

Misuse of Drugs Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill will amend the Misuse of Drugs Act 1975 (the **Act**) to reclassify ephedrine and pseudoephedrine as Class B2 controlled drugs, remove thalidomide as a Class A controlled drug, allow hazardous substances to be scheduled also as restricted substances, extend the definition of amphetamine analogues, and extend the controls over drug paraphernalia.

Reclassification of ephedrine and pseudoephedrine

Ephedrine and pseudoephedrine are active ingredients used in the manufacture of the Class A controlled drug methamphetamine. Pseudoephedrine is currently available over the counter in cold and flu remedies from pharmacies. The reclassifications will make both ephedrine and pseudoephedrine available only with a prescription from a medical practitioner.

In June 2009, the Expert Advisory Committee on Drugs determined that legislative change was needed on the grounds that effective alternative remedies to ephedrine and pseudoephedrine are available and that the risk of pseudoephedrine being diverted into the manufacture of methamphetamine outweighs the requirement for its ongoing over-the-counter availability. The purpose of the reclassifications is therefore to restrict the availability of these substances and make it

difficult for potential manufacturers of methamphetamine to access the key ingredients to make the drug. The Bill also establishes the amount at and over which these substances are presumed to be for supply.

Removal of thalidomide as Class A controlled drug

The Bill will remove thalidomide from Schedule 1 (Class A) of the Act. The removal of thalidomide from the Act is required because the current classification of this substance is an anomaly. Thalidomide has no potential to be misused for a psychoactive effect and can be more effectively controlled as a medicine under the Medicines Act 1981.

A notice in the *Gazette* to schedule thalidomide as a prescription-only medicine will be issued concurrently with the passage of this Bill to ensure that appropriate controls of this substance remain in place.

Removal of exemption that restricted substance under Misuse of Drugs Amendment Act 2005 cannot also be hazardous substance under Hazardous Substances and New Organisms Act 1996

The Bill will remove the exclusion that a hazardous substance, as defined in the Hazardous Substances and New Organisms Act 1996, cannot be a restricted substance under the Misuse of Drugs Amendment Act 2005. This amendment is necessary to remove the barrier between these 2 pieces of legislation and allow for the continued control of low-risk psychoactive substances as restricted substances.

Amendment to controlled drug analogue provisions of Act

The Bill amends the definition of amphetamine analogues in Part 7 of Schedule 3 by including the words “and/or alkylthio radicals” after “alkylamino radicals”. This will control by default a wider range of emerging designer drugs.

Broadening of notice-making provisions of Act to control importation and supply of drug utensils

The provisions for prohibiting the importation and supply of utensils used for the purpose of administering controlled drugs will be expanded to make it an offence to possess utensils for the purpose

of sale or supply and prohibit the importation of incomplete utensils that, for example, require only the addition of a metal cone for burning cannabis to become usable. This will allow Police and Customs to more effectively enforce the utensils provisions and minimise the visibility and availability of drug paraphernalia.

Consequential amendments to other enactments

The Bill makes consequential amendments to the Land Transport Act 1998 and the Customs and Excise Act 1996 to ensure consistency with the proposed changes in the Bill.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that, with the exception of the provisions relating to ephedrine and pseudoephedrine, the Bill comes into force on the day after the date on which it receives the Royal assent. The provisions relating to ephedrine and pseudoephedrine come into force on 1 March 2011.

Clause 3 provides that the Bill amends the Misuse of Drugs Act 1975 (the Act).

Part 1

Amendments to principal Act and consequential amendments to other enactments

Amendments to principal Act

Clause 4 amends section 22 by—

- increasing the range of actions that are offences in relation to pipes and other utensils; and
- including identifiable components of pipes and other utensils as items in relation to which offences may be committed.

Clause 5 removes thalidomide from clause 1 of Schedule 1 of the Act, so that it is no longer a Class A controlled drug.

Clause 6 amends Schedule 2 of the Act by adding ephedrine and pseudoephedrine to clause 1 of Part 2 of that schedule, to include them as Class B2 controlled drugs.

Clause 7 amends Schedule 3 of the Act by—

- removing some pseudoephedrine preparations from Part 3 of that schedule so that they are no longer Class C3 controlled drugs; and
- removing both ephedrine and pseudoephedrine from Part 5 of that schedule, so that they are no longer Class C5 controlled drugs; and
- including alkylthio radicals in certain combinations of amphetamine analogues in Part 7 of that schedule, so that they are Class C7 controlled drugs.

Clause 8 amends Schedule 4 of the Act by removing ephedrine and pseudoephedrine from Part 1 of that schedule, so that they are no longer precursor substances under that Part.

Clause 9 provides for the amendment of Schedule 5 of the Act by adding the items set out in the *Schedule* to the Bill.

Consequential amendments to other enactments

Clause 10 amends the Land Transport Act 1998 to reflect that thalidomide is no longer a controlled drug. Previously, it was an exception to the offences of driving, etc, under the influence of a Schedule 1 controlled drug. As it is no longer a controlled drug (as the effect of *clause 5*), it does not need to be an exception to those offences.

Clause 11 amends Schedule 1 of the Customs and Excise Act 1996 to make the references to section 22(1A) of the Misuse of Drugs Act 1975 consistent with the amendments to that section that are made by *clause 4*.

Part 2

Amendment to Misuse of Drugs Amendment Act 2005

Clause 12 provides that *Part 2* amends the Misuse of Drugs Amendment Act 2005 (the **2005 Amendment Act**).

Clause 13 amends section 31 of the 2005 Amendment Act by repealing paragraph (b)(v) of the definition of substance, so that hazardous substances, as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996, are no longer excluded from the definition of substance for the purposes of the 2005 Amendment Act.

Schedule

The *Schedule* to the Bill contains the items added by *clause 9* to Schedule 5 of the Act. Ephedrine and pseudoephedrine are presumed to be for supply at the amount of 10 grams, whether or not contained in a substance, preparation, or mixture.

Regulatory impact statement

The regulatory impact statement relating to this Bill can be found at <http://www.moh.govt.nz/publications/compliance> and <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Hon Peter Dunne

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Amendments to principal Act and consequential amendments to other enactments

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Part 2

Amendment to Misuse of Drugs Amendment Act 2005

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Schedule 5
Items added to clause 1 of Schedule 5

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Misuse of Drugs Amendment Act **2010**.
- 2 Commencement**
- (1) **Sections 6, 7(1) and (2), 8, and 9** come into force on 1 March 2011. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Misuse of Drugs Act 1975.
- Part 1** 10
Amendments to principal Act and consequential amendments to other enactments
- Amendments to principal Act*
- 4 Powers of Minister to prohibit importation, etc, of controlled drugs** 15
- (1) Section 22(1A) is amended by—
- (a) omitting “import or supply” and substituting “importation, supply, possession for the purpose of sale or supply, or offering for sale”; and 20
- (b) omitting “pipe or other utensil” and substituting “pipe, other utensil, or identifiable component of a pipe or other utensil”.
- (2) Section 22 is amended by repealing subsection (3) and substituting the following subsection: 25
- “(3) Every person commits an offence against this Act who—

- “(a) supplies, possesses for the purpose of sale or supply, or offers for sale a pipe, other utensil, or identifiable component of a pipe or other utensil whose sale, possession for the purpose of sale or supply, or offering for sale (as the case may be) is absolutely prohibited by a notice issued under subsection (1A); or 5
- “(b) supplies, possesses for the purpose of sale or supply, or offers for sale a pipe, other utensil, or identifiable component of a pipe or other utensil otherwise than in accordance with any condition under which that pipe, other utensil, or identifiable component of a utensil may, under a notice issued under subsection (1A), be supplied, possessed for the purpose of sale or supply, or offered for sale (as the case may be); or 10
- “(c) imports a pipe, other utensil, or identifiable component of a pipe or other utensil otherwise than in accordance with any condition under which that pipe, other utensil, or identifiable component of a pipe or other utensil may, under a notice issued under subsection (1A), be imported.” 15 20

5 Schedule 1 amended

The item relating to thalidomide in clause 1 of Schedule 1 is omitted.

6 Schedule 2 amended

Clause 1 of Part 2 of Schedule 2 is amended by inserting the following items in their appropriate alphabetical order: 25

- “**Ephedrine**
- “**Pseudoephedrine**”.

7 Schedule 3 amended

- (1) Part 3 of Schedule 3 is amended by repealing clause 6. 30
- (2) The items relating to ephedrine and pseudoephedrine in clause 1 of Part 5 of Schedule 3 are omitted.
- (3) Paragraph (d) of the item relating to amphetamine analogues in Part 7 of Schedule 3 is amended by inserting “and/or alkylthio radicals” after “alkylamino radicals”. 35

8 Schedule 4 amended

The items relating to ephedrine and pseudoephedrine in clause 1 of Part 1 of Schedule 4 are omitted.

9 Schedule 5 amended

Clause 1 of Schedule 5 is amended by adding the items set out in the **Schedule** of this Act. 5

*Consequential amendments to other enactments***10 Land Transport Act 1998 consequentially amended**

- (1) This section amends the Land Transport Act 1998.
- (2) Paragraph (a)(i) of the definition of **qualifying drug** in section 2(1) is amended by omitting “(except thalidomide)”. 10
- (3) Section 58(1)(b) is amended by omitting “(except thalidomide)”. 15
- (4) Section 61(2)(b) is amended by omitting “(except thalidomide)”. 15
- (5) Section 62(1)(b) is amended by omitting “(except thalidomide)”. 15

11 Customs and Excise Act 1996 consequentially amended

- (1) This section amends the Customs and Excise Act 1996.
- (2) Schedule 1 is amended by omitting “pipe or other utensil” and substituting “pipe, other utensil, or identifiable component of a pipe or other utensil”. 20

Part 2**Amendment to Misuse of Drugs****Amendment Act 2005**

25

12 Misuse of Drugs Amendment Act 2005 amended

This Part amends the Misuse of Drugs Amendment Act 2005.

13 Interpretation

Paragraph (b)(v) of the definition of **substance** in section 31 is repealed. 30

Schedule

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Items added to clause 1 of Schedule 5

Ephedrine	10 grams, whether or not contained in a substance, preparation, or mixture
Pseudoephedrine	10 grams, whether or not contained in a substance, preparation, or mixture