

House of Representatives

Supplementary Order Paper

Tuesday, 2 August 2011

Misuse of Drugs Amendment Bill

Proposed amendments

Hon Peter Dunne, in Committee, to move the following amendments:

New clauses 3A and 3B

To insert the following clauses before *clause 4* (after line 14 on page 2):

3A Interpretation

Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**temporary class drug** means a substance, preparation, mixture, or article specified in a temporary class drug notice

“**temporary class drug notice** means a notice given under **section 4C**”.

3B New sections 4C to 4E inserted

The following sections are inserted after section 4B:

“4C Temporary class drug notice

“(1) The Minister may, by notice in the *Gazette*, specify any substance, preparation, mixture, or article as a temporary class drug.

“(2) The Minister must not give notice under **subsection (1)** if the substance, preparation, mixture, or article is a Class A controlled drug, a Class B controlled drug, a Class C controlled drug, a precursor substance, or a restricted substance (as defined in section 31 of the Misuse of Drugs Amendment Act 2005).

“(3) The Minister must not give notice under **subsection (1)** unless he or she is satisfied that the substance, preparation, mixture, or article that is to be specified in the notice poses, or may pose, a risk of harm to individuals, or to society.

- “(4) A notice under **subsection (1)** may describe the substance, preparation, mixture, or article by any 1 or more of the following:
- “(a) its chemical name, or 1 of its chemical names:
 - “(b) its product name:
 - “(c) a description of the substance, preparation, mixture, or article, in the form that the Minister considers appropriate for the purposes of the notice.
- “(5) A notice under **subsection (1)** must state the date on which the notice comes into force.
- “(6) The date specified under **subsection (5)** must not be earlier than 7 days after the date of the publication of the notice in the *Gazette*.

“4D Effect of temporary class drug notice

- “(1) Except as provided in this section, a temporary class drug is to be treated, while the temporary class drug notice remains in force, in the same way as if the drug were a controlled drug that is specified or described in Part 1 of Schedule 3.
- “(2) A temporary class drug specified or described in a temporary class drug notice is not to be added to any schedule of this Act while the notice is in force.
- “(3) Despite section 7(1), it is not an offence for a person, in relation to a temporary class drug, to do either or both of the following while the temporary class drug notice relating to that drug is in force:
- “(a) to possess for his or her own use less than 56 grams in total of any products (including cigarettes), or any drug forms (including flakes, tablets, or capsules), each containing some quantity of that temporary class drug:
 - “(b) to use that temporary class drug.
- “(4) Possession by a person of 56 grams or more in total of any products (including cigarettes), or any drug forms (including flakes, tablets, or capsules), each containing some quantity of that temporary class drug is to be treated, for the purposes of this Act, as possession by that person of an amount, level, or quantity at and over which a controlled drug that is specified or described in Part 1 of Schedule 3 is presumed to be for supply.
- “(5) A substance that has a structure substantially similar to a temporary class drug is not to be treated as a controlled drug analogue by reason only of that similarity.
- “(6) While a temporary class drug notice is in force, the Minister must seek advice, as he or she considers appropriate, under section 5 or 5AA, or both, in relation to the temporary class drug and its appropriate classification, if any (including as a precursor substance, or as a restricted substance as defined

in section 31 of the Misuse of Drugs Amendment Act 2005), under this Act.

- “(7) As soon as possible after the publication of a temporary class drug notice in the *Gazette*, and while a temporary class drug notice is in force, the Director-General of Health must ensure that the notice, and information about its effects, is available—
- “(a) on the Ministry of Health’s Internet site, in an electronic form that is publicly accessible; and
 - “(b) in any other way that the Director-General considers appropriate in the circumstances.
- “(8) Despite the Regulations (Disallowance) Act 1989, a temporary class drug notice is not to be treated as a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“4E Duration of temporary class drug notice

- “(1) A temporary class drug notice expires at the earliest of—
- “(a) the close of the day that is 1 year after the date on which the notice came into force; or
 - “(b) the date on which the substance, preparation, mixture, or article is—
 - “(i) classified as a Class A controlled drug; or
 - “(ii) classified as a Class B controlled drug; or
 - “(iii) classified as a Class C controlled drug; or
 - “(iv) added to Schedule 4 as a precursor substance; or
 - “(v) classified as a restricted substance (as defined in section 31 of the Misuse of Drugs Amendment Act 2005); or
 - “(c) its revocation by the Minister by notice in the *Gazette*.
- “(2) A temporary class drug notice may be renewed by the Minister—
- “(a) prior to the date of its expiry as calculated under **subsection (1)**; and
 - “(b) on 1 occasion only; and
 - “(c) only for the purpose of allowing sufficient time for the Minister to obtain the advice that is to be sought under **section 4D(6)**.”

Explanatory note

This Supplementary Order Paper amends the Misuse of Drugs Amendment Bill by enabling the specification as a temporary class drug of a substance, preparation, mixture, or article that is not a Class A, Class B, or Class C controlled drug, a restricted substance, or a precursor substance, but that the Minister is

satisfied poses, or may pose, a risk of harm to individuals or to society. A temporary class drug—

- is specified by the Minister in a notice published in the *Gazette* (a **temporary class drug notice**):
- is not listed in any of the schedules of the Misuse of Drugs Act 1975, but is treated for most of the purposes of that Act as a Class C1 controlled drug, except as specified in *new section 4D*:
- does not have any offence associated with its personal use, or possession for personal use at amounts lower than 56 grams in total of any products or drug forms containing the temporary class drug; possession at and above 56 grams of any products or drug forms containing the temporary class drug is to be treated as possession of a Class C1 controlled drug at and over an amount, level, or quantity at which it is presumed to be for supply.

While a temporary class drug notice is in force,—

- the Minister must seek advice as to the temporary class drug's appropriate classification, if any, under the Act:
- information about the notice and its effects must be made available publicly, for example, on the Ministry of Health's Internet site.

A temporary class drug notice expires after 12 months, unless it is earlier determined that the substance that is the subject of the notice should be classified instead as a controlled drug or restricted substance or precursor substance, or if the notice is earlier revoked. However, the notice may be renewed, once only, to allow enough time for the Minister to obtain the necessary advice on the drug's appropriate classification under the Misuse of Drugs Act 1975.
