

[AS REPORTED FROM THE COMMERCE AND MARKETING
COMMITTEE]

House of Representatives, 24 May 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

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.

No. 225—2

*Price
incl. GST \$2.20*

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(2) This Act shall come into force on the 1st day of April 1990.

PART I

IMPORTATION OF MEDICINES

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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

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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:

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“(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—

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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).

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New

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

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New

5 “32A. (1) Notwithstanding anything in this Act, but subject to subsection (2) of this section, 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 subject to subsection (2) of this section, 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) Nothing in subsection (1) of this section limits or affects the application to the Crown of sections 20, 44, and 45 of this Act.

15 “(3) Section 50 (2) of this Act, to the extent that it relates to the payment of a fee on the application for a licence to sell a medicine by wholesale, applies to the Crown in the same way as it applies to other persons in any case where the Crown would, but for subsection (1) of this section, be required to obtain
20 a licence to sell a medicine imported by the Crown under subsection (1) of this section by wholesale.

“(4) Nothing in section 24 of this Act prevents a person who holds a licence to sell a medicine imported by the Crown under
25 subsection (1) of this section by wholesale from selling the medicine, or supplying it by way of gift or loan or sample or in any other way.

“(5) Nothing in section 24 of this Act prevents—

30 “(a) A pharmacist employed in a hospital in the course of that pharmacist’s employment as a pharmacist in that hospital, selling a medicine imported by the Crown under subsection (1) of this section or supplying it by way of gift or loan or sample or in any other way:

35 “(b) Any other pharmacist, in any pharmacy, selling a medicine imported by the Crown under subsection (1) of this section, or supplying it by way of gift or loan or sample or in any other way.

40 “(6) Nothing in subsection (5) of this section affects a duty or obligation imposed on a pharmacist in relation to the sale, supply, or dispensing of a medicine under the Social Security Act 1964.

New

“(7) The powers conferred by this section to do anything in respect of a medicine include the power to do likewise in respect of any advertising material, container, label, labelling material, or package (as those terms are defined in section 2 of this Act), or a data sheet or other written or printed material, relating to that medicine. 5

“(8) In this section the term ‘sell’ includes the matters specified in paragraphs (a) to (c) of the definition of that term in section 2 of this Act.” 10

(2) The Medicines Amendment Act 1989 is hereby consequentially repealed.

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PART II

PROTECTION FROM CIVIL PROCEEDINGS 15

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:

“(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: 25

“(a) Where—

“(i) The trade mark to which the proceedings relate was applied to the medicine before the medicine was imported; and 30

“(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: 35

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- “**(b)** Where the trade mark was applied to the medicine after the medicine was imported.
“**(2B)** For the purposes of **subsection (2A)** of this section, a trade mark shall be deemed to be applied to a medicine if—
5 “**(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.”

10 *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

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

20 “**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:

- “**(a)** Where—
25 “**(i)** The trade mark to which the action relates was applied to the medicine before the medicine was imported; and
“**(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:

30 “**(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—

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

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

New

7. Right given by registration in Part A and infringement thereof—Section 8 of the principal Act (as amended by section 5 of the Trade Marks Amendment Act 1987) is hereby amended by inserting, after subsection (3), the following subsection: 5

“(3A) For the purposes of subsection (3) (a) of this section, the proprietor or registered user of a trade mark is deemed to have consented to the use of that mark in relation to a medicine that is imported by the Crown pursuant to section 32A of the Medicines Act 1981 if the use of that mark in relation to that medicine has been expressly or impliedly consented to, whether or not that consent is subject to restrictions, by a person with whom the proprietor or registered user has any arrangement, whether direct or indirect and whether legally enforceable or not, relating to the use of that mark by the proprietor or registered user.” 10 15 20

Copyright

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). 25

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

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

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9. Infringement by importation, sale, and other dealings—(1) Section 10 of the principal Act is hereby amended by adding the following subsection: 30

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

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

5 “(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.”

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

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

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

15 “(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.”

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

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

“(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

25 “(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. 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:

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

35 “(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.”

New

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

“(5) Nothing in this section applies in relation to a literary work or an 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, reproduced, published, adapted or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 10

10. Penalties and summary proceedings in respect of dealings which infringe copyright—Section 28 of the principal Act is hereby amended by adding the following subsection: 15

“(5) Nothing in subsection (1) of this section applies in relation to a literary work or an artistic work that—

“(a) Relates to a medicine that has been imported by the Crown pursuant to **section 32A** of the Medicines Act 1981; and 20

“(b) Has been made, reproduced, published, adapted, or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 25

11. Provisions for restricting importation of printed copies—Section 29 of the principal Act is hereby amended by inserting, after subsection (6), the following subsection:

“(7) Nothing in this section applies in relation to a literary work or an artistic work that— 30

“(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, reproduced, published, adapted or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.” 35

New

5 **12. 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:

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

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

15 “(b) Has been made, reproduced, published, adapted 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.”