

MISUSE OF DRUGS AMENDMENT BILL

EXPLANATORY NOTE

THE amendments in this Bill have 2 main purposes. First, they deal with so-called “designer drugs”, termed in the Bill “controlled drug analogues”. These are substances that are made specifically to mimic the effect of a controlled drug but in a form that takes them outside the description of the drug in the Misuse of Drugs Act 1975.

Secondly, provision is made to enable a system of supplying clean needles and syringes to be introduced.

Clause 2: Subclause (1) defines the term “controlled drug analogue”.

Subclause (2) widens the definition of the fungi popularly known as “magic mushrooms”, to include indigenous as well as imported genera.

Subclause (3) makes it clear that a salt of a controlled drug is deemed to include the controlled drug.

Clause 3 relates to offences involving needles and syringes. At present, possession of any needle or syringe for the purpose of committing an offence against the Misuse of Drugs Act 1975 is itself an offence. The effect of the amendment is to provide that possession of such items for that purpose may be permitted in circumstances and subject to conditions prescribed by regulations made under the Act.

Clause 4 provides for a defence to a charge of unlawful possession of a controlled drug analogue if the defendant proves that he or she had the substance for supply to others in accordance with procedures approved for the purpose by the Director-General of Health, or otherwise than for human consumption.

Clause 5 makes 2 amendments relating to a certificate of analysis. The first extends the present procedure to cover cases where any employee of the Police Department delivers the sample to the DSIR for analysis. At present, the section refers to members of the Police but not civilian employees.

Secondly, it provides that the analyst may give evidence of the receipt of a sealed package by another employee of the DSIR. At present, at least 1 Judge has required evidence of the other employee to prove receipt of the sealed sample.

Clause 6 provides for regulations to be made relating to the proposed scheme for the supply of clean needles and syringes.

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Clause 7 prescribes 2 new Class A controlled drugs.

Clause 8 redefines a certain class of Class B controlled drugs, and prescribes a new Class B controlled drug.

Clause 9 defines certain controlled drug analogues.

Hon. Dr Michael Bassett

MISUSE OF DRUGS AMENDMENT

ANALYSIS

Title		
1. Short Title and commencement		5. Evidence of analysis
2. Interpretation		6. Regulations
3. Miscellaneous offences		7. First Schedule amended
4. Special provisions where offence relating to controlled drug analogues alleged		8. Second Schedule amended
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A BILL INTITULED

An Act to amend the Misuse of Drugs Act 1975

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 Misuse of Drugs Amendment Act 1987, and shall be read together with and deemed part of the Misuse of Drugs Act 1975* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

10 **2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term "controlled drug", the following definition:

"'Controlled drug analogue' means—

15 "(a) Any substance specified or described in Part VII of the Third Schedule to this Act; and

"(b) Any other substance that—

20 "(i) Has a chemical structure substantially similar to that of any controlled drug (other than one specified or described in that Part of that Schedule); and

*1975, No. 116

Amendments: 1978, No. 65; 1979, No. 2; 1979, No. 132; 1980, No. 64; 1985, No. 130

“(ii) Is not specified or described in the First Schedule or the Second Schedule or Parts I to VI of the Third Schedule to this Act; and

“(iii) Is not a pharmacy-only medicine or a prescription medicine or a restricted medicine within the meaning of the Medicines Act 1981.”

(2) Section 2 (1) of the principal Act is hereby further amended by repealing paragraph (e) of the definition of the term “prohibited plant”, and substituting the following definition:

“(e) Any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced or which contains a controlled drug:”

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

“(5) For the purposes of this Act, a salt of any controlled drug shall be deemed to contain that drug.”

3. Miscellaneous offences—Section 13 (1) of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

“(a) Has in that person’s possession any pipe or other utensil (not being a needle or syringe) for the purpose of the commission of an offence against this Act; or

“(aa) Except as may be provided by regulations made under this Act, has in that person’s possession any needle or syringe for the purpose of the commission of an offence against this Act; or”.

4. Special provisions where offence relating to controlled drug analogues alleged—The principal Act is hereby amended by inserting, after section 29B (as inserted by section 6 of the Misuse of Drugs Amendment Act 1982), the following section:

“29C. It shall be a defence to a charge relating to the possession of any controlled drug analogue in contravention of any of the provisions of this Act if the defendant proves that he or she had the substance—

“(a) For the purpose of supplying it to others in accordance with any procedure approved by the Director-General of Health; or

“(b) Otherwise than for the purpose of human consumption.”

5. Evidence of analysis—(1) Section 31 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

5 “(2) Subject to subsections (3) and (4) of this section, in any proceedings for an offence against this Act, a certificate purporting to be signed by an analyst, and certifying that, on a date stated in the certificate, the substance, preparation, mixture, or article to which the certificate relates was received by the signatory personally in any case or (where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post) by any other employee of the Department of Scientific and Industrial Research authorised by the Dominion Analyst to do so, from the member of the Police or employee of the Police Department or officer of Customs named in the certificate, and that upon analysis that substance, preparation, mixture, or article was found to be or to contain a particular controlled drug (whether of a specified or an unspecified weight) or a particular prohibited plant, or a particular part of a particular prohibited plant, or a seed or fruit of a particular prohibited plant, specified or described in the certificate, shall until the contrary is proved be sufficient evidence—

“(a) Of the qualifications and authority of the person by whom the analysis was carried out; and

25 “(b) Of the authority of the person who signed the certificate to sign that certificate; and

“(c) Of the facts stated in the certificate.

30 “(2A) Where the substance, preparation, mixture, or article was delivered in a sealed package or by registered post and received by any employee of the Department of Scientific and Industrial Research (other than the person who signed the certificate) authorised by the Dominion Analyst to do so from any person referred to in **subsection (2)** of this section, the person who made the analysis may give evidence of receipt by that employee of the substance, preparation, mixture, or article that is the subject of that analysis. Such evidence shall, in the absence of evidence to the contrary, be admissible as sufficient proof of the proper receipt of the substance, preparation, mixture, or article by the person who made the analysis.”

40 (2) The following enactments are hereby consequentially repealed:

(a) Section 8 of the Misuse of Drugs Amendment Act 1978:

(b) Section 3 (1) of the Misuse of Drugs Amendment Act 1980.

6. Regulations—Section 37 (1) of the principal Act is hereby amended by inserting, after paragraph (g), the following paragraphs:

“(ga) Prescribing the circumstances in which, and the conditions under which, any person or class of persons may possess needles or syringes notwithstanding that those needles or syringes may be intended to be used for the purpose of the commission of offences against this Act: 5

“(gb) Regulating the sale or supply of needles or syringes by medical practitioners or pharmacists, or by authorised representatives of any agency, association, or body approved for the purpose by the Director-General of Health, notwithstanding that those needles or syringes may be intended by the persons to whom they are sold or supplied to be used for the commission of offences against this Act:” 10 15

7. First Schedule amended—The First Schedule to the principal Act (as amended by clause 3 of the Misuse of Drugs Order (No. 2) 1978 and clause 2 of the Misuse of Drugs Order 1981) is hereby amended by inserting in clause 1, in their appropriate alphabetical order, the following names of substances: 20

“MPTP (1-methyl-4-phenyl-1,2,5,6-tetrahydropyridine). 25

“PEPTP (1-(2-phenylethyl)-4-phenyl-1,2,5,6-tetrahydropyridine).”

8. Second Schedule amended—(1) Part II of the Second Schedule to the principal Act is hereby amended by repealing clause 1, and substituting the clause set out in the First Schedule to this Act. 30

(2) Part III of the Second Schedule to the principal Act (as amended by clause 3 (2) of the Misuse of Drugs Order 1981) is hereby amended by inserting, in its appropriate order, the following name of a substance: 35

“NABILONE (3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one).”

(3) Clause 3 (1) of the Misuse of Drugs Order 1981 is hereby consequentially revoked.

9. Third Schedule amended—The Third Schedule to the principal Act is hereby amended by adding the Part VII set out in the Second Schedule to this Act. 40

SCHEDULES

FIRST SCHEDULE**Section 8**

CLAUSE SUBSTITUTED IN PART II OF SECOND SCHEDULE TO
MISUSE OF DRUGS ACT 1975

“1. The following substances, namely:

AMPHETAMINE (2-amino-1-phenylpropane).
 BENZPHETAMINE (2-benzylmethylamino-1-phenylpropane).
 CATHINONE (2-amino-1-phenylpropane-1-one).
 DOET (2-amino-1-(2,5-dimethoxy-4-ethylphenyl)propane).
 N-ETHYLAMPHETAMINE (2-ethylamino-1-phenylpropane).
 FENCAMFAMINE (N-ethyl-3-phenylbicyclo[2.2.1]heptan-2-amine).
 FENETHYLLINE (3,7-dihydro-1,3-dimethyl-7-[2-[(1-methyl-2-phenylethyl)amino]ethyl]-1H-purine-2,6-dione).
 FENPROPorex (2-(2-cyanoethylamino)-1-phenylpropane).
 MDMA (2-methylamino-1-(3,4-methylenedioxyphenyl)propane).
 MEFENOREX (2-(3-chloropropylamino)-1-phenylpropane).
 METHAMPHETAMINE (2-methylamino-1-phenylpropane).
 METHAQUALONE (2-methyl-3-(2-methylphenyl)-4(3H)-quinazolinone).
 METHYLPHENIDATE (α -phenyl-2-piperidineacetic acid methylester).
 NORPSEUDOEPHEDRINE (*threo*-2-amino-1-hydroxy-1-phenylpropane).
 PROPYLHEXEDRINE (1-cyclohexyl-2-methylaminopropane).
 PYROVALERONE (1-(4-methylphenyl)-2-(1-pyrrolidinyl)-1-pentanone).”

SECOND SCHEDULE**Section 9**

PART ADDED TO THIRD SCHEDULE OF MISUSE OF DRUGS ACT 1975

“PART VII

AMPHETAMINE ANALOGUES, in which the 1-amino-2-phenylethane nucleus carries any of the following radicals, either alone or in combination:

- (a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, attached to the nitrogen atom:
- (b) 1 or 2 methyl radicals, or an ethyl group, attached to the carbon atom adjacent to the nitrogen atom:
- (c) A hydroxy radical, attached to the carbon atom adjacent to the benzene ring:
- (d) Any combination of up to 5 alkyl radicals and/or alkoxy radicals and/or alkylamino radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals and/or nitro radicals and/or amino radicals, attached to the benzene ring.

PETHIDINE ANALOGUES, in which a 4-phenylpiperidine nucleus carries any of the following radicals, either alone or in combination:

- (a) An alkyl radical, with up to 6 carbon atoms, attached to the nitrogen atom:

SECOND SCHEDULE—*continued*

- (b) A phenalkyl radical, with up to 12 carbon atoms, attached to the nitrogen atom:
- (c) A phenalkyl radical, as in paragraph (b), with 1 or more alkyl radicals, each with up to 6 carbon atoms, attached to the benzene ring in the phenalkyl radical:
- (d) An alkylcarbonyloxy or alkoxy carbonyl or hydroxy radical, with up to 6 carbon atoms, attached to the 4 position in the piperidine ring:
- (e) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring.

PHENCYCLIDINE ANALOGUES, being chemical compounds with the 1-alkylamino-1-arylcyclohexane structure, with any combination of the following alkylamino and aryl radicals:

- (a) The alkylamino radical is 1-piperidinyl, 1-pyrrolidinyl, 4-morpholinyl, or any other radical with up to 6 carbon atoms in the alkyl portion:
- (b) The aryl radical is phenyl, thienyl, pyridinyl, or pyrrolidinyl:
- (c) The aryl radical, as described in paragraph (b), carries any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals.

FENTANYL ANALOGUES, in which an N-[1-(2-phenethyl)-4-piperidyl]aniline nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) An acetyl, propionyl, butenoyl or butanoyl radical, attached to the aniline nitrogen atom:
- (b) One or more alkyl radicals, with up to 10 carbon atoms in total, attached to the ethyl moiety:
- (c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) attached to each of the benzene rings.

METHAQUALONE ANALOGUES, in which a 3-arylquinazolin-4-one nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) An alkyl radical, with up to 6 carbon atoms, attached to the two position:
- (b) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals attached to each of the benzene rings.

DMT (DIMETHYLTRYPTAMINE) ANALOGUES, in which the 3-(2-aminoethyl)indole nucleus has additional radicals, either alone or in combination, attached as follows:

- (a) 1 or 2 alkyl radicals, each with up to 6 carbon atoms, including cyclic radicals, attached to the amino nitrogen atom:
- (b) 1 or 2 methyl groups, or an ethyl group, attached to the carbon atom adjacent to the amino nitrogen atom:
- (c) Any combination of up to 5 alkyl radicals and/or alkoxy radicals (each with up to 6 carbon atoms, including cyclic radicals) and/or halogen radicals, attached to the benzene ring."