Misuse of Drugs Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation
The Health Committee has examined the Misuse of Drugs Amendment Bill and recommends that it be passed with the amendment shown.

Introduction
This bill would amend the Misuse of Drugs Act 1975 in order to
• reclassify ephedrine and pseudoephedrine as Class B2 controlled drugs, and establish the quantity for presumption of supply at 10 grams
• remove thalidomide’s classification as a Class A controlled drug
• allow hazardous substances to also be classified as restricted substances
• extend the definition of amphetamine analogues
• allow notices to be issued in the Gazette to extend the controls over drug paraphernalia.

We were advised that Professor Sir Peter Gluckman wrote that the value of the methamphetamine “market” in New Zealand was esti-
mated by the National Drug Intelligence Bureau in 2007 to be about 1 billion dollars (about 1,000 kg of drug) per annum. At least 10 percent of this is derived from domestically diverted pseudoephedrine (although there are indications that this may be a significant underestimate), the remainder from illegal imports of pseudoephedrine and of methamphetamine itself. There is some evidence that importation of pseudoephedrine is increasing relative to that of methamphetamine.1

Drug utensils
We recommend a minor amendment to new section 22(3)(b), as inserted by clause 4 of the bill. This amendment would ensure that all of the references to utensils were worded consistently.

We were advised by the New Zealand Police that amending section 22 of the Misuse of Drugs Act 1975 to enable notices to be made to prohibit the advertisement or display of drug utensils, and to prohibit the importation of incomplete utensils and identifiable parts of these utensils, will make the enforcement of drug laws clearer and would remove loopholes that are currently being exploited. Broadening the scope of section 22 will allow Police to more effectively deter the sale of drug utensils by removing the limitation that an offence occurs once a sale has been made. Police also understand that this amendment will remove the difficulties that the Customs Service has with restricting the importation of incomplete drug utensils and identifiable parts. Making it an offence to sell, supply, and import utensils would assist the anti-drug effort by ensuring that the public is receiving a consistent message about the unacceptability of illegal drugs.

Submissions
Most of the submissions we received expressed opposition to the proposed amendment to the utensils provision. Many argued that prohibiting drug utensils would be ineffective and would increase the harm suffered by drug users because they would make their own

1 Professor Sir Peter Gluckman, Consideration of reduction of access to, or elimination of, pseudoephedrine in “cold and flu” preparations, Office of the Prime Minister’s Science Advisory Committee, 2009.
Commentary

Misuse of Drugs Amendment Bill

utensils or would buy them illegally. It was also claimed that the importation of utensils would become clandestine, so that the New Zealand Customs Service would no longer know who the importers were.

Other submitters told us that research from the United States indicates that the effect of methamphetamine precursor regulation on its own is temporary. The rates of hospital admissions and arrests decreased initially, and then rebounded in the months and years after regulation took effect. We note and acknowledge the views expressed by submitters, but recommend no further changes to the bill.

New Zealand Labour Party minority view

We believe that the bill would do no harm; we remain concerned that the bill as written would not achieve the aims of reducing the availability of methamphetamine or reducing drug-related harm.

We question the merit of placing further restrictions on drug utensils when an evidence base for doing so has not been established.

We note that the Ministry of Health has not been able to quantify the financial impact either on consumers or on the Government of requiring patients to acquire a GP prescription for medication containing pseudoephedrine.

We also question the validity of passing an amendment to the Misuse of Drugs Act while the Law Commission is carrying out a wide-ranging review of that Act. Government practice has been to suspend or oppose legislative change while a larger review is under way. Examples include legislation that deals with the Sale and Supply of Alcohol, Tobacco Control, and Responsible Lending. Passing this bill seems at odds with the Government’s usual practice.

Green Party minority view

The Green Party has a view that differs from the majority of committee members in two respects.
Clause 4 Power of Minister to Prohibit Importation etc, of controlled drugs

This clause increases the range of actions in relation to utensils that are offences, and extends the range of items in relation to which offences exist to include identifiable components of pipes and other utensils.

The committee received no evidence whatsoever that the changes that this clause would bring about would reduce drug use even slightly. Instead we received many submissions to the effect that

• the new provisions relating to utensils will not reduce drug use.
• the utensils provisions may prove a minor inconvenience to those importing and selling them but they are likely to respond with small changes of behaviour to evade the law.
• the utensils provisions are likely to be applied unevenly based on assumptions about intent. For example, we were shown a plumbing fitting that could be used either as a household plumbing item or as a component of a drug utensil. This potential for the same behaviour to be both legal or illegal depending on who does it suggests strongly that the law has been miscast.
• utensils such as pipes are typically used to reduce the harm associated with using smoked drugs. Any reduction achieved in utensil use will increase the harm associated with drug-taking.

In summary the proposed provisions seem unlikely to achieve anything useful and, indeed, are somewhat likely to increase harm associated with drug-taking. They seem like an unhelpful distraction from the central purpose of reducing drug-related harm, and seem particularly inappropriate given the current review of the Misuse of Drugs Act by the Law Commission and the absence of any argument for urgency.

Clause 6 Schedule 2 amended

The effect of this clause is to reclassify ephedrine and pseudoephedrine as Class B2 controlled substances. This would mean that medicines containing these substances could only be supplied with a prescription from a doctor. The purpose of this measure is make it more difficult for these substances to be accessed for the manufacture of methamphetamine.
There seems no reason to oppose this course of action for ephedrine, which we were told has no therapeutic value. On the other hand pseudoephedrine is widely used and has therapeutic value for many people. The committee asked for, but could not be given, any evidence of the extent to which pseudoephedrine purchased from retail pharmacies has been used for methamphetamine manufacture. Nonetheless the Green Party does accept that this does play some role. However, we are persuaded by the evidence received from the Pharmaceutical Society of New Zealand, the organisation representing the professional interests of pharmacists.

The Pharmaceutical Society told us that alternatives to pseudoephedrine were not as effective, leaving many people needing to visit a general practitioner for a prescription for symptomatic relief, exposing them and others to the risk of further infection and imposing an unwelcome increase in workload for general practices. The Pharmaceutical Society offered several alternatives to this approach, which would stop pseudoephedrine-containing medicines from being available over the counter, but nonetheless have them available from pharmacies without the need for a prescription. They also told us about pharmacy systems to detect and report inappropriate purchase of such medicines. To believe that prescriptions should be necessary for pseudoephedrine to be dispensed relies on an assumption that general practitioners will be more able or inclined to detect drug-seeking behaviour than are pharmacists. The committee heard no evidence that this is the case.

In summary we accept that there is a benefit, albeit unquantified, from restricting the supply of medicines containing pseudoephedrine. However we believe that the method of restriction proposed in the bill is not necessary and has significant inconvenience and cost for many people.
Appendix

Committee process
The Misuse of Drugs Amendment Bill was referred to the committee on 24 August 2010. The closing date for submissions was 29 September 2010. We received and considered 65 submissions from interested groups and individuals and heard evidence from seven of them. We also received and considered 775 form submissions. We received advice from the Ministry of Health.

Committee membership
Dr Paul Hutchison (Chairperson)
Dr Jackie Blue
Hon Ruth Dyson
Kevin Hague
Iain Lees-Galloway
Hon Luamanuvao Winnie Laban (until 13 October 2010)
Hon Damien O’Connor (from 13 October 2010)
Eric Roy
Nicky Wagner
Michael Woodhouse
Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously
Hon Peter Dunne

Misuse of Drugs Amendment Bill

Government Bill

Contents

<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Commencement</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Principal Act amended</td>
<td>2</td>
</tr>
</tbody>
</table>

Part 1

Amendments to principal Act and consequential amendments to other enactments

Amendments to principal Act

<table>
<thead>
<tr>
<th></th>
<th>Powers of Minister to prohibit importation, etc, of controlled drugs</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Schedule 1 amended</td>
<td>3</td>
</tr>
<tr>
<td>6</td>
<td>Schedule 2 amended</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Schedule 3 amended</td>
<td>3</td>
</tr>
<tr>
<td>8</td>
<td>Schedule 4 amended</td>
<td>4</td>
</tr>
<tr>
<td>9</td>
<td>Schedule 5 amended</td>
<td>4</td>
</tr>
</tbody>
</table>

Consequential amendments to other enactments

<table>
<thead>
<tr>
<th></th>
<th>Land Transport Act 1998 consequentially amended</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Customs and Excise Act 1996 consequentially amended</td>
<td>4</td>
</tr>
</tbody>
</table>

Part 2

Amendment to Misuse of Drugs Amendment Act 2005

<table>
<thead>
<tr>
<th></th>
<th>Misuse of Drugs Amendment Act 2005 amended</th>
<th>4</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Interpretation</td>
<td>4</td>
</tr>
</tbody>
</table>

126—2 1
The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Misuse of Drugs Amendment Act 2010.

2 Commencement
(1) Sections 6, 7(1) and (2), 8, and 9 come into force on 1 March 2011.
(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 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.”

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

6 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”.

7 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”.

3
8 Schedule 4 amended
The items relating to ephedrine and pseudoephedrine in clause 1 of Part 1 of Schedule 4 are omitted.

9 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

10 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)”.

11 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

12 Misuse of Drugs Amendment Act 2005 amended
This Part amends the Misuse of Drugs Amendment Act 2005.

13 Interpretation
Paragraph (b)(v) of the definition of substance in section 31 is repealed.
### Schedule

**Items added to clause 1 of Schedule 5**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ephedrine</td>
<td>10 grams, whether or not contained in a substance, preparation, or mixture</td>
</tr>
<tr>
<td>Pseudoephedrine</td>
<td>10 grams, whether or not contained in a substance, preparation, or mixture</td>
</tr>
</tbody>
</table>

### Legislative history

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 April 2010</td>
<td>Introduction (Bill 126–1)</td>
</tr>
<tr>
<td>24 August 2010</td>
<td>First reading and referral to Health Committee</td>
</tr>
</tbody>
</table>