

COPYRIGHT (REMOVAL OF PROHIBITION ON PARALLEL IMPORTING) AMENDMENT BILL

EXPLANATORY NOTE

General Policy Statement

This Bill removes the current prohibition on parallel importing of copyright goods, and increases the penalties associated with pirated goods and certain breaches of the Medicines Act 1981.

Parallel importing occurs where a person imports goods that were lawfully made, into New Zealand, without obtaining the permission of the holder of the copyright in those goods in New Zealand. It can be distinguished from the importing of goods which were not lawfully made (known as pirated goods). Importing of pirated goods occurs when goods that were made without the permission of the copyright holder in the country in which they were made are imported into New Zealand. Importing of such goods will continue to be prohibited.

The Bill changes the Copyright Act 1994 to make New Zealand goods markets more competitive, and to ensure that New Zealanders are paying internationally competitive prices for goods. The penalty increases are to deter people from committing certain offences in relation to importing pirated goods.

The penalty increases in the Medicines Act 1981 relate to breaches of certain provisions in that Act which are in place for health safety reasons. Currently parties breaching those provisions are almost always parallel importers, therefore, the penalties in the Copyright Act for parallel importing have been a key deterrent. As this Bill removes the deterrent set out in the Copyright Act, it is necessary to ensure that the penalties in the Medicines Act are sufficient to act as a deterrent in their own right.

Clause by Clause Analysis

Part 1 of the Bill amends the Copyright Act 1994 to remove the prohibition on parallel importing.

Clause 3 inserts into the interpretation section of the Act a simple cross-reference to the definition of “infringing copy” in the amended *section 12*.

Clause 4 amends the definition of “issue to the public” in section 9 of the Act to specifically exclude the distribution of copies of a work that under the amended *section 12* are no longer treated as infringing copies.

Clause 5 amends section 12 of the Act, which is the provision that currently prohibits parallel importing.

Under that section, objects imported into New Zealand are treated as “infringing copies” if either—

- (a) Their making infringed copyright in the country in which they were made; or
- (b) Had they been made in New Zealand by the person importing them, they would have infringed copyright in New Zealand.

The proposed new *subsection (3)(a)* retains the prohibition in relation to imported objects whose making infringed copyright in the overseas country in which they were made, but the proposed new *subsections (3)(b) and (5A)* relax the criterion for infringement set out in paragraph (b) above to allow for the importation of parallel imports.

The new *subsection (5A)(a)* provides that an imported object will not be treated as an infringing copy if it was made by or with the consent of the owner of the copyright (or other equivalent intellectual property right) in the work in question in the country in which the object was made.

The new *subsection (5A)(b)* deals with the situation where there was no owner of the copyright in the relevant work in the country in which the imported object was made. In such cases an object will not be an infringing copy if—

- (i) The copyright protection period in that country has expired; or
- (ii) The person who was entitled to be the owner of the copyright in that country has failed to take some step legally available to them to secure ownership of the copyright; or
- (iii) The object is a 3-dimensional copy of an artistic work that has been industrially applied in that country in the manner specified in section 75 (4) of the Act (which section provides an exception from copyright protection for certain works that have been industrially applied); or
- (iv) The object was made in that country by or with the consent of the owner of the copyright in the work in New Zealand.

Clause 6 amends section 131 of the Act to increase the penalties for various copyright infringements relating to pirated goods.

Clause 7 amends the definition of the term “pirated work” in section 135 of the Act to exclude from the definition works that are not infringing copies within the meaning of the amended *section 12*.

Clause 8 repeals section 144 of the Act, which currently provides for alert notices in relation to parallel imports to be given to New Zealand Customs by concerned copyright holders. (The Act still retains in section 137 provision for alert notices in relation to pirated works.)

Clause 9 ensures that no compensation is payable by the Crown in respect of any diminution in the rights attaching to copyright that may arise by virtue of the enactment of the Bill.

Part 2 of the Bill amends the Medicines Act 1981 to increase the penalties for particular offences that are relevant to the removal of the prohibition on parallel importing.

Clause 11 amends section 20 of that Act, which makes it an offence to sell, distribute, or advertise new medicines before the consent of the Minister has been notified in the *Gazette*, or otherwise than in accordance with conditions imposed on the consent. The penalty for the offence is increased from \$500 to \$20,000 in the case of individuals, and to \$100,000 in the case of bodies corporate.

Clause 12 amends section 24 of the Act, which contains a number of offences in relation to the situation where there is a material change in relation to a medicine that is required to be notified to the Director-General of Health. The penalty for these offences is increased from \$500 to \$20,000 in the case of individuals, and to \$100,000 in the case of bodies corporate.

Clause 13 amends section 42 of the Act, which contains offences in relation to the duty of importers and manufacturers of medicines to have and produce specifications relating to the quality testing of their medicines. The penalty for these offences is increased from \$500 to \$10,000 in the case of individuals, and to \$100,000 in the case of bodies corporate.

Hon John Luxton

**COPYRIGHT (REMOVAL OF PROHIBITION ON
PARALLEL IMPORTING) AMENDMENT**

ANALYSIS

Title	9. No compensation for diminution in rights attaching to copyright
1. Short Title and commencement	
PART 1	PART 2
AMENDMENTS TO COPYRIGHT ACT 1994	AMENDMENTS TO MEDICINES ACT 1981
2. Part to be part of Copyright Act 1994	10. Part to be part of Medicines Act 1981
3. Interpretation	11. Restrictions on sale or supply of new medicines
4. Meaning of "issue to the public"	12. Distribution of changed medicines restricted
5. Meaning of "infringing copy"	13. Duty of importer and manufacturer to have and produce specifications of medicines
6. Criminal liability for making or dealing with infringing objects	
7. Definitions—border protection measures	
8. Notices to Chief Executive concerning importations of parallel imports	

A BILL INTITULED

An Act to amend the Copyright Act 1994 and the Medicines Act 1981 to—

- 5 **(a) Remove the prohibition on parallel importing from the Copyright Act 1994; and**
- 10 **(b) Increase the penalties for importation of pirated copyright works and for breaching certain requirements of the Medicines Act 1981 in relation to the sale and distribution of medicines**

BE IT ENACTED by the Parliament of New Zealand as follows:

- 15 **1. Short Title and commencement—**(1) This Act may be cited as the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998.
- (2) This Act comes into force on the day on which it receives the Royal assent.

*Copyright (Removal of Prohibition on
Parallel Importing) Amendment*

PART 1

AMENDMENTS TO COPYRIGHT ACT 1994

2. Part to be part of Copyright Act 1994—This Part is part of the Copyright Act 1994* (in this Part referred to as the principal Act).

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*1994, No. 143

3. Interpretation—Section 2 (1) of the principal Act is amended by inserting, after the definition of “graphic work”, the following definition:

“ ‘Infringing copy’ has the meaning given by **section 12**:”.

4. Meaning of “issue to the public”—Section 9 (1) of the principal Act is amended by adding the expression “; or” to paragraph (c), and adding the following paragraph:

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“(d) Distribution of imported copies that are not infringing copies within the meaning of **section 12** subsequent to their importation into New Zealand.”

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5. Meaning of “infringing copy”—(1) Section 12 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) An object that a person imports, or proposes to import, into New Zealand is an infringing copy if—

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“(a) The making of the object constituted an infringement of the copyright in the work in question in the country in which the object was made; or

“(b) The importer would have infringed the copyright in the work in question in New Zealand had the importer made the object in New Zealand, unless the object is one to which **subsection (5A)** or subsection (6) applies.”

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(2) Section 12 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) An object that a person imports or proposes to import into New Zealand is not an infringing copy under **subsection (3) (b)** if—

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“(a) It was made by or with the consent of the owner of the copyright, or other equivalent intellectual property right, in the work in question in the country in which the object was made; or

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“(b) Where no person owned the copyright, or other equivalent intellectual property right, in the work in question in the country in which the object was made, any of the following applies:

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“(i) The copyright protection (or other equivalent intellectual property right protection) formerly afforded to the work in question in that country has expired:

5 “(ii) The person otherwise entitled to be the owner of the copyright (or other equivalent intellectual property right) in the work in question in that country has failed to take some step legally available to them to secure the copyright (or other
10 equivalent intellectual property right) in the work in that country:

 “(iii) The object is a copy in 3 dimensions of an artistic work that has been industrially applied in that country in the manner specified in
15 section 75 (4):

 “(iv) The object was made in that country by or with the consent of the owner of the copyright in the work in New Zealand.”

20 **6. Criminal liability for making or dealing with infringing objects**—(1) Section 131 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

 “(5) Every person who commits an offence against this section is liable on summary conviction—

25 “(a) In the case of an offence against subsection (1), to a fine not exceeding \$10,000 for every infringing copy to which the offence relates, but not exceeding \$150,000 in respect of the same transaction, or to imprisonment for a term not exceeding 3 months:

30 “(b) In the case of an offence against subsection (2) or subsection (3), to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding 3 months.”

35 (2) Section 131 of the principal Act is amended by repealing subsection (8).

7. Definitions—border protection measures—Section 135 of the principal Act is amended by inserting, after subparagraph (i) of paragraph (c) of the definition of “pirated copy”, the following subparagraph:

40 “(ia) Any other work that is not an infringing copy within the meaning of **section 12**; or”.

8. Notices to Chief Executive concerning importations of parallel imports—(1) The principal Act is amended by repealing section 144.

(2) Any notices given under section 144 cease to have effect on the commencement of this Act. 5

9. No compensation for diminution in rights attaching to copyright—No person is entitled to compensation from the Crown in respect of any diminution in the rights attaching to copyright that may arise by virtue of the enactment of this Part of this Act. 10

PART 2

AMENDMENTS TO MEDICINES ACT 1981

10. Part to be part of Medicines Act 1981—This Part is part of the Medicines Act 1981* (in this Part referred to as the principal Act). 15

*1981, No. 118

11. Restrictions on sale or supply of new medicines—Section 20 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

“(4) A person who contravenes subsection (2) commits an offence, and is liable on conviction— 20

“(a) In the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$20,000:

“(b) In the case of a body corporate, to a fine not exceeding \$100,000.” 25

12. Distribution of changed medicines restricted—Section 24 of the principal Act is amended by adding the following subsection:

“(7) A person who commits an offence under subsection (6) is liable on conviction— 30

“(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$20,000:

“(b) In the case of a body corporate, to a fine not exceeding \$100,000.” 35

13. Duty of importer and manufacturer to have and produce specifications of medicines—Section 42 of the

principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) A person who contravenes this section commits an offence, and is liable on conviction—

5 “(a) In the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000:

 “(b) In the case of a body corporate, to a fine not exceeding \$100,000.”