No 268

House of Representatives

Supplementary Order Paper

Tuesday, 2 July 2013

Psychoactive Substances Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **this is inserted text**
- ~~**this is deleted text**~~

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper (**SOP**) makes various amendments to the Psychoactive Substances Bill. The majority of these changes are minor and technical and are made to ensure consistency among provisions, to fix cross-reference errors, and to make general drafting refinements or improvements. The SOP also makes substantive changes to *clause 11A* (which relates to the duty of the advisory committee relating to the use of animals when evaluating psychoactive products), *clause 31* (which relates to applications for approval of a psychoactive product), and *Schedule 1* (which relates to the transitional arrangement for psychoactive products lawfully sold before commencement of the Bill), and several other provisions. The effect of the substantive changes is as follows:

Clauses 11A and 31(3)

The purpose of *clause 11A* is to minimise the use of animals in trials relating to psychoactive products where suitable alternatives exist. This SOP recasts *clause 11A* and adds *new clause 31(3)* to give better effect to that purpose.

Clause 11A(1) provides that the advisory committee, when performing the function set out in *clause 11(2)(a)* (which is to evaluate, with regard to the results of trials, psychoactive products to assess whether they should be approved for use by individuals), must comply with *clause 11A(2) and (3)*.

Clause 11A(2) provides that if a suitable alternative trial that does not involve the use of an animal has been publicly notified by the Authority, the advisory committee must not have regard to the results of a trial that involves the use of an animal.

Clause 11A(3) provides that if a suitable alternative trial does not exist, the advisory committee may only have regard to the results of a trial that involves the use of an animal if—

- the trial is based on the relevant International Conference on Harmonisation Guidelines; and
- the trial complies with—
    - the restrictions set out in Part 6 of the Animal Welfare Act 1999 (the **AWA**) or, if undertaken overseas, complies with restrictions that are equivalent to, or exceed, those set out in the AWA; and

  - any guidelines issued by the Authority relating to the use of animals in trials; and
- use of the trial is periodically reviewed to ensure there is up-to-date analysis of available alternatives to reduce the number of animals used and to reduce harm to animals that are used in trials.

Clause 11A(4) defines a suitable alternative as a trial that does not involve the use of an animal and that is publicly notified by the Authority, on the recommendation of the advisory committee, as a suitable alternative.

Clause 11A(5) requires the advisory committee, in considering whether to recommend a suitable alternative, to have particular regard to—

- the principle in *clause 4(a)* (which provides that a psychoactive product that is approved for use by individuals should pose no more than a low risk of harm to individuals who use it); and
- the likelihood of psychoactive products being used by young adults.

New clause 31(3) provides that an application for approval of a psychoactive product must not include particulars, information, documents, or other material that the advisory committee must not have regard to under *clause 11A*. The effect of this change is that the results of any trial using animals for which a suitable alternative exists and that has been publicly notified by the Authority must not form part of the information provided to the Authority in support of an application for approval of a psychoactive product.

Schedule 1

This SOP replaces *Schedule 1*, which contains a transitional provision relating to psychoactive products that were being lawfully sold throughout the period of 3 months immediately before the commencement of the Bill, with a *new Schedule 1*. The *new Schedule 1* provides that the Authority may grant interim approval of psychoactive products and interim licences during the period after commencement of the Bill and until regulations made under *clause 79F* (which relates to fees and charges) and *clause 83(1)(a)*

(which relates to information that must accompany applications for approval and licences) come into force.

Clause 1 defines certain terms used in *new Schedule 1*.

Clause 2 provides that *new Schedule 1* applies to psychoactive substances and psychoactive products that were lawfully being imported, manufactured, researched, or sold in the period of 3 months immediately before the commencement of the Bill.

Interim approval of psychoactive products

Clauses 3 to 6 relate to the grant of an interim approval of a psychoactive product by the Authority. *Clause 3* provides that a person who is a New Zealand resident may, within 28 days after the commencement of the Bill, apply for the interim approval of a psychoactive product to which *Schedule 1* applies. *Clause 3(2) and (3)* requires that the application must be accompanied by, among other things,—

- a statutory declaration made by the applicant stating that the psychoactive product to which the application relates was being lawfully sold in New Zealand throughout the period of 3 months immediately before the commencement of the Bill; and
- the fee payable for the interim approval, which is $10,000 (*see clause 10*).

Clause 4 relates to the grant of an interim approval. It provides that *subparts 2 and 3 of Part 2* of the Bill (which relates to applications for approval and appeals against decisions of the Authority) apply, with any necessary modifications, to an application for interim approval of a psychoactive product as if it were an application for an approved product.

Clause 5 applies the provisions of *Part 3* of the Bill, with any necessary modifications, as if the psychoactive product that was granted interim approval were an approved product. Accordingly, the following provisions (among others) will apply to a psychoactive product granted interim approval:

- *clauses 46 to 60* of the Bill (which impose age restrictions on the sale and supply of psychoactive products and impose place-of-sale, advertising, labelling, and free-of-charge distribution restrictions and requirements on those products):

- *clauses 61 to 61D* of the Bill (which enable a local authority to adopt a local approved products policy):
- *clause 78* of the Bill (which enables the Authority to recall a psychoactive product that was granted interim approval during the period that the interim approval is in force):
- *clause 80* of the Bill (which relates to the duty of specified persons to notify the Authority about adverse reactions).

Clause 6 relates to the duration of an interim approval. It provides that, within 28 days after the date on which regulations made under *clauses 79F and 83(1)(a)* of the Bill come into force, the person who applied for interim approval of a psychoactive product must decide whether to make a full application to the Authority in respect of the product under *clause 31* of the Bill and must notify the Authority accordingly.

Clause 6(3) and (4) provide that, where the person who applied for the interim approval notifies the Authority that the person does not wish to proceed with a full application in respect of the psychoactive product, the interim approval of the product is deemed to be revoked on the date on which the Authority receives that notification.

Clause 6(5) provides that, where the person who applied for the interim approval notifies the Authority that the person does wish to proceed with a full application, the interim approval granted in respect of the psychoactive product continues in force until the date on which the full application is determined under the Bill and is then deemed to be revoked.

Clause 6(6) enables the Authority to require a person who has notified the Authority that he or she wishes to make a full application in respect of a psychoactive product that was granted interim approval to provide the Authority with any relevant information in order to establish whether that person is taking reasonable steps to submit a full application.

Clause 6(7) enables the Authority to revoke an interim approval where, after considering any information provided under *clause 6(6)*, the Authority is not satisfied that the person is taking reasonable steps to make a full application in respect of the product.

Interim licences to sell psychoactive products

Clauses 7 to 9 enable the Authority to issue an interim licence to a person who, in the period of not less than 28 days immediately before the commencement of the Bill, was in the business of lawfully importing, manufacturing, researching, or selling psychoactive substances or psychoactive products.

Clause 7 provides that a person who is a New Zealand resident may, within 28 days after the commencement of the Bill, apply to the Authority for 1 or more interim licences. *Clause 7(2) and (3)* require that the application for an interim licence must be accompanied by, among other things,—

- a statutory declaration made by the applicant stating that the applicant was, during the period of not less than 28 days before commencement of the Bill, in the business of importing, manufacturing, researching, or selling psychoactive substances or psychoactive products to which *Schedule 1* applies and that the applicant is aware of any conditions or other requirements pertaining to the licence and agrees to comply with them; and
- the appropriate fee payable for the interim licence, which is $500 in the case of each interim licence (*see clause 10*).

Clause 8 relates to the grant of an interim licence. It provides that *subparts 1 and 3 of Part 2* of the Bill (which relates to applications for licences and appeals against decisions of the Authority) apply, with any necessary modifications, to an application for an interim licence as if it were an application for a licence made under *clause 12* of the Bill.

Clause 9 relates to the duration of an interim licence. It provides that an interim licence is deemed to be cancelled 28 days after the date on which regulations made under *clauses 79F and 83(1)(a)* of the Bill come into force, unless the holder of the interim licence makes a full application in respect of the activity to which the interim licence relates. If the holder of the interim licence makes a full application, the interim licence continues in force until the date on which that application is determined under the Bill and is then deemed to be cancelled.

Fees for interim approval and interim licences

Clause 10 specifies the fees (inclusive of goods and services tax) payable to the Authority for an application for an interim approval or an application for an interim licence.

Other changes

Clause 8, which contains definitions, is amended to clarify some existing definitions and to insert new definitions of trial and publicly notify to reflect changes to *clause 11A*.

Clause 11(2A) is amended to clarify that the list of matters specified in that subclause relates to matters the advisory committee must have regard to in evaluating psychoactive products.

New clause 15(3)(ab) is inserted to include offences against the Medicines Act 1981 in the list of relevant offences that the Authority must take into account in determining whether the applicant is a fit and proper person to hold the licence or is a body corporate of good repute.

Clause 16(3) is recast to provide that it is a compulsory condition of a licence to sell psychoactive substances that the holder of the licence may only sell psychoactive substances that are not approved products to a person in New Zealand who holds—

- a licence to manufacture psychoactive substances; or
- a licence to research psychoactive substances.

Clause 26, which provides that it is an offence to breach any conditions of a licence, is amended to simplify the drafting of the provision. The penalties remain the same.

Clause 35 is amended to align the provision more closely with *new clause 4(ba)*, which provides that a psychoactive product that poses no more than a low risk of harm to individuals who use the product should be approved, by providing that the Authority must approve an application for approval where the application meets all the requirements for approval.

Clause 48 provides that it is an offence to supply of an approved product in a public place to a person who is aged under 18 years. However, a defendant has a defence if he or she proves that he or she had reasonable grounds to believe that the person to whom the product was supplied was 18 years or over. *Clause 48(4)* specifies the circumstances in which reasonable grounds will exist for the

purposes of that defence. *Clause 48(4)* has been amended to remove the reference to an approved evidence of age system because the use of such a system is unlikely in the context of the social supply of approved products.

Clause 61C is amended to clarify that a local approved products policy adopted by a local authority under the Bill may regulate the density of approved product retail outlets.

Clause 72(3), which provides that a constable may arrest a person who has persistently refused or failed to provide particulars when required under *clause 72*, is deleted because the power to arrest in these circumstances is covered by *clause 74*.

Hon Todd McClay, in Committee, to propose the amendments shown in the following document.

Hon Todd McClay

Psychoactive Substances Bill

Government Bill

Contents

Part 2
Psychoactive substances and approved products

Subpart 1—Licences to import, manufacture, research, and sell

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Psychoactive Substances Act **2013**.

2 Commencement

This Act comes into force ~~on~~ on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

Subpart 1—Preliminary matters

3 Purpose

The purpose of this Act is to regulate the availability of psychoactive substances in New Zealand to protect the health of, and minimise harm to, individuals who use psychoactive substances.

4 Principles

In performing functions or duties or exercising powers (either individually or collectively) under this Act, a person or body must take into account the following principles to the extent that they are relevant to those functions, duties, or powers:

(a) a psychoactive product that is approved for use by individuals should pose no more than a low risk of harm to individuals who use it:

(b) before a psychoactive product can be approved for use by individuals, the degree of harm posed by the product to individuals who use it should be assessed by the Authority on the basis of—
  (i) the advice of an expert advisory committee; and
  (ii) evidence, including the results of preclinical and clinical trials:

(ba) a psychoactive product that poses no more than a low risk of harm to individuals who use the product should be approved:

(c) a psychoactive product that poses more than a low risk of harm to individuals who use the product should be prohibited:

(d) a psychoactive product that has not been approved by the Authority should be prohibited, on a precautionary basis, until it has been assessed by the Authority and the Authority is satisfied that it poses no more than a low risk of harm to individuals who use it.

5 Application of Act

(1) This Act applies to the importation, manufacture, sale, supply, or possession of a psychoactive substance or approved product for the primary purpose of inducing a psychoactive effect in an individual who uses the substance or product.

(2) **Schedule 1** contains ~~a transitional provision that affects~~ application, savings, and transitional provisions that affect this Act's other provisions as from time to time amended, repealed, or repealed and replaced (*see* **section 88**).

6 Overview

(1) In this Act,—
  (a) this Part—
    (i) sets out the purpose of this Act and the principles on which it is based:
    (ii) provides that this Act binds the Crown:
    (iii) defines terms used in this Act, including the key term psychoactive substance:

(iv) establishes the Psychoactive Substances Regulatory Authority and the Psychoactive Substances Expert Advisory Committee:

(b) **Part 2** authorises the Authority to issue licences for the importation, manufacture, and sale of psychoactive substances and to approve psychoactive products and also deals with related matters, including—

(i) creating offences relating to the importation, manufacture, sale, and supply of psychoactive substances without a licence or in breach of licence conditions:

(ii) a requirement for the Authority to issue a code of manufacturing practice relating to psychoactive substances:

(iii) the process for appeals against decisions of the Authority:

(c) **Part 3** relates to the control of approved products, creates offences relating to the sale and supply of psychoactive substances that are not approved products and also deals with other regulatory matters, including—

(i) age restrictions and place-of-sale restrictions on the sale of approved products:

(ii) advertising, labelling, and packaging restrictions and requirements for approved products:

(iii) health-warning requirements for approved products:

(iv) signage, storage, and display restrictions and requirements for approved products:

(v) creating offences relating to the sale of approved products by or to persons under the age of 18 years and the possession of psychoactive substances without a licence:

(vi) the relationship between this Act and other enactments:

(vii) authorising the Authority to recall approved products in certain circumstances:

(viii) requiring the Ministry ~~of Health~~ to conduct a review of the policy and operation of this Act no

later than 5 years after the commencement of ~~this~~ the Act:

(ix) providing for the circumstances in which psychoactive substances that were being lawfully sold throughout the period of ~~6~~ 3 months before the commencement of this Act may continue to be sold if certain conditions are met:

(x) amending other enactments.

(2) This section is a guide only to the general scheme and effect of this Act and does not limit or affect the other provisions of this Act.

7 Act binds the Crown

This Act binds the Crown.

Subpart 2—Interpretation

General

8 Interpretation

In this Act, unless the context otherwise requires,—

adverse reaction means an unwanted or a harmful reaction—

(a) ~~an unwanted or harmful reaction~~ that is experienced by an individual who has used a psychoactive substance or an approved product; and

(b) that is suspected to have arisen from, or to be related to, the use of the substance or product

advertising—

(a) means any words, whether written, printed, or spoken, and any pictorial representation or design, used or appearing to be used to promote the sale of an approved product (for example, a sign, publication, or leaflet); and

(b) includes any matter referred to in **paragraph (a)** that is represented in an electronic or a digital medium

advisory committee means the Psychoactive Substances Expert Advisory Committee established by **section 11**

alcohol has the same meaning as in section 5(1) of the Sale and Supply of Alcohol Act 2012

animal has the same meaning as in section 2(1) of the Animal Welfare Act 1999

appeals committee means the Psychoactive Substances Appeals Committee established by **section 42**

approved evidence of age document has the same meaning as in section 5(1) of the Sale and Supply of Alcohol Act 2012

approved evidence of age system has the same meaning as in section 5(1) of the Sale and Supply of Alcohol Act 2012

approved product means a psychoactive product approved by the Authority under **section 35** ~~that is or contains 1 or more psychoactive substances~~

Authority means the Psychoactive Substances Regulatory Authority established by **section 10**

code of manufacturing practice or **code** means a code of practice, relating to the manufacture of psychoactive substances, issued under **section 27**

constable has the same meaning as in section 4 of the Policing Act 2008

Customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

district, in relation to a territorial authority, has the same meaning as in section 5(1) of the Local Government Act 2002

enforcement officer means a person appointed by the Authority under **section 68**

evidential material has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

export certificate means a certificate issued by the Authority under **section 79**

hazardous substance has the same meaning as in section 2(1) of the Hazardous Substances and New Organisms Act 1996

~~**individual** means a natural person, other than a deceased natural person~~

importation and **importer** have the same meanings as in section 2(1) of the Customs and Excise Act 1996

individual means a natural person, other than a deceased natural person

Internet sale, in relation to an approved product, means a sale (whether by retail or by wholesale) of the approved product pursuant to a contract that—

(a) has been entered into using the Internet and is between—

(i) a seller whose business is or includes offering the product for sale (whether by retail or wholesale); and

(ii) a person (whether the purchaser or a person acting on the purchaser's behalf) who is at a distance from the seller's place of business; and

(b) contains a term providing for the product to be delivered by or on behalf of the seller to, or to a place or person chosen by, the purchaser

label includes any written, pictorial, or other descriptive matter that—

(a) relates to an approved product; or

(b) appears on, is attached to, or is associated with the approved product

licence means a licence, granted under **section 15**, that is in force

manufacture, in relation to a psychoactive substance or an approved product,—

(a) means to make up, prepare, produce, or process the substance or product for the purpose of sale; and

(b) includes packaging the substance or product for the purpose of sale

manufacturer includes any company with which a manufacturer is associated within the meaning of subpart YB of the Income Tax Act 2007

Minister means the Minister ~~who is,~~ of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministry means the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

minor means a person under the age of 18 years

New Zealand resident has the same meaning as in section YD 1 or YD 2 of the Income Tax Act 2007

place includes any building, conveyance, craft, land, or structure

possess, in relation to a psychoactive substance, includes a psychoactive substance that is subject to a person's control but that is in the custody of another person

~~**prescribed monitoring agency** means the agency specified in the regulations as the agency to whom adverse reactions must be reported~~

private premises has the same meaning as in section 3(1) of the Search and Surveillance Act 2012

psychoactive effect, in relation to an individual who is using or has used a psychoactive ~~product~~ substance, means the effect of the ~~product~~ substance on the individual's mind

psychoactive product or **product** means a finished product packaged and ready for retail sale that is a psychoactive substance or that contains 1 or more psychoactive substances

psychoactive substance has the meaning given in **section 9**

public health has the same meaning as in section 6(1) of the New Zealand Public Health and Disability Act 2000

publicly notify means to publish a notice—

(a) in the *Gazette*; and

(b) on an Internet site maintained by or on behalf of the Authority

regulations means regulations made under this Act

~~**retailer** means a person engaged in any business that includes the sale of approved products by retail~~

retail premises means premises for which a licence to sell approved products by retail has been granted

retailer means a person engaged in any business that includes the sale of approved products by retail

sell includes every method of disposition for valuable consideration, for example,—

(a) bartering:

(b) offering or attempting to sell or having in possession for sale, or exposing, sending, or delivering for sale, or

causing or allowing to be sold, offered, or exposed for sale:

(c) retailing:

(d) wholesaling

special consultative procedure has the same meaning as in section 5(1) of the Local Government Act 2002

supply—

(a) includes distribute or give; but

(b) does not include sell

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002

trial—

(a) means a preclinical or clinical trial; and

(b) includes research, testing, and teaching

use, in relation to a psychoactive substance,—

(a) means use by an individual; and

(b) includes—

(i) ingesting, inhaling, injecting, or being administered the psychoactive substance~~.~~; and

(ii) any other method of inducing a psychoactive effect from the psychoactive substance

vehicle means any conveyance that is capable of being moved under a person's control, whether or not the conveyance is used for the carriage of persons or goods, and includes a motor vehicle, aircraft, train, ship, or bicycle

wholesaler means a person engaged in any business that includes the sale of approved products by wholesale.

Meaning of psychoactive substance

9 Meaning of psychoactive substance

(1) In this Act, unless the context otherwise requires, **psychoactive substance** means a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.

(2) **Psychoactive substance** includes—

(a) an approved product:

(b) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind ~~or belonging~~ that is, or belongs to a class that is, declared by the Governor-General by Order in Council made under **section 81** to be a psychoactive substance for the purposes of this Act.

(3) Despite **subsections (1) and (2)**, **psychoactive substance** does not include—

(a) a controlled drug specified or described in Schedule 1, 2, or 3 of the Misuse of Drugs Act 1975:

(b) a precursor substance specified or described in Schedule 4 of the Misuse of Drugs Act 1975:

(c) a medicine within the meaning of section 3 of the Medicines Act 1981 or a related product within the meaning of section 94 of that Act:

(d) a herbal remedy (within the meaning of section 2(1) of the Medicines Act 1981):

(e) a dietary supplement (within the meaning of regulation 2A of the Dietary Supplements Regulations 1985):

(f) any food (within the meaning of section 2 of the Food Act 1981):

(g) any alcohol, unless the alcohol contains a psychoactive substance as defined in **subsection (1) or (2)** that is not alcohol:

(h) any tobacco product (within the meaning of section 2(1) of the Smoke-free Environments Act 1990), unless the tobacco product contains a psychoactive substance as defined in **subsection (1) or (2)** that is not tobacco:

(i) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind ~~or belonging~~ that is, or belongs to a class that is, declared by the Governor-General by Order in Council made under **section 81** not to be a psychoactive substance for the purposes of this Act.

Compare: 2005 No 81 s 31

Subpart 3—Key regulatory roles

10 Psychoactive Substances Regulatory Authority

(1) This section establishes the Psychoactive Substances Regulatory Authority.

(2) The Authority is the Director-General of Health.

(3) The office of the Authority must be administered by the Ministry.

11 Psychoactive Substances Expert Advisory Committee

(1) This section establishes the Psychoactive Substances Expert Advisory Committee.

(2) The functions of the advisory committee are—

(a) to evaluate, with regard to the results of ~~preclinical and clinical~~ trials, psychoactive products to assess whether they should be approved for use by individuals; and

(b) to advise the Authority about whether a psychoactive product should or should not be approved for use by individuals; and

(c) to increase public awareness of the advisory committee's work in relation to psychoactive substances, for example, by the timely release of papers, reports, and recommendations.

(2A) For the purposes of ~~**subsection (2)(b)**~~, ~~the matters that advisory committee must have regard to in advising the Authority~~ **subsection (2)(a)**, the matters that the advisory committee must have regard to in evaluating psychoactive products include—

(a) the specific effects of the product, including pharmacological, psychoactive, and toxicological effects; and

(b) the risks, if any, to public health; and

(c) the potential for use of the product to cause death; and

(d) the ~~ability of~~ potential for the product to create physical or psychological dependence; and

(e) the likelihood of misuse of the product; and

(f) the potential appeal of the product to vulnerable populations; and

(g) any other matters that the Authority considers relevant.

(3) The advisory committee may comprise up to 6 members who between them must have appropriate expertise in—

(a) pharmacology; and

(b) toxicology; and

(c) neurosciences; and

(d) medicine; and

(e) any other areas the Authority considers relevant.

(4) The Authority may appoint members of the advisory committee on any terms and conditions that the Authority thinks fit.

(5) The Authority must appoint 1 member as chairperson of the advisory committee.

(6) The Authority must consult the Minister before making an appointment to the advisory committee.

(7) The Authority may give terms of reference—

(a) for the advice that the advisory committee provides to the Authority:

(b) for the use of external experts to assist the advisory committee.

(8) The advisory committee may, subject to any provision of this Act or the regulations, determine its own procedure.

(9) In performing its functions under this Act, the advisory committee must—

(a) act independently; and

(b) comply with the principles of natural justice.

~~11A Duty of advisory committee relating to use of animals when evaluating psychoactive product for approval~~

~~(1) In performing the function set out in **section 11(2)(a)**, the advisory committee must, having particular regard to the principle in **section 4(a)** and the likelihood for psychoactive products to be used by young adults, comply with **subsections (2) and (3)**.~~

~~(2) The advisory committee must ensure that any preclinical or clinical tests (whether undertaken in New Zealand or overseas) that relate to a psychoactive product do not rely on any research, testing, or teaching that involves the use of an animal if suitable alternatives exist.~~

~~(3) The advisory committee must ensure that, if any preclinical trials or clinical trials (whether undertaken in New Zealand or overseas) that relate to a psychoactive product include research, testing, or teaching that involves the use of an animal, those tests—~~

~~(a) are based on the relevant International Conference on Harmonisation Guidelines (as amended from time to time); and~~

~~(b) if undertaken in New Zealand, comply with the restrictions on the use of animals in research, testing, or teaching set out in Part 6 of the Animal Welfare Act 1999; and~~

~~(c) if undertaken overseas, comply with restrictions on the use of animals in research, testing, or teaching that are equivalent to or exceed those set out in Part 6 of the Animal Welfare Act 1999; and~~

~~(d) are periodically reviewed to ensure there is up to date analysis of available alternatives with an aim to—~~

~~(i) reducing the number of animals used in research, testing, and teaching to the minimum necessary; and~~

~~(ii) refining the techniques used in any research, testing, and teaching so that any harm caused to animals is minimised; and~~

~~(iii) replacing animals as subjects for research and testing of psychoactive products as further information becomes available (whether in New Zealand or overseas).~~

~~(4) In this section, **animal** has the same meaning as in section 2(1) of the Animal Welfare Act 1999.~~

11A Duty of advisory committee relating to use of animals when evaluating psychoactive products

(1) In performing the function set out in **section 11(2)(a)**, the advisory committee must comply with **subsections (2) and (3)**, which provide whether and, if so, to what extent the advisory committee may have regard to the results of a trial (whether undertaken in New Zealand or overseas) that involves the use of an animal.

(2) If a suitable alternative exists, the advisory committee must not have regard to the results of a trial that involves the use of an animal.

(3) If a suitable alternative does not exist, the advisory committee may have regard to the results of a trial that involves the use of an animal, but only if the following conditions exist:

(a) the trial is based on the relevant International Conference on Harmonisation Guidelines (as amended from time to time); and

(b) for a trial undertaken in New Zealand, the trial complies with the restrictions on the use of animals in research, testing, or teaching set out in Part 6 of the Animal Welfare Act 1999; and

(c) for a trial undertaken overseas, the trial complies with restrictions on the use of animals in research, testing, or teaching that are equivalent to or exceed those set out in Part 6 of the Animal Welfare Act 1999; and

(d) the use of the trial is periodically reviewed to ensure that there is up-to-date analysis of available alternatives with the aim of—

(i) reducing the number of animals used in research, testing, and teaching to the minimum necessary; and

(ii) refining the techniques used in any research, testing, and teaching so that any harm caused to animals is minimised; and

(iii) replacing animals as subjects for research and testing of psychoactive products, whether undertaken in New Zealand or overseas, as further information becomes available; and

(e) the trial complies with any guidelines issued by the Authority relating to the use of animals in trials of psychoactive products.

(4) In this section, **suitable alternative** means a trial that does not involve the use of an animal and that is publicly notified, on the recommendation of the advisory committee, as a suitable alternative by the Authority.

(5) In considering whether to recommend a suitable alternative, the advisory committee must have particular regard to—

(a) the principle set out in **section 4(a)**; and

(b) the likelihood of psychoactive substances being used by young adults.

(6) To avoid doubt, if a suitable alternative exists, the advisory committee is not precluded from having regard to—

(a) the results of a trial that involves the use of an animal and that was undertaken before the Authority notified the suitable alternative; or

(b) the results of any other trial that does not involve the use of an animal.

Part 2
Psychoactive substances and approved products

Subpart 1—Licences to import, manufacture, research, and sell

Applications for licence

12 Application for licence

(1) A person who is a New Zealand resident may apply to the Authority for 1 or more of the following licences:
- (a) a licence to import psychoactive substances:
- (b) a licence to manufacture psychoactive substances:
- (c) a licence to research psychoactive substances:
- (d) a licence to sell psychoactive substances that are not approved products:
- (e) a licence to sell approved products by retail:
- (f) a licence to sell approved products by wholesale.

(2) An application must—
- (a) be made to the Authority in a form or manner approved by the Authority; and
- (b) be accompanied by—
  - (i) any particulars, information, documents, or other material required by the Authority and prescribed in the regulations; and
  - (ii) the prescribed fee (if any).

13 Authority may refuse to process application for licence

(1) The Authority may refuse to process an application for a licence if the application does not comply with **section 12**.

(2) If the Authority refuses to process an application under **subsection (1)**, the Authority must give the applicant written notice of the refusal and the reasons for it.

14 Authority may request further information, etc

(1) The Authority may request an applicant for a licence to supply further particulars, information, documents, or other material before deciding whether to grant a licence.

(2) An application for a licence lapses if the further particulars, information, documents, or other material requested is not supplied within—

(a) 30 days after the date of the request; or

(b) any further time that the Authority may allow by written notice to the applicant.

Granting of licence

15 Grounds for granting licence

(1) The Authority must grant a licence if the Authority is satisfied that~~;~~—

(a) the application has been made in the form or manner required by **section 12**; and

(b) the application does not contain materially false or misleading information; and

(c) for an application made by an individual, the applicant is a fit and proper person to hold the licence; and

(d) for an application made on behalf of a body corporate, the body corporate is of good repute.

(2) In determining under **subsection (1)(c) or (d)** whether an applicant is a fit and proper person to hold a licence or a body corporate of good repute, the Authority must take into account—

(a) whether the applicant has been convicted of a relevant offence; and

(b) whether there has been a serious or repeated failure by the applicant to comply with any requirement of this Act; and

(c) whether there are other grounds for considering that the applicant is likely to fail to comply with any requirement of this Act; and

(d) any other matter that the Authority considers relevant.

(3) For the purposes of **subsection (2)(a)**, **relevant offence** means—

(a) an offence against this Act; or

(b) an offence against the Misuse of Drugs Act 1975 or the Misuse of Drugs Amendment Act 2005 or any regulations made under those Acts; or

(ba) an offence against the Medicines Act 1981; or

(c) a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961).

Conditions of licence

16 Compulsory conditions of licences

(1) It is a condition of a licence to import that the licence holder must, before each importation of a psychoactive substance by the licence holder,—

(a) advise the Authority of the importation; and

(b) provide to the Authority particulars of—

(i) the name and quantity of the psychoactive substance to be imported; and

(ii) the intended date of the importation.

(2) It is a condition of a licence to manufacture that the licence holder must comply with the code of manufacturing practice at all times.

(3) It is a condition of a licence to sell psychoactive substances that are not approved products that the licence holder may only sell psychoactive substances in New Zealand to a person who holds ~~a licence to manufacture psychoactive substances.~~—

(a) a licence to manufacture psychoactive substances; or

(b) a licence to research psychoactive substances.

(4) It is a condition of every licence that the licence holder must—

(a) keep, in ~~some place of security~~ a secure place at the licence holder's place of business, any records required to be kept by the licence holder by the regulations; and

(b) retain those records for the period of time prescribed in the regulations.

(5) It is a condition of every licence that the licence holder must, before ~~any~~ each exportation of a psychoactive substance by the licence holder,—

(a) advise the Authority of the exportation; and

(b) provide to the Authority particulars of—

(i) the name and quantity of the psychoactive substance to be exported; and
(ii) the intended date of the exportation.

17 Discretionary conditions of licence

(1) The Authority may, when granting a licence, impose any other conditions on the licence in addition to a relevant condition specified in **section 16** that the Authority thinks fit.

(2) If a licence holder asks the Authority for the reasons for imposing conditions on the licence under **subsection (1)**, the Authority must, as soon as practicable, provide written reasons.

Duration of licence

18 Duration of licence

A licence remains in force for 3 years after the date that it is granted unless—

(a) the Authority specifies a shorter period for the licence; or
(b) it is sooner cancelled or surrendered under this subpart.

Licence not transferable

19 Licence may not be transferred

A licence may not be transferred to, or vest by operation of law in, a person other than the person who ~~applied for and~~ was granted the licence.

Refusal of licence

20 Refusal to grant licence

(1) If the Authority proposes to refuse to grant a licence, the Authority must give the applicant—

(a) written notice that clearly informs the applicant of the grounds for the proposed refusal; and
(b) a reasonable opportunity to make written submissions.

(2) If, after considering any submissions provided by the applicant under **subsection (1)(b)**, the Authority decides to refuse to

grant the licence, the Authority must, as soon as practicable, give the applicant written notice of—

(a) the decision and the reasons for it; and

(b) the applicant's right to appeal the decision under **section 43**.

Suspension, cancellation, and surrender of licence

21 Suspension or cancellation of licence

(1) The Authority may suspend or cancel a licence if the Authority is satisfied, at any time after the licence has been granted, that—

(a) the licence holder supplied information in the application for the licence that is materially false or misleading:

(b) the licence holder has breached any conditions of the licence:

(c) the licence holder is failing, or has failed, to comply with any relevant requirement of this Act or the regulations:

(d) the licence holder has ceased to be ~~a fit and proper person to hold the licence.~~—

(i) in the case of an individual, a fit and proper person to hold the licence:

(ii) in the case of a body corporate, a person of good repute.

(2) The Authority may suspend a licence under **subsection (1)**, for a period of time that is reasonable in the circumstances, to enable the Authority to consider whether to cancel the licence.

(3) The Authority may cancel a licence under **subsection (1)** only after—

(a) giving the licence holder a reasonable opportunity to be heard; and

(b) considering any evidence provided by the licence holder; and

(c) considering submissions made to it by the licence holder.

(4) If a licence holder asks the Authority for the reasons for the suspension or cancellation of the licence, the Authority must, as soon as practicable, provide written reasons.

Compare: 1981 No 118 s 51(6), (7)

22 Surrender of licence

(1) If a licence holder ceases to undertake the activity to which a licence relates, the licence holder must, within 30 days of ceasing to undertake the activity, surrender the licence to the Authority.

(2) A licence holder may surrender a licence at any other time.

(3) On receiving a licence under **subsection (1) or (2)**, the Authority must cancel the licence.

Offences relating to licences

23 Offence relating to application for licence

(1) A person commits an offence in respect of an application for a licence if the person provides information that the person knows, or ought to have known, is false or misleading in any material respect.

(2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.

24 Offence relating to importation of psychoactive substance without licence

(1) A person must not, without reasonable excuse, import a psychoactive substance without a licence to import.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a term of imprisonment not exceeding 2 years:

(b) in the case of a body corporate, to a fine not exceeding $500,000.

25 Offence relating to manufacture of psychoactive substance without licence

(1) A person must not, without reasonable excuse, manufacture a psychoactive substance without a licence to manufacture.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a term of imprisonment not exceeding 2 years:

(b) in the case of a body corporate, to a fine not exceeding $500,000.

~~26 Offence relating to importation, manufacture, research, or sale in breach of licence conditions~~

~~(1) A person who holds a licence to import psychoactive substances must not import a psychoactive substance in breach of any conditions of the licence.~~

~~(2) A person who holds a licence to manufacture psychoactive substances must not manufacture a psychoactive substance in breach of any conditions of the licence.~~

~~(3) A person who holds a licence to research must not conduct any research activity with a psychoactive substance in breach of any conditions of the licence.~~

~~(4) A person who holds a licence to sell approved products by retail must not sell an approved product in breach of any conditions of the licence.~~

~~(5) A person who holds a licence to sell approved products by wholesale must not sell an approved product in breach of any conditions of the licence.~~

~~(6) A person who holds a licence to sell psychoactive substances that are not approved products must not sell a psychoactive substance in breach of any conditions of the licence.~~

~~(7) A person who contravenes **subsection (1), (2), (3), (4), (5), or (6)** commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.~~

26 Offence relating to breach of licence condition

(1) A person who holds a licence must not breach any conditions of the licence.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.

Further provisions relating to manufacture of psychoactive substances

27 Code of manufacturing practice

(1) The Authority must issue a code of manufacturing practice relating to the manufacture of psychoactive substances.

(2) The code must come into force no later than 6 months after the commencement of this Act.

(3) In developing the code and any amendments to it, the Authority must—

(a) be guided by the principles of this Act:

(b) consult ~~with~~ persons or organisations that the Authority considers to be representative of the interests of persons likely to be affected by the code or the proposed amendments to it.

(4) The Authority must ensure that the code, and any amendment to the code,—

(a) specifies the date on which it takes effect:

(b) is published on an Internet site maintained by, or on behalf of, the Authority:

(c) is available for purchase in hard copy, at a reasonable cost, from the Authority.

28 Audit of manufacturing facilities

(1) This section applies to a manufacturing facility in which a psychoactive substance is being manufactured under a licence to manufacture.

(2) For the purpose of assessing whether the manufacturing facility complies with the code and, if applicable, any conditions of the licence to manufacture, the Authority may do 1 or both of the following:

(a) conduct an audit of the manufacturing facility at any time:

(b) to the extent that the Authority considers applicable, recognise an audit of the manufacturing facility conducted by another person under another enactment or for any other purpose.

(3) The Authority may conduct an audit under **subsection (2)(a)** in any manner that the Authority considers is appropriate and consistent with the principles of this Act.

29 Authorised person may enter manufacturing facility

(1) The Authority may authorise a person (an **authorised person**) to enter a manufacturing facility during the normal business hours of the facility and to exercise any power set out in this section for the purpose of—

(a) assessing an application for a licence to manufacture; or

(b) assessing whether the manufacturing facility is complying with the code of manufacturing practice or any conditions of a licence to manufacture.

(2) For the purpose of **subsection (1)(a) or (b)**, an authorised person may—

(a) open containers and packages and inspect the contents:

(b) request, gather, or secure evidence, take samples of any psychoactive substances, and test or analyse or arrange for the testing or analysis of such samples:

(c) inspect, inquire about, or copy any documents or other records (including documents or other records in an electronic form) relating to the obligations imposed under this Act or the regulations:

(d) remove any documents or other records (including documents or other records in an electronic form) from the manufacturing facility for the purpose of taking copies of the documents or records.

(3) An authorised person must provide—

(a) evidence of his or her authorisation to the person in charge of the manufacturing facility at the time when the authorised person first enters the facility, and at any later time at the request of the person in charge; and

(b) to the person in charge of the manufacturing facility a list of any items that have been removed from the facility.

(4) The Authority must ensure that—

(a) any items (except a sample) that have been removed from the facility under this section are retained only for as long as is necessary to achieve the purpose for which they were removed; and

(b) any property (except a sample) that has been removed is maintained, cared for, and secured during the period of its removal.

(5) An authorisation under **subsection (1)** must be in writing and specify—

(a) a reference to this section; and

(b) the full name of the authorised person; and

(c) a statement of the powers conferred on the authorised person under this section; and

(d) the authorised person's reasons for ~~the audit of~~ the manufacturing facility.

(6) For the purposes of **subsection (1)**, **enter a manufacturing facility** includes to go on, into, under, or over the manufacturing facility.

30 Authority may issue compliance notice

The Authority may issue a compliance notice to any person whose manufacturing facility has been audited under **section ~~29~~ 28** that requires the person to do, or to refrain from doing, within a specified time, a particular thing that affects the person's compliance with the code of manufacturing practice or any condition of the person's licence to manufacture.

Subpart 2—Approved products

Applications for approval

31 Application for approval

(1) A person who is a New Zealand resident may apply to the Authority for approval of a psychoactive product as an approved product.

(2) The application must—

(a) be made to the Authority in a form or manner approved by the Authority; and

(b) be accompanied by—

(i) any particulars, information, documents, samples, or other material required by the Authority and prescribed in the regulations; and

(ii) the prescribed fee (if any).

(3) The application must not be accompanied by, or contain, any particulars, information, documents, or other material relating to any trial that the advisory committee must not have regard to under **section 11A**.

32 Authority may refuse to process application for approval

(1) The Authority may refuse to process an application for approval of a product if the application does not comply with **section 31**.

(2) If the Authority refuses to process an application under **subsection (1)**, the Authority must give the applicant written notice of the refusal and the reasons for it.

33 Authority may request further information, etc

(1) The Authority may request an applicant to supply further particulars, information, documents, samples, or other material before deciding whether to approve a psychoactive product as an approved product.

(2) An application for approval of a product lapses if the requested further particulars, information, documents, samples, or other material is not supplied within—

(a) 30 days of the date of the request; or

(b) any further time that the Authority may allow by written notice to the applicant.

34 Authority must protect confidential supporting information relating to application for approval

(1) This section applies if the Authority has received an application for approval of a psychoactive product under **section 31** that includes confidential supporting information specified in, or given in relation to, the application.

(2) The Authority—

(a) must, during the protected period, take reasonable steps to ensure that the confidential supporting information is kept confidential to the Authority; and

(b) must not use that confidential supporting information for the purposes of deciding whether to grant any other application for approval of a psychoactive product.

(3) Despite **subsection (2)**, the Authority may, during the protected period, disclose the confidential supporting information referred to in **subsection (1)**—

(a) to 1 or more of the following:

(i) the World Health Organization:

(ii) the Food and Agriculture Organization:

(iii) any regulatory agency of a WTO country:

(iv) any person or organisation or class of persons or organisations approved by the regulations; and

(b) to 1 or more of the following persons or organisations if the Authority is satisfied that the person or organisation will take reasonable steps to ensure that the confidential supporting information is kept confidential:

(i) the advisory committee:

(ii) the Expert Advisory Committee on Drugs established under section 5AA of the Misuse of Drugs Act 1975:

(iii) any adviser for the purpose of obtaining advice about the psychoactive substance to which the confidential supporting information relates:

(iv) a government department or statutory body for the purposes of the government department or statutory body.

(4) In this section,—

confidential supporting information includes—

(a) trade secrets; and

(b) information that has commercial value that would be, or would be likely to be, diminished by disclosure

protected period means, in relation to confidential supporting information, a period beginning on the date on which the Authority receives that information and ending on the day that

is 5 years after the date on which the Authority received the application for approval to which the information relates

WTO country means a country that is a party to the Agreement Establishing the World Trade Organization adopted at Marrakesh on 15 April 1994.

Compare: 1981 No 118 ss 23A–23C

Granting of approval

35 Grounds for approving product

The Authority ~~may~~ must approve a psychoactive product as an approved product ~~only~~ if the Authority is satisfied that—

(a) the application relating to the product—

(i) complies with the requirements of **section 31**; and

(ii) does not contain any materially false or misleading information; and

(b) the degree of harm that the product poses to individuals using the product is no more than a low risk of harm.

Conditions of approval

36 Conditions of approval

(1) The Authority may, when approving a psychoactive product, impose conditions on the approval as the Authority thinks fit.

(2) If the applicant asks the Authority for the reasons for imposing conditions under **subsection (1)**, the Authority must, as soon as practicable, provide written reasons.

Refusal and revocation of approval

37 Refusal to grant approval

(1) If the Authority proposes to refuse to approve a psychoactive product as an approved product, the Authority must give the applicant—

(a) written notice that clearly informs the applicant of the grounds for the proposed refusal; and

(b) a reasonable opportunity to make written submissions.

(2) If, after considering any submissions provided by the applicant under **subsection (1)(b)**, the Authority decides to refuse

to approve the product, the Authority must, as soon as practicable, give the applicant written notice of—

(a) the decision and the reasons for it; and

(b) the applicant's right to appeal against the decision under **section 43**.

38 Revocation of approval

(1) The Authority may, at any time, by notice in the *Gazette*, revoke an approval of a psychoactive product granted under **section 35** if the Authority considers on reasonable grounds that the product poses more than a low risk of harm to individuals using the product.

(2) If the Authority revokes an approval, the Authority—

(a) must notify the person who applied for approval of the product:

(b) may issue a recall order for the product under **section 78**.

Compare: 1981 No 118 s 35

Offences relating to approvals

39 Offence relating to application for approval

(1) A person commits an offence in respect of an application for approval of a psychoactive product if the person—

(a) provides information that the person knows, or ought to ~~have known~~ know, is materially false or misleading; or

(b) fails, without reasonable excuse, to provide any relevant information relating to—

(i) the ingredients of the product; or

(ii) the effect of the product on individuals ~~using~~ who use the product.

(2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.

40 Offence relating to breach of conditions of approval

(1) A person commits an offence if, without reasonable excuse, the person imports, manufactures, or sells an approved product

in breach of any conditions of the approval imposed by the Authority under **section 36**.

(2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.

Register of products

41 Register of products

(1) The Authority must keep and maintain a register of—

(a) approved products; and

(b) psychoactive products that the Authority has refused to approve.

(2) The purpose of the register is—

(a) to enable a member of the public—

(i) to obtain information about approved products; and

(ii) to confirm whether a psychoactive product is an approved product:

(b) to assist any person in the performance of the person's functions or duties, or in the exercise of the person's powers, under this Act or any other enactment.

(3) The Authority must publish the register on an Internet site maintained by, or on behalf of, the Authority.

(4) This section is subject to **section 34**.

Subpart 3—Appeals against decisions of Authority

42 Psychoactive Substances Appeals Committee

(1) This section establishes the Psychoactive Substances Appeals Committee.

(2) The function of the appeals committee is to determine appeals against decisions of the Authority made by or under this Act.

(3) The appeals committee must consist of 3 members, each appointed by the Minister on any terms and conditions that the Minister thinks fit.

(4) One member of the appeals committee must be a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006) of not less than 7 years' legal experience.

(5) The appeals committee may, subject to any provision of this Act or the regulations, regulate its own procedure.

(6) In performing its functions or exercising its powers under this Act, the appeals committee must—
  (a) act independently; and
  (b) comply with the principles of natural justice.

43 Appeals against Authority's decisions

(1) A person who has applied for a licence under **section 12** or been granted a licence under **section 15** may appeal to the appeals committee against any decision of the Authority—
  (a) to refuse to grant the person a licence:
  (b) to impose a condition on the person's licence:
  (c) to suspend or cancel the person's licence.

(1A) A person who has applied for ~~the~~ approval of a psychoactive product under **section 31** may appeal to the appeals committee against any decision of the Authority—
  (a) to refuse to approve the psychoactive product:
  (b) to impose a condition on the approval of the psychoactive product:
  (c) to revoke the approval of ~~a~~ the psychoactive product:
  (d) to issue a recall order for ~~an~~ the approved product.

(2) The appeal under **subsection (1) or (1A)** must be made within 60 days after the decision appealed against is given, or within ~~such~~ any further period that the appeals committee may allow.

(3) A decision of the Authority against which an appeal is lodged continues in force unless the appeals committee orders otherwise.

(4) An appeal under **subsection (1) or (1A)** is by way of rehearing.

(5) On hearing the appeal, the appeals committee may—
  (a) confirm, reverse, or modify the decision appealed against:

(b) make any other decision that the Authority could have made.

~~(6) The appeals committee must not review—~~
~~(a) any part of a decision not appealed against; or~~
~~(b) any decision not appealed against at all.~~

(6) The appeals committee must not review any decision, or any part of a decision, not appealed against.

44 Appeals committee may refer appeals back for reconsideration

(1) The appeals committee may, instead of determining any appeal under **section 43**, direct the Authority to reconsider, either generally or in respect of any specific matter, the whole or any part of the matter to which the appeal relates.

(2) In giving any direction under **subsection (1)**, the appeals committee must—
(a) advise the Authority of its reasons for so doing; and
(b) give to the Authority any other directions it thinks just as to the whole or any part of the matter that is referred back for reconsideration.

(3) In reconsidering any matter referred back to it under **subsection (1)**, the Authority must have regard to the appeals committee's directions and the appeals committee's reasons for giving the directions.

Further appeals

45 Appeal to High Court on question of law

An appeal against a determination or direction of the appeals committee on a question of law only may be made to the High Court in accordance with the rules of court.

Part 3
Control of approved products and other matters

Subpart 1—Control of approved products

Age restrictions

46 Restriction on persons under 18 years buying or possessing psychoactive ~~substance~~ substances (including approved products)

(1) A person under the age of 18 years commits an offence if the person buys~~,~~ or possesses any psychoactive substance, including an approved product.

(2) **Subsection (1)** does not apply to a person who buys a psychoactive substance or an approved product at the request of a constable or an enforcement officer acting in the course of his or her duties.

(3) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding $500.

47 Restriction on selling approved products to persons under 18 years

(1) A person must not sell an approved product to a person who is under the age of 18 years.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

(3) It is a defence to a charge under **subsection (2)** if the defendant proves that he or she had reasonable grounds to believe that the person to whom the approved product was sold was aged 18 years or over.

(4) Without limiting **subsection (3)**, reasonable grounds exist for the purposes of that subsection if the defendant proves that, before or at the time of the sale of the approved product,—

(a) there was produced to the defendant a document purporting to be an approved evidence of age document,

and the defendant believed on reasonable grounds that the document—

(i) was in fact an approved evidence of age document; and

(ii) related to the person to whom the approved product was sold; and

(iii) indicated that the person to whom the approved product was sold was aged 18 years or over:

(b) the defendant verified the person's age using an approved evidence of age system in the approved manner.

(5) It is not a defence to a charge under **subsection (2)** that—

(a) the person to whom the approved product was sold was buying it for, on behalf of, or as agent for a person aged 18 years or over; or

(b) the defendant believed on reasonable grounds that the person to whom the approved product was sold was buying it for, on behalf of, or as agent for a person aged 18 years or over.

Compare: 2005 No 81 ss 36, 37

48 Restriction on supplying approved products to persons under 18 years in public place

(1) A person must not, in a public place (within the meaning of section 2(1) of the Summary Offences Act 1981), supply an approved product to a person—

(a) who is under the age of 18 years; or

(b) with the intention that it be supplied (directly or indirectly) to a person who is under the age of 18 years.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $2,000.

(3) It is a defence to a charge under **subsection (2)** if the defendant proves that he or she had reasonable grounds to believe that the person to whom the approved product was supplied was aged 18 years or over.

~~(4) Without limiting **subsection (3)**, reasonable grounds exist for the purposes of that subsection if the defendant proves that, before or at the time of the supply of the approved product,—~~

~~(a) there was produced to the defendant a document purporting to be an approved evidence of age document and the defendant believed on reasonable grounds that the document—~~

~~(i) was in fact an approved evidence of age document; and~~

~~(ii) related to the person to whom the approved product was supplied; and~~

~~(iii) indicated that the person to whom the approved product was supplied was 18 years or over:~~

~~(b) the defendant verified the person's age using an approved evidence of age system in the approved manner.~~

(4) Without limiting **subsection (3)**, reasonable grounds exist for the purposes of that subsection if the defendant proves that, before or at the time of the supply of the approved product, there was produced to the defendant a document purporting to be an approved evidence of age document, and the defendant believed on reasonable grounds that the document—

(a) was in fact an approved evidence of age document; and

(b) related to the person to whom the approved product was supplied; and

(c) indicated that the person to whom the approved product was supplied was aged 18 years or over.

(5) It is not a defence to a charge under **subsection (2)** that—

(a) the person to whom the approved product was supplied was acquiring the product for, on behalf of, or as agent for a person aged 18 years or over; or

(b) the defendant believed on reasonable grounds that the person to whom the approved product was supplied was acquiring the product for, on behalf of, or as ~~gent~~ agent for a person aged 18 years or over.

(6) **Subsections (1) and (2)** do not apply to a person who is acting in the performance or exercise of a function, duty, or power under this Act or any other enactment.

(7) **Subsection (2)** applies irrespective of any liability that may attach to a person who has ~~sold~~ supplied the approved product concerned to any other person.

Compare: 1990 No 108 s 30AA(1), (5); 2005 No 81 ss 39, 40

49 Restriction on employing persons under 18 years to sell approved products

(1) A person must not employ a person under the age of 18 years to sell (including by Internet sale) an approved product on behalf of the person.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $2,000.

Other restrictions, prohibitions, and requirements relating to approved products

50 Prohibitions and restrictions on place of sale of approved products

(1) A person must not sell an approved product from any of the following:

(a) a shop commonly thought of as a dairy:

(b) a shop commonly thought of as a convenience store:

(c) a grocery store or a supermarket:

(d) any premises where the principal business carried on is—

(i) the sale of automotive fuels; or

(ii) the repair and servicing of motor vehicles and the sale of automotive fuels:

(e) any premises where alcohol is sold or supplied under a licence issued under the Sale and Supply of Alcohol Act 2012:

(f) any premises that are not a fixed permanent structure~~,~~ (for example, a tent or marquee):

(g) any vehicle or other conveyance (for example, a mobile street cart):

(h) any other place or premises specified or described in the regulations.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $10,000:

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Compare: 2005 No 81 s 41

51 Restrictions and requirements relating to Internet sales of approved products

(1) This section applies to an offer of an approved product ~~for~~ by Internet sale to which a prescribed restriction or prescribed requirement applies.

(2) A person must not offer an approved product ~~for~~ by Internet sale in a way that does not comply with the prescribed restriction or prescribed requirement.

(3) A person who contravenes **subsection (2)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000; and

(b) in the case of a body corporate, to a fine not exceeding $10,000.

52 Prohibition on free-of-charge distribution and rewards of approved products

(1) A manufacturer, importer, wholesaler, or retailer of an approved product must not—

(a) distribute an approved product free of charge; or

(b) supply an approved product to a person free of charge for the purpose of subsequent distribution; or

(c) in the case of a retailer, supply an approved product to a person free of charge for the purpose of that retailer's business.

(2) A manufacturer, importer, wholesaler, or retailer of an approved product must not—

(a) offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to the purchaser of an approved product in consideration for the purchase of that approved product~~,~~ or to any person in consideration for the provision of evidence of a purchase of that kind; or

(b) offer, to any retailer, a gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to—

(i) the purchase or sale of an approved product by that retailer; or

(ii) the advertising of an approved product inside that retailer's place of business; or

(iii) the display of an approved product in a particular part of that retailer's place of business.

(3) **Subsection (2)** does not apply to a payment or reward to any person who purchases or attempts to purchase an approved product—

(a) with the consent of the Authority, the Commissioner of Police, or some other person authorised for the purpose by the Authority or the Commissioner; and

(b) for the purpose of monitoring compliance with the provisions of this Act.

(4) A person who contravenes **subsection (1) or (2)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 42

52A Prohibition on sponsoring activity involving use of trade mark, etc, of approved product

(1) A person must not sponsor an organised activity that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand~~,~~ and that involves the use of, in the name of that activity, or on or through any thing other than an approved product, ~~of all or any~~ 1 or more of the following:

(a) an approved product trade mark:

(b) all or any part of a company name included in an approved product trade mark:

(c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of an approved product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person exposed to the name or thing to believe that the 1 or more elements are used in, on, or through it only or mainly for the purpose of advertising the product.

(2) A person sponsors an activity for the purposes of **subsection (1)** if the person does ~~all or any~~ 1 or more of the following:

(a) organises or promotes, before the activity is to take place, or during the time that it takes place, some or all of the activity:

(b) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution towards some or all of the activity:

(c) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution to any other person in respect of the organisation or promotion, by that other person, of, or the participation, by that other person, in, some or all of the activity.

(3) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an importer, manufacturer, or wholesaler ~~of an approved product~~, to a fine not exceeding $50,000:

(b) in the case of a retailer ~~of an approved product~~, to a fine not exceeding $10,000.

Compare: 1990 No 108 s 25

53 Prohibitions, restrictions, and requirements relating to advertising of approved products

(1) A person must not advertise an approved product—

(a) on television or on radio; or

(b) in any newspaper or other periodical publication printed and published in New Zealand; or

(c) on an Internet site (except an Internet site maintained for the primary purpose of the Internet sale of approved products); or

(d) on or in any other medium prescribed in the regulations.

(2) A person must not advertise an approved product—

(a) in a ~~way~~ manner, way, medium, or form that conveys that the product is safe:

(b) in a ~~way~~ manner, way, medium, or form that ~~contain~~ contains themes that are, or are likely to be, particularly appealing to minors:

(c) where the advertising is accompanied by incentives that are designed to encourage persons to buy an approved

product (for example, a promotional gift or the free-of-charge supply of an approved product).

(3) Advertising for an approved product (except a product sold by Internet sale)—

(a) may appear only in premises where the approved product is sold; and

(b) must be confined to the inside of the premises; and

(c) must not be easily visible or audible from outside the premises; and

(d) must be limited to material that communicates objective information about the product, including (without limitation)—

(i) the active ingredients of the product and the appropriate ~~quantitative~~ ~~ingredients~~ quantity of each active ingredient:

(ii) the price of the product.

(4) A person must not advertise an approved product in a way that does not comply with **subsection (3)**.

(5) A person who contravenes **subsection (1), (2), or (4)** commits an offence and is liable on conviction,—

(a) in the case of an importer, manufacturer, or wholesaler ~~of an approved product~~, to a fine not exceeding $50,000:

(b) in the case of a retailer ~~of an approved product~~, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 43

53A Restriction on retailer's name using words, expressions, or trademarks, etc, associated with approved products

(1) This section applies to a retailer of an approved product.

(2) The retailer of an approved product may display the retailer's name or trade name at the outside of the retail premises from which approved products are sold, but only if that name is not and does not include either or both of the following:

(a) any word or expression signifying that any approved product is available inside the premises for purchase:

(b) the trade mark of an approved product or the company name of an approved ~~products~~ product manufacturer.

(3) A person who contravenes **subsection ~~(1)~~ (2)** commits an offence and is liable on conviction to a fine not exceeding $10,000.

54 Restrictions and requirements relating to labelling of approved products

~~(1) A label for an approved product must not be designed in such a manner, way, medium, or form to appeal, or be likely to appeal, to minors.~~

(1) A label for an approved product must not be designed in a manner or way, or using a medium or form, so as to particularly appeal, or to be likely to particularly appeal, to minors.

(2) A label for an approved product must include the following information in a prominent position on the label:

(a) a list of the active ingredients of the product and the ~~quantitative particulars~~ appropriate quantity of each active ingredient; and

(b) the appropriate health warning relating to the product; and

(c) the contact details of the importer, manufacturer, wholesaler, or retailer of the product; and

(d) the telephone number of the National Poisons Centre information service or any other telephone service prescribed in the regulations~~.~~; and

(e) any other information prescribed by the regulations.

(3) A person must not sell an approved product with a label that does not comply with **subsection (1) or (2)**.

(~~2~~4) A person who contravenes **subsection (1) ~~or (2)~~, (2), or (3)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 44

55 Restrictions and requirements relating to packaging of approved products

(1) A person must not sell an approved product to which a prescribed restriction or prescribed requirement relating to packaging applies in a package that does not comply with that restriction or requirement.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 45

56 Requirement relating to health warnings

(1) A person must not sell an approved product without an appropriate health warning relating to the product on the label.

(1A) For the purposes of **subsection (1)**, the health warning must contain the information prescribed in the regulations.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 46

57 Requirement to display signage

(1) A person must not sell an approved product to which a prescribed requirement relating to signage applies without displaying signage that complies with that requirement.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $2,000.

Compare: 2005 No 81 s 47

58 Restrictions and requirements relating to storage and display of approved products

(1) A person who sells an approved product to which a prescribed restriction or prescribed requirement relating to storage or display applies must not store or display the product in a way that does not comply with that restriction or requirement.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 49

59 Restrictions and requirements relating to disposal of psychoactive substances

(1) An importer, manufacturer, or seller of a psychoactive substance to which a prescribed restriction or prescribed requirement relating to disposal applies must not dispose of the substance in a way that does not comply with that restriction or requirement.

(2) A person who contravenes **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

60 Requirement to keep records relating to psychoactive substances and approved products

(1) A person who~~,~~ holds a licence under this Act in respect of psychoactive substances or approved products must—

(a) keep, in ~~some place of security~~ a secure place at that person's place of business, any records required to be kept by that person by the regulations; and

(b) retain those records for the period of time prescribed in the regulations.

(2) A person who fails to comply with **subsection (1)** commits an offence and is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding $5,000:

(b) in the case of a body corporate, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 53

Prohibitions and restrictions on convicted persons selling approved products

61 Prohibitions and restrictions on convicted persons selling approved products

(1) This section applies if a person has been convicted of any offence under this Act and, within 2 years of being sentenced for that offence, the person is convicted of another offence under this Act.

(2) In imposing the sentence for the second or subsequent offence, the court may (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order—

(a) prohibiting either or both of the following:

(i) the sale of any approved products or approved products of a specified kind by or on behalf of the person (including by Internet sale):

(ii) the sale of any approved products or approved products of a specified kind at the place or on the premises at which the second or subsequent offence occurred:

(b) imposing any conditions or restrictions (or both) that the court thinks fit on either or both of the following:

(i) the sale of approved products by or on behalf of the person (including by Internet sale):

(ii) the sale of approved products at the place or on the premises at which the second or subsequent offence occurred.

(3) The order must state—

(a) the date that it takes effect (which may be the date on which it is made or a later date); and

(b) the date that it expires (which must be a date at least 4 weeks and not more than 3 months after the date that it takes effect).

(4) A person who contravenes an order made under **subsection (2)** commits an offence and is liable on conviction to a fine not exceeding $50,000.

Compare: 1990 No 108 s 30AB; 2005 No 81 s 54

Local approved products policies

61A Territorial authority may have local approved products policy

(1) Any territorial authority may have a policy relating to the sale of approved products within its district.

(2) A local approved products policy may—

(a) provide differently for different parts of its district; and

(b) apply to only part (or 2 or more parts) of its district; and

(c) apply differently to premises for which licences of different kinds are held or have been applied for.

(3) No territorial authority is required to have a local approved products policy.

61B Territorial authorities may adopt joint local approved products policy

(1) Two or more territorial authorities may adopt a single local approved products policy for their districts.

(2) If **subsection (1)** applies, the 2 or more territorial authorities are to be treated in respect of the local approved products policy as if they were a single territorial authority with a single district.

61C Content of local approved products policy

A local approved products policy may include policies on ~~any or all~~ 1 or more of the following matters:

(a) the location of premises from which approved products may be sold by reference to broad areas within the district:

(ab) the location from which approved products may be sold by reference to proximity to other premises from which approved products are sold within the district:

(b) the location of premises from which approved products may be sold by reference to proximity to premises or

facilities of a particular kind or kinds within the district (for example, kindergartens, early childhood centres, schools, places of worship, or other community facilities).

61D Adoption and review of local approved products policy

(1) A territorial authority that wishes to have a local approved products policy must adopt the policy in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.

(2) A local approved products policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.

(3) A territorial authority must, as soon as practicable after adopting or amending a local approved products policy, provide a copy of the policy to the Authority.

(4) A territorial authority must complete a review of a local approved products policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.

(5) A local approved products policy does not cease to have effect because it is due for review or is being reviewed.

Subpart 2—Offences relating to psychoactive substances that are not approved products

62 Offences relating to psychoactive substance that is not approved product

(1) A person commits an offence if the person, without reasonable excuse,—

(a) sells or supplies a psychoactive substance that is not an approved product to any person; or

(b) offers to sell or supply a psychoactive substance that is not an approved product to any person; or

(c) possesses a psychoactive substance that is not an approved product with the intent to sell or supply the psychoactive substance to any person.

(2) **Subsection (1)** does not apply to a person who holds a licence to sell psychoactive substances that are not approved products that applies to the psychoactive substance.

(3) A person who commits an offence against **subsection (1)** is liable on conviction,—

(a) in the case of an individual, to a term of imprisonment not exceeding 2 years:

(b) in the case of a body corporate, to a fine not exceeding $500,000.

63 Offence relating to personal possession of psychoactive substance that is not approved product

(1) A person commits an offence if the person has a psychoactive substance that is not an approved product in his or her possession.

(2) **Subsection (1)** does not apply to a person who holds a licence in respect of the psychoactive substance.

(3) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding $500.

Infringement offences

64 Interpretation

In this subpart,—

infringement fee, in relation to an infringement offence, means an amount not exceeding $500 prescribed for the purposes of this section in the regulations

infringement offence means an offence against—

(a) **section 46** (which relates to a person under the age of 18 years buying or possessing a pyschoactive substance, including an approved product):

(b) **section 48** (which relates to supplying an approved product to a person under the age of 18 years in a public place):

(c) **section 63** (which relates to personal possession of a psychoactive substance that is not an approved product).

65 Proceedings for infringement offence

A person who is alleged to have committed an infringement offence may ~~either~~—

(a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided for in **section 66**.

66 Infringement notices

(1) If ~~an enforcement officer or~~ a constable observes a person committing an infringement offence, or has reasonable grounds to believe that such an offence is being or has been committed by the person, the ~~officer or~~ constable may serve an infringement notice in respect of the offence on the person.

(2) ~~An enforcement officer or a~~ A constable (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) in person to the person alleged to have committed an infringement offence ~~personally~~ or send the notice by post addressed to that person's last known place of residence.

(3) An infringement notice (or a copy of it) sent by post to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.

(4) An infringement notice must be in the prescribed form and must contain the following particulars:

(a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and

(b) the amount of the infringement fee; and

(c) the address of the place at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and

(h) any other particulars that may be prescribed.

(5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications.

67 Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid into a Crown ~~bank account~~ Bank Account.

Subpart 3—Enforcement

Enforcement officers

68 Enforcement officers

(1) The Authority may appoint enforcement officers to enforce this Act.

(2) A person appointed as an enforcement officer may be—

(a) a person appointed by name; or

(b) the holder for the time being of a particular position.

(3) A person appointed under **subsection (1)** is not by virtue of that appointment alone—

(a) an officer or employee of the Public Service; or

(b) a person to whom the State Sector Act 1988 or the Government Superannuation Fund Act 1956 applies.

(4) The Authority must not appoint a person under **subsection (1)** unless the Authority is satisfied that the person is suitably qualified and trained and is a fit and proper person for appointment as an enforcement officer.

(5) The Authority may do ~~any or all~~ 1 or more of the following:

(a) appoint persons to enforce only some of the provisions of this Act:

(b) appoint persons to exercise only some of the powers conferred on enforcement officers by this Act:

(c) appoint persons subject to limitations or restrictions on their exercise of enforcement powers.

(6) An enforcement officer must have an instrument of appointment identifying the holder as an enforcement officer appointed under this section.

(7) An enforcement officer's instrument of appointment must state—

(a) that the officer is appointed to enforce—

(i) all the provisions of this Act; or

(ii) only specified provisions of this Act; or

(iii) all the provisions of this Act except certain specified provisions; and

(b) that the officer is appointed to exercise—

(i) all enforcement powers; or

(ii) only specified enforcement powers; or

(iii) all enforcement powers except certain specified powers; and

(c) all limitations and restrictions (if any) that are imposed on the person's exercise of enforcement powers under **subsection (5)(c)**.

Compare: 1990 No 108 s 14; 2005 No 81 s 55

Enforcement powers

69 Warrantless power to enter and search

(1) A constable may enter and search a place (except private premises), vehicle, or other thing without a warrant if the constable has reasonable grounds—

(a) to believe that it is not practicable to obtain a warrant; and

(b) to believe that there is a psychoactive substance in or on the place, vehicle, or other thing; and

(c) to suspect that in or on the place, vehicle, or other thing an offence against any of ~~**section 24, 25, or 62**~~ **sections 24, 25, and 62** has been, is being ~~committed~~, or is about to be committed in respect of that substance; and

(d) to believe that, if the entry and search is not carried out immediately, evidential material relating to the sus-

pected offence will be destroyed, concealed, altered, or damaged.

(2) The provisions of Part 4 (except subpart 3) of the Search and Surveillance Act 2012 apply.

Compare: 2012 No 24 s 20

69A Power to enter and search retail premises

(1) An enforcement officer or a constable may at any reasonable time enter and inspect any retail premises (or any part of ~~any~~ the premises) to ascertain whether the licence holder is complying with the provisions of this Act and the conditions of the licence.

(2) For the purposes of **subsection (1)**, an enforcement officer or a constable may—

(a) require the production of any licence or records that ~~is~~ are required by this Act to be kept~~,~~ and examine and make copies of them; and

(b) require the licence holder or any person appearing to be in charge of the retail premises (or any part of the premises) to provide any information or assistance reasonably required by ~~an~~ the enforcement officer or ~~a~~ the constable relating to any matter within the duties of the licence holder or the person in charge.

(3) A person must not, without reasonable excuse,—

(a) refuse or fail to admit to any retail premises any enforcement officer or constable who demands entry under **subsection (1)**; or

(b) delay unreasonably in admitting to any retail premises any enforcement officer or constable who demands entry under **subsection (1)**.

(4) The licence holder or any other person appearing to be in charge of the retail premises (or any part of the premises) must not, without reasonable excuse, refuse or fail—

(a) to produce the licence or any records when required to do so under **subsection (2)(a)**; or

(b) to provide any assistance or information when required to do so under **subsection (2)(b)**.

(5) A person who contravenes **subsection (3) or (4)** commits an offence and is liable on conviction to a fine not exceeding $2,000.

Compare: 2012 No 120 s 267

70 Warranted power to enter and search

(1) An issuing officer (within the meaning of section 3(1) of the Search and Surveillance Act 2012) may issue a search warrant in relation to a place, vehicle, or other thing if, on application made by an enforcement officer or a constable in the manner provided in subpart 3 of Part 4 of that Act, he or she is satisfied that there are reasonable grounds—

(a) to suspect that an offence has been, is being ~~committed~~, or is about to be committed against this Act; and

(b) to believe that the search will find evidential material in respect of the offence in or on the place, vehicle, or other thing.

(2) The provisions of Part 4 of the Search and Surveillance Act 2012 apply.

(3) Despite **subsection (2)**, sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a warrant issue to a named constable or to every constable.

71 Power to demand information where offence against section 47 suspected

(1) **Subsection (2)** applies to an enforcement officer or a constable who, at any time, has reasonable grounds to suspect that within the previous 14 days an approved product was sold to a person under the age of 18 years at a place in contravention of **section 47**.

(2) The enforcement officer or constable may,—

(a) if he or she has reasonable grounds to believe that the person who sold the approved product is at the place, require that person to give the enforcement officer or constable his or her name and address and date of birth; or

(b) if the person who is believed to have sold the approved product is not present at the place, require any other person appearing to be in charge of the place (or any part

of the place) to give the officer or constable the name and address and date of birth of the person who the enforcement officer or constable has reasonable grounds to believe sold the product.

(3) An enforcement officer or a constable who suspects that a person referred to in **subsection (2)(a)** is under the age of 17 years must not require that person to give the officer or constable his or her name and address and date of birth unless—

(a) there is no other person who appears to be in charge of the place; or

(b) there is another person who appears to be in charge of the place, but the enforcement officer or constable suspects that that other person is also under the age of 17 years.

(4) If an enforcement officer or a constable suspects that a person referred to in **subsection (2)(b)** is under the age of 17 years, the enforcement officer or constable must not require that person to give the name and address and date of birth of any other person if the other person is in the place concerned and appears to be of or over the age of 17 years.

(5) The powers conferred by this section must be used only for, and only to the extent necessary for, finding out the name and address of (or, if the address is not within the knowledge of the person asked, the name and any other identifying information within that person's knowledge and relating to) a person the enforcement officer or constable believes to have sold an approved product to a person under the age of 18 years.

Compare: 2005 No 81 s 58

72 Power to demand information ~~and arrest where offence against section 63~~ where offence against section 46, 48, or 63 suspected

(1) A constable who has reasonable cause to suspect that a person has committed, is committing, or is attempting to commit an offence against **section 46, 48, or 63** may require the person to provide particulars of his or her full name and address and date of birth.

(2) A constable who believes on reasonable grounds that any particulars provided under **subsection (1)** are false may require

the person concerned to provide satisfactory evidence of the particulars.

~~(3) If a person, without reasonable excuse, refuses or fails to provide any particulars or evidence when required to do so by a constable under this section, and persists in refusing or failing after being cautioned by the constable, he or she may be arrested, without warrant, by any constable.~~

73 Forfeiture

(1) A constable may seize and remove a psychoactive substance or an approved product if the constable has reasonable grounds to believe that an offence against this Act has been, is being, or ~~will~~ is about to be committed in respect of the psychoactive substance or approved product.

(2) If a person is found guilty of an offence against this Act in respect of a psychoactive substance or an approved product seized under **subsection (1)**, the psychoactive substance or approved product is forfeit to the Crown.

(3) A psychoactive substance or an approved product is forfeit to the Crown if—

(a) it is seized by the Police from a person under the age of 18 years who is issued with an infringement notice in respect of an offence against **section 46, 48, or 63**; and

(b) the infringement fee is later paid.

(4) If a person is acquitted of an offence against this Act, the psychoactive substance or approved product seized under this section in relation to the offence—

(a) may be collected from the relevant ~~police~~ Police station within 28 days of the acquittal by or on behalf of the person or, if the person is under the age of 18 years, by the person's parent or guardian; and

(b) if not collected within that time, may be disposed of in any manner that the Commissioner of Police directs.

(5) If **subsection (2), (3), or (4)** does not apply, subpart 6 of Part 4 of the Search and Surveillance Act 2012 applies in respect of a psychoactive substance or an approved product that is seized under **subsection (1)**.

Offences relating to enforcement

74 Obstructing enforcement officer or constable

(1) A person commits an offence if the person—

(a) wilfully obstructs an enforcement officer or a constable performing any function or duty or exercising any powers under this Act; or

(b) when required under **section 71 or 72** to give information, intentionally fails to comply with that requirement or provides any information that the person knows, or ought to ~~have known~~ know, is false or misleading in any material respect.

(2) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500.

Compare: 2005 No 81 s 60

International controlled delivery of psychoactive substances

75 International controlled delivery of psychoactive substances

(1) An enforcement officer, a constable, a Customs officer, or an officer of a relevant law enforcement agency with which there is an agreement of the kind referred to in **subsection (3)(a)** who is involved in an international controlled delivery—

(a) does not commit an offence under this Act by reason of taking part in the international controlled delivery; and

(b) unless he or she is acting in bad faith, is not subject to any criminal or civil liability as a result of taking part in the international controlled delivery.

(2) **Subsection (1)** does not affect the liability of any person charged with an offence under this Act.

(3) In this section, **international controlled delivery** means allowing a psychoactive substance to pass through or into the territory of 1 or more countries—

(a) with the agreement of the relevant law enforcement agencies of the countries ~~which~~ that the substance is to pass through or into; and

(b) with a view to identifying persons involved in—

(i) the commission of an offence under this Act; or
(ii) an act that would, if done or committed in New Zealand, be an offence under this Act.

Compare: 1978 No 65 s 12D

Liability of principals and directors

75A Liability of principals and directors

(1) If a person (the **agent**) commits an offence against this Act while acting as an agent (including a contractor) or employee of another person (the **principal**), the principal commits the same offence, if it is proved—
(a) that the act that constituted the offence took place with his or her authority, permission, or consent; or
(b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

(2) If a body corporate commits an offence against this Act, every director and every person concerned in the management of the body corporate commits the same offence, if it is proved—
(a) that the act that constituted the offence took place with his or her authority, permission, or consent; or
(b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Compare: 2012 No 118 s 40

Subpart 4—Other powers of Authority

76 Authority may declare recognised authorities

(1) The Authority may, by notice in the *Gazette*, declare a person or body to be a recognised authority—
(a) for a specified purpose under this Act or a provision of this Act; and
(b) for a specified period or not.

(2) Before declaring a person or body to be a recognised authority for a specified purpose under this Act or a provision of this

Act, the Authority must be satisfied that the person or body (whether in New Zealand or overseas)—

(a) makes decisions, or is engaged in an area of work, in respect of psychoactive substances; and

(b) is required, in making those decisions or engaging in that area of work, to assess conformity or compliance with criteria that are equivalent to or more robust than those under this Act.

77 Approved laboratories

(1) The Authority may ~~from time to time~~, by notice in the *Gazette*, approve a laboratory for the purposes of this Act.

(2) An approval under **subsection (1)** may be granted on the terms and conditions (if any) that the Authority thinks fit and that are specified in the notice approving the laboratory.

Compare: 1975 No 116 s 5A

78 Recall orders

(1) The Authority may issue a recall order to the importer, manufacturer, wholesaler, or retailer of an approved product.

(2) On receipt of a recall order, the importer, manufacturer, wholesaler, or retailer of the approved product must—

(a) advise the Authority of the details of the manner in which that person intends to comply with the order; and

(b) advise the Authority in writing when the recall order has been complied with.

(3) An importer, manufacturer, wholesaler, or retailer who fails to comply, in any respect, with a recall order issued under **subsection (1)** or any requirement under **subsection (2)** commits an offence and is liable on conviction,—

(a) in the case of a retailer, to a fine not exceeding $100,000:

(b) in the case of an importer, manufacturer, or wholesaler, to a fine not exceeding $500,000.

(4) In this section, **recall order** means an order directing the recall of an approved product or requiring the destruction of an approved product because the Authority has reasonable grounds

to believe that the approved product poses more than a low risk of harm to individuals using the product.

Compare: 2005 No 81 s 52

79 Export certificates

(1) A person may apply to the Authority for an export certificate in relation to an approved product.

(2) An application for an export certificate must—

(a) be made to the Authority in a form or manner approved by the Authority; and

(b) be accompanied by the prescribed fee (if any).

(3) An export certificate is a written statement that the Authority is satisfied that the approved product poses no more than a low risk of harm to individuals using the approved product.

(4) The Authority may determine the form and content of the export certificate.

(5) The Authority may withdraw the export certificate at any time if the approval of the product is revoked under **section 38** or the Authority is satisfied that—

(a) approval of the product was incorrectly or inappropriately granted; or

(b) events or circumstances occurring since the approval was granted mean that the approval—

(i) no longer applies; or

(ii) is misleading.

(6) An export certificate is not a guarantee that the approved product—

(a) meets any requirements that might apply to such products outside New Zealand:

(b) poses no more than a low risk of harm to individuals using the approved product.

Subpart 4A—Cost recovery

79A Costs to be recovered

The Minister ~~and the Authority~~ must take all reasonable steps to ensure that the direct and indirect costs of administering this Act that are not provided for by money appropriated by

Parliament for the purpose are recovered under this subpart, whether by way of fees, levies, or otherwise.

79B Principles of cost recovery

(1) In determining the most appropriate method of cost recovery under **section 79A**, the Minister ~~and the Authority~~ must, as far as is reasonably practicable, have regard to the following principles:

(a) equity, in that funding for a particular function, power, or service (or a particular class of function, power, or service) should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant functions, powers, or services at a level commensurate with their use of or benefit from the function, power, or service:

(b) efficiency, in that the allocation of costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:

(c) justifiability, in that costs should generally be recovered to meet only the actual and reasonable costs (including indirect costs) of the provision of or exercise of the relevant function, power or service:

(d) transparency, in that costs should generally be identified, and allocated as closely as practicable to, tangible service provision in the recovery period in which the service is provided:

(e) ease of administration, in that the costs of collection should generally be kept as low as possible.

(2) Costs should not be recovered under this subpart unless—

(a) there has been appropriate consultation with persons or organisations that the Authority considers representative of the interests of persons likely to be substantially affected by the exercise of the power; and

(b) the persons involved have been given sufficient time and information to make an informed contribution.

(3) **Subsection (2)** does not require consultation in relation to specific fees or charges, or the specific levels of fees or charges, as long as the fees or charges are set reasonably within the scope of any general consultation.

(4) A failure to comply with **subsection (2)** does not affect the validity of any regulations made for the purposes of this subpart.

(5) This section does not require the strict apportionment of the costs that are to be recovered for a particular function or service based on usage.

(6) Without limiting the way in which fees and charges may be set under this subpart, a fee or charge may be set at a level or in a way that—

(a) is determined by calculations that involve an averaging of costs or potential costs:

(b) takes into account costs or potential costs of services (that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost) arising from the delivery of the service to a class of persons or all persons who use the service.

79C Methods of cost recovery

The methods by which costs may be recovered ~~made~~ under this subpart are as follows:

(a) fixed fees or charges:

(b) fees or charges based on a scale or formula or at a rate determined on a time-unit basis:

(c) ~~the recovery by way of fee or charge of~~ fees or charges based on the actual and reasonable costs expended in, or associated with, the performance of a service or function:

(d) fees or charges based on estimated costs and paid before the provision of the service, followed by reconciliation and an appropriate further payment or refund after the provision of the service or function:

(e) refundable or non-refundable deposits paid before the provision of the service or function:

(f) fees or charges imposed on all users of services, classes of users of services, all beneficiaries of services, or classes of beneficiaries of services:

(g) levies:

(h) any combination of the above.

79D Cost recovery to relate generally to financial year

(1) Except as provided in **subsection (2),** any regulations under this subpart that set a fee, charge, or levy that applies in any financial year—

(a) must have been made before the start of that financial year; but

(b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced.

(2) **Subsection (1)** does not prevent the alteration or setting during any financial year of a fee, charge, or levy payable in that year if ~~either~~—

(a) the fee, charge, or levy is reduced, removed, or restated without substantive alteration; or

(b) in the case of an increase of a fee, charge, or levy or a new fee, charge, or levy,—

(i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the alteration or setting; and

(ii) the Minister is satisfied that those persons, or their representatives, agree or substantially agree with the alteration or setting.

(3) **Subsection (1)** does not prevent the amendment of any regulation setting a fee, charge, or levy if any substantive alteration effected by the amendment is for the purpose of correcting an error.

(4) Recovery may be made in any financial year of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

79E Three-yearly review of cost recovery

(1) The Minister must review the levels and methods of cost recovery in relation to any class of psychoactive substance or approved products, persons, or other matter at least once in every 3-year period occurring since the original setting of, or latest change to, the cost recovery of those things.

(2) The Minister must ensure that appropriate consultation takes place in relation to any such review.

(3) A review may make provision for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years, or make allowance for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

(4) **Subsection (1)** does not—

(a) require all areas of cost recovery to be reviewed at the same time:

(b) impose any time limit on the making of regulations to implement the results of a review.

79F Regulations prescribing fees and charges

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations ~~prescribing—~~ providing for the payment of fees or charges.

~~(a) fees or charges of a kind or kinds described in **section 79C(a) to (f)**:~~

~~(b) the persons liable for the payment of the fees or charges:~~

~~(c) the persons or class of persons, if any, exempt from paying the fees or charges.~~

(1A) The regulations may—

(a) prescribe fees or charges of a kind or kinds described in **section 79C(a) to (f)**:

(b) specify the persons liable for the payment of the fees or charges:

(c) exempt any person or classes of persons from paying the fees or charges:

(d) provide for waivers or refunds of the whole or any part of fees or charges.

(2) If an exemption is provided under **subsection ~~(1)(c)~~ (1A)(c)**, the reasons for it must be set out in the ~~regulations' explanatory note~~ explanatory note of the regulations.

79G Regulations imposing levies

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the payment of a levy.

(2) The regulations may—

(a) prescribe different levies for different classes of persons:

(b) specify the amount of the levy:

(c) provide for the method by which the levy will be calculated:

(d) specify the criteria and other requirements by and against which the levy will be set or reset:

(e) provide for the payment and collection of the levy:

(f) exempt any person or ~~class or~~ classes of persons from paying the levy:

(g) provide for waivers or refunds of the whole or any part of the levy:

(h) provide for any other matters necessary or desirable to set, calculate, administer, collect, and enforce the levy.

(3) If an exemption is provided under **subsection (2)(f)**, the reasons for it must be set out in the ~~regulations' explanatory note~~ explanatory note of the regulations.

79H Failure to pay fee, charge, or levy

(1) This section applies if a fee, charge, or levy imposed by regulations made under **section 79F or 79G** is wholly or partly unpaid 20 working days after a request for payment.

(2) The Authority may recover ~~a~~ the fee, charge, or levy from a person responsible for paying it as a debt due in a court of competent jurisdiction.

Subpart 5—Other matters

Duty to notify adverse reactions

80 Duty of specified persons to notify Authority about adverse reactions

(1) A person specified in **subsection (2)** must, as soon as is reasonably practicable, notify the Authority if the person becomes aware of any adverse reaction arising from the use of a psy-

choactive substance or an approved product by any individual (whether in New Zealand or overseas).

(2) The persons are—

(a) a person who holds a licence in respect of the psychoactive substance:

(b) the person who applied for approval of the approved product under **section 31**.

(3) A notification under **subsection (1)** must include—

(aa) the name of the psychoactive substance or approved product as far as it is known to the person; and

(a) the nature of the adverse reaction as far as it is known to the person; and

(b) the circumstances in which the adverse reaction arose as far as they are known to the person.

(4) A person who contravenes **subsection (1)** commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.

~~(5) A person who commits an offence against **subsection (1)** is liable on conviction to a term of imprisonment not exceeding 3 months or a fine not exceeding $500,000, or both.~~

Regulations

81 Regulations relating to psychoactive substances

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations declaring, by name or description,—

(a) a substance, mixture, preparation, article, device, or thing to be or not to be a psychoactive substance for the purposes of this Act:

(b) any kinds or class of substances, mixtures, preparations, articles, devices, or things to be or not to be psychoactive substances for the purposes of this Act.

(2) Before making a recommendation under **subsection (1)**, the Minister must—

(a) be satisfied that the proposed regulations are reasonably necessary for achieving the purpose of this Act; and

(ab) seek, and have regard to, the advice of the advisory committee in respect of the proposed regulations; and

(b) consult ~~with~~ any person or organisation that the Minister considers to be representative of the interests of persons likely to be substantially affected by the proposed regulations.

82 Regulations relating to infringement offences

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

(a) prescribing the infringement fees payable for infringement offences:

(b) prescribing the form of infringement notices and reminder notices for infringement offences and any other particulars to be contained in an infringement notice and reminder notice.

83 Other regulations

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

Applications for licences and ~~approval~~ approvals

(a) prescribing, in relation to an application for a licence or approval of a psychoactive product,—

(i) any particulars, information, documents, samples, or other material that must accompany or be contained in the application:

(ii) any matter that the Authority must take into account when deciding the application:

Place-of-sale restrictions or prohibitions

(b) prescribing restrictions or prohibitions, or both, on the places or premises from which approved products may be sold:

Internet sales restrictions or requirements

(c) prescribing restrictions and requirements relating to the location, manner, way, medium, or form in which approved products are offered ~~for~~ by Internet sale, for example,—

(i) restricting the offer of approved products on Internet sites that contain material that is designed in ~~such a manner, way, medium, or form to appeal, or be likely to appeal, to minors~~ a manner or way, or using a medium or form, so as to particularly appeal, or to be likely to particularly appeal, to minors:

(ii) requiring that certain information, such as the appropriate health warning relating to the product, be visible on the Internet site when people browse, enter, or otherwise access the site:

(iii) requiring prescribed measures to be taken to ensure that minors cannot enter, browse, or otherwise access the Internet site:

Advertising restrictions or requirements

(d) prescribing restrictions or requirements relating to the manner, way, medium, or form in which approved products are advertised:

Labelling restrictions or requirements

(e) prescribing restrictions or requirements relating to the manner, way, medium, and form in which approved products are labelled, for example,—

(i) restrictions relating to labelling designed to ~~appeal~~ be particularly appealing to minors:

(ia) requirements that labelling for an approved product comply with any prescribed requirements (such as requirements relating to plain packaging):

(ii) requirements relating to the labelling of approved products that must appear on an approved product for the purposes of sale, for example, a requirement that the inner and outer packages for approved products both carry labels specifying certain prescribed information:

Packaging restrictions or requirements

(f) prescribing restrictions or requirements relating to the size and type of packaging for approved products for the

purpose of sale, for example, that the packaging must be tamper-proof or child-proof:

(g) prescribing restrictions or requirements relating to—

(i) the type of material and the medium or form of the material that may be inserted in packages that contain approved products for the purpose of sale, for example, restrictions relating to the inclusion of written material of a certain kind (such as material that associates approved products with youth culture):

(ii) the content of any material required to be inserted in packages that contain approved products for the purpose of sale, for example, a requirement that certain material be inserted in the package (such as information leaflets about contraindications for use of the approved product):

(iii) the material and the medium or form of the material that is to be inserted in packages that contain approved products for the purpose of sale, for example, a requirement that material be presented in a certain way (such as a requirement for material to be printed in a certain size or manner):

Health warnings

(h) prescribing, for the purposes of **section 56(1A)**, the information that must be specified or included in the health warning for an approved product:

(ha) prescribing requirements ~~as~~ relating to the manner, way, medium, or form in which health warnings must appear on the label for the product or must appear in an advertisement relating to the approved product:

Signage requirements

(i) prescribing requirements—

(i) relating to signage that is to be displayed when approved products are sold:

(ii) ~~as~~ relating to the manner, way, medium, and form in which signage, if required, is to be displayed when approved products are sold, for example, a requirement that a person selling an approved product display a sign of a particular size stating

that the approved product may not be sold to a person under the age of 18 years or stating a recommended maximum dosage:

Quantity, dosage, form, and serving restrictions or requirements

(j) prescribing restrictions or requirements relating to—

(i) the quantity or form of approved products that may be sold together at any one time:

(ii) the maximum dosage or serving of an approved product that may be sold at any one time:

Storage, display, and disposal restrictions or requirements

(k) prescribing restrictions or requirements relating to—

(i) the storage of psychoactive substances, for example, a restriction on the maximum amount of any psychoactive substance that may be stored in any premises at any one time or a requirement that the psychoactive substance must be stored at or below a certain temperature:

(ii) the manner of disposal of psychoactive substances:

(iii) the storage of approved products for the purposes of sale, for example, a restriction on the maximum amount of any approved product that may be stored in any premises at any one time or a requirement that sellers of an approved product must store it at or below a certain temperature:

(iv) the display of approved products inside retail premises for the purposes of sale, for example, restrictions on approved products being displayed in any particular place or a requirement that approved products not be visible from the street:

Prescribing telephone service ~~or monitoring agency~~

(ka) prescribing ~~any~~ a telephone service for the purposes of **section 54(2)(d)**:

~~(kb) prescribing a monitoring agency for the purposes of **section 80A**:~~

Confidential supporting information

(kb) prescribing the persons or organisations or class of persons or organisations to whom the Authority may disclose confidential supporting information under **section 34(3)**:

Procedure

(n) prescribing the procedure of the advisory committee and the appeals committee:

Record-keeping requirements

(o) prescribing requirements for specified persons to keep records under this Act and the period of time for which those records must be retained:

General

(p) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Before making a recommendation under **subsection (1)**, the Minister must consult ~~with~~ any person or organisation that the Minister considers to be representative of the interests of persons likely to be substantially affected by the proposed regulations.

(3) Regulations made under this section may—

(a) apply to psychoactive substances or approved products generally or to ~~a~~ any particular psychoactive substance or approved product or any class or description of psychoactive substances or approved products specified or described in the regulations:

(b) apply differently to different classes or descriptions of psychoactive substances or approved products, or on any other differential basis.

Compare: 2005 No 81 s 62

Delegation of Authority's functions, duties, or powers

84 Delegation of Authority's functions, duties, or powers

(1) The Authority may, as the Authority thinks fit, delegate to any person any of the Authority's functions, duties, or powers under this Act.

(2) A delegation under **subsection (1)**—
- (a) may be made subject to any terms or conditions that the Authority thinks fit:
- (b) may be made generally or in any particular case:
- (c) does not prevent the Authority from exercising any power or performing any function or duty:
- (d) does not affect the responsibility of the Authority for the actions of any person acting under a delegation:
- (e) may be revoked at any time by notice to the delegate.

(3) A person to whom any functions, duties, or powers are delegated under **subsection (1)**—
- (a) may, with the prior written consent of the Authority, delegate those functions, duties, or powers to any other person:
- (b) may, subject to any terms or conditions, carry out or exercise those functions, duties, or powers in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(4) A person purporting to act under any delegation under **subsection (1)** is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Protection from civil and criminal liability

84A Immunities

(1) This section applies to the following:
- (a) the Authority:
- (b) a member of the advisory committee:
- (c) a member of the appeals committee.

(2) The person is protected from civil and criminal liability for any act that the person does or omits to do in the carrying out or intended carrying out of the person's functions or duties or the exercise or intended exercise of the person's powers under this Act~~,~~ and that is done—
- (a) in good faith; and
- (b) with reasonable cause.

Relationship with other enactments

85 Relationship with Hazardous Substances and New Organisms Act 1996

(1) This section applies to a psychoactive substance that is also a hazardous substance within the meaning of the Hazardous Substances and New Organisms Act 1996 (the **HSNO Act**).

(2) Nothing in this Act affects the application of the HSNO Act in relation to the psychoactive substance.

(3) However, in the event of any inconsistency—

(a) between the provisions of this Act and the provisions of the HSNO Act, the provisions of this Act prevail:

(b) between the provisions of regulations made under this Act and the provisions of regulations made under the HSNO Act, the provisions of regulations made under this Act prevail.

Compare: 1981 No 118 ss 5A, 110

86 Application of Customs and Excise Act 1996

The provisions of the Customs and Excise Act 1996, except section 209 of that Act, apply to a psychoactive substance that is not an approved product (or part of an approved product) as if it were prohibited goods under that Act, unless the person importing the psychoactive substance—

(a) holds a licence to import psychoactive substances; and

(b) has notified the Authority of the importation in accordance with **section 16(1)**.

Review of Act

87 Ministry must review Act

(1) The Ministry must, no later than 5 years after the commencement of this Act,—

(a) conduct a review of the policy and operation of this Act; and

(b) prepare for the Minister a report on the review.

(2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

~~Transitional provision~~ Application, savings, and transitional provisions

88 ~~Transitional provision~~ Application, savings, and transitional provisions

The ~~transitional provision~~ application, savings, and transitional provisions set out in **Schedule 1** ~~has~~ have effect for the purposes of this Act.

Amendments to Search and Surveillance Act 2012

89 Amendments to Search and Surveillance Act 2012

(1) This section amends the Search and Surveillance Act 2012.

(2) In section 45(1)(b), after "Arms Act 1983", insert "; or".

(3) After section 45(1)(b), insert:

"(c) against **section 24, 25, or 62** of the Psychoactive Substances Act **2013**."

(4) In section 45(2)(b), after "Arms Act 1983", insert "; or".

(5) After section 45(2)(b), insert:

"(c) against **section 24, 25, or 62** of the Psychoactive Substances Act **2013**."

Amendments to Children, Young Persons, and Their Families Act 1989

90 Amendments to Children, Young Persons, and Their Families Act 1989

(1) This section amends the Children, Young Persons, and Their Families Act 1989.

(2) After section 272(3)(b), insert:

"(ba) an infringement offence against the Psychoactive Substances Act **2013**; or".

(3) In section 272(5), replace "subsection (3)(c), where a young person is charged with" with "subsection (3)(ba) or 3(c), where a young person is charged with an infringement offence referred to in subsection 3(ba) or".

Consequential amendments and revocation

91 Consequential amendments and revocation

(1) Amend ~~or revoke~~ the enactments specified in **Parts 1 and 2 of Schedule 2** as set out in that schedule.

(2) The regulations specified in **Part 3 of Schedule 2** are revoked.

Schedule 1 ss 5(2), 88

Transitional provision

1 Transitional provision for products sold before commencement of Act

(1) This clause applies to a psychoactive product that was lawfully being sold throughout the period of 3 months before the commencement of this Act.

(2) The psychoactive product may continue to be sold after the commencement of this Act only if,—

(a) within 30 days after that commencement, an application is made to the Authority under **section 31** for the approval of the product; and

(b) the Authority accepts the application.

(2A) A person may continue to sell the psychoactive product by retail only if,—

(a) within 30 days after that commencement, the person applies to the Authority under **section 12** for a licence to sell approved products by retail; and

(b) the Authority accepts the application.

(2B) **Subpart 1 of Part 3** applies to a psychoactive product that may continue to be sold under this clause as if it were an approved product.

(3) The Authority may, at any time, if it is satisfied that the continued sale of the psychoactive product poses more than a low risk of harm to individuals using the product, recall a product to which this clause applies under **section 78** as if it were an approved product, and that section applies with any necessary modifications to the recall of the product.

(4) To avoid doubt, this clause does not authorise the sale of psychoactive product for which an approval—

(a) is granted under **section 35**; or

(b) is refused under **section 37**.

Schedule 1

ss 5(2), 88

Application, savings, and transitional provisions

1 Interpretation

In this schedule,—

full application means,—

(a) in respect of a psychoactive product granted interim approval, an application made under **section 31** by the person who applied for interim approval of the product:

(b) in respect of an activity to which an interim licence relates, an application made under **section 12** by the person who was granted the interim licence

interim approval means an approval of a psychoactive product granted by the Authority under **clause 4**

interim licence means a licence granted by the Authority under **clause 8**.

2 Transitional arrangement for psychoactive substances or psychoactive products lawfully imported, manufactured, researched, or sold before commencement of Act

(1) This schedule applies to a psychoactive substance or psychoactive product that was lawfully being imported, manufactured, researched, or sold throughout the period of 3 months immediately before the commencement of this Act.

(2) The psychoactive substance or psychoactive product may continue to be imported, manufactured, researched, or sold after the commencement of this Act, but only,—

(a) in the case of the sale of a psychoactive product, if the Authority has granted an interim approval in respect of the product; and

(b) by a person who holds an interim licence while that licence remains in force.

Interim approval of psychoactive products

3 Application for interim approval of psychoactive product

(1) A person who is a New Zealand resident may, within 28 days after the commencement of this Act, apply for the interim ap-

proval of a psychoactive product to which this schedule applies.

(2) An application under **subclause (1)** must—

(a) be made in a form or manner approved by the Authority; and

(b) contain the following information:

(i) the full name and address (including an electronic address, if available) of the person; and

(ii) the physical address of the premises from which the psychoactive product was manufactured; and

(c) be accompanied by—

(i) the information specified in **subclause (3)** and

(ii) the appropriate fee payable for an application for an interim approval specified in **clause 10**.

(3) For the purposes of **subclause (2)(c)(i)**, the information is—

(a) a statutory declaration made by the applicant stating that the psychoactive product to which the application relates has been lawfully sold in New Zealand throughout the period of 3 months immediately before the commencement of this Act; and

(b) any other information that the Authority reasonably requires and that is notified in writing to the applicant.

(4) The Authority may, as the Authority thinks fit, waive the fee payable for an application for an interim approval of a psychoactive product, in whole or in part, in any particular case or class of cases.

4 Grant of interim approval

Subparts 2 and 3 of Part 2 (except **sections 31 and 35(a)(i)**) apply, with any necessary modifications, to an application for interim approval as if it were an application made under **section 31**.

5 Control of pychoactive products granted interim approval

Part 3 applies, with any necessary modifications, to a psychoactive product granted interim approval as if it were an approved product.

6 Duration of interim approval

(1) This clause applies to a psychoactive product granted interim approval by the Authority under **clause 4**.

(2) Within 28 days after the date on which regulations made under **sections 79F and 83(1)(a)** come into force, the person who applied for an interim approval of the psychoactive product must notify the Authority in writing that the person—

(a) does not wish to make a full application in respect of the product; or

(b) wishes to make a full application in respect of the product.

(3) If **subclause (2)(a)** applies, the interim approval of the product is deemed to be revoked on the date on which the Authority receives that notification.

(4) If **subclause (2)(b)** applies, the person must submit the full application to the Authority—

(a) as soon as practicable after the date on which regulations made under **sections 79F and 83(1)(a)** come into force; and

(b) no later than 18 months after those regulations come into force or any longer period that the Authority may allow in the circumstances.

(5) If the person submits a full application in accordance with **subclause (4)**, the interim approval granted in respect of the psychoactive product continues in force until the date on which the full application is determined under this Act, and the interim approval is then deemed to be revoked.

(6) For the purposes of **subclause (4)**, the Authority may, on any 1 or more occasions, require the person to provide any relevant information that the Authority requires in order to establish whether that person is taking reasonable steps to submit a full application.

(7) If, after considering any information provided under **subclause (6)**, the Authority is not satisfied that the person is taking reasonable steps to submit a full application within the period specified in **subclause (4)**, the Authority must revoke the interim approval granted in respect of the psychoactive product.

Interim licences

7 Application for interim licence

(1) A person who is a New Zealand resident may, within 28 days after the commencement of this Act, apply to the Authority for 1 or more of the following interim licences:

(a) an interim licence to import psychoactive substances:

(b) an interim licence to manufacture psychoactive substances:

(c) an interim licence to research psychoactive substances:

(d) an interim licence to sell psychoactive substances:

(e) an interim licence to sell a pychoactive product granted interim approval by retail:

(f) an interim licence to sell a pychoactive product granted interim approval by wholesale.

(2) An application under **subclause (1)** must—

(a) be made in a form or manner approved by the Authority; and

(b) contain the following information:

(i) the full name and address (including an electronic address, if available) of the person; and

(ii) the physical address of the premises to which the application relates, if applicable; and

(c) be accompanied by—

(i) the information specified in **subclause (3)**; and

(ii) the appropriate fee payable for an application for an interim licence specified in **clause 10**.

(3) For the purposes of **subclause (2)(c)(i),** the information is—

(a) a statutory declaration made by the applicant stating that the applicant—

(i) was, during the period of not less than 28 days immediately before the commencement of this Act, in the business of importing, manufacturing, researching, or selling psychoactive substances or products to which this schedule applies; and

(ii) is aware of any conditions or other requirements pertaining to the licence and agrees to comply with them; and

(b) written consent of the applicant for the Authority to access any personal information about the applicant rele-

vant to the application, including (without limitation) any Police records; and

(c) any other information that the Authority reasonably requires and that is notified in writing to the applicant.

(4) The Authority may, as the Authority thinks fit, waive the fee payable for an application for an interim licence, in whole or in part, in any particular case or class of cases.

8 Grant of interim licence

Subparts 1 and 3 of Part 2 (except **sections 12 and 15(1)(a)**) apply, with any necessary modifications, to an application for an interim licence as if it were an application made under **section 12**.

9 Duration of interim licence

(1) An interim licence granted under **clause 8** is deemed to be cancelled 28 days after the date on which regulations made under **sections 79F and 83(1)(a)** come into force unless, within that period, the holder of the interim licence makes a full application under **section 12** for a licence to carry out the activity to which the interim licence relates.

(2) If the holder of the interim licence complies with **subclause (1)**, the interim licence continues in force until the date on which the full application under **section 12** is determined under this Act, and the interim licence is then deemed to be cancelled.

Fees

10 Fees payable for interim approval or interim licence

The fee payable for an application for interim approval or an application for an interim licence is the fee specified in the second column of the following table opposite the approval or licence specified in the first column:

Interim approval or interim licence	Fee ($) (including GST)
Interim approval of psychoactive product	10,000
Interim licence to import psychoactive substances	500

Interim approval or interim licence	Fee ($) (including GST)
Interim licence to manufacture psychoactive substances	500
Interim licence to research psychoactive substances	500
Interim licence to sell psychoactive substances that are not approved products	500
Interim licence to sell psychoactive products granted interim approval by retail	500
Interim licence to sell psychoactive products granted interim approval by wholesale	500

Schedule 2 s 91
Consequential amendments and revocation

Part 1
Amendments to Acts

Corrections Act 2004 (2004 No 50)

Repeal section 23(3)(c).

Misuse of Drugs Act 1975 (1975 No 116)

In section 2(1), repeal the definitions of **temporary class drug** and **temporary class drug notice**.

In section 2(1), definition of **controlled drug analogue**, paragraph (b), after "Medicines Act 1981", insert "; or".

In section 2(1), definition of **controlled drug analogue**, after paragraph (b), insert:

"(c) an approved product within the meaning of the Psychoactive Substances Act **2013**".

Repeal sections 4C to 4E.

Misuse of Drugs Amendment Act 2005 (2005 No 81)

Repeal Part 3.

Repeal Schedule 4.

Ombudsmen Act 1975 (1975 No 9)

In ~~the Schedule~~ Schedule 2, Part 2, insert in their appropriate alphabetical order "Psychoactive Substances Expert Advisory Committee" and "Psychoactive Substances Appeals Committee".

Part 1—*continued*

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

Psychoactive Substances Act **2013**	**69**	Constable may enter and search a place (except private premises), vehicle, or other thing without a warrant to search for evidence of offences against Psychoactive Substances Act **2013**	All (except subpart 3)
~~Psychoactive Substances Act **2013**~~	**70**	Enforcement officer or constable may obtain and execute search warrant to search for evidence of offences against Psychoactive Substances Act **2013**	All (except sections 118 and 119 apply to constables only)

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, ~~insert~~ after paragraph (j), insert:

"(ja) **section 66** of the Psychoactive Substances Act **2013**; or".

Part 2
Amendments to regulations

Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 (SR 2001/112)

Replace regulation 4(2) with:

"(2) This regulation is subject to regulations 5, 6, and **6A**."

After regulation 6, insert:

"**6A Psychoactive substances**

"(1) A psychoactive substance is not hazardous for the purposes of the Act if—

"(a) the substance is an approved product; or

"(b) the substance—

"(i) meets the minimum degree of hazard specified in clause 2(1)(s) of Schedule 4; and

Part 2—*continued*

Hazardous Substances (Minimum Degrees of Hazard) Regulations 2001 (SR 2001/112)—*continued*

"(ii) only meets the minimum degree of hazard specified in clause 2(1)(s) of Schedule 4 because of its psychoactive properties; and

"(iii) does not meet any other minimum degree of hazard of the intrinsic hazardous substance properties specified in regulation 7.

"(2) In this regulation,—

"**approved product** has the same meaning as in **section 8** of the Psychoactive Substances Act **2013**

"**psychoactive substance** has the same meaning as in **section 9** of the Psychoactive Substances Act **2013**."

Part 3
Regulations revoked

Misuse of Drugs (Restricted Substances) Regulations 2008 (SR 2008/373)

~~Revoke.~~

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