Misuse of Drugs Amendment Bill (No 4)

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Misuse of Drugs Amendment Bill (No 4) and recommends that it be passed with the amendments shown.

Introduction

The Misuse of Drugs Amendment Bill (No 4) (the bill) makes miscellaneous amendments to the Misuse of Drugs Act 1975 (the Act). Principally the bill as originally introduced:

- provides for the expeditious classification of controlled drugs before the drugs become established in the New Zealand market and puts in place procedural safeguards to ensure appropriate parliamentary and public scrutiny of such classification
- creates a basis for the future classification of drugs
- creates a presumption that possession of 5 grams, or 100 flakes or other form, of the drugs MDMA (commonly known as Ecstasy), MDEA or MDA is possession for supply
- provides a defence for travellers coming into or leaving New Zealand with controlled drugs that have been prescribed to treat their medical condition

Price Code: J

- provides that conditions can be imposed on medical practitioners who are approved to prescribe controlled drugs to treat dependence.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Rapid classification of new drugs

A rapid means to schedule new drugs and reclassify existing drugs is required to bring the Act into line with developments in the manufacture and supply of illicit drugs. The illicit drug market has become more sophisticated in recent years. The chemical structures of "designer drugs" can often be easily manipulated. Modifying the chemical structure of a prohibited substance in a subtle way can create a new synthetic psychoactive drug that would not generally be covered by existing legislation. Currently, to add such a substance to the list of banned substances contained in the schedules to the Act requires the full legislative process for amending an Act to be undertaken (except with Class C drugs). This can often be a lengthy process, hampering the Government's ability to respond quickly to emerging drug threats. Submissions on the bill that addressed this issue were generally supportive of moves to allow a more rapid classification mechanism. The intent of this process is to minimise the harm done by drugs, in the interests of public safety. Without this process significant harm can occur to individuals and the community through the establishment of harmful drugs within in the New Zealand community.

Amendment procedure proposed in the original bill

The original bill proposed that the current schedules listing Class A, B and C drugs be removed from the Act and placed in regulations. New drugs would become classified and existing controlled drugs reclassified by regulation rather than legislative amendment.

The bill would put in place a special procedure requiring that such regulations cannot come into force unless the House of Representatives approves them by resolution. Such a resolution cannot be made until at least 28 days after the date on which notice that the regulations have been made is given in the *Gazette*. The regulations lapse if the resolution is defeated or if a resolution is not made within one year of making the regulations. If approved by the House, the Governor-General may, by Order in Council, make a commencement order bringing the regulations into force.

Regulations Review Committee concerns

The Regulations Review Committee raised what, in its view, were serious concerns about the amendment procedure in the bill in a report to us under Standing Order 381(3). The committee's primary concern is that the bill offends the long-established principle that matters of policy and substance should be dealt with by Act of Parliament, while regulations should be confined to dealing with matters of technical detail necessary to implement the policy contained in the principal Act. The severity of any offence committed under the Act is in effect determined by whether the drug in question is listed in the First, Second or Third Schedule. By moving the schedules into regulations, the bill would allow regulations to define the magnitude of an offence committed under the principal Act.

We accept the Regulations Review Committee's concerns that this is a bill that allows, in effect, the Executive to create new offences by introducing new drugs into the schedules and to significantly change the nature of an offence by moving drugs between the schedules. The nature of the offences and penalties available at sentencing under the Act depend on the classification of the drug in question. A person convicted of dealing in controlled drugs is liable to the following penalties depending on the drug in question:

- Class A: life imprisonment
- Class B: up to 14 years' imprisonment
- in any other case: up to eight years' imprisonment.

Furthermore the Act enables a person suspected of concealing Class A or B drugs to be detained indefinitely.

However, we also recognise that there is a significant technical component in deciding the classification level at which a drug should be scheduled. Given the need to balance the demand for both expeditious classification, and the procedural concerns expressed by the Regulations Review Committee, we have determined that the expeditious classification mechanism needs to be accompanied by significant procedural safeguards. We therefore recommend that the bill be amended to enact an alternative procedure, detailed below, to allow for the expeditious classification and reclassification of controlled drugs. As an additional measure we are also recommending a statutory committee be established to provide expert advice on drug classification.

Alternative procedure recommended by the committee: amend schedules by Order in Council

Under this procedure, the schedules listing controlled drugs would be retained in the Act, and the Act would provide that the Governor-General may amend those schedules by Order in Council. However, parliamentary approval would be required before any such regulation comes into force. This procedure, which provides for much greater parliamentary scrutiny of proposed regulations than is normally the case, essentially follows the procedure as set out in the bill. The main difference is that the schedules would remain in the Act. As the bill currently provides, 28 days would have to elapse between the giving of notice that the regulations have been made in the *Gazette* and the moving of the motion.

The major advantage of this approach is that it is consistent with the constitutional convention that matters of policy and substance should be dealt with in primary legislation. We note that it also has several precedents. [1] Sections 5 to 10 of the Regulations (Disallowance) Act 1989 would not apply to regulations made under this procedure, but the Regulations Review Committee would have the opportunity to scrutinise the Orders in Council under Standing Order 382 (2). This scrutiny provides an additional check on the regulations being made.

While we accept that the most desirable and appropriate way to amend an Act of Parliament is by way of an amendment bill, we consider the approach we are recommending in this specific instance is justified. We consider it is vital that authorities are able to act rapidly in order to respond appropriately to dangerous and potentially harmful drugs.

Select committee scrutiny of Order in Council

As an additional procedural safeguard we recommend that the House adopt procedures to allow for select committee scrutiny of any Order in Council made under this procedure. This step is in addition to the requirement that the House approve the regulation by resolution. This would allow a committee of the House to substantively consider any proposed regulation. Such consideration would be unconstrained as far as policy is concerned. The process by which a committee examines any such regulation should be set out in Standing Orders, not in the legislation.

[1] See, for example, section 11 of the Tariff Act 1988 and section 80 of the Customs Act 1996.

Select committee examination of the proposed regulations is important as it would allow for public participation in the process. The committee's report to the House would also be valuable in informing the debate on the motion.

The appropriate committee to undertake the examination of such Orders in Council is the Health Committee. We recommend that the House adopt the following Sessional Orders to take effect as soon as the bill comes into force:

1) Any notice of motion to approve an Order in Council made under section 4(1) of the Misuse of Drugs Act 1975 stands referred to the Health Committee for examination.
2) The Health Committee must report to the House on any such notice of motion within 28 days of the notice of motion being lodged.
3) No motion to approve an Order in Council made under section 4(1) of the Misuse of Drugs Act 1975 can be moved until either the Health Committee has reported to the House on the notice of motion or 28 days have elapsed since the notice of motion was lodged, whichever is earlier.

We would not support the bill's enactment unless such Sessional Orders are adopted.

We therefore recommend that consideration be given to incorporating this Sessional Order into the Standing Orders when they are next reviewed.

Future basis for classification of drugs

Currently the Act provides no definition to give a basis for the difference between Class A, B and C drugs as listed in the schedules. To give a more robust basis for differentiation, the bill proposes that drugs be classified according to the risk of harm to individuals or society by their misuse. Accordingly, drugs posing a very high risk of harm would be classified Class A, those posing a high risk of harm would be classified Class B and those posing a moderate risk of harm would be classified Class C. Future drug classification decisions would be taken based on broad criteria regarding risk of harm and on more detailed criteria listed in clause 4B.

Expert advisory committee should be established

We understand that when the bill was being developed the Ministry of Health considered that an expert advisory committee should be formed to advise the Minister on the classification of drugs. We support the formation of such a committee and consider it should be established in statute and have its membership and functions clearly

defined. We consider a statutory committee would have a higher public profile and be more independent and objective than the *ad hoc* committee originally intended. We agree with the submission of the New Zealand Drug Foundation that a statutory committee is required to provide the Minister with stable and reliable advice on the classification of drugs. We also concur with submitters who recommend that any expert committee have a member representing the views of consumers of drug treatment services.

We recommend that the bill be amended to place an obligation on the Minister to establish an expert advisory committee to provide advice on drug classification matters and that the bill clearly set out the functions and composition of the committee. We consider that the primary objective of this committee should be to carry out medical and scientific evaluations of new and existing narcotic drugs and psychotropic substances, and to make recommendations to the Minister concerning the classification of these drugs. Additionally, however, we consider the advisory committee should have a role in increasing public awareness of its work. This can be achieved by requiring the committee make publicly available its reports and recommendations. In addition we would expect the Expert Advisory Committee to make its reports available to the Health Committee and to report annually on its activities through the Ministry of Health's annual report.

A balanced membership on the expert committee is also needed to ensure its recommendations are properly considered and objective. We consider that in addition to officials with expertise in public health, pharmaceuticals, law enforcement and border control, individuals with expertise in pharmacology, toxicology, drug and alcohol treatment, psychology and community medicine should be included. We recommend that the bill be amended accordingly.

Presumption of possession for supply

The concept of a presumption of possession for supply

Currently the Act provides that where the Crown proves that a person possesses more than a certain quantity of a drug, that possession is for the purpose of supply. It is then for the defendant to prove, on the balance of probabilities that he or she is in possession of the drug for purposes other than to supply it to others. The threshold for presumption of supply is set at a level where it is clear that possession of that quantity is almost certainly for the purposes of supply. As there is a substantial difference between the potential sentence

and length of any incarceration for possession and for possession for supply, the presumption has major consequences.

Specifying the threshold for Ecstasy and related drugs

This bill amends the Act to specify that where a defendant is proved to be in possession of five grams or 100 flakes, tablets or other forms of Ecstasy or related drugs, he or she is deemed to be possessing the drugs for supply. The Act already contains similar presumptions for supply of other drugs. For example, the threshold for presumption of supply of heroin and cocaine is set at half a gram, where as for lysergide (LSD) it is set at 2.5 grams or 25 or more flakes or tablets. In addition there is general presumption that possession of 56 grams of any other controlled drug is for the purpose of supply. While this provides a default threshold for the presumption of supply, with Ecstasy it is a very high threshold. One hundred tablets are equivalent to 100 active doses of the drug. Ecstasy is not usually taken daily and is usually associated with events. The retail value of Ecstasy is between $80 and $100 a tablet. On this basis possession of 100 tablets indicates an investment of between $8,000 and $10,000.

Compliance with the New Zealand Bill of Rights Act 1990

A provision that requires an accused person to disprove on the balance of probabilities the existence of a presumed fact, where that fact is an important element of the offence in question, violates the presumption of innocence guaranteed by section 25(c) of the New Zealand Bill of Rights Act 1990. In assessing whether the limitation to this fundamental right is justified, the Crown Law Office considered the reasonableness of the limit to determine the appropriate balance between the seriousness of the intrusion on the rights guaranteed under the Bill of Rights Act and the social objectives served by the intrusion. Crown Law considered that where the fact at issue is one that is clearly within the capacity of the accused person to prove but would be very difficult for the Crown to prove or disprove, a reverse onus of proof provision may be justified. Crown Law believes that such a presumption is acceptable if the quantity of proved possession that triggers the presumption of possession for the purposes of supply is so high as to make the risk of conviction of a person who did not possess the drug for supply negligible.

Initially the Ministry of Health proposed the presumption for supply of Ecstasy be set at 2.5 grams or 25 tablets. This assessment was supported by technical advice from the Institute of Environmental

Science and Research and the New Zealand Police and Customs Services. This would have also achieved parity with LSD, a drug that is seen as having comparable effects. In light of concerns raised by the Crown Law Office the presumption for supply was increased. We considered carefully whether to recommend the Ministry of Health's original threshold be adopted. We were particularly concerned that the process involved in determining the threshold had neither sufficient rigour nor technical input. We concluded that the threshold of five grams or 100 tablets should be adopted as an interim position. However, we believe that this case highlights the need for matters relating to the threshold for presumption of supply to be considered by the Expert Advisory Committee on Drugs that we have recommended be established. We recommend that, when established, the Expert Advisory Committee review current presumptions from a technical perspective and advise the Minister of a consistent, reasonable and fair approach for all classified substances. As part of ongoing policy work, the Minister of Health should consider whether existing arrangements for establishing presumption of supply limits should be reviewed. We are very concerned that, through use of laboratory technology, drug manufacturers are able to easily circumvent the law. This matter should be investigated and, if this is the case, the Minister should look at expediting the process for setting presumptions of supply.

Defence for travellers

In January 1999 the Misuse of Drugs Act was amended, in accordance with the 1971 United Nations Convention on Psychotropic Substances, to make benzodiazepines a Class C controlled drug. At the same time an interim provision was made to allow travellers carrying legally prescribed benzodiazepines to avoid prosecution. This interim provision allowed two years for the Act to be amended to provide a statutory defence for travellers in possession of legally prescribed controlled drugs. Clause 8 of this bill provides for such a defence. While the committee supports this provision it agrees with the submission of the Pharmaceutical Society of New Zealand that the words "or designated provider" be added to clause 8(2)(1)(i) and 8(2)(1)(ii). Currently clause 8 only provides a defence where the controlled drug was prescribed or supplied by a medical practitioner or dentist. In 1999 the Medicines Act 1981 was amended to allow

prescribing rights to be extended, by way of regulation, to "designated prescribers." We recommend that clause 8 be amended to reflect these changes to the Medicines Act.

Minor technical amendment

The Ministry is seeking one minor technical amendment to the bill which, while we support, we believe highlights the benefits of the proposed new process. In Part II of the Third Schedule there is an incorrect reference to Dihydrocodeine. The phrase under Dihydrocodeine ends "other than a preparation or mixture named or described in Part IV of this Schedule". The reference should be to Part VI. As the bill originally proposed to remove the schedules from the Act this amendment was not previously included. As we are recommending that the schedules remain part of the Act, we support this amendment. It is envisaged that the new procedure for expeditious classification will obviate the need for such amendments in the future.

Appendix

Committee process

The Misuse of Drugs Amendment Bill (No 4) was referred to the committee on 5 October 1999. The closing date for submissions was 29 February 2000. We received and considered 12 submissions from interested groups and individuals. We heard six submissions orally. Hearing evidence took one hour and forty-five minutes. Consideration took six hours and 30 minutes.

We received advice from the Ministry of Health. The Regulations Review Committee reported to the committee on the powers contained in the provisions in the bill relating to the expeditious classification of controlled drugs. The Clerk of the House also briefed the committee. We were able to achieve a high level of consensus.

Committee membership

Judy Keall (Chairperson)
Hon Phillida Bunkle
Steve Chadwick
Rt Hon Wyatt Creech
Sue Kedgley
Dr Paul Hutchison
Mita Ririnui
Dr Lynda Scott

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,	Text struck out unanimously

New (unanimous)

Subject to this Act,	Text inserted unanimously
(*Subject to this Act,*)	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Note: This bill has been reformatted in accordance with the resolution of the House of 22 December 1999.

Hon Annette King

Misuse of Drugs Amendment Bill (No 4)

Government Bill

Contents

1 Title
1A Commencement
3 New section 3A inserted
3A Classification of drugs
4 New sections 4 to 4B substituted
4 Amendment of schedules that identify controlled drugs and precursor substances
4A Procedure for bringing Order in Council made under section 4(1) into force
4B Matters to which Minister must have regard before recommending Order in Council under section 4(1)
5 New section 5AA inserted
5AA Expert Advisory Committee on Drugs
6 New section 5B inserted
5B Functions of Minister
7 Dealing with controlled drugs
8 Exemptions from sections 6 and 7
9 Treatment of persons dependent on controlled drugs
10 Third Schedule amended
12 Consequential repeals

The Parliament of New Zealand enacts as follows:

Struck out (unanimous)

1 Short Title and commencement

(1) This Act may be cited as the Misuse of Drugs Amendment Act **(No 4) 1999**, and is part of the Misuse of Drugs Act 1975[1] ("the principal Act").

(2) **Sections 2, 5, 10, 11, and 12** come into force on a date to be appointed by the Governor-General by Order in Council, in accordance with **subsection (4)**.

(3) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

(4) The date of commencement specified in the Order in Council made under **subsection (2)** must be the same as the date on which regulations made under **section 4(1)** of the principal Act come into force.

[1] RS Vol 26, p. 567
Amendments: 1992, No 49; 1995, No 67; 1996, No 133; 1997, Nos 57, 96; 1998, No 14

New (unanimous)

1 Title

(1) This Act is the Misuse of Drugs Amendment Act **(No 4) 2000**.

(2) In this Act, the Misuse of Drugs Act 1975[2] is called "the principal Act".

[2] 1975 No 116

1A Commencement

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

Struck out (unanimous)

2 Interpretation

(1) Section 2(1) of the principal Act is amended by repealing the definitions of the terms "Class A controlled drug", "Class B controlled drug", "Class C controlled drug", "controlled drug", and "controlled drug analogue", and substituting, respectively, the following definitions:

"**Class A controlled drug** means the controlled drugs named or described in Schedule 1 of regulations made under **section 4**

"**Class B controlled drug** means the controlled drugs named or described in Schedule 2 of regulations made under **section 4**

"**Class C controlled drug** means the controlled drugs named or described in Schedule 3 of regulations made under **section 4**; and includes any controlled drug analogue

"**controlled drug** means any substance, preparation, mixture, or article named or described in Schedule 1, Schedule 2, or Schedule 3 of regulations made under **section 4**; and includes any controlled drug analogue

"**controlled drug analogue** means any substance, such as the substances named or described in Part 7 of Schedule 3 of regulations made under **section 4**, that has a structure substantially similar to that of any controlled drug; but does not include—

Struck out (unanimous)

"(a) any substance named or described in Schedule 1, Schedule 2, or Parts 1 to 6 of Schedule 3 of regulations made under **section 4**; or

"(b) any pharmacy-only medicine or prescription medicine or restricted medicine within the meaning of the Medicines Act 1981".

(2) Section 2(1) of the principal Act is amended by inserting, after the definition of the term **minister**, the following definition:

"**pethidine** means the substance 1-methyl-4-phenylpiperidine-4-carboxylic acid ethyl ester".

(3) Section 2(1) of the principal Act is amended by repealing the definition of the term "precursor substance", and substituting the following definition:

"**precursor substance** means any substance named or described in Part 1 or Part 2 of Schedule 4 of regulations made under **section 4**".

3 New section 3A inserted

The principal Act is amended by inserting, after section 3, the following section:

"3A **Classification of drugs**

The classification of a drug under this Act is based on the risk of harm the drug poses to individuals, or to society, by its misuse; and accordingly—

"(a) drugs that pose a very high risk of harm are classified as Class A drugs; and

"(b) drugs that pose a high risk of harm are classified as Class B drugs; and

"(c) drugs that pose a moderate risk of harm are classified as Class C drugs."

4 New sections 4 to 4B substituted

The principal Act is amended by repealing sections 4 and 4A, and substituting the following sections:

Struck out (unanimous)

"4 **Regulations classifying controlled drugs and precursor substances**

"(1) The Governor-General may, by Order in Council, make regulations (the 'principal regulations') classifying controlled drugs and precursor substances by naming or describing them in schedules of the regulations.

"(2) The schedules of the regulations made under **subsection (1)** must be the same as the schedules of this Act as they read immediately before their repeal by **section 10(1)** of the Misuse of Drugs Amendment Act **(No 4) 1999**. The schedules of the regulations may incorporate changes of any kind described in **paragraphs (a) to (c) of subsection (6)** of this section.

"(3) The Governor-General may from time to time, by Order in Council, in accordance with a recommendation of the Minister, make regulations amending the principal regulations by—

"(a) adding the name or description of any substance, preparation, mixture, or article to any schedule of the regulations:

"(b) removing the name or description of any substance, preparation, mixture, or article from any schedule of the regulations:

"(c) removing the name or description of any substance, preparation, mixture, or article from one schedule, or Part or clause of a schedule, of the regulations, and inserting that name or description in another schedule, or Part or clause of a schedule.

"(4) Regulations made under **subsection (3)** may not come into force except in accordance with a commencement order made under **section 4A.**

"(5) Sections 5 to 10 of the Regulations (Disallowance) Act 1989 do not apply to regulations made under **subsection (3)**.

"(6) The Governor-General may from time to time, by Order in Council, make regulations for any or all of the following purposes:

"(a) amending the name or description of any substance, preparation, mixture, or article named or described in any schedule of the principal regulations, but only for

Struck out (unanimous)

the purpose of rendering that name or description consistent with international scientific usage:

"(b) updating the principal regulations, or updating any one or more schedules, or Part or clause of a schedule, of those regulations, but only for the purpose of clarifying content or correcting drafting errors. Under this paragraph, no change may be made that would have the effect of classifying, changing the classification of, or declassifying any substance, preparation, mixture, or article:

"(c) adding to, or removing from, Schedule 4 of the principal regulations the name or description of any substance included in that schedule if the amendment is necessary for the purpose of giving effect to any changes to the Annex to the Vienna Convention.

"4A **Procedure for bringing regulations made under section 4(3) into force**

"(1) Subject to **subsection (2)**, the Governor-General may, by Order in Council, make a commencement order bringing regulations made under **section 4(3)** into force.

"(2) The Order in Council may be made only after the Governor-General has received advice from the Minister (based on advice from the Clerk of the House) that the regulations have been approved by resolution of the House of Representatives.

"(3) A resolution of the House of Representatives approving specified regulations made under **section 4(3)** may be made at any time after—

"(a) the date that is 28 days after the date on which notice that the regulations have been made is given in the *Gazette*; or

"(b) if the *Gazette* notice is given during the period commencing on 24 December in one year and ending on 15 January in the following year, 15 February of that following year.

"(4) Regulations made under **section 4(3)** lapse if—

"(a) a motion to approve the regulations is defeated; or

Struck out (unanimous)

"(b) within one year of making the regulations, no motion to approve the regulations is agreed to.

"4B **Matters Minister must have regard to before recommending regulations be made under section 4(3)**

"(1) Before recommending to the Governor-General that regulations be made under **section 4(3)**, the Minister must have regard to the matters set out in **subsection (2)** in respect of each substance, preparation, mixture, or article ('drug') referred to in the proposed regulations.

"(2) The matters that the Minister must have regard to are—

"(a) the likelihood or evidence of drug abuse, including such matters as the prevalence of the drug, levels of consumption, drug seizure trends, and the potential appeal to vulnerable populations; and

"(b) the specific effects of the drug, including pharmacological, psychoactive, and toxicological effects; and

"(c) the mode of use of the drug; and

"(d) the therapeutic value of the drug, if any; and

"(e) the potential for use of the drug to cause death; and

"(f) the ability of the drug to create physical or psychological dependence; and

"(g) the international classification and experience of the drug in other jurisdictions; and

"(h) any other matters that the Minister considers relevant."

New (unanimous)

"4 **Amendment of schedules that identify controlled drugs and precursor substances**

"(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend the First Schedule, the Second Schedule, the Third Schedule, and Schedule 4, by doing any 1 or more of the following to any 1 or more of those schedules:

"(a) adding the name or description of any substance, preparation, mixture, or article to a schedule; or

New (unanimous)

"(b) removing the name or description of any substance, preparation, mixture, or article from a schedule; or

"(c) moving the name or description of any substance, preparation, mixture, or article from 1 schedule, or Part or clause of a schedule, and inserting that name or description in another schedule, or Part or clause of a schedule.

"(2) An Order in Council made under **subsection (1)** may not come into force except in accordance with a commencement order made under **section 4A**.

"(3) Sections 5 to 10 of the Regulations (Disallowance) Act 1989 do not apply to any Order in Council made under **subsection (1)**.

"(4) The Governor-General may, by Order in Council,—

"(a) amend the name or description of any substance, preparation, mixture, or article named or described in the First Schedule, the Second Schedule, or the Third Schedule, if the amendment is necessary for the purpose of rendering that name or description consistent with international scientific usage:

"(b) update the First Schedule, the Second Schedule, or the Third Schedule, if the update is necessary for the purpose of clarifying content or correcting drafting errors:

"(c) add to, or remove from, Schedule 4 the name or description of any substance included in that schedule, if the amendment is necessary for the purpose of giving effect to any changes to the Annex to the Vienna Convention.

"(5) No Order in Council may be made under **paragraph (a) or paragraph (b) of subsection (4)** if it has the effect of classifying, changing the classification of, or declassifying any substance, preparation, mixture, or article.

"4A **Procedure for bringing Order in Council made under section 4(1) into force**

"(1) Subject to **subsection (2)**, the Governor-General may, by Order in Council, make a commencement order bringing any Order in Council made under **section 4(1)** into force.

New (unanimous)

"(2) The commencement order may be made only after the Order in Council made under **section 4(1)** has been approved by resolution of the House of Representatives.

"(3) A resolution of the House of Representatives approving an Order in Council made under **section 4(1)** may be made at any time after—

"(a) the date that is 28 days after the date on which notice that the Order in Council has been made is given in the *Gazette*; or

"(b) if the *Gazette* notice is given during the period commencing on 24 December in 1 year and ending on 15 January in the following year, 15 February of that following year.

"(4) An Order in Council made under **section 4(1)** lapses if—

"(a) a motion to approve the Order in Council is defeated; or

"(b) no motion to approve the Order in Council is agreed to within 1 year of its date of making.

"4B **Matters to which Minister must have regard before recommending Order in Council under section 4(1)**

"(1) Before recommending to the Governor-General that an Order in Council be made under **section 4(1)**, the Minister must, in respect of each substance, preparation, mixture, or article (**drug**) referred to in the proposed Order in Council,—

"(a) consult with, and consider any advice given by, the Expert Advisory Committee on Drugs established under **section 5AA**, about the drug; and

"(b) have regard to the matters set out in **subsection (2)**.

"(2) The matters that the Minister must have regard to, and on which the Expert Advisory Committee on Drugs must give advice, are—

"(a) the likelihood or evidence of drug abuse, including such matters as the prevalence of the drug, levels of consumption, drug seizure trends, and the potential appeal to vulnerable populations; and

"(b) the specific effects of the drug, including pharmacological, psychoactive, and toxicological effects; and

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

New (unanimous)

"(d) the therapeutic value of the drug, if any; and
"(e) the potential for use of the drug to cause death; and
"(f) the ability of the drug to create physical or psychological dependence; and
"(g) the international classification and experience of the drug in other jurisdictions; and
"(h) any other matters that the Minister considers relevant."

Struck out (unanimous)

5 **References to schedules of this Act are references to schedules in regulations made under section 4**

The principal Act is amended by inserting, after **section 4B**, the following section:

"4C

A reference in any enactment to a schedule of this Act, or to a Part or clause of a schedule of this Act, is a reference to the corresponding schedule, or Part or clause of a schedule, in regulations made under **section 4**."

New (unanimous)

5 **New section 5AA inserted**

The principal Act is amended by inserting, immediately before section 5A, the following section:

"5AA **Expert Advisory Committee on Drugs**

"(1) The Minister must establish an Expert Advisory Committee on Drugs to advise the Minister on drug classification matters.

"(2) The functions of the Committee are—
"(a) to carry out medical and scientific evaluations of controlled drugs, and any other narcotic or psychotropic substances, preparations, mixtures, or articles; and
"(b) to make recommendations to the Minister about—
"(i) whether and how controlled drugs or other substances, preparations, mixtures, or articles should be classified; and

New (unanimous)

"(ii) the level at which any presumption for supply, as provided for in section 6(6), should be set for any substance, preparation, mixture, or article that is, or is proposed to be classified as, a controlled drug; and

"(c) to increase public awareness of the Committee's work, by (for instance) the timely release of papers, reports, and recommendations.

"(3) The Committee must comprise—

"(a) up to 5 people who, between them, have appropriate expertise in—

"(i) pharmacology:

"(ii) toxicology:

"(iii) drug and alcohol treatment:

"(iv) psychology:

"(v) community medicine; and

"(b) up to 3 people employed in the Public Service (as defined in section 27 of the State Sector Act 1988) who between them have appropriate expertise in—

"(i) public health:

"(ii) the appropriateness and safety of pharmaceuticals and their availability to the public:

"(iii) border control; and

"(c) 1 member of the Police; and

"(d) 1 person representing the views of consumers of drug treatment services.

"(4) The Minister must appoint 1 member as chairperson of the Committee.

"(5) Subsections (2) and (3) of section 5 apply to the Expert Advisory Committee on Drugs as if it were a committee established under section 5."

6 New section 5B inserted

The principal Act is amended by inserting, after section 5A, the following section:

"5B **Functions of Minister**

For the purposes of this Act, the functions of the Minister include the provision and publication of reports, information, and advice concerning the misuse of drugs and the treatment of persons suffering from the misuse of drugs."

7 Dealing with controlled drugs

(1) Section 6(6) of the principal Act is amended by inserting, after paragraph (ca), the following paragraph:

"(cb) 5 grams or more of MDMA, MDEA, or MDA, or 100 or more flakes, tablets, capsules, or other drug forms containing any one or more of MDMA, MDEA, or MDA:".

(2) Section 6 of the principal Act is amended by adding the following subsection:

"(7) Subsection (6) does not apply to any substance mentioned in any of paragraphs (a) to (e) of that subsection unless the substance mentioned is named or described in (*Schedule 1, Schedule 2, or Schedule 3 of regulations made under* ***section 4***.) the First Schedule, Second Schedule, or Third Schedule, or is a controlled drug analogue."

8 Exemptions from sections 6 and 7

Section 8(2) of the principal Act is amended by adding the following paragraph:

"(l) a person may, while entering or leaving New Zealand, possess a controlled drug required for treating the medical condition of the person or any other person in his or her care or control, if the quantity of drug is no greater than that required for treating the medical condition for one month, and the drug was—

"(i) lawfully supplied to the person by a medical practitioner, designated prescriber (as defined in section 2(1) of the Medicines Act 1981), or dentist in New Zealand; or

"(ii) prescribed by a medical practitioner, designated prescriber (as defined in section 2(1) of the Medicines Act 1981), or dentist, and lawfully supplied to the person in New Zealand; or

"(iii) lawfully supplied to the person overseas and supplied for the purpose of treating a medical condition."

9 Treatment of persons dependent on controlled drugs

(1) Section 24 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) A medical practitioner may prescribe, administer, or supply any controlled drug for or to any such person if the medical practitioner—

"(a) is for the time being a medical practitioner approved by the Minister under **subsection (5)(a)** and is acting in accordance with any general or specific directions imposed by the Minister under that approval; or

"(b) is working in a place specified under **subsection (5)(b)** and is authorised, by a medical practitioner approved under **subsection (5)(a)** who is working in the same place, to prescribe controlled drugs; or

"(c) is acting in the medical practitioner's capacity as a medical officer employed in a place specified under **subsection (5)(b)**, and is authorised in writing by the chief executive of the organisation that runs that place (acting under the general or specific direction of a Medical Officer of Health) to prescribe controlled drugs; or

"(d) is acting in relation to a particular patient during the period prescribed in, and in accordance with the terms and conditions of, a permission in writing given by an approved medical practitioner (as described in **paragraph (a)**) or an authorised medical officer (as described in **paragraph (c)**)."

(2) Section 24(3) of the principal Act is amended by omitting the word "specified", and substituting the word "approved".

(3) Section 24 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) The Minister may from time to time, by notice in the *Gazette*, do any 1 or more of the following:

"(a) approve any medical practitioner as a medical practitioner who may, subject to any general or specific conditions imposed by the Minister on the recommendation of the Director-General of Health, prescribe, administer, or supply controlled drugs for the purpose of this section:

"(b) specify by name or description any licensed hospital (within the meaning of the Hospitals Act 1957), or any health centre, clinic, or similar place, as a place at

which controlled drugs may be prescribed, administered, or supplied for the purpose of this section:

"(c) revoke any approval or specification under this section."

Struck out (unanimous)

10 Schedules repealed

(1) The First, Second, and Third Schedules, and Schedule 4, of the principal Act are repealed.

(2) The following orders are consequentially revoked:

(a) Misuse of Drugs Order 1978 (SR 1978/143):

(b) Misuse of Drugs Order 1981 (SR 1981/114):

(c) Misuse of Drugs Order 1982 (SR 1982/259):

(d) Misuse of Drugs Order 1984 (SR 1984/101):

(e) Misuse of Drugs Order (No 2) 1984 (SR 1984/315):

(f) Misuse of Drugs Order 1998 (SR 1998/351).

New (unanimous)

10 Third Schedule amended

Part II of the Third Schedule of the principal Act is amended by omitting from the item relating to Dihydrocodeine the expression "Part IV", and substituting the expression "Part VI".

Struck out (unanimous)

11 Consequential amendments to principal Act

The principal Act is consequentially amended in the manner set out in **Schedule 1**.

12 Consequential amendments to, and repeals of, other enactments

(1) Section 10(1) of the Misuse of Drugs Amendment Act 1978 is amended by omitting from the definition of the term "prescribed cannabis offence" the words "specified or described in Part I of the Third Schedule of the principal Act", and substituting the words "named or described in Part 1 of

Struck out (unanimous)

Schedule 3 of regulations made under **section 4** of the principal Act".

(2) The Misuse of Drugs Regulations 1977 are consequentially amended in the manner set out in **Schedule 2**.

(3) The following provisions are repealed:

(a) section 2 of the Misuse of Drugs Amendment Act 1978:

(b) sections 2, 7, and 8 of the Misuse of Drugs Amendment Act 1982:

(c) section 4 of the Misuse of Drugs Amendment Act 1985:

(d) section 4 of the Misuse of Drugs Amendment Act 1986:

(e) sections 8, 9, and 10 of the Misuse of Drugs Amendment Act (No 2) 1987:

(f) Sections 2, 6, 7, and 8 of the Misuse of Drugs Amendment Act 1996:

(g) Sections 3 and 12 of the Misuse of Drugs Amendment Act 1998.

New (unanimous)

12 Consequential repeals

The following provisions are repealed:

(a) section 2 of the Misuse of Drugs Amendment Act 1982 (1982 No 151):

(b) section 3 of the Misuse of Drugs Amendment Act 1998 (1998 No 14).

Struck out (unanimous)

Schedule 1

s 11

Consequential amendments to principal Act

Section 6(1)(a)

By omitting the words "specified or described in Part VI of the Third Schedule to this Act", and substituting the words "named or described in Part 6 of Schedule 3 of regulations made under **section 4**".

Section 6(6)(d)

By omitting the words ", as described in the Second Schedule to this Act", and substituting the words "(other than one contained in a Class C controlled drug)".

Section 6(6)

By repealing paragraph (e), and substituting the following paragraph:

"(e) in relation to cannabis,—

"(i) 5 grams or more of any cannabis preparation that is produced by subjecting cannabis plant material to any kind of processing, and contains tetrahydrocannabinols (for example, cannabis resin and cannabis oil); or

"(ii) 28 grams or more of cannabis plant, whether fresh or dried, being any part of a plant of the genus *Cannabis* except a part from which all the resin has been extracted; or

"(iii) 100 or more cigarettes containing any cannabis preparation (as described in **subparagraph (i)**) or cannabis plant (as described in **subparagraph (ii)**):".

Section 8(2)(aa)

By omitting the words "the controlled drug pethidine (as described in the Second Schedule to this Act)", and substituting the word "pethidine".

Section 8(2)(ba)

By omitting the words "(as so described)".

Section 8(2)(da)

By omitting the words "(as so described)".

Struck out (unanimous)

Section 8(3)

By repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) import or export any controlled drug named or described in Part 6 of Schedule 3 of regulations made under **section 4**:

"(b) supply or administer any controlled drug named or described in Part 6 of Schedule 3 of regulations made under **section 4**."

Section 18(2)

By omitting the words "specified or described in the First Schedule or in Part I of the Second Schedule or in Part I of the Third Schedule to this Act", and substituting the words "named or described in Schedule 1, Part 1 of Schedule 2, or Part 1 of Schedule 3 of regulations made under **section 4**".

Section 18(3)

By omitting the words "specified or described in the First Schedule or in Part I of the Second Schedule or in Part I of the Third Schedule to this Act", and substituting the words "named or described in Schedule 1, Part 1 of Schedule 2, or Part 1 of Schedule 3 of regulations made under **section 4**".

Section 23(1)(aa)

By omitting the words "(as described in the Second Schedule to this Act)".

Section 36

By omitting the words "specified or described in Part VI of the Third Schedule to this Act", and substituting the words "named or described in Part 6 of Schedule 3 of regulations made under **section 4**".

Struck out (unanimous)

Schedule 2

s 12(2)

Consequential amendments to other enactment

Misuse of Drugs Regulations 1977 (1977 No 37)

By omitting from the definition of the term **name** in regulation 2(1) the words "Schedule to the Act", and substituting the words "schedule in regulations made under **section 4** of the Act".

By adding to regulation 2 the following subclause:

"(3) Every reference in these regulations to a schedule of the Act, or to a Part or clause of a schedule of the Act, is a reference to the corresponding schedule, or Part or clause of a schedule, in regulations made under **section 4** of the Act."

By revoking subclause (2) of regulation 25, and substituting the following subclause:

"(2) For the purposes of subclause (1), the appropriate designation, in relation to a controlled drug, is as follows:

" '(A)' ... to indicate a controlled drug for the time being named or described in Schedule 1 of regulations made under **section 4** of the Act:

" '(B1)' ... to indicate a controlled drug for the time being named or described in Part1 of Schedule 2 of regulations made under **section 4** of the Act:

" '(B2)' ... to indicate a controlled drug for the time being named or described in Part2 of Schedule 2 of regulations made under **section 4** of the Act:

" '(B3)' ... to indicate a controlled drug for the time being named or described in Part3 of Schedule 2 of regulations made under **section 4** of the Act:

" '(C1)' ... to indicate a controlled drug for the time being named or described in Part1 of Schedule 3 of regulations made under **section 4** of the Act:

Struck out (unanimous)

Misuse of Drugs Regulations 1977—continued

" '(C2)' ... to indicate a controlled drug for the time being named or described in Part2 of Schedule 3 of regulations made under **section 4** of the Act:

" '(C3)' ... to indicate a controlled drug for the time being named or described in Part3 of Schedule 3 of regulations made under **section 4** of the Act:

" '(C4)' ... to indicate a controlled drug for the time being named or described in Part4 of Schedule 3 of regulations made under **section 4** of the Act:

" '(C5)' ... to indicate a controlled drug for the time being named or described in Part5 of Schedule 3 of regulations made under **section 4** of the Act."