



Misuse of Drugs Amendment Act (No 2) 2011

Public Act 2011 No 54
Date of assent 8 August 2011
Commencement see section 2

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Part 2

Amendment to Misuse of Drugs Amendment Act 2005

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Schedule

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Items added to clause 1 of Schedule 5

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Misuse of Drugs Amendment Act (No 2) 2011.

2 Commencement

(1) Sections 8, 9(1) and (2), 10, and 11 come into force on the day that is 1 month after the date on which this Act receives the Royal assent.

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

3 Principal Act amended

This Act amends the Misuse of Drugs Act 1975.

Part 1

**Amendments to principal Act and
consequential amendments to other
enactments**

Amendments to principal Act

4 Interpretation

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

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

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

5 New sections 4C to 4E inserted

The following sections are inserted after section 4B:

“4C Temporary class drug notice

- “(1) The Minister may, by notice in the *Gazette*, specify any substance, preparation, mixture, or article as a temporary class drug.
- “(2) The Minister must not give notice under subsection (1) if the substance, preparation, mixture, or article is a Class A controlled drug, a Class B controlled drug, a Class C controlled drug, a precursor substance, or a restricted substance (as defined in section 31 of the Misuse of Drugs Amendment Act 2005).
- “(3) The Minister must not give notice under subsection (1) unless he or she is satisfied that the substance, preparation, mixture, or article that is to be specified in the notice poses, or may pose, a risk of harm to individuals, or to society.
- “(4) A notice under subsection (1) may describe the substance, preparation, mixture, or article by any 1 or more of the following:
- “(a) its chemical name, or 1 of its chemical names:
 - “(b) its product name:
 - “(c) a description of the substance, preparation, mixture, or article, in the form that the Minister considers appropriate for the purposes of the notice.
- “(5) A notice under subsection (1) must state the date on which the notice comes into force.
- “(6) The date specified under subsection (5) must not be earlier than 7 days after the date of the publication of the notice in the *Gazette*.

“4D Effect of temporary class drug notice

- “(1) Except as provided in this section, a temporary class drug is to be treated, while the temporary class drug notice remains in force, in the same way as if the drug were a controlled drug that is specified or described in Part 1 of Schedule 3.
- “(2) A temporary class drug specified or described in a temporary class drug notice is not to be added to any schedule of this Act while the notice is in force.

- “(3) Despite section 7(1), it is not an offence for a person, in relation to a temporary class drug, to do either or both of the following while the temporary class drug notice relating to that drug is in force:
- “(a) to possess for his or her own use less than 56 grams in total of any products (including cigarettes), or any drug forms (including flakes, tablets, or capsules), each containing some quantity of that temporary class drug:
 - “(b) to use that temporary class drug.
- “(4) Possession by a person of 56 grams or more in total of any products (including cigarettes), or any drug forms (including flakes, tablets, or capsules), each containing some quantity of that temporary class drug is to be treated, for the purposes of this Act, as possession by that person of an amount, level, or quantity at and over which a controlled drug that is specified or described in Part 1 of Schedule 3 is presumed to be for supply.
- “(5) A substance that has a structure substantially similar to a temporary class drug is not to be treated as a controlled drug analogue by reason only of that similarity.
- “(6) While a temporary class drug notice is in force, the Minister must seek advice, as he or she considers appropriate, under section 5 or 5AA, or both, in relation to the temporary class drug and its appropriate classification, if any (including as a precursor substance, or as a restricted substance as defined in section 31 of the Misuse of Drugs Amendment Act 2005), under this Act.
- “(7) As soon as possible after the publication of a temporary class drug notice in the *Gazette*, and while a temporary class drug notice is in force, the Director-General of Health must ensure that the notice, and information about its effects, is available—
- “(a) on the Ministry of Health’s Internet site, in an electronic form that is publicly accessible; and
 - “(b) in any other way that the Director-General considers appropriate in the circumstances.
- “(8) Despite the Regulations (Disallowance) Act 1989, a temporary class drug notice is not to be treated as a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“4E Duration of temporary class drug notice

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

6 Powers of Minister to prohibit importation, etc, of controlled drugs

- (1) Section 22(1A) is amended by—
- (a) omitting “import or supply” and substituting “importation, supply, possession for the purpose of sale or supply, or offering for sale”; and
 - (b) omitting “pipe or other utensil” and substituting “pipe, other utensil, or identifiable component of a pipe or other utensil”.
- (2) Section 22 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) Every person commits an offence against this Act who—
- “(a) supplies, possesses for the purpose of sale or supply, or offers for sale a pipe, other utensil, or identifiable component of a pipe or other utensil whose sale, possession for the purpose of sale or supply, or offering for sale (as

the case may be) is absolutely prohibited by a notice issued under subsection (1A); or

- “(b) supplies, possesses for the purpose of sale or supply, or offers for sale a pipe, other utensil, or identifiable component of a pipe or other utensil otherwise than in accordance with any condition under which that pipe, other utensil, or identifiable component of a pipe or other utensil may, under a notice issued under subsection (1A), be supplied, possessed for the purpose of sale or supply, or offered for sale (as the case may be); or
- “(c) imports a pipe, other utensil, or identifiable component of a pipe or other utensil otherwise than in accordance with any condition under which that pipe, other utensil, or identifiable component of a pipe or other utensil may, under a notice issued under subsection (1A), be imported.”

7 Schedule 1 amended

The item relating to thalidomide in clause 1 of Schedule 1 is omitted.

8 Schedule 2 amended

Clause 1 of Part 2 of Schedule 2 is amended by inserting the following items in their appropriate alphabetical order:

“**Ephedrine**

“**Pseudoephedrine**”.

9 Schedule 3 amended

- (1) Part 3 of Schedule 3 is amended by repealing clause 6.
- (2) The items relating to ephedrine and pseudoephedrine in clause 1 of Part 5 of Schedule 3 are omitted.
- (3) Paragraph (d) of the item relating to amphetamine analogues in Part 7 of Schedule 3 is amended by inserting “and/or alkylthio radicals” after “alkylamino radicals”.

10 Schedule 4 amended

The items relating to ephedrine and pseudoephedrine in clause 1 of Part 1 of Schedule 4 are omitted.

11 Schedule 5 amended

Clause 1 of Schedule 5 is amended by adding the items set out in the Schedule of this Act.

*Consequential amendments to other enactments***12 Land Transport Act 1998 consequentially amended**

- (1) This section amends the Land Transport Act 1998.
- (2) Paragraph (a)(i) of the definition of **qualifying drug** in section 2(1) is amended by omitting “(except thalidomide)”.
- (3) Section 58(1)(b) is amended by omitting “(except thalidomide)”.
- (4) Section 61(2)(b) is amended by omitting “(except thalidomide)”.
- (5) Section 62(1)(b) is amended by omitting “(except thalidomide)”.

13 Customs and Excise Act 1996 consequentially amended

- (1) This section amends the Customs and Excise Act 1996.
- (2) Schedule 1 is amended by omitting “pipe or other utensil” and substituting “pipe, other utensil, or identifiable component of a pipe or other utensil”.

Part 2**Amendment to Misuse of Drugs
Amendment Act 2005****14 Misuse of Drugs Amendment Act 2005 amended**

This Part amends the Misuse of Drugs Amendment Act 2005.

15 Interpretation

Paragraph (b)(v) and (viii) of the definition of **substance** in section 31 are repealed.

Schedule

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Items added to clause 1 of Schedule 5

Ephedrine	10 grams, whether or not contained in a substance, preparation, or mixture
Pseudoephedrine	10 grams, whether or not contained in a substance, preparation, or mixture

Legislative history

22 April 2010	Introduction (Bill 126–1)
24 August 2010	First reading and referral to Health Committee
29 November 2010	Reported from Health Committee (Bill 126–2)
13 July 2011	Second reading
2 August 2011	Committee of the whole House (Bill 126–3)
4 August 2011	Third reading
8 August 2011	Royal assent

This Act is administered by the Ministry of Health.
