

## IMPORTATION OF MEDICINES BILL

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### EXPLANATORY NOTE

THIS Bill relates to the importation of medicines by the Crown.

Section 32A of the Medicines Act 1981 was enacted by section 66 of the Finance Act (No. 5) 1989, which was passed through all stages on Budget night. That section provides blanket protection in respect of the importation of medicines by the Crown.

This Bill removes that blanket protection, and provides instead certain specific protections under the Crown Proceedings Act 1950, the Trade Marks Act 1953, and the Copyright Act 1962.

The amendments to the Crown Proceedings Act 1950 and the Trade Marks Act 1953 are to similar effect. They protect the Crown and other persons from liability in respect of any infringement of trade mark relating to any medicine imported under section 32A, except where—

- (a) The trade mark was wrongfully applied to the medicine before importation; or
- (b) The trade mark was applied to the medicine after importation.

The amendments to the Copyright Act 1962 provide protection against liability for breach of copyright relating to any literary or artistic work connected with a medicine imported under section 32A if the work was made or distributed in an overseas country by or with the licence of the owner of the copyright in that country.

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*Hon. David Butcher*

## IMPORTATION OF MEDICINES

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### A BILL INTITULED

## **An Act to make further provision for the importation of medicines by the Crown**

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

- 5     **1. Short Title and commencement**—(1) This Act may be cited as the Importation of Medicines Act 1989.  
          (2) This Act shall come into force on the 1st day of April 1990.

### PART I

#### 10     IMPORTATION OF MEDICINES

**2. Sections to be read with Medicines Act 1981**—This section and the next succeeding section shall be read together with and deemed part of the Medicines Act 1981\* (in that section referred to as the principal Act).

\*1981, No. 118

Amendments: 1985, No. 29; 1987, No. 9; 1989, No. 59

**3. Exemptions in respect of importation by the Crown**—(1) Section 32A of the principal Act (as inserted by section 2 of the Medicines Amendment Act 1989) is hereby amended by repealing subsection (1), and substituting the following subsection: 5

“(1) Notwithstanding anything in this Act, the Crown may, in respect of any medicine approved by the Director-General for the purposes of this section,—

“(a) Import the medicine into New Zealand; and

“(b) Sell the medicine, or distribute it by way of gift or loan or sample or in any other way, or advertise it for sale, or advertise the availability of it— 10

and, in doing any of those things, it shall not be necessary for the Crown to comply with any of the provisions of this Act.”

(2) Section 32A of the principal Act (as so inserted) is hereby further amended by repealing subsection (7). 15

## PART II

### PROTECTION FROM CIVIL PROCEEDINGS

#### *Crown Proceedings*

**4. Sections to be read with Crown Proceedings Act 1950**—This section and the next succeeding section shall be read together with and deemed part of the Crown Proceedings Act 1950\* (in that section referred to as the principal Act). 20

\*R.S. Vol. 2, p. 23

Amendments: 1982, No. 165; 1988, No. 115

**5. Provisions as to industrial property**—Section 7 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections: 25

“(2A) No proceedings in respect of the infringement of a trade mark shall lie against the Crown in relation to any medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981 except in the following circumstances: 30

“(a) Where—

“(i) The trade mark to which the proceedings relate was applied to the medicine before the medicine was imported; and 35

“(ii) The application of the trade mark constituted an infringement of the trade mark at the time that the trade mark was applied to the medicine:

“(b) Where the trade mark was applied to the medicine after the medicine was imported. 40

“(2B) For the purposes of **subsection (2A)** of this section, a trade mark shall be deemed to be applied to a medicine if—

“(a) It is woven in, impressed on, worked into, or annexed or affixed to the medicine; or

5 “(b) It is applied to a covering, label, seal, or thing in or with which the medicine is supplied.”

*Trade Marks*

**6. Sections to be read with Trade Marks Act 1953**—This section and the next succeeding section shall be read together with and deemed part of the Trade Marks Act 1953\* (in that section referred to as the principal Act).

\*R.S. Vol. 11, p. 563

Amendments: 1985, No. 42; 1987, No. 156

**7. Exception in relation to medicines imported by the Crown**—The principal Act is hereby amended by inserting, after section 12, the following section:

15 “12A. (1) No action for infringement of a trade mark shall lie in relation to any medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981 except in the following circumstances:

20 “(a) Where—

“(i) The trade mark to which the action relates was applied to the medicine before the medicine was imported; and

25 “(ii) The application of the trade mark constituted an infringement of the trade mark at the time that the trade mark was applied to the medicine:

“(b) The trade mark was applied to the medicine after the medicine was imported.

“(2) For the purposes of **subsection (1)** of this section, a trade mark shall be deemed to be applied to a medicine if—

30 “(a) It is woven in, impressed on, worked into, or annexed or affixed to the medicine; or

“(b) It is applied to a covering, label, seal, or thing in or with which the medicine is supplied.”

*Copyright*

35 **8. Sections to be read with Copyright Act 1962**—This section and the next 2 succeeding sections shall be read together with and deemed part of the Copyright Act 1964\* (in those sections referred to as the principal Act).

\*R.S. Vol. 11, p. 1

Amendments: 1985, No. 134; 1986, No. 81

**9. Infringement by importation, sale, and other dealings**—(1) Section 10 of the principal Act is hereby amended by adding the following subsection:

“(5) Nothing in subsection (2) or subsection (3) of this section shall apply in relation to any literary or artistic work that— 5

“(a) Relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and

“(b) Has been made or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 10

(2) Section 28 of the principal Act is hereby amended by adding the following subsection:

“(5) Nothing in subsection (1) of this section shall apply in relation to any literary or artistic work that— 15

“(a) Relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and

“(b) Has been made or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 20

(3) Section 29 of the principal Act is hereby amended by inserting, after subsection (6), the following subsection:

“(7) Nothing in this section shall apply in relation to any literary or artistic work that— 25

“(a) Relates to a medicine that has been, or is proposed to be, imported by the Crown pursuant to section 32A of the Medicines Act 1981; and

“(b) Has been made or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 30

**10. Special exceptions from protection of literary and artistic works relating to medicines**—The principal Act is hereby amended by inserting, after section 20B (as inserted by section 5 (1) of the Copyright Amendment Act 1985), the following section: 35

“20c. The reproduction or publication of a literary or an artistic work does not infringe the copyright in that work if—

“(a) The literary or artistic work relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and 40

“(b) Has been made or distributed in New Zealand or in an overseas country by or with the licence of the owner

of the copyright in the work in New Zealand or in that overseas country.”