, such as BZP, that are not considered to pose a high or moderate risk, but need regulating. BZP is sold and promoted on the basis of its psychoactive effects, but is not regulated as a food, medicine, or controlled drug.

After our consideration of the issues raised by the SOP, we have considered carefully options for regulating low-risk substances with psychoactive effects, including BZP. These substances may have negative health effects but are at the lower end of the regulatory spectrum and do not warrant regulation as controlled drugs.

This commentary focuses on the major issues we examined and discusses the amendments we recommend to the bill. These amendments incorporate those aspects of the SOP that we think should proceed. We also recommend some technical amendments not covered by this commentary.

Restricted substances

We recommend that the restricted substances portion of this legislation cover substances manufactured for the primary purpose of being administered, ingested, inhaled, or injected to induce a psychoactive response but excluding agricultural compounds or veterinary medicines, controlled drugs or precursor substances, dietary supplements, food, hazardous substances, herbal remedies, liquor, tobacco products, and herbal smoking products. This is a narrower definition than that proposed in the SOP, and is intended to capture only those low-risk substances that are not, or cannot be, regulated under other legislation.

We consider that, where substances are governed by other legislation, that legislation should be used to control the use of those substances rather than creating new legislation. For example some substances, such as butane gas, aerosols, and nitrous oxide (NOS) achieve a psychoactive effect but are manufactured, promoted, and sold for a primary personal, domestic, or industrial use. These substances are generally regulated in terms of their intended use. We also note that other methods could be used to reduce the potential for these substances to be used for their psychoactive properties, such as changes to the manufacturing process to make them unpalatable.

The SOP did not include any indication of the kinds of substances that would be regulated as restricted substances, or sufficient detail about the restrictions or requirements that could be placed on such substances by regulations. We considered that more clarity was needed about what constituted a restricted substance, as the SOP proposed very flexible provisions for designating substances as “restricted”.

Regulation of restricted substances

We recommend a framework for regulating restricted substances that will become a stand-alone amendment Act if passed by the House, to be read with and deemed to be part of the principal Act. The stand-alone amendment Act will regulate restricted substances under the same legislation as controlled drugs.

We considered carefully the option of regulating restricted substances under stand-alone legislation, for example in a “Restricted Substances Act”. We note that such an Act, not connected to the principal Act, would have required substantial policy work to achieve consistency with the principal Act, and we considered that regulation of “legal highs” needed to be pursued quickly. The stand-alone amendment Act we propose will regulate restricted substances under the same legislation as controlled drugs. Some of us would like to see the ongoing policy work continue so that a stand-alone “Restricted Substances Act” could be developed to replace our proposed amendments.

Substances covered by the legislation could be subject to restrictions and requirements placed on matters such as advertising, distribution, manufacturing, and sale and supply. It would not be an offence to possess a restricted substance.

Adding or removing restricted substances

We recommend that the provisions relating to restricted substances apply only to substances listed in the amendment Act (Schedule 4). We recommend including BZP in Schedule 4, on the basis of the evidence we received and the Expert Advisory Committee on Drugs’ recommendation for regulation of BZP. The SOP did not specify particular substances but rather established a mechanism by which substances could be added to the schedule at a later time.

We recommend provisions allowing other substances to be added to or removed from Schedule 4 by Order in Council, subject to an

affirmative resolution procedure in the House. Before the Order in Council could be made, the substance would be subject to assessment and recommendation by the Expert Advisory Committee on Drugs. The matters to be considered by the Expert Advisory Committee on Drugs are set out in our recommended amendments (clause 36(2)).

The Expert Advisory Committee on Drugs makes recommendations to the Minister of Health on the classifications of drugs and substances based on certain criteria (section 4B(2) of the principal Act). Under the proposed amendments all substances considered by the Expert Advisory Committee on Drugs would continue to be subject to the existing criteria, as amended by this bill, but if the expert advisory committee was considering recommending a restricted substances classification, a second set of criteria would also have to be considered. These criteria are set out in clause 36(2), and include the practicalities of imposing restrictions or requirements on the substance and the ability to enforce those, and the risk of encouraging people to use more dangerous substitutes in place of the substance.

Some of us are concerned that having a second set of criteria to classify restricted substances would encourage the Expert Advisory Committee on Drugs to make assumptions about the subsequent classification a substance would have, and consider that one set of criteria should be used for all substances undergoing classification.

Others of us are satisfied that the criteria proposed for the Expert Advisory Committee on Drugs are robust as they gauge a substance's level of harm before criteria for a controlled drug or restricted substance are applied. However, we would like to see a more integrated approach to the criteria for classification of controlled drugs and restricted substances, and would like this to be considered for any future revision of the Act.

The SOP proposed allowing not only substances to be added or removed by Order in Council, but also the restrictions and requirements applying to each substance. Our recommended amendments have moved more of the restrictions and requirements into the primary legislation, with delegated legislation providing the detail. The primary legislation could be amended by regulation to add or remove a restricted substance only.

We consider that the framework for adding and removing restricted substances offers an appropriate mechanism for scheduling low-risk

substances, as it balances public health needs against the low risk presented by these substances. We are confident that regulatory changes can be made swiftly through the Order in Council process should a substance present a risk to public health.

We have considered the concerns raised by the Regulations Review Committee about amending primary legislation through delegated legislation and the proliferation of the affirmative resolution procedure, and its advice that these should be used in justifiable circumstances only. We consider that it is vital to be able to amend the schedule quickly, as a public health measure. We consider that the use of the affirmative resolution procedure is appropriate in these circumstances, although we recognise that allowing amendment through delegated legislation rather than an amendment bill will limit public input into this process.

We discuss the advice received from the Regulations Review Committee further below, particularly in relation to the affirmative resolution procedure.

Limiting ability to reschedule controlled drugs

We recommend removing the ability for the classification level of a controlled drug to be decreased, or for a classification to be removed, by Order in Council (subject to an affirmative resolution procedure). This would mean a controlled drug could not be changed to a restricted substance without the controlled drug classification being removed by Parliament first. The majority of us consider that the expeditious scheduling mechanism provided for in the principal Act is justified for increasing classifications only, where the public interest is served best by enabling a government to react quickly to new and evolving drug problems. The majority of us consider the argument for abbreviating the normal parliamentary scrutiny process is less strong when a lower classification is being considered, and believe the policy implications of such changes should be considered by Parliament in the usual way.

Sale and supply restrictions and requirements

We recommend prohibiting the sale or supply of restricted substances to a person under the age of 18 years (clauses 37 and 40). We recommend that people under the age of 18 years be prohibited from

selling restricted substances. We also recommend provisions requiring the sale or supply of restricted substances to comply with the further restrictions and requirements detailed below.

We are satisfied that these restrictions will prevent people under the age of 18 years obtaining restricted substances, and will provide greater protection than is currently available to young people. We were greatly concerned by submissions we received suggesting BZP was being promoted directly to young people and children, although we acknowledge a voluntary code of practice has been adopted by many in the industry that restricts sales of BZP to people over 18.

We recommend enabling regulations to be made to restrict the places and premises where restricted substances can be sold or supplied (clause 63(1)(b)). For example, the sale of restricted substances from premises selling alcohol could be prohibited. Given the evidence we received indicating the incompatibility of BZP and alcohol, we consider these restrictions are important to minimise possible harm. Regulations could also be made to restrict the sale or supply of restricted substances from places where children or young people gather (such as schools).

Other restrictions and requirements

We recommend requiring the sale and supply of restricted substances to comply with any regulations made under this bill. Regulations could be made regarding advertising, labelling, packaging, and signage specifications.

Where advertising is permitted, we recommend that regulations prescribe detail to cover such things as prohibiting sponsorship, or advertising in certain locations (for example schools), or advertising that employs certain themes (appealing to children)(clause 63(1)(c) and (d)).

We recommend allowing restrictions on the appearance of labels on restricted substances to be set in regulations (clause 63(1)(e) and (f)). This would include prohibiting labelling that appeals to children, or makes associations with youth culture. Regulations could also prescribe requirements for the labelling of restricted substances, for example that both inner and outer layers of a package carry labels that specify certain prescribed matters.

Similarly, we recommend enabling regulations to prescribe packaging restrictions specifying such detail as the size and type of packaging permitted for restricted substances, and what sort of material can

be inserted in such packaging (clause 63(1)(g) to (k)). Regulations could also be made to cover health warnings to be added on restricted substance packaging.

We recommend that any requirements on the signage displayed where restricted substances are sold be contained in regulation (clause 63(1)(n) and (o)). Such detail would include the form of any signage displayed where restricted substances are sold. This might include, for example, a requirement for a sign of a particular size to be displayed stating that restricted substances will not be sold to a person under the age of 18 years.

Manufacturing and distribution standards

We recommend that every person who manufactures or imports a restricted substance must comply with any applicable manufacturing codes of practice (clause 51). In the event that a restricted substance needs to be recalled from sale, we recommend enabling the Minister of Health to issue a recall order to any manufacturer, importer, or seller (clause 53). A recall could be made on the grounds that a restricted substance was unsound for human consumption, or was damaged or contaminated.

Further detail relating to manufacturing standards for restricted substances could be set by issuing or revoking codes of practice. The Director-General of Health could, from time to time, issue, approve, amend, or revoke a code of practice (clause 64). The Director-General of Health would be required to consult with organisations representative of the manufacturers before issuing or making changes to a code of practice. We consider that these checks are necessary to ensure compliance with manufacturing standards for restricted substances. We recommend that the manufacturing standards apply to imported restricted substances, to ensure the safety of any imported substances.

We recommend certain book-keeping requirements for every person who imports, prepares, processes, or manufactures restricted substances. These restrictions require people involved in these parts of the business of manufacturing or distributing restricted substances to keep business records for a certain period of time, to be prescribed in regulations. Book-keeping is also important should there be a recall of restricted substances.

Penalties

We recommend a number of penalties for offences relating to restricted substances. These fines range from \$1,000 to \$5,000 (or \$10,000 for a body corporate). We outline some of the penalty provisions below.

We recommend that any person who obstructs an enforcement officer or member of the police in the execution of any power or duty under Part 3 should be liable to a fine not exceeding \$1,000.

We recommend that any person be liable to a fine not exceeding \$2,000 if they commit an offence relating to the sale or supply of restricted substances to a person under 18 years. Offences include selling or supplying a restricted substance to a person under the age of 18 years, and selling or supplying a restricted substance from a place or premises not complying with a prescribed restriction.

We recommend that any person be liable to a fine not exceeding \$5,000 (or \$10,000 for a body corporate) for committing any one of a range of offences, including distributing a restricted substance free of charge; offering a gift or cash rebate or a prize to a purchaser or retailer of restricted substances; advertising a restricted substance on television, radio, in any newspaper, or using any other prescribed medium; and selling a restricted substance without complying with labelling restrictions.

Enforcement

We recommend enabling the Director-General of Health to appoint suitably qualified and trained persons as enforcement officers. Enforcement officers would have the power to enter a place if they believed restricted substances were present and wanted to establish whether Part 3 was being complied with. "Place" would not include a dwelling or other residential accommodation, unless consent was given by the occupier or authority was given under an enactment. However, members of the police would be able to enter a dwelling or other residential accommodation under a search warrant.

We recommend that enforcement officers have the power to enter a place and do any of the following: take photographs, copy documents or records, exercise the powers given by clause 59, and inspect any articles or materials. An enforcement officer or member of the police would also be able to seize any restricted substance, document, or record, or other article relating to a restricted substance.

If an enforcement officer believed that within the past 14 days a restricted substance had been sold to a person under the age of 18 years, the officer could seek further information about the person who sold it. We consider these measures are important to prevent the sale of restricted substances to people under the age of 18. We recommend that it be an offence to obstruct an enforcement officer or make a false statement to an enforcement officer.

Effect of conviction on overseas travel

We were concerned that people convicted of selling or supplying a restricted substance might be prevented from undertaking some international travel. Our advisers provided us with detailed information about the impact of a conviction on travel to various overseas jurisdictions. We note that people with restricted substance convictions for BZP would be unlikely to gain entry to the United States of America, but they would be able to enter Australia and the United Kingdom. This is because the United States of America is likely to deny entry to any individual with a conviction of any kind, whereas Australia and the United Kingdom are concerned in relation to convictions that attract significant prison sentences in their country or in New Zealand only.

We were advised that the United States of America, Australia, and the United Kingdom all have access to conviction information held in New Zealand in order to determine eligibility for entry to those jurisdictions.

Reversal of onus of proof for possession of needles and syringes

The bill proposes reversing the onus of proof, from the defendant to the prosecution, for the offence of having in one's possession a needle or syringe for the purpose of commission of an offence against the Act (section 13(1)(aa) of the principal Act). The defence is currently set out in regulations, and requires a defendant to prove that he or she obtained the needle or syringe lawfully. The reversal of the onus of proof will require the prosecution to prove that a person is unlawfully in possession of the needle or syringe. It will also move the defence from regulations to primary legislation.

We welcome this change, as we consider it will encourage more injecting drug users to use the Needle and Syringe Exchange Programme. We recommend some minor amendments to this provision to clarify its intent.

We considered removing the offence entirely and sought clarification from the New Zealand Police about the operational implications of doing so. The New Zealand Police told us it would not support the removal of the offence as it considers being able to prosecute under this provision a useful drug-control measure. Most of us agree with this, and therefore do not recommend removing the offence.

We note concerns raised by the Needle and Syringe Exchange Programme about its use of resources to defend people found in possession of a needle or syringe. However, most of us consider that these concerns will be alleviated with the reversal of onus of proof, as prosecutions would proceed only where there was evidence of unlawful possession.

Presumption of supply

We recommend that the ability to amend the presumption of supply level for a controlled drug by Order in Council, as proposed in the bill, be limited to two circumstances (clause 5). The first is where the classification of the controlled drug is also being changed. We agree that changing this level in tandem with a classification or reclassification would prevent anomalies such as occurred with methamphetamine, where the drug was given a Class A classification by Order in Council, but the associated presumption of supply change required this bill.

We also recommend allowing the presumption of supply level to be raised by Order in Council. This second circumstance allows for a situation where the presumption of supply level has been set too low.

Importing and exporting precursor substances without reasonable excuse

We recommend clarifications to proposed new section 12AC, which establishes the offence of importing and exporting precursor substances without reasonable excuse. These clarifications will make it clear that the involvement of a medical practitioner, veterinarian, or dentist will constitute a reasonable excuse only where the precursor substance was imported for a legitimate and legal purpose, as set out in section 8(2) of the principal Act. We also recommend clarifying

that for a prosecution to be successful, the prosecution must negate beyond a reasonable doubt any reasonable excuse raised in dispute by the defendant.

Expert Advisory Committee on Drugs

We are pleased that the bill proposes to include a Ministry of Justice official on the Expert Advisory Committee on Drugs, as we had suggested this would have been helpful in previous reports on Orders in Council made under the principal Act.

We note that some submissions were opposed to this inclusion, but consider that such an official will add valuable expertise to this committee.

Other changes

We recommend changes relating to pharmacists to bring the bill into line with the Health Practitioners Competence Assurance Act 2003.

We also recommend a change to clause 28, so that when a member of the police or a Customs officer applies to renew a detention warrant, the detainee is given access to information concerning any rub-down or strip search under proposed new section 13EA.

Regulations Review Committee advice

The Regulations Review Committee reported to us on the bill and the SOP, particularly the use of the affirmative resolution procedure. We discuss the relevant portions of that committee's reports below.

The bill proposes moving presumption of supply matters to the schedules of the principal Act so that they can be set or altered by Order in Council and approved by resolution of the House (affirmative resolution procedure). This is an extension of the procedure currently used for amending the classification of controlled drugs. We recommend narrowing the application of this procedure (see discussion above). Some of us disagree with this.

The SOP proposes a similar procedure for classifying restricted substances and determining what general controls would apply. After considering the SOP, we recommend confining the use of this procedure to adding and removing restricted substances to and from Schedule 4 using the Order in Council process, subject to an affirmative resolution procedure.

The Regulations Review Committee notes that, while the affirmative resolution procedure allows a truncated legislative process, it considers there are considerable drawbacks. In particular, the procedure allows significant matters of policy and principle to be dealt with in delegated legislation rather than primary legislation; and it allows a limited time for select committee scrutiny, which may be insufficient for public consultation or for substantial consideration of the policy rationale.

The Regulations Review Committee considers that there should be compelling reasons for applying the affirmative resolution procedure when primary legislation is being amended in respect of serious offences. It noted that the affirmative resolution procedure is justifiable in limited and exceptional circumstances, including where there is a need for expeditious change or where significant matters of health and safety are at issue.

The Regulations Review Committee notes that extending the Order in Council process to presumption of supply matters would allow changes to be made to correspond with any changes to classification.

While we agree that the affirmative resolution procedure should not proliferate, we consider that it is appropriate to amend the presumption of supply by Order in Council concurrently with any amendment to the classification, in order to achieve the purposes of the Act in dealing with the serious risk of emerging drug threats (see discussion above). We also consider that the use of the affirmative resolution procedure is appropriate to amend the list of substances in Schedule 4, given our concerns about the health and safety implications of this issue.

Human rights issues

The Regulations Review Committee also commented on the proposed amendment contained in the SOP that would have allowed regulations to limit certain rights in the New Zealand Bill of Rights Act 1990. The rights in question related to the freedom of expression and the freedom from discrimination on the grounds of age. We agreed that this was not appropriate and have not recommended the inclusion of such a provision.

New Zealand National minority view

New Zealand National supports the original Misuse of Drugs Amendment Bill (No 3), which deals with changes to legislation

concerning controlled drugs. We recognise the extraordinary harm caused by inappropriate use of controlled drugs to health and safety. The affirmative resolution process, which bypasses the normal parliamentary consideration given to primary legislation, was put in to deal with extreme circumstances.

We are mindful of the Regulations Review Committee's statement that—

- the affirmative resolution procedure should not proliferate
- the affirmative resolution procedure should only be used in limited and exceptional circumstances
- any extension to the affirmative resolution procedure on the Misuse of Drugs Act 1975 should only be permitted where it is:
 - a necessary adjustment to altering the schedules of controlled drugs
 - essential in order to achieve the purpose of the Act in dealing with the serious risk of emerging drug threats.

New Zealand National is very concerned about the increasing use of benzylpiperazine (BZP), party drugs, herbal highs etc. particularly on people under the age of 18. This has been an emerging problem for some years, and we believe the response should be well considered legislation, where the public are given opportunity for full submissions. As per the recommendations of the Regulations Review Committee, with “restricted drugs” which are often legal substances, we consider the legislation around them should be covered by primary legislation.

We therefore do not support the Honourable Jim Anderton Supplementary Order Paper, but instead commit, that as government we would ensure that properly evolved legislation dealing with “restricted drugs and substances”, would be brought into the House and passed within 12 months.

New Zealand First minority view

The rapid expansion in the availability and use of party drugs does require the urgent attention of Parliament. However, New Zealand First strongly believes that the Honourable Mr Anderton's Supplementary Order Paper does not sufficiently address the problems that the increasing use of benzylpiperazine (BZP), party drugs, herbal highs and other psychoactive substances are causing.

New Zealand First recommends that this group of substances should be treated in the same way as all other controlled drugs and included on the appropriate schedule. We believe that harm minimisation as a strategy does not address the issues and needs of those most at risk from abuse of these substances. While supporting the Supplementary Order Paper, we view this as a first step only. New Zealand First believes that there should be no softening of drug laws for these new designer drugs.

ACT New Zealand minority view

ACT New Zealand opposes the passage of this bill as reported back from the Health Committee. We would like to have been in a position to support this bill for the contribution it could make to the control of possession and supply of dangerous drugs. However, this bill promotes draconian powers in relation to substances that may be little more insidious or addictive than alcohol or nicotine, or many other harmful but not necessarily catastrophic substances. It will now cover a bureaucrat's wish list of requirements for manufacturing and importing procedures that have little to do with dangerous drugs. The costs have not been properly weighed against the benefits. The normal process of legislative change is a safeguard against ad hoc hysteria. The submission process informs Parliament of practical issues that officials and Ministers may not know, or may ignore. Ministers will be able to respond to what may be passing political panics with new prohibitions which will not receive proper parliamentary scrutiny.

With regard to the proposed new section 4(1AA), we find it bizarre that people's liberties will be able to be removed by ministerial decree while all the machinery of Parliament will be needed to reduce regulation. There is no constitutional history to support increased regulation of substances by Order in Council but requiring the full legislative process to be administered to decrease regulation of these substances. ACT New Zealand maintains that the full parliamentary process including submissions by the public should be involved in both increasing and decreasing regulation.

Regulations Review Committee warnings regarding amendment to primary legislation by Order in Council, subject to affirmative resolution have been largely ignored. ACT New Zealand considers this bill now creates dangerous precedents for political interference with ordinary law abiding people.

Green Party minority view

The Green Party is concerned about a number of things in this bill. Most improper, in the Green Party's opinion, is the last minute proposal to change how substances are reclassified. The proposed amendment is unrelated to the amendment bill and supplementary order paper before us and has had no opportunity for public comment or even comment by the Expert Advisory Committee on Drugs whom it most affects.

Currently decisions to classify or reclassify a substance follow a recommendation of the Expert Advisory Committee on Drugs, based on a set of rational criteria. The amendment would leave that in place for a classification based on higher risk, but remove it from any decision to reclassify a controlled substance as a lower risk. The proposal was driven by the United Future member's concern that the Expert Advisory Committee on Drugs might recommend cannabis be downgraded if it considered the evidence. The Green Party considers it to be bad law-making, unbalancing the entire Misuse of Drugs Act framework in order to placate the United Future member's obsession with one particular drug.

In relation to the Minister's Supplementary Order Paper the enforcement powers under clause 57 are unnecessarily draconian, allowing an enforcement officer or member of the police to seize anything relating to a restricted substance if the officer believes that an offence is being, has been or will be committed. This power of search and seizure is not constrained by the need for a warrant, nor is there any time limit after which either a charge must be laid or goods returned. While the Green Party recognises that courts will apply common law principles, Parliament should not pass legislation providing for the use of arbitrary powers of search and seizure. The Green Party remains dissatisfied with the New Zealand Bill of Rights Act 1990 advice provided by Crown Law in this regard, which did not draw attention to this clause.

The Green Party also has concerns about the functioning of the Expert Advisory Committee on Drugs, and believes that there should be a statutory requirement for the Expert Advisory Committee on Drugs to consult outside its membership when making a recommendation. Neither the Expert Advisory Committee on Drugs nor the select committee when considering its recommendation needs to receive submissions, and when coupled with the inability of Parliament or the select committee to amend the motion to schedule,

leaves the procedure with inadequate safeguards in the Green Party's opinion.

Another major concern relates to the criteria applied by the Expert Advisory Committee on Drugs when providing advice to the Minister on the scheduling of a recreational drug. Under the amendment proposed, a different set of criteria would apply when recommending a classification under schedules A, B, or C than under schedule D. This implies that the Expert Advisory Committee on Drugs prejudices the outcome of its considerations in order to apply the correct criteria, and this was confirmed by officials. It seems an illogical and inefficient process.

The Green Party urges the Government to introduce a single set of criteria that incorporates clause 36(2)(b) into section 4B(2) of the principal Act. This would mean that, when considering any substance for the purpose of recommending whether it should be scheduled, the Expert Advisory Committee on Drugs would apply a single set of criteria and any recommendations would logically fall out of that. The practical effect of incorporating the two sets of criteria would be that the probable effect of scheduling would itself inform any recommendation. It seems self evident that if prohibiting a substance would cause more problems than the substance itself, the Expert Advisory Committee on Drugs should take account of that.

Nevertheless the Green Party member supports most of the amendments proposed. As one of the originators of the idea he particularly endorses the idea of a schedule D, allowing some recreational drugs to be restricted even when the lack of evidence of harm provides no statutory basis for criminalising them.

United Future minority view

United Future is pleased that the stand-alone amendment Act means that "legal highs" can now be regulated and we believe that this addresses the many concerns members of the public have expressed, responding in a timely way to their request for better controls.

However, we believe that more substantial legislative work should continue on this matter so that eventually "legal highs" can be managed under a completely separate "Restricted Substances" Act.

United Future is also pleased that Order in Council provisions have been amended to prevent the legal downgrading of drugs like cannabis. This change means that such changes can only occur with full public and parliamentary scrutiny.

Appendix

Committee process

The Misuse of Drugs Amendment Bill (No 3) was referred to the committee on 15 September 2004. The closing date for submissions was 22 October 2004. Supplementary Order Paper No 298 was referred to the committee on 10 November 2004. The closing date for submissions was 31 January 2005. We received and considered 24 submissions from interested groups and individuals on the bill and 35 submissions from interested groups and individuals on Supplementary Order Paper No 298. We heard 10 submissions on the bill and 10 submissions on Supplementary Order Paper No 298. Hearing of evidence took 6 hours and 13 minutes and consideration took 12 hours. A subcommittee met on 23 March 2005, and spent 2 hours and five minutes considering the bill and SOP.

We received advice from the Ministry of Health, the Ministry of Justice, the New Zealand Customs Service, the New Zealand Police, and the Regulations Review Committee. The Regulations Review Committee reported to the committee on the powers contained in clauses 5 to 7 and in the SOP. We also received independent legal advice from Allan Bracegirdle, Legislative Counsel.

Committee membership

Steve Chadwick (Chairperson)

Sue Kedgley (Deputy Chairperson)

Dr Paul Hutchison

Nanaia Mahuta

Mark Peck

Katherine Rich

Heather Roy

Lesley Soper

Barbara Stewart

Judy Turner

Dianne Yates

Nandor Tanczos replaced Sue Kedgley for this item of business.

On 12 April 2005 Lesley Soper replaced Darren Hughes as a permanent member of the committee.

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

▬ Subject to this Act, **▬**

Text struck out unanimously

New (majority)

▭ Subject to this Act, ▭

Text inserted by a majority

New (unanimous)

▭ Subject to this Act, ▭

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

<Subject to this Act,>

Words inserted by a majority

Subject to this Act,

Words inserted unanimously

Hon Jim Anderton

Misuse of Drugs Amendment Bill (No 3)

Government Bill

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50			Restrictions and requirements relating to storage and display of restricted substances
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55			Certain persons prohibited from selling or manufacturing restricted substances
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63			Regulations

	<i>Code of manufacturing practice</i>	Schedule 1
64	Code of manufacturing practice	New Part 3 added to Schedule 4 of principal Act
	<i>Relationship of this Part to other specified enactments</i>	Schedule 2
65	Relationship of this Part to specified enactments	New Schedule 5 added to principal Act
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67	Application of section 31 of principal Act to this Part	Consequential amendments to other enactments
68	Administration of this Part	Schedule 4
		Restricted substances

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Misuse of Drugs Amendment Act (No 3) **2004**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Substantive amendments to Misuse of Drugs Act 1975 and consequential amendments

3 Misuse of Drugs Act 1975 called principal Act in this Part

In this **Part**, the Misuse of Drugs Act 1975¹ is called “the principal Act”.

¹ 1975 No 116

4 Interpretation

(1) The definition of **precursor substance** in section 2(1) of the principal Act is amended by inserting, after the expression “or Part 2”, the expression “or **Part 3**”.

(2) Section 2 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Any reference in this Act to an **amount, level, or quantity at and over which a controlled drug is presumed to be for supply** is a reference to the amount, level, or quantity specified in **Schedule 5**.”

5 Amendment of schedules that identify controlled drugs and precursor substances

- (1) The heading to section 4 of the principal Act is amended by adding the words “, **and set amount, level, or quantity at and over which controlled drugs are presumed to be for supply**”.
- (2) Section 4 of the principal Act is amended by inserting, after subsection (1), the following subsections:

New (majority)

“(1AA) An Order in Council may not be made under subsection (1) in relation to a controlled drug if the effect of the Order in Council is—

- “(a) to remove the controlled drug from all of Schedules 1 to 3; or
- “(b) to move the controlled drug—
 - “(i) from Schedule 1 to Schedule 2 or Schedule 3; or
 - “(ii) from Schedule 2 to Schedule 3; or
 - “(iii) from Part 1 of Schedule 2 or of Schedule 3 to another part of the same schedule.

“(1A) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend **Schedule 5**, by doing any of the following:

- “(a) altering the amount, level, or quantity at and over which any controlled drug specified in **clause 1 of Schedule 5** is presumed to be for supply:
- “(b) adding any <substance, preparation, mixture, or article that is to be classified as a> controlled drug to **clause 1 of Schedule 5** and the amount, level, or quantity at and over which it is presumed to be for supply:
- “(c) removing any controlled drug from **clause 1 of Schedule 5** and the amount, level, or quantity at and over which it is presumed to be for supply.

New (majority)

“(1B) An Order in Council may not be made under **subsection (1A)(a)** in relation to a controlled drug unless—

New (majority)

“(a) the name or description of the controlled drug is, at the same time, being moved from Schedule 1, 2, or 3, or from a part or clause of Schedule 1, 2, or 3 to another of those schedules, parts, or clauses; or

“(b) the Order in Council increases the amount, level, or quantity at and over which the controlled drug is presumed to be for supply.

“(1C) An Order in Council may not be made under **subsection (1A)(b)** in relation to a substance, preparation, mixture, or article unless its name or description is, at the same time, being added to Schedule 1, 2, or 3.”

- (3) Section 4(2) of the principal Act is amended by inserting, after the expression “subsection (1)”, the expression “or **subsection (1A)**”.
- (4) Section 4(3) of the principal Act is amended by adding the expression “or **subsection (1A)**”.
- (5) Section 4(4)(a) and (b) of the principal Act is amended by omitting the words “or the Third Schedule”, and substituting the words, “the Third Schedule, or **Schedule 5**”.

6 Procedure for bringing Order in Council made under section 4(1) into force

- (1) The heading to section 4A of the principal Act is amended by inserting, after the expression “**section 4(1)**”, the expression “**or (1A)**”.
- (2) Section 4A(1), (2), (3), and (4) of the principal Act is amended by inserting, after the expression “section 4(1)”, the expression “**or (1A)**”.

7 Matters to which Minister must have regard before recommending Order in Council under section 4(1)

- (1) The heading to section 4B of the principal Act is amended by adding, after the expression “section 4(1)”, the expression “**or (1A)**”.
- (2) Section 4B(2) of the principal Act is amended by inserting, after the words “must have regard to”, the words “under subsection (1)(b)”.

- (3) Section 4B of the principal Act is amended by adding the following subsections:
- “(3) Before recommending to the Governor-General that an Order in Council be made under **section 4(1A)**, the Minister must, in relation to the amount, level, or quantity at and over which any controlled drug is to be presumed to be for supply in the proposed Order in Council,—
- “(a) consult with, and consider any advice given by, the Expert Advisory Committee on Drugs established under section 5AA, about the amount, level, or quantity at and over which a controlled drug might be presumed to be for supply; and
- “(b) have regard to the matters in **subsection (4)**.
- “(4) The matters that the Minister must have regard to under **subsection (3)(b)**, and on which the Expert Advisory Committee on Drugs may give advice, are—
- “(a) the amount of the drug that could reasonably be possessed for personal use, including, without limitation, levels of consumption, the ability of the drug to create physical or psychological dependence, and the specific effects of the drug; and
- “(b) the amount, level, or quantity at and over which the drug is presumed to be for supply in other jurisdictions; and
- “(c) any other matters that the Minister considers relevant.”

8 Expert Advisory Committee on Drugs

- (1) Section 5AA(2)(b) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraphs:
- “(ii) the amount, level, or quantity at and over which (a controlled drug) any substance, preparation, mixture, or article that is a controlled drug (or is proposed to be classified as a controlled drug), and that is to be specified or described in **clause 1 of Schedule 5**, is to be presumed to be for supply; and
- “(iii) the level at and over which controlled drugs to which **clause 2 of Schedule 5** applies are presumed to be for supply; and”.

- (2) Section 5AA(3) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
- “(ca) 1 employee of the Ministry of Justice who has appropriate expertise in matters relating to the justice system; and”.

9 Dealing with controlled drugs

Section 6 of the principal Act is amended by repealing subsections (6) and (7), and substituting the following subsection:

- “(6) For the purposes of subsection (1)(f), a person is presumed until the contrary is proved to be in possession of a controlled drug for any of the purposes in subsection (1)(c), (d), or (e) if he or she is in possession of the controlled drug in an amount, level, or quantity at or over which the controlled drug is presumed to be for supply (*see* **section 2(1A)**).”

10 Aiding offences against corresponding law of another country

Section 10(1) of the principal Act is amended by omitting the words “or section 9 of this Act” in both places where they appear, and substituting in each case the words “, 9, 12A, or **12AB**”.

11 New sections 12AB and 12AC inserted

The principal Act is amended by inserting, after section 12A, the following sections:

“12AB Offence to knowingly import or export precursor substances for unlawful use

- “(1) Every person commits an offence who—
- “(a) imports into New Zealand any precursor substance knowing that it will be used to commit an offence under section 6(1)(b) (which is the offence of producing or manufacturing any controlled drug); or
- “(b) exports from New Zealand any precursor substance knowing that it will be used to commit an offence under a provision of the law of the country to which the precursor substance is being exported that corresponds to an offence under section 6(1)(b).

- “(2) A person who commits an offence under **subsection (1)** is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.
- “(3) If a person is summarily convicted of an offence under **subsection (1)**,—
- “(a) a court may sentence the person to imprisonment for a term not exceeding 1 year or a fine not exceeding \$1,000, or both; and
 - “(b) the sentencing limits contained in section 7 of the Summary Proceedings Act 1957 do not apply.

“12AC **Offence to import or export precursor substance without reasonable excuse**

- “(1) Every person commits an offence who, without reasonable excuse, imports into, or exports from, New Zealand any precursor substance.
- “(2) Without limiting the circumstances under **subsection (1)** in which a person may have a reasonable excuse, a person has a reasonable excuse if—
- “(a) he or she imports a precursor substance into New Zealand in order that—
 - “(i) a medical practitioner, dentist, or veterinarian may, in the circumstances referred to in section 8(2)(a), produce or manufacture a controlled drug from the precursor substance; or
 - “(ii) a pharmacist or any person with the authority and under the immediate supervision of a pharmacist may, in any of the circumstances referred to in section 8(2)(b), produce or manufacture a controlled drug from the precursor substance; or
 - “(iii) the precursor substance be used for a lawful purpose (including, without limitation, an agricultural, commercial, or industrial purpose); or
 - “(b) the precursor substance that he or she is importing into, or exporting from, New Zealand has been lawfully supplied to that person for his or her own medical use; or
 - “(c) he or she exports a precursor substance from New Zealand in order that the precursor substance be used for a purpose that is authorised or lawful under the law of the country to which it is being exported.

“(3) The requirements in section 67(8) of the Summary Proceedings Act 1957 relating to proof of any exception, excuse, or qualification do not apply to an offence under **subsection (1)**.”

New (unanimous)

“(3A) By way of explanation, the effect of **subsection (3)** is that, in order for a prosecution to be successful, the prosecution must negate beyond a reasonable doubt any reasonable excuse in dispute (being any matter raised as a reasonable excuse by the defendant).”

“(4) A person who commits an offence under **subsection (1)** is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$1,000, or both.”

12 Laundering proceeds of drug offences

Section 12B(1) of the principal Act is amended by inserting, in paragraph (a) of the definition of **specified drug offence**, after the expression “section 12A”, the expression “or **section 12AB**”.

13 Commission of offences outside New Zealand

Section 12C(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) **section 12AB**; or”.

14 Miscellaneous offences

(1) Section 13(1) of the principal Act is amended by repealing paragraph (aa), and substituting the following paragraph:

“(aa) has in that person’s possession for the purpose of committing an offence under this Act any needle or syringe *(other than a needle or syringe that)*—

“(i) that he or she obtained from a person (a **supplier**) *(that)* who he or she could not have reasonably believed at the time of the acquisition was a *(registered)* pharmacist, pharmacy employee, approved medical practitioner, or an authorised representative; or

“(ii) that another person (an **acquirer**) obtained on his or her behalf from a supplier *(whom)* who the

acquirer could not have reasonably believed at the time the needle or syringe was obtained was a (*registered*) pharmacist, pharmacy employee, approved medical practitioner, or an authorised representative; or

“(iii) other than a needle or syringe that he or she obtained in accordance with any regulations made under section 37 that regulate the sale, exchange, or supply of needles or syringes; or

“(iv) other than a needle or syringe that the acquirer obtained on his or her behalf in accordance with any regulations made under section 37 that regulate the sale, exchange, or supply of needles or syringes; or”.

(2) Section 13 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) No pharmacist, pharmacy employee, approved medical practitioner, or authorised representative commits an offence by selling or supplying any needle or syringe in accordance with any regulations made under section 37 that regulate the sale, exchange, or supply of needles or syringes.”

(3) Section 13 of the principal Act is amended by adding the following subsection:

“(4) For the purposes of this section, unless the context otherwise requires,—

“**approved medical practitioner** means a medical practitioner who has been approved by the Director-General of Health under any regulations made under section 37 for the purposes of those regulations

“**authorised representative** means, in relation to an agency, an association, or a body approved by the Director-General of Health, a person for the time being approved by the Director-General as a representative of that agency, association, or body

“**needle** means a needle forming part of, or attached to, or designed for attachment to and use with, a syringe

“**pharmacy employee** means a person employed in a pharmacy within the meaning of the Medicines Act 1981.”

15 Search and seizure

- (1) Section 18(2) of the principal Act is amended—
- (a) by inserting, after the words “the Third Schedule to this Act”, the words “or any precursor substance specified or described in **Part 3 of Schedule 4**”; and
 - (b) by inserting, after the words “in respect of that drug”, the words “or precursor substance”.
- (2) Section 18(3) of the principal Act is amended—
- (a) by inserting, after the words “the Third Schedule to this Act”, the words “or any precursor substance specified or described in **Part 3 of Schedule 4**”; and
 - (b) by inserting, after the words “in respect of that drug”, the words “or precursor substance”; and
 - (c) by inserting, after the words “any controlled drug”, in the second place where they appear, the words “or precursor substance”.

New (unanimous)**15A Powers of Minister to prohibit prescribing, etc**

Section 23(2)(d) of the principal Act is amended by omitting the words “Council of the Pharmaceutical Society of New Zealand”, and substituting the words “Pharmacy Council”.

16 Mistake as to nature of controlled drug or precursor substance

Section 29 of the principal Act is amended by inserting, after the expression “section 12A”, the words “or **section 12AB** or **section 12AC**”.

17 Further provision on crimes to be treated as included in extradition treaties

Section 35A(1) of the principal Act is amended by inserting, after the expression “12A,”, the expression “**12AB,**”.

18 Restrictions on surrender of offenders

Section 35C(1) of the principal Act is amended by inserting, after the expression “12A,”, the expression “**12AB,**”.

19 New section 36 substituted

The principal Act is amended by repealing section 36, and substituting the following section:

“36 Application of Customs and Excise Act 1996

“(1) Sections 137, 139, 140, 143 to 145, 148 to 149B, 149C(1) and (2), 149D, 151, 152, 161, 165 to 172, 225, and 226 of the Customs and Excise Act 1996 apply in relation to the controlled drugs and precursor substances referred to in **subsection (2)**, as if they were prohibited imports or exports under that Act.

“(2) The controlled drugs and precursor substances are—

“(a) any controlled drug, other than a controlled drug specified or described in *(Part III) Part VI* of the Third Schedule; and

“(b) any precursor substance specified or described in **Part 3 of Schedule 4.**”

20 New Part 3 added to Schedule 4

Schedule 4 of the principal Act is amended by adding the **Part 3** set out in **Schedule 1** of this Act.

21 Schedule 4 of (the) principal Act amended

Schedule 4 of the principal Act is amended—

(a) by inserting in clause 1 of Part 1, in their appropriate alphabetical order, the items “ACETIC ANHYDRIDE” and “POTASSIUM PERMANGANATE”; and

(b) by omitting from clause 1 of Part 2 the items “ACETIC ANHYDRIDE” and “POTASSIUM PERMANGANATE”.

22 New Schedule 5 added

The principal Act is amended by adding the **Schedule 5** set out in **Schedule 2** of this Act.

23 Consequential amendments

The enactments listed in **Schedule 3** are consequentially amended in the manner indicated in that schedule.

Part 2
Amendments to Misuse of Drugs Amendment
Act 1978

24 Misuse of Drugs Amendment Act 1978 called amendment Act in this Part

In this **Part**, the Misuse of Drugs Amendment Act 1978² is called “the amendment Act”.

² 1978 No 65

25 Allowing delivery of unlawfully imported drugs for purpose of detection, etc

- (1) The heading to section 12 of the amendment Act is amended by inserting, after the words “**imported drugs**”, the words “**or precursor substances**”.
- (2) Section 12(1) of the amendment Act is amended—
 - (a) by inserting, after the words “any controlled drug”, the words “or precursor substance”; and
 - (b) by inserting, after the expression “section 6(1)(a)”, the expression “or **section 12AB**”; and
 - (c) by inserting, after the words “leave or replace that drug”, the words “or precursor substance”.
- (3) Section 12(2) of the amendment Act is amended by inserting, after the words “controlled drug”, the words “or precursor substance”.

26 New sections 12A to 12D inserted

The amendment Act is amended by inserting, after section 12, the following sections:

“12A Searches relating to persons involved in delivery under section 12

- “(1) If the circumstances in **subsection (2)** exist, a member of the police or a Customs officer may, during the course of a delivery in relation to which a Customs officer has exercised his or her powers under section 12,—
 - “(a) search any person involved in that delivery; and
 - “(b) detain that person for the purpose of carrying out that search.
- “(2) The circumstances are that the member of the police or the Customs officer believes on reasonable grounds that the person is in possession of any of the following:

- “(a) a controlled drug:
 - “(b) a precursor substance:
 - “(c) a package in relation to which the Customs officer has replaced all or a portion of any controlled drug or precursor substance:
 - “(d) evidence of the commission of an offence under section 6(1)(a) or **section 12AB** of the principal Act.
- “(3) Reasonable force may be used, if necessary, for either or both of the following purposes:
- “(a) to search a person under **subsection (1)**:
 - “(b) to detain a person under **subsection (1)**.
- “(4) A member of the police or a Customs officer may, without a search warrant issued under section 198 of the Summary Proceedings Act 1957, enter any building, craft, carriage, vehicle, premises, or place in order to carry out a search under **subsection (1)**.
- “(5) A member of the police or a Customs officer who undertakes a search under **subsection (1)** must, within 3 working days of the search, give a written report of the search, the circumstances in which the search was conducted, and the matters that gave rise to the reasonable grounds to believe required under **subsection (2)**, to—
- “(a) in the case of a member of the police, the Commissioner of Police; and
 - “(b) in the case of a Customs officer, the chief executive of the New Zealand Customs Service.
- “12B **Seizure of items found during search under section 12A**
- “(1) A member of the police or a Customs officer may seize any thing found on or about a person when carrying out a search under **section 12A(1)** that the member of the police or the Customs officer has reasonable cause to suspect is a thing described in any of paragraphs (a) to (d) of **section 12A(2)**.
- “(2) Reasonable force may be used, if necessary, to seize the thing.
- “12C **Obligations on member of police or Customs officer conducting search under section 12A to identify self and power relied on**
- “(1) Every member of the police or Customs officer who exercises a power of search under **section 12A(1)** must—

- “(a) identify himself or herself to any person he or she intends to search; and
 - “(b) advise that person that the search is being undertaken under the authority of **section 12A(1)**.
- “(2) Every member of the police or Customs officer who enters any building, craft, carriage, vehicle, premises, or place in order to carry out a search under **section 12A(1)** must—
- “(a) identify himself or herself to any person who questions his or her right to enter; and
 - “(b) advise that person that the entry is being undertaken under the authority of **section 12A(1)**.

“12D **International controlled delivery and liability for offences**

- “(1) In this section, an **international controlled delivery** means allowing a controlled drug or precursor substance (or substance substituted in the place of a controlled drug or precursor substance) to pass through or into the territory of 1 or more countries—
- “(a) with the agreement of the relevant law enforcement agencies of the countries which it is to pass through or into; and
 - “(b) with a view to identifying persons involved in the commission of an offence—
 - “(i) under section 6(1)(a) or **section 12AB** of the principal Act; or
 - “(ii) that would, if done or committed in New Zealand, be an offence under either of those sections.
- “(2) Nothing in **subsection (3)** affects the liability of any person charged with an offence under section 6(1)(a) or **section 12AB** or **section 12AC** of the principal Act.
- “(3) Any member of the police, Customs officer, or officer of a relevant law enforcement agency with which there is an agreement under **subsection (1)(a)** who is involved in an international controlled delivery—
- “(a) does not commit an offence under section 6(1)(a), **12AB**, or **12AC** of the principal Act by reason of taking part in that international controlled delivery; and

“(b) unless he or she is acting in bad faith, is not subject to any criminal or civil liability as a result of taking part in that international controlled delivery.”

27 New sections 13EA to 13EE inserted

The amendment Act is amended by inserting, after section 13E, the following sections:

“13EA Searches associated with detention warrant

“(1) If the circumstances in **subsection (2)** exist, a member of the police or a Customs officer may undertake any of the following in relation to a person (**person A**):

“(a) a rub-down search (as defined in **section 13EB**):

“(b) a strip search (as defined in **section 13EC**):

“(c) both a rub-down search and a strip search.

“(2) The circumstances are that—

“(a) a detention warrant has been issued under section 13E in relation to person A; and

“(b) the member of the police or the Customs officer has reasonable cause to suspect that person A has hidden on or about his or her person any Class A controlled drug or Class B controlled drug.

“(3) In deciding what type of search to undertake under **subsection (1)**, a member of the police or a Customs officer must have regard to all of the relevant circumstances, including, without limitation, the matters referred to in **section 13ED(2)**.

“(4) If, as a result of a search under **subsection (1)**, a member of the police or a Customs officer finds any Class A controlled drug or Class B controlled drug, he or she may take possession of it.

“(5) Reasonable force may be used, if necessary, to undertake a search under **subsection (1)**.

“(6) If a person who is undergoing a search under **subsection (1)** makes a request for an internal examination under section 13C(4), the member of the police or the Customs officer conducting the search may continue with and complete the search before arranging for the internal examination to take place.

“13EB Definition of rub-down search

“(1) For the purposes of this section, **section 13EA** and **sections 13ED** to 13M, a **rub-down search** means a search of a clothed

person in which the person conducting the search may do all or any of the following:

- “(a) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person:
 - “(b) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
 - “(c) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following:
 - “(i) open his or her mouth:
 - “(ii) display the palms of his or her hands:
 - “(iii) display the soles of his or her feet:
 - “(iv) lift or rub his or her hair.
- “(2) For the purpose of facilitating any of the actions referred to in any of **paragraphs (a) to (c) of subsection (1)**, the person conducting a rub-down search may require the person being searched—
- “(a) to remove, raise, lower, or open any outer clothing (including (without limitation) any coat, jacket, jumper, or cardigan) being worn by the person being searched, except where that person has no other clothing, or only underclothing, under that outer clothing; and
 - “(b) to remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person.
- “(3) Authority to conduct a rub-down search includes the authority to conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.
- “(4) Authority to conduct a rub-down search of a person includes the authority to search—
- “(a) any item carried by, or in the possession of, the person; and
 - “(b) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
 - “(c) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

“13EC Definition of strip search

- “(1) For the purposes of this section, **section 13EA**, and **sections 13ED** to 13M, a **strip search** means a search where the person conducting the search may require the person being searched to remove, raise, lower, or open all or any of that latter person’s clothing.
- “(2) For the purpose of facilitating a strip search, the person conducting the search may require the person being searched to do all or any of the following:
- “(a) open his or her mouth:
 - “(b) display the palms of his or her hands:
 - “(c) lift or rub his or her hair:
 - “(d) display the soles of his or her feet:
 - “(e) raise his or her arms to expose his or her armpits:
 - “(f) with his or her legs spread apart, bend his or her knees.
- “(3) Authority to conduct a strip search includes the authority to conduct a visual examination (whether or not facilitated by any instrument or device designed to illuminate or magnify) of the mouth, nose, and ears, but does not authorise the insertion of any instrument, device, or thing into any such orifice.
- “(4) Authority to conduct a strip search of a person includes the authority to search—
- “(a) any item of clothing removed, raised, lowered, or opened for the purposes of the search; and
 - “(b) any item carried by, or in the possession of, the person.

“13ED Restrictions on searches associated with detention warrant

- “(1) A rub-down search or strip search, or both, may be carried out only by a person of the same sex as the person to be searched, and no strip search may be carried out in view of any person who is not of the same sex as the person to be searched.
- “(2) A person who carries out a rub-down search or strip search, or both, must conduct the search with decency and sensitivity and in a manner that affords to the person being searched the greatest degree of privacy and dignity consistent with the purpose of the search.
- “(3) No member of the police or Customs officer may conduct a strip search unless another member or officer is also present.

“(4) A strip search of a person must not be carried out in view of any other person who is detained or being searched.

“13EE Reporting search associated with detention warrant

A member of the police or a Customs officer who undertakes a search under **section 13EA** must, within 3 working days of the search, give a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable cause to suspect required by **section 13EA(2)(b)** to,—

- “(a) in the case of a member of the police, the Commissioner of Police; and
- “(b) in the case of a Customs officer, the chief executive of the New Zealand Customs Service.”

28 Renewal of warrants

(1) Section 13I(2) of the amendment Act is amended by inserting, after paragraph (c), the following paragraph:

Struck out (unanimous)

“(ca) the date or dates, circumstances surrounding, and results of any rub-down search or strip search undertaken under **section 13EA**.”

New (unanimous)

- “(ca) the date or dates of any rub-down search or strip search undertaken under **section 13EA**, the circumstances in which it was conducted, and the results of the search.”
- (2) Section 13I(5) of the amendment Act is amended by inserting, after the words “or paragraph (c)”, the words “or paragraph (ca)”.

29 Commissioner of Police and chief executive of New Zealand Customs Service to report to Parliament

Section 13M of the amendment Act is amended by adding the following paragraph:

- “(f) the number of rub-down searches and strip searches undertaken by members of the police or Customs officers under **section 13EA**.”

30 Second Schedule amended

The Second Schedule of the amendment Act is amended by inserting, before the heading “SUPERVISING LAWYER AND DOCTOR” the heading “**Searches**” and the words “If a detention warrant is issued there are certain circumstances in which a member of the police or a Customs officer may undertake a rub-down search or strip search, or both.”

31 Transitional provision relating to person detained under amendment Act on commencement of this Act

If a person is detained under section 13A of the amendment Act when this Act comes into force, the detained person may not be searched under **section 13EA** of the amendment Act during the course of that detention.

New (majority)

Part 3
Restricted substances

32 Interpretation

In this **Part**, unless the context otherwise requires,—

advertising—

- (a) means any words, whether written, printed, or spoken, and any pictorial representation or design, used or appearing to be used to promote the sale of a substance (including, without limitation, any sign, publication, or leaflet); and
- (b) includes any matter referred to in **paragraph (a)** that is represented in an electronic or digital medium

code of manufacturing practice means a code of practice for the manufacturing of restricted substances issued or approved under **section 64**

distributor means a person engaged in the business of selling restricted substances, otherwise than at retail only

enforcement officer means an officer appointed under **section 56**

manufacturer includes any company with which a manufacturer is associated within the meaning of section OD 7 of the Income Tax Act 2004

New (majority)

principal Act means the Misuse of Drugs Act 1975

restricted substance means a substance specified or described in **Schedule 4** that is not in a preparation, concentration, form, or use exempted from being a restricted substance by regulations made under this **Part**

retailer means a person engaged in any business that includes the sale of restricted substances, at retail

sale, in relation to a restricted substance, includes every method of disposition for valuable consideration, including, without limitation,—

- (a) bartering; and
- (b) offering or attempting to sell or having in possession for sale, or exposing, sending, or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale; and
- (c) retailing; and
- (d) wholesaling

substance—

- (a) means any mixture, preparation, or article that is manufactured for the primary purpose of being administered, ingested, inhaled, or injected in order to induce a psychoactive response; but
- (b) does not include any—
 - (i) agricultural compound or veterinary medicine (as defined in section 2(1) of the Agricultural Compounds and Veterinary Medicines Act 1997):
 - (ii) controlled drug, controlled drug analogue, or precursor substance (as defined in section 2(1) of the principal Act):
 - (iii) dietary supplement (as defined in regulation 2(1) of the Dietary Supplements Regulations 1985 (SR 1985/208)):
 - (iv) food (as defined in section 2 of the Food Act 1981):
 - (v) hazardous substance (as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996):

New (majority)

- (vi) herbal remedy (as defined in section 2(1) of the Medicines Act 1981), medicine (as defined in section 3 of that Act), or related product (as defined in section 94 of that Act):
- (vii) liquor (as defined in section 2 of the Sale of Liquor Act 1989):
- (viii) tobacco product or herbal smoking product (as defined in section 2(1) of the Smoke-free Environments Act 1990)

supply means distribute or give, but does not include sell.

Functions of Expert Advisory Committee on Drugs under this Part

33 Functions of Expert Advisory Committee on Drugs under this Part

The functions of the Expert Advisory Committee on Drugs (as established under section 5AA of the principal Act) in relation to this **Part** are—

- (a) to carry out evaluations of substances to assess whether they should be restricted substances; and
- (b) to make recommendations to the Minister, in accordance with **section 36(2)**, about—
 - (i) whether a substance should or should not be restricted; and
 - (ii) if in its view a substance should be a restricted substance, the kind of prescribed restrictions or requirements (if any) that it may be appropriate to attach to the substance; and
- (c) to increase public awareness of the Committee's work in relation to restricted substances, by (for instance) the timely release of papers, reports, and recommendations.

Compare: 1975 No 116 s 5AA(2)

Scheduling restricted substances

34 Amendment to Schedule 4

- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend **Schedule 4** by—

New (majority)

- (a) adding the name or description of any substance to **Schedule 4**, in order that it become a restricted substance; or
 - (b) removing the name or description of any substance from **Schedule 4**, in order that it no longer be a restricted substance.
- (2) An Order in Council made under **subsection (1)** may not come into force except in accordance with a commencement order made under **section 35**.
- (3) Sections 5 to 10 of the Regulations (Disallowance) Act 1989 do not apply to an Order in Council made under **subsection (1)**.
- (4) The Governor-General may, by Order in Council,—
- (a) amend the name or description of any restricted substance named or described in **Schedule 4**, if the amendment is necessary for the purpose of making that name or description consistent with international scientific usage;
 - (b) update **Schedule 4**, if the update is necessary for the purpose of clarifying content or correcting drafting errors.

Compare: 1975 No 116 s 4

35 Procedure for bringing Order in Council into force

- (1) Subject to **subsection (2)**, the Governor-General may, by Order in Council, make a commencement order bringing any Order in Council made under **section 34(1)** into force.
- (2) The commencement order may be made only after the Order in Council made under **section 34(1)** has been approved by resolution of the House of Representatives.
- (3) A resolution of the House of Representatives approving an Order in Council made under **section 34(1)** may be made at any time after—
- (a) the date that is 28 days after the date on which notice that the Order in Council has been made is given in the *Gazette*; or
 - (b) if the *Gazette* notice is given during the period commencing on 24 December in one year and ending on 15

New (majority)

January in the following year, 15 February of that following year.

- (4) An Order in Council made under **section 34(1)** lapses if—
- (a) a motion to approve the Order in Council is defeated; or
 - (b) no motion to approve the Order in Council is agreed to within 1 year of its date of making.

Compare: 1975 No 116 s 4A

36 Matters to which Minister must have regard before recommending Order in Council under section 34(1)

- (1) Before recommending to the Governor-General that an Order in Council be made under **section 34(1)**, the Minister must, in respect of each substance referred to in the proposed Order in Council,—
- (a) consult with, and consider any recommendations made by, the Expert Advisory Committee on Drugs, about the substance; and
 - (b) have regard to the matters set out in **subsection (2)**.
- (2) The matters that the Minister must have regard to, and on which the Expert Advisory Committee on Drugs must make recommendations, are—
- (a) the matters set out in section 4B(2) of the principal Act; and
 - (b) the following matters:
 - (i) the purposes for which the substance is currently manufactured, advertised, imported, or sold (including, without limitation, whether it is being manufactured, advertised, imported, or sold as a psychoactive substance):
 - (ii) the practicalities of imposing restrictions or requirements on the substance and the ability to enforce those restrictions and requirements:
 - (iii) the extent to which the substance is subject to regulation or control under any other enactment:
 - (iv) the risk of increasing the abuse of the substance due to increased awareness or knowledge of the substance's abuse potential if it is made a restricted substance:

New (majority)

- (v) the risk of encouraging persons to use more dangerous substitutes in place of the substance:
 - (vi) whether alternatives to restrictions or requirements imposed on the substance are available and are likely to be effective in reducing the risks or harm resulting from abuse of the substance.
- (3) For the purposes of **subsection (2)**, section 4B(2) of the principal Act applies as if every reference to “drug” were a reference to a “substance” (as defined in this **Part**).

Compare: 1975 No 116 s 4B

*Sale and supply restrictions***37 Restriction on selling restricted substances to persons under 18 years**

- (1) No person may sell a restricted substance to a person who is under the age of 18 years.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Compare: 1990 No 108 s 30(1)

38 Defence to charge of selling restricted substance to person under 18 years

- (1) It is a defence to a charge in respect of a contravention of **section 37(1)** if the person charged proves—
- (a) that the contravention occurred without his or her knowledge; and
 - (b) that he or she took reasonable precautions and exercised due diligence in order to prevent the contravention of that section.
- (2) A person has the defence in **subsection (1)** if he or she proves that he or she—
- (a) sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) for the person to whom the restricted substance was sold, indicating that the person was of or over the age of 18 years; and

New (majority)

- (b) reasonably believed that the evidence of age document—
 - (i) was valid; and
 - (ii) related to the person to whom the restricted substance was sold.
- (3) **Subsection (2)** does not affect the generality of **subsection (1)**.
- (4) It is not a defence to a charge in respect of a contravention of **section 37(1)**—
 - (a) that the person to whom the restricted substance was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years; or
 - (b) that the person charged believed on reasonable grounds that the person to whom the restricted substance concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years.

Compare: 1990 No 108 s 30(2)–(3)

39 Restriction on persons under 18 years selling restricted substances

- (1) No person may sell a restricted substance unless that person is of or over the age of 18 years.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

40 Restriction on supplying restricted substances to persons under 18 years

- (1) No person may supply a restricted substance to a person—
 - (a) who is under the age of 18 years; or
 - (b) with the intention that it be supplied (directly or indirectly) to a person who is under the age of 18 years.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.
- (3) Nothing in **subsections (1) or (2)** applies to a person who is acting in pursuance of a duty, function, or power under this **Part** or any other enactment.

New (majority)

- (4) **Subsection (1)** applies irrespective of any liability that may attach to a person who has sold the restricted substance concerned to any other person.

Compare: 1990 No 108 s 30AA(1), (5)

41 Defence to charge of supplying restricted substance to person under 18 years

- (1) It is a defence to a charge in respect of a contravention of **section 40(1)** if the person charged proves that he or she had no reasonable grounds to suspect that the person to whom he or she supplied the restricted substance was under the age of 18 years.
- (2) A person has the defence in **subsection (1)** if he or she proves that he or she—
- (a) sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) for the person to whom the restricted substance was supplied, indicating that the person was of or over the age of 18 years; and
 - (b) reasonably believed that the evidence of age document—
 - (i) was valid; and
 - (ii) related to the person to whom the restricted substance was supplied.
- (3) **Subsection (2)** does not affect the generality of **subsection (1)**.
- (4) It is not a defence to a charge in respect of a contravention of **section 40(1)**—
- (a) that the person being supplied was acquiring the restricted substance concerned for or on behalf of, or as agent for, a person of or over the age of 18 years; or
 - (b) that the person charged believed on reasonable grounds that the person being supplied was acquiring the restricted substance concerned for or on behalf of, or as agent for, a person of or over the age of 18 years.

Compare: 1990 No 108 s 30AA(2)–(4)

New (majority)**42 Restriction on place of sale or supply of restricted substances**

- (1) No person may sell or supply a restricted substance to which a prescribed restriction relating to place of sale or supply applies from a place or premises that do not comply with that restriction.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

43 Restriction on free of charge distribution and rewards of restricted substances

- (1) No manufacturer, distributor, importer, or retailer of any restricted substance may—
 - (a) distribute a restricted substance free of charge; or
 - (b) supply a restricted substance to a person free of charge for subsequent distribution; or
 - (c) in the case of a retailer, supply a restricted substance to a person free of charge for the purpose of that retailer's business.
- (2) No manufacturer, distributor, importer, or retailer of any restricted substance may—
 - (a) offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to the purchaser of a restricted substance in consideration for the purchase of that restricted substance, or to any person in consideration for the provision of evidence of a purchase of that kind; or
 - (b) offer, to any retailer, a gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to—
 - (i) the purchase or sale of restricted substances by that retailer; or
 - (ii) the advertising of restricted substances inside that retailer's place of business; or
 - (iii) the display of restricted substances in a particular part of that retailer's place of business.

New (majority)

- (3) Nothing in **subsection (2)** applies in respect of any payment or reward to any person who purchases or attempts to purchase a restricted substance—
- (a) with the authority of the Director-General of Health, the Commissioner of Police, or some other person authorised for the purpose by the Director-General or the Commissioner; and
 - (b) for the purpose of monitoring compliance with the provisions of this **Part**.
- (4) Every person who contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1990 No 108 s 28

*Advertising restrictions and requirements***44 Restrictions and requirements relating to advertising restricted substances**

- (1) No person may advertise a restricted substance—
- (a) on television; or
 - (b) on radio; or
 - (c) in any newspaper or other periodical publication printed and published in New Zealand; or
 - (d) on or in any other medium prescribed in regulations made under this **Part**.
- (2) No person may advertise a restricted substance to which a prescribed restriction relating to advertising applies in a way that does not comply with that restriction.
- (3) Every person who advertises a restricted substance to which a prescribed requirement relating to advertising applies must advertise the restricted substance in a way that complies with that requirement.
- (4) Every person who contravenes **subsection (1), (2), or (3)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; and

New (majority)

- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

*Labelling restrictions and requirements***45 Restrictions and requirements relating to labelling restricted substances**

- (1) No person may sell or supply a restricted substance to which a prescribed restriction relating to labelling applies with a label that does not comply with that restriction.
- (2) Every person who sells or supplies a restricted substance to which a prescribed requirement relating to labelling applies must sell or supply the restricted substance with a label that complies with that requirement.
- (3) Every person who contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1990 No 108 s 32(1)

*Packaging restrictions and requirements***46 Restrictions and requirements relating to packaging restricted substances**

- (1) No person may sell or supply a restricted substance to which a prescribed restriction relating to packaging applies in a package that does not comply with that restriction.
- (2) Every person who sells or supplies a restricted substance to which a prescribed requirement relating to packaging applies must sell or supply the restricted substance in a package that complies with that requirement.
- (3) Every person who contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; and
- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

New (majority)*Health warning requirements***47 Requirement relating to health warning**

- (1) Every person who sells or supplies a restricted substance to which a prescribed requirement relating to a health warning applies must sell or supply the restricted substance with the necessary health warning required to comply with that requirement.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

*Signage requirements***48 Requirement to display signage**

- (1) Every person who sells a restricted substance to which a prescribed requirement relating to signage applies must display the signage required to comply with that requirement.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

*Quantity, dosage, form, and serving restrictions
and requirements***49 Restrictions and requirements relating to quantity,
dosage, form, or serving of restricted substances**

- (1) No person may sell or supply a restricted substance to which a prescribed restriction relating to quantity, dosage, form, or serving applies in a quantity, dose, form, or serving that does not comply with that restriction.
- (2) Every person who sells or supplies a restricted substance in relation to which a prescribed requirement relating to quantity, dosage, form, or serving applies must sell or supply the restricted substance in a quantity, dose, form, or serving that complies with that requirement.

New (majority)

- (3) Every person who contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

*Storage and display restrictions and requirements***50 Restrictions and requirements relating to storage and display of restricted substances**

- (1) No person who sells or supplies a restricted substance to which a prescribed restriction relating to storage or display applies may store or display the restricted substance in a way that does not comply with that restriction.
- (2) Every person who sells or supplies a restricted substance to which a prescribed requirement relating to storage or display applies must store or display the restricted substance in a way that complies with that requirement.
- (3) Every person who contravenes **subsection (1) or (2)** commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

*Manufacturing requirement***51 Requirement to manufacture restricted substances in accordance with code of practice**

- (1) Every person who manufactures a restricted substance to which a code of manufacturing practice applies must manufacture the restricted substance in accordance with that code.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

New (majority)**52 Restriction on import of restricted substances**

- (1) No person may import into New Zealand a restricted substance to which a code of manufacturing practice applies unless the restricted substance meets or exceeds the minimum standards established by the code.
- (2) Every person who contravenes **subsection (1)** commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; and
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.

*Recall***53 Recall of restricted substances in certain circumstances**

- (1) The Minister may, for the purpose of protecting the public, issue an order of the kind referred to in **subsection (2)** (a **recall order**) to any manufacturer, importer, or seller of any restricted substance.
- (2) The recall order is an order directing the recall of any restricted substance or requiring the destruction of any restricted substance because the restricted substance is—
 - (a) unsound or unfit for human consumption; or
 - (b) damaged, deteriorated, or perished; or
 - (c) contaminated with any poisonous, deleterious, or injurious substance.
- (3) A manufacturer, importer, or seller must,—
 - (a) on receipt of a recall order, advise the Minister of the details of the manner in which that person proposes to comply with the order; and
 - (b) when the recall order has been complied with, give written notice of that fact to the Minister.
- (4) Every person who fails to comply, in any respect, with any of the provisions of this section or any order issued under this section commits an offence and is liable on summary conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; or

New (majority)

- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1981 No 45 s 40

*Record-keeping requirement***54 Requirement to keep records relating to restricted substances**

- (1) Every person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any restricted substance, must—
- (a) keep, in some place of security at that person's place of business, any records required to be kept by that person by any regulations made under this **Part**; and
- (b) retain those records for the period of time prescribed in the regulations.
- (2) Every person who fails to comply with **subsection (1)** commits an offence and is liable on summary conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$10,000.

Compare: 1981 No 45 s 41

*Certain persons prohibited from selling or manufacturing restricted substances***55 Certain persons prohibited from selling or manufacturing restricted substances**

- (1) This section applies if a person has been convicted of any offence under this **Part** and, within 2 years of being sentenced for that offence, he or she is convicted of another offence or offences under this **Part**.
- (2) If this section applies, the court imposing the sentence for the second or subsequent offence may (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order—
- (a) prohibiting any or all of the following:

New (majority)

- (i) the sale of any restricted substances by or on behalf of the person:
 - (ii) the sale of any restricted substances at the place or premises at which the second or subsequent offence occurred:
 - (iii) the manufacture of any restricted substances by or on behalf of the person:
 - (iv) the manufacture of any restricted substances at the place or premises at which the second or subsequent offence occurred; or
- (b) prohibiting any or all of the following:
- (i) the sale of restricted substances of a stated kind by or on behalf of the person:
 - (ii) the sale of restricted substances of a stated kind in the premises or at the place in which the second or subsequent offence occurred:
 - (iii) the manufacture of restricted substances of a stated kind by or on behalf of the person:
 - (iv) the manufacture of restricted substances of a stated kind in the premises or at the place in which the second or subsequent offence occurred; or
- (c) imposing any conditions or restrictions (or both) it thinks fit on any or all of the following:
- (i) the sale of restricted substances by or on behalf of the person:
 - (ii) the sale of restricted substances at the premises or place at which the second or subsequent offence occurred:
 - (iii) the manufacture of restricted substances by or on behalf of the person:
 - (iv) the manufacture of restricted substances at the premises or place at which the second or subsequent offence occurred.
- (3) The order must state—
- (a) the date it takes effect (which may be the date on which it is made or a later date); and
 - (b) the date it expires (which must be a date at least 4 weeks and no more than 3 months after the date it takes effect).

New (majority)

- (4) Every person who contravenes an order made under **subsection (2)** commits an offence.
- (5) Every person who commits an offence under **subsection (4)** is liable on summary conviction to a fine not exceeding \$2,000.
Compare: 1990 No 108 s 30AB

*Enforcement officers***56 Enforcement officers**

- (1) The Director-General of Health may appoint enforcement officers to enforce this **Part**.
- (2) A person appointed as an enforcement officer may be a person appointed by name or may be the holder for the time being of a particular position.
- (3) A person appointed under **subsection (1)** is not by virtue of that appointment alone—
 - (a) an officer or employee of the Public Service; or
 - (b) a person to whom the State Sector Act 1988 or the Government Superannuation Fund Act 1956 applies.
- (4) The Director-General of Health must not appoint a person under **subsection (1)** unless the Director-General is satisfied that he or she is suitably qualified and trained and is a fit and proper person for appointment as an enforcement officer.
- (5) The Director-General of Health may do any or all of the following:
 - (a) appoint persons to enforce only some of the provisions of this **Part**;
 - (b) appoint persons to exercise only some of the powers given to enforcement officers by this **Part**;
 - (c) appoint persons subject to limitations or restrictions on their exercise of enforcement powers.
- (6) Every enforcement officer must have an instrument of appointment identifying the holder as an enforcement officer appointed under this section.
- (7) An enforcement officer's instrument of appointment must state—
 - (a) that he or she is appointed to enforce—
 - (i) all the provisions of this **Part**; or

New (majority)

- (ii) only stated provisions of this **Part**; or
- (iii) all the provisions of this **Part** other than certain stated provisions; and
- (b) that he or she is appointed to exercise—
 - (i) all enforcement powers; or
 - (ii) only stated enforcement powers; or
 - (iii) all enforcement powers other than certain stated powers; and
- (c) all limitations and restrictions (if any) imposed under **subsection (5)(c)** on his or her exercise of enforcement powers.

Compare: 1990 No 108 s 14

*Enforcement powers***57 Entry and inspection for purposes of ensuring compliance with this Part**

- (1) An enforcement officer or a member of the police may enter a place, if he or she believes there is a restricted substance in that place, to—
 - (a) find out whether this **Part** is being complied with in relation to that restricted substance;
 - (b) find out the extent to which this **Part** is not being complied with in relation to that restricted substance;
 - (c) exercise the powers given by **section 59**.
- (2) **Subsection (1)** does not apply to a dwellinghouse or other residential accommodation.
- (3) An enforcement officer or a member of the police who enters a place under **subsection (1)** may do any or all of the following things:
 - (a) inspect the place;
 - (b) take photographs or videos of the place;
 - (c) copy any documents or records (of any kind) relating to a restricted substance;
 - (d) exercise the powers given by **section 59**;
 - (e) inspect any article or material (for example, advertising material and display signage) in relation to which a restriction or requirement is imposed by or under this **Part**.

New (majority)

- (4) Nothing in **subsection (2)** prevents an enforcement officer or a member of the police from entering a dwellinghouse or other residential accommodation and exercising the powers referred to in **subsection (3)**—
- (a) under authority given by or under an enactment (including another section of this **Part**); or
 - (b) with the occupier's consent.
- (5) An enforcement officer or a member of the police who is exercising powers under this section in respect of or in a place, must,—
- (a) if a person in charge of the place is present on initial entry, identify himself or herself to the person in charge as an enforcement officer or a member of the police; and
 - (b) in the case of an enforcement officer who is asked by a person in charge to do so, produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both; and
 - (c) explain to that person that the authority to enter is under this section.

Compare: 1990 No 108 s 41A

58 Powers of entry and inspection if reasonable grounds to believe offence committed under this Part

- (1) An enforcement officer or a member of the police may enter a place if he or she has reasonable grounds to believe that—
- (a) there is a restricted substance in that place; and
 - (b) an offence has been, is being, or will be committed under this **Part** in relation to that restricted substance in that place.
- (2) **Subsection (1)** does not apply to a dwellinghouse or other residential accommodation.
- (3) An enforcement officer or a member of the police who enters a place under **subsection (1)** may do any or all of the following things:
- (a) inspect the place;
 - (b) take photographs or videos of the place:

New (majority)

- (c) seize any restricted substance, document or record (of any kind), or other article relating to a restricted substance (for example, any advertising or labelling material);
 - (d) copy any documents or records (of any kind) or relating to the restricted substance;
 - (e) exercise the powers given by **section 59**.
- (4) Nothing in **subsection (2)** prevents a member of the police from entering a dwellinghouse or other residential accommodation and exercising the powers referred to in **subsection (3)**—
- (a) with the consent of an occupier; or
 - (b) under authority given by or under an enactment (including another section of this **Part**, for example, pursuant to a warrant issued under **subsection (5)**).
- (5) A District Court Judge may issue to a member of the police a warrant to enter any part of a dwellinghouse or other residential accommodation, if satisfied that there are reasonable grounds for believing that—
- (a) there is a restricted substance in the dwellinghouse or residential accommodation; and
 - (b) an offence has been, is being, or will be committed under this **Part** in relation to that restricted substance in that dwellinghouse or residential accommodation.
- (6) A warrant issued under **subsection (5)** must state a period during which the warrant may be executed, which must not exceed 14 days from the date of its issue.
- (7) An enforcement officer or a member of the police exercising powers under this section in respect of or in a place, must,—
- (a) if a person in charge of the place is present on initial entry, identify himself or herself to the person in charge as an enforcement officer or a member of the police; and
 - (b) in the case of an enforcement officer who is asked by a person in charge to do so, produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both; and
 - (c) explain to that person that the authority to enter is under this section.

New (majority)**59 Requirement to give identifying information**

- (1) **Subsection (2)** applies to an enforcement officer or a member of the police who at any time believes on reasonable grounds that within the previous 14 days a restricted substance was sold to a person under the age of 18 years in a place.
- (2) An enforcement officer or a member of the police to whom this subsection applies may,—
 - (a) if he or she believes on reasonable grounds that the person who sold the restricted substance is in the place, require that person to give the enforcement officer or a member of the police his or her name and address; and
 - (b) if the person who sold the restricted substance is not present, require any other person in the place who appears to be in charge of it or any part of it, to give the enforcement officer or a member of the police the name and address of (or, if the address is not within the person's knowledge, the name and any other identifying information within the person's knowledge relating to) the person the enforcement officer or a member of the police believes on reasonable grounds sold the restricted substance.
- (3) An enforcement officer or a member of the police who suspects that a person is under the age of 17 years must not under **subsection (2)(a)** require the person to give the enforcement officer or member of the police his or her name and address unless—
 - (a) there is no other person in the place concerned who appears to be in charge of it; or
 - (b) there is another person in the place who appears to be in charge of it, but the enforcement officer suspects that that person is also under the age of 17 years.
- (4) An enforcement officer or a member of the police who suspects that a person is under the age of 17 years must not under **subsection (2)(b)** require the person to give the enforcement officer or a member of the police the name and address of (or name and other identifying information relating to) any other person if the other person is in the place concerned and appears to be of or over the age of 17 years.

New (majority)

- (5) The powers given by this section must be used only for, and only to the extent necessary for, finding out the name and address of (or, if the address is not within the knowledge of the person asked, the name and any other identifying information within the person's knowledge relating to) a person the enforcement officer or member of the police concerned believes to have sold a restricted substance to a person under the age of 18 years.

Compare: 1990 No 108 s 41B and 41C(2)

60 Information laid under this Part

- (1) An information in respect of an offence against this **Part** may be laid at any time within 1 year after the time the matter it relates to arose.
- (2) **Subsection (1)** overrides section 14 of the Summary Proceedings Act 1957.

Compare: 1990 No 108 s 41F(2), (3)

*Offences relating to enforcement***61 Offence to obstruct enforcement officer or member of police under this Part**

- (1) A person who obstructs an enforcement officer or a member of the police in the execution of any power or duty under this **Part** commits an offence.
- (2) Every person who commits an offence under **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,000.

62 Offence to make false statement to enforcement officer or member of police under this Part

- (1) A person commits an offence if—
- (a) he or she makes a declaration or statement to an enforcement officer or a member of the police executing any power or fulfilling any duty under this **Part**; and
- (b) he or she knows that the declaration or statement is false.

New (majority)

- (2) Every person who commits an offence under **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,000.

Compare: 1975 No 116 s 15

*Regulations***63 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

Exemptions

- (a) exempting any specified preparation, concentration, form, or use of a restricted substance from being a restricted substance:

Place of sale or supply restrictions

- (b) prescribing restrictions on the places and premises from which restricted substances may be sold or supplied, or both, including, without limitation, restrictions of the following kinds:

- (i) a restriction completely prohibiting the sale or supply, or both, of restricted substances from premises of a specified kind (for example, from non-fixed premises, such as a vehicle):
- (ii) a restriction prohibiting the sale of restricted substances from certain types of retail premises (for example, premises where liquor is sold):
- (iii) a restriction prohibiting the sale or supply, or both, of restricted substances from places where children or minors gather (for example, schools or recreational facilities):

Advertising restrictions and requirements

- (c) prescribing restrictions on the location, manner, way, medium, or form in which advertising for restricted substances may appear, including, without limitation, restrictions of the following kinds:

- (i) a restriction completely prohibiting sponsorship activities relating to restricted substances:
- (ii) a restriction on advertising restricted substances in certain places (for example, near schools):

New (majority)

- (iii) a restriction on using certain forms or themes of advertising for restricted substances (for example, advertising that appeals to children):
- (d) prescribing requirements relating to the location, manner, way, medium, and form in which advertising for restricted substances, if undertaken, is to appear including, without limitation, a requirement that advertising for restricted substances include certain information (for example, the ingredients contained in the restricted substance):
 - Labelling restrictions and requirements*
 - (e) prescribing restrictions on the manner, way, medium, or form in which the labelling of restricted substances is to appear for the purposes of sale or supply, or both, including, without limitation, prohibiting certain kinds of labelling (for example, labelling designed to appeal to children or that associates restricted substances with youth culture):
 - (f) prescribing requirements relating to the manner, way, medium, or form in which the labelling of restricted substances is to appear for the purposes of sale or supply, or both (for example, requiring that the inner and outer packages for restricted substances both carry labels specifying certain prescribed matters):
 - Packaging restrictions and requirements*
 - (g) prescribing restrictions on the size and type of packaging for restricted substances for the purposes of sale or supply, or both:
 - (h) prescribing requirements as to the size and type of packaging for restricted substances for the purposes of sale or supply, or both (for example, that packaging is to be tamper-proof or child-proof):
 - (i) prescribing restrictions on the type of material and the medium or form of the material that may be inserted in packages that hold restricted substances for the purposes of sale or supply, or both, including, without limitation, a restriction prohibiting the inclusion of written material of a certain kind (for example, material

New (majority)

that associates restricted substances with youth culture):

- (j) prescribing requirements as to the content of any material required to be inserted in packages that hold restricted substances for the purposes of sale, supply, or both, including, without limitation, a requirement that certain material be inserted in the package (for example, informational leaflets relating to contraindications for use of the restricted substance):
- (k) prescribing requirements relating to the material, and the medium or form of the material that is to be inserted in packages that hold restricted substances for the purposes of sale, supply, or both, including, without limitation, a requirement that material be presented in a certain way (for example, printed in a certain size or manner):
 - Health warning requirements*
 - (l) prescribing requirements that health warnings accompany restricted substances for the purposes of sale or supply, or both, including, without limitation, the following kinds of requirements:
 - (i) a requirement that a health warning accompany a restricted substance that specifies that the restricted substance should not be taken with certain other things (for example, liquor, drugs, other restricted substances, or medicines):
 - (ii) a requirement that a health warning accompany a restricted substance that specifies that the restricted substance should not be taken when a person is in a specified condition or situation (for example, the person is pregnant, breast-feeding, driving, or operating heavy machinery):
 - (iii) a requirement that a health warning accompany the restricted substance that states where to obtain help should adverse effects occur as a result of taking the restricted substance:
- (m) prescribing requirements as to the manner, way, medium, or form in which health warnings are, if

New (majority)

required, to appear (for example, that the health warning is to be on the label or advertising of a package containing restricted substances):

Signage requirements

- (n) prescribing requirements relating to signage that is to be displayed when restricted substances are sold:
- (o) prescribing requirements as to the manner, way, medium, and form in which signage, if required, is to be displayed when restricted substances are sold (for example, a requirement that a person selling a restricted substance display a sign of a particular size stating that the restricted substance may not be sold to a person under the age of 18 years or stating a recommended maximum dosage):

Quantity, dosage, form, and serving requirements

- (p) prescribing restrictions on the quantity or form of restricted substances that may be sold or supplied together at any one time:
- (q) prescribing requirements relating to the quantity or form of restricted substances that may be sold or supplied together at any one time:
- (r) prescribing restrictions on the maximum dosage or serving of restricted substances that may be sold or supplied at any one time:
- (s) prescribing requirements relating to the maximum dosage or serving of restricted substances that may be sold or supplied at any one time:

Storage and display restrictions

- (t) prescribing restrictions on the storage or display of restricted substances for the purposes of sale or supply, or both, including, without limitation, a restriction on the maximum amount of any restricted substance that may be stored in any premises at any one time:
- (u) prescribing restrictions on the manner of storage and display of restricted substances for the purposes of sale or supply, or both, including, without limitation, a

New (majority)

restriction that a restricted substance must not be displayed in a particular place (for example, a position in a shop where it is visible from the street):

- (v) prescribing requirements relating to the storage or display, or both, of restricted substances for the purposes of sale or supply, or both (for example, a requirement that sellers of a restricted substance must store it at or below a certain temperature):

Record-keeping requirements

- (w) prescribing requirements for specified persons to keep records under this **Part** and the period of time for which those records must be retained:

General

- (x) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this **Part** and for its due administration.
- (2) Any regulations made under **subsection (1)** may apply to all restricted substances, any class or description of restricted substances, or any particular restricted substance.

*Code of manufacturing practice***64 Code of manufacturing practice**

- (1) The Director-General of Health may from time to time issue, approve, amend, or revoke a code of practice for the manufacturing of restricted substances.
- (2) Before issuing, approving, amending, or revoking a code of practice under **subsection (1)**, the Director-General of Health must consult with the organisations for the time being recognised by the Director-General as representing the interests of those persons involved in the manufacture or importation of restricted substances who will or may be affected by the code of practice.
- (3) A failure to comply with **subsection (2)** does not affect the validity of a code of practice issued or amended under this section, or the validity of a revocation of a code of practice under this section.

New (majority)

- (4) Any code of practice issued or approved by the Director-General of Health under **subsection (1)** may apply to all restricted substances, any class or description of restricted substances, or any particular restricted substance.
- (5) The Director-General of Health, when issuing, approving, amending, or revoking a code of practice, must—
 - (a) notify the issue, approval, amendment, or revocation of the code in the *Gazette*; and
 - (b) show in the notice the date of the issue, approval, amendment, or revocation of the code; and
 - (c) specify in the notice the place or places at which copies of the code or the amendment are available for inspection or purchase.
- (6) The Director-General of Health must ensure that copies of the codes of practice and any amendments to those codes issued or approved under this section are available for inspection at the place or places specified in the notice given under **subsection (5)**.
- (7) A code of practice, or an amendment or revocation of a code of practice, does not have any force or effect under this **Part** until notified in the *Gazette*.

Compare: 1997 No 87 s 28

*Relationship of this Part to other specified enactments***65 Relationship of this Part to specified enactments**

- (1) Nothing in this **Part** affects or derogates from an Act specified in **subsection (3)**.
- (2) In the event of any inconsistency between the provisions of an Act specified in **subsection (3)**, or between the provisions of any regulations made under that Act and the provisions of any regulations made under this **Part**, the provisions of that Act and any regulations made under that Act prevail.
- (3) The Acts are the—
 - (a) Customs and Excise Act 1996:
 - (b) Fair Trading Act 1986:
 - (c) Imports and Exports (Restrictions) Act 1988:
 - (d) Ozone Layer Protection Act 1996.

New (majority)**66 Sections of principal Act that do not apply to restricted substances**

The following enactments in the principal Act do not apply to restricted substances:

- (a) the definition of **supply** in section 2(1):
- (b) section 12:
- (c) section 13(1)(a):
- (d) sections 14 to 16:
- (e) section 18:
- (f) sections 27 and 28:
- (g) sections 32 and 33.

67 Application of section 31 of principal Act to this Part

For the purposes of this **Part**, section 31(2) of the principal Act applies as if there were inserted,—

- (a) after the words “officer of Customs”, the words “or enforcement officer”; and
- (b) after the words “precursor substance”, the words “or restricted substance”.

68 Administration of this Part

This **Part** is administered in the Ministry of Health.

Schedule 1 s 20
New Part 3 added to Schedule 4 of principal Act

PART 3

- 1 The following substances:
EPHEDRINE
PSEUDOEPHEDRINE
 - 2 The salts of the substances listed in **clause 1** whenever the existence of such salts is possible.
-

s 22

Schedule 2 New Schedule 5 added to principal Act

ss 2(1A), 6(1)(f)

Schedule 5 Amount, level, or quantity at and over which controlled drugs are presumed to be for supply

1 The controlled drugs listed in the first column are presumed to be for supply at and over the amount, level, or quantity listed in the second column.

Morphine	5 grams, whether or not contained in a substance, preparation, or mixture
Cocaine	half a gram, whether or not contained in a substance, preparation, or mixture
Heroin	half a gram, whether or not contained in a substance, preparation, or mixture
Lysergide	2 and a half milligrams or 25 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug
<i>(4-bromo-2,5-dimethoxyamphetamine)</i>	<i>(100 milligrams or 25 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug)</i>
<i>(MDMA, MDEA, or MDA)</i>	<i>(5 grams or 100 flakes, tablets, capsules, or other drug forms containing any one or more of those drugs)</i>
<u>DOB (2-amino-1-(4-bromo-2,5-dimethoxyphenyl)propane) (also known as bromo-DMA)</u>	<u>100 milligrams or 25 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug</u>
<u>MDMA (2-methylamino-1-(3,4-methylenedioxyphenyl)propane)</u>	<u>5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug</u>
<u>N-ETHYL MDA (2-ethylamino-1-(3,4-methylenedioxyphenyl)propane)</u>	<u>5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug</u>
<u>MDA (2-amino-1-(3,4-methylenedioxyphenyl)propane)</u>	<u>5 grams or 100 flakes, tablets, capsules, or other drug forms each containing some quantity of the drug</u>
Tetrahydrocannabinol (as described in the Second Schedule)	250 milligrams, whether or not contained in a substance, preparation, or mixture
Any cannabis preparation (as described in the Second Schedule)	5 grams or 100 cigarettes containing the drug
Cannabis plant (as described in the Third Schedule)	28 grams or 100 cigarettes containing the drug
Methamphetamine	5 grams, whether or not contained in a substance, preparation, or mixture

Schedule 5—continued

- 2 Any controlled drug not specified in **clause 1** is presumed to be for supply at and over the level of 56 grams.
-

s 23

Schedule 3**Consequential amendments to other enactments****Extradition Act 1999** (1999 No 55)

Insert in section 101A(2)(b), after the expression “section 35”, the expression “and section 35A”.

Health (Needles and Syringes) Regulations 1998 (SR 1998/254)

Revoke regulation 10 and the heading before that regulation.

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)

Insert in the second column of the Schedule in item 4 (which relates to the Misuse of Drugs Act 1975), in its appropriate numerical order:

12AB Offence to knowingly import or export precursor substances for unlawful use

Proceeds of Crime Act 1991 (1991 No 120)

Repeal the definition of **drug-dealing offence** in section 2(1) and substitute:

“**drug-dealing offence** means any offence against section 6 of the Misuse of Drugs Act 1975 in relation to a Class A controlled drug, a Class B controlled drug, or a Class C controlled drug, in relation to which the amount, level, or quantity at and over which the drug is presumed to be for supply is specified in **Schedule 5** of that Act”.

Prostitution Reform Act 2003 (2003 No 28)

Insert in section 36(2)(d)(ii), after the expression “12A,” the expression “**section 12AB**,”.

Summary Proceedings Act 1957 (1957 No 87)

Insert in the second and third columns of Part II of the First Schedule in the item relating to the Misuse of Drugs Act 1975, in its appropriate numerical order:

12AB Offence to knowingly import or export precursor substances for unlawful use

New (majority)

Schedule 4

s 32, s 34(1)

Restricted substances

BZP (1-benzylpiperazine or A2 benzylpiperazine or N-benzylpiperazine (1-Benzyl-1, 4-diazacyclohexane))

Legislative history

8 September 2004

Introduction (Bill 186-1)

15 September 2004

First reading and referral to Health Committee