



# Misuse of Drugs Amendment Act 2019

Public Act      2019 No 42  
Date of assent    12 August 2019  
Commencement    see section 2

## Contents

	Page
1      Title	1
2      Commencement	2
3      Principal Act	2
<b>Part 1</b>	
<b>Amendments to principal Act</b>	
4      Section 2 amended (Interpretation)	2
5      New sections 4C to 4G inserted	2
4C      Temporary class drug order	2
4D      Effect of temporary class drug order	3
4E      Further action relating to temporary class drugs	3
4F      Duration of temporary class drug order	3
4G      Status of temporary class drug order	4
6      Section 7 amended (Possession and use of controlled drugs)	4
7      Schedule 1 amended	4
<b>Part 2</b>	
<b>Amendment to Psychoactive Substances Act 2013</b>	
8      Psychoactive Substances Act 2013 amended	4

## The Parliament of New Zealand enacts as follows:

### 1      Title

This Act is the Misuse of Drugs Amendment Act 2019.

## 2 Commencement

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

## 3 Principal Act

This Act amends the Misuse of Drugs Act 1975 (the **principal Act**).

### Part 1

#### Amendments to principal Act

#### 4 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **Class C controlled drug**, after “includes”, insert “any temporary class drug and”.
- (2) In section 2(1), definition of **controlled drug**, after “includes”, insert “any temporary class drug and”.
- (3) In section 2(1), insert in its appropriate alphabetical order:

**temporary class drug** means any substance, preparation, mixture, or article specified as a temporary class drug by an order made under section 4C

#### 5 New sections 4C to 4G inserted

After section 4B, insert:

##### 4C Temporary class drug order

- (1) The Minister may, by an order published in the *Gazette*, specify any substance, preparation, mixture, or article as a temporary class drug.
- (2) The Minister must not make an order if the substance, preparation, mixture, or article is already a Class A controlled drug, a Class B controlled drug, a Class C controlled drug (except a controlled drug analogue), or a precursor substance.
- (3) The Minister must not make an order unless satisfied that the substance, preparation, mixture, or article that is to be specified in the order—
  - (a) poses, or may pose, a risk of harm to individuals or to society; and
  - (b) has not been classified under this Act, except as a controlled drug analogue.
- (4) An order may describe the substance, preparation, mixture, or article by either or both of the following:
  - (a) its chemical name, or one of its chemical names:
  - (b) a description of the substance, preparation, mixture, or article, in the form that the Minister considers appropriate for the purposes of the order.

- (5) An order must state the date on which the order comes into force, and that date must not be earlier than the day after the date of the publication of the order in the *Gazette*.

#### **4D Effect of temporary class drug order**

- (1) This section applies to every temporary class drug while it remains subject to a temporary class drug order.
- (2) The temporary class drug must be treated for all purposes as if the drug were a controlled drug that is specified or described in Part 1 of Schedule 3.
- (3) *See* section 7(5) for a prosecutorial discretion that applies to possession and use offences for all controlled drugs (including temporary class drugs).
- (4) A substance that has a structure substantially similar to the temporary class drug must not be treated as a controlled drug analogue just because of that similarity.

#### **4E Further action relating to temporary class drugs**

- (1) While a temporary class drug order is in place, the Minister must seek advice, as the Minister considers appropriate, under section 5 or 5AA (or both) about the temporary class drug and its appropriate classification (if any, including as a precursor substance) under this Act.
- (2) As soon as possible after the publication of a temporary class drug order in the *Gazette*, the Director-General of Health must ensure that, while the order remains in force, both the order and information about its effects are 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.

#### **4F Duration of temporary class drug order**

- (1) A temporary class drug order expires at the earliest of—
- (a) the close of the day that is 1 year after the date on which the order came into force; and
  - (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; and
  - (c) its revocation by the Minister by order in the *Gazette*.
- (2) A temporary class drug order may be renewed by the Minister—

- (a) before 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 4E(1).

#### **4G Status of temporary class drug order**

A temporary class drug order is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

### **6 Section 7 amended (Possession and use of controlled drugs)**

After section 7(4), insert:

- (5) To avoid doubt, it is affirmed that there is a discretion to prosecute for an offence against subsection (1)(a), and a prosecution should not be brought unless it is required in the public interest.
- (6) When considering whether a prosecution is required in the public interest, in addition to any other relevant matters, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial to the public interest.

### **7 Schedule 1 amended**

In Schedule 1, clause 1, insert in their appropriate alphabetical order:

5F-ADB: Methyl (2S)-2- {[1-(5-fluoropentyl)-1H-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate

AMB-FUBINACA: Methyl (2S)-2-({1-[(4-fluorophenyl)methyl]-1H-indazole-3-carbonyl}amino)-3-methylbutanoate

## **Part 2**

### **Amendment to Psychoactive Substances Act 2013**

#### **8 Psychoactive Substances Act 2013 amended**

- (1) This section amends the Psychoactive Substances Act 2013.
- (2) After section 9(3)(b), insert:
  - (ba) a substance, preparation, mixture, or article specified by an order made under section 4C of the Misuse of Drugs Act 1975 as a temporary class drug:

### **Legislative history**

7 March 2019	Introduction (Bill 119–1)
12 March 2019	First reading and referral to Health Committee
1 July 2019	Reported from Health Committee (Bill 119–2)
30 July 2019	Second reading
6 August 2019	Committee of the whole House (Bill 119–3)
7 August 2019	Third reading
12 August 2019	Royal assent

This Act is administered by the Ministry of Health.