Psychoactive Substances Bill

Government Bill

Explanatory note

General policy statement

The Psychoactive Substances Bill (the **Bill**) will regulate otherwise unregulated psychoactive substances such as "party pills" and other "legal highs" in New Zealand. The Bill will restrict the importation, manufacture, and supply of psychoactive substances and only allow the sale of those psychoactive substances that can meet safety and manufacturing requirements.

Currently, there is no mechanism to prevent potentially harmful psychoactive substances being imported, manufactured, or sold unless they are scheduled in the Misuse of Drugs Act 1975. Existing legislative controls rely upon the Government identifying that a psychoactive substance is being sold and then reacting accordingly. This means that there is a delay between a psychoactive substance becoming publicly available and controls being placed on it.

In 2011, the Government introduced temporary class drug notices under the Misuse of Drugs Act 1975 that allow for emergency restrictions to be placed on new psychoactive substances. The notices were designed as an interim measure and will begin to permanently lapse in August 2013. The Bill provides a long-term and more effective solution as it will restrict all psychoactive substances by default, and only allow the sale of those approved by a regulatory authority. This means the Government will no longer have to demonstrate a

product is harmful before restricting it from being sold. Instead, the onus will be on manufacturers to demonstrate that a product that is a psychoactive substance or contains psychoactive substances poses no more than a low risk to individuals using it before it can be legally sold.

The Bill applies to the importation, manufacture, sale, supply, or possession of a psychoactive substance for the primary purpose of inducing a psychoactive effect in individuals using the substance. The Bill does not apply to controlled drugs or precursor substances listed in the Misuse of Drugs Act 1975 or to medicines and does not generally apply to alcohol or tobacco products unless they contain psychoactive substances.

The Bill provides for—

- a regulatory authority within the Ministry of Health to consider and grant approvals of psychoactive products, issue a code of practice relating to the manufacture of psychoactive substances, issue licences relating to the importation, manufacture, and sale of psychoactive substances, and carry out post-marketing monitoring, recall, and audit functions:
- the establishment of an expert advisory committee to give technical advice to the regulatory authority:
- requirements for importers and manufacturers of psychoactive substances to apply for a licence to carry out activities under the Bill, apply to the regulatory authority for approval before marketing a psychoactive product, meet manufacturing standards, and notify the regulatory authority of any adverse reactions associated with substances:
- prohibitions on free-of-charge distribution of approved products and on certain types of advertising:
- offences and penalties for failing to meet the requirements of the Bill:
- the establishment of an appeals committee:
- regulation-making powers to prescribe retail restrictions (including place-of-sale, advertising, labelling, and packaging restrictions) and health warning, signage, storage, display, and record-keeping requirements relating to psychoactive substances and approved products, and to prescribe fees:

- a transitional provision to allow the continued sale of some psychoactive substances following enactment of the Bill.

Regulatory impact statement

The Ministry of Health produced regulatory impact statements on 1 July 2012 and 1 October 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statements can be found at—

- http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/new-regulatory-regime-psychoactive-substances
- http://www.treasury.govt.nz/publications/informationreleases/ris

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides that the Bill comes into force on 1 August 2013.

Part 1
Preliminary provisions

Subpart 1—Preliminary matters

Clauses 3 to 7 relate to preliminary matters. In particular, this subpart—

- states that the purpose of the Bill is to regulate the availability of psychoactive substances in New Zealand (*clause 3*):
- sets out the principles to be taken into account by a person or body performing functions or duties or exercising powers under the Bill (*clause 4*):
- deals with the application of the Bill. It provides that the Bill applies to the importation, manufacture, sale, supply, or possession of a psychoactive substance for the primary purpose of inducing a psychoactive effect in an individual using the substance (*clause 5*):
- provides an overview of the general scheme and effect of the Bill (*clause 6*):

- provides that the Bill binds the Crown (*clause 7*).

Subpart 2—Interpretation

Clauses 8 and 9 relate to interpretation. These clauses define various terms used in the Bill and, in particular, the key terms psychoactive substance, psychoactive product, and approved product.

Clause 8 defines a psychoactive product as a finished product that is a psychoactive substance or contains 1 or more psychoactive substances. An approved product is a psychoactive product that has been approved by the Authority under the Bill.

Clause 9 defines a psychoactive substance as a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect in an individual who uses the psychoactive substance. *Clause 9(c)* specifically excludes controlled drugs (as specified or described in Schedule 1, 2, or 3 of the Misuse of Drugs Act 1975), precursor substances (as specified or described in Schedule 4 of that Act), medicines, herbal remedies, dietary supplements, and food from the definition. Alcohol and tobacco products are also generally excluded from the definition of psychoactive substance unless the alcohol or tobacco product contains a psychoactive substance.

In addition, *clause 9(b)(ii) and (c)(ix)* provide that the definition includes or excludes a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect in an individual that is declared, by the Governor-General by Order in Council made under *clause 81*, to be or not be a psychoactive substance for the purposes of the Bill.

Subpart 3—Key regulatory roles

Clause 10 establishes the Psychoactive Substances Regulatory Authority (the **Authority**). The Authority is the Director-General of Health.

Clause 11 establishes the Psychoactive Substances Expert Advisory Committee (the **advisory committee**). The advisory committee's main function is to evaluate psychoactive products and advise the Authority whether the products should be approved for use by individuals. Members of the advisory committee are to be appointed by the Authority after consultation with the Minister responsible for the administration of the Bill (the **Minister**), and between them,

must have expertise in pharmacology, toxicology, neurosciences, medicine, and any other areas that the Minister considers relevant.

Part 2
Psychoactive substances and approved products

Part 2 (*clauses 12 to 45*) sets up a licensing regime in relation to psychoactive substances and an approval regime in relation to approved products. In particular, *Part 2*—

- enables the Authority to grant licences in relation to the importation, manufacture, and sale of psychoactive substances and to approve psychoactive products as approved products:
- contains specific provisions relating to the manufacture of psychoactive substances:
- provides for appeals against decisions of the Authority.

Subpart 1—Licences to import, manufacture, and sell psychoactive substances

The Bill provides for the Authority to grant 3 types of licences in respect of psychoactive substances. These are—

- a licence to import a psychoactive substance:
- a licence to manufacture a psychoactive substance:
- a licence to sell a psychoactive substance that is not an approved product to a person who holds a licence to manufacture a psychoactive substance.

Applications for licences

Clause 12 authorises the Authority to grant licences to import, manufacture, or sell psychoactive substances. The applicant for a licence must be a New Zealand resident and the application for a licence must be made in the form or manner approved by the Authority and be accompanied by the prescribed fee (if any).

Clause 13 provides that the Authority may refuse to process an application for a licence that does not comply with *clause 12*.

Clause 14 provides that the Authority may request further information from an applicant before deciding whether or not to grant a li-

cence and that unless the further information is provided within 30 days (or any further time that the Authority may allow), the application lapses.

Granting of licence

Clause 15 sets out the grounds for granting a licence. In particular, it provides that the Authority may grant a licence if it is satisfied that the applicant is a fit and proper person to hold the licence.

Conditions of licences

Clauses 16 and 17 set out certain compulsory conditions that apply to the different types of licences and authorise the Authority to impose additional conditions on licences as the Authority thinks fit.

Clause 18 relates to the duration of licences. Licences generally remain in force for a period of 3 years unless the Authority specifies a shorter period for the licence or the licence is sooner cancelled or surrendered under the Bill.

Licences not transferable

Clause 19 prohibits a licence from being transferred by the licence holder to any other person.

Refusal of licence

Clause 20 sets out the process to be followed if the Authority proposes to refuse to grant a licence. The Authority must notify the applicant of the proposed refusal and the grounds for it. If, after considering any submissions provided by the applicant, the Authority decides to refuse to grant a licence, it must notify the applicant of the decision in writing and give the reasons for the decision.

Suspension, cancellation, and surrender of licence

Clause 21 empowers the Authority to suspend or cancel a licence and sets out the grounds for suspension and cancellation.

Clause 22 provides that a licence holder may surrender a licence at any time and must do so, within 30 days, if the licence holder ceases to undertake the activity to which the licence relates.

Offences relating to licences

Clauses 23 to 26 create offences relating to licences, including offences in relation to—

- providing materially false or misleading information in respect of an application for a licence (*clause 23*):
- importing or manufacturing a psychoactive substance without a licence or importing, manufacturing, selling, or supplying a psychoactive substance in breach of licence conditions (*clauses 24 to 26*).

Further provisions relating to manufacturing psychoactive substances

Clause 27 requires the Authority to issue a code of practice for the manufacture of psychoactive substances (the **code**).

Clause 28 provides that the Authority may conduct an audit of a manufacturing facility at which psychoactive substances are manufactured to assess whether the manufacturing facility is complying with the code and, if applicable, any conditions of a licence to manufacture. It also provides that the Authority may recognise audits of manufacturing facilities conducted by other persons.

Clause 29 provides that persons authorised by the Authority may enter manufacturing facilities for the purposes of—

- assessing an application for a licence to manufacture; or
- determining whether a manufacturing facility is complying with the code or any conditions of a licence to manufacture.

Clause 30 empowers the Authority to issue a compliance notice following an audit.

Subpart 2—Approved products

Applications for approval

Clause 31 enables a New Zealand resident to apply to the Authority for approval of a psychoactive product as an approved product. The application must be made in the form or manner approved by the Authority and be accompanied by the prescribed fee (if any).

Clause 32 provides that the Authority may refuse to process an application for approval that does not comply with *clause 31*.

Clause 33 provides that the Authority may request further information from an applicant before deciding whether or not to approve a psychoactive product and that unless the further information is provided within 30 days (or any further time that the Authority may allow), the application lapses.

Clause 34 provides that the Authority must not disclose any confidential supporting information specified in, or given in relation to, an application for approval of a psychoactive product except to specified persons or organisations.

Granting of approval

Clause 35 sets out the grounds for approving a psychoactive product as an approved product. In particular, it provides that the Authority may grant an approval only if it is satisfied that 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

Clause 36 provides that the Authority may impose conditions on the approval of a psychoactive product.

Refusal and revocation of approval

Clause 37 sets out the process to be followed if the Authority proposes to refuse to approve a psychoactive product. The Authority must notify the applicant of the proposed refusal and the grounds for it. If, after considering any submissions provided by the applicant, the Authority decides to refuse to approve a product, the Authority must notify the applicant of the decision in writing and give the reasons for the decision.

Clause 38 provides that the Authority may, at any time, by notice in the *Gazette*, revoke the approval of an approved product if the Authority considers, on reasonable grounds, that the product can no longer be regarded as posing no more than a low risk of harm to individuals using the product.

Offences relating to approvals

Clauses 39 and 40 create offences in relation to approvals, including offences in relation to—

- providing materially false or misleading information in respect of an application for approval of a product, or failing, without reasonable excuse, to provide relevant information in respect of the application:
- breaching conditions of approval.

Register of approved products

Clause 41 requires the Authority to maintain a register of approved products and publish the register on an Internet site maintained by, or on behalf of, the Authority. A key purpose of the register is to enable members of the public to obtain information about approved products and, in particular, confirm whether a psychoactive product is an approved product.

Subpart 3—Appeals against Authority

Clause 42 establishes the Psychoactive Substances Appeals Committee (the **appeals committee**) to determine appeals against decisions of the Authority.

Clauses 43 to 45—

- set out the types of decision that can be appealed to the appeals committee:
- specify procedural matters relating to appeals:
- provide that the appeals committee may refer appeals back to the Authority for reconsideration:
- limit appeals against determinations of the appeals committee to the High Court only on questions of law.

Part 3
Control of approved products and other matters

Part 3 (*clauses 46 to 91*) contains provisions relating to the control of approved products and other matters. In particular, it largely carries forward existing provisions in Part 3 of the Misuse of Drugs

Amendment Act 2005 that control the sale and supply of restricted substances and that relate to the enforcement of those controls.

Subpart 1—Control of approved products

Age restrictions

Clause 46 provides that it is an offence for a person under the age of 18 years to buy an approved product.

Clauses 47 and 48 impose age restrictions on the sale and supply of approved products to persons under the age of 18 years. In particular, the Bill provides that it an offence—

- to sell an approved product to a person who is under the age of 18 years (*clause 47*):
- to supply an approved product to a person who is under the age of 18 years (*clause 48*).

Clauses 47(3) and 48(3) provide defences to a charge of selling or supplying an approved product to a person under the age of 18 years.

Clause 47(3) provides that is it a defence to a charge of selling an approved product to a person under the age of 18 years if the defendant proves that he or she—

- did not know the person to whom the approved product was sold was under the age of 18 years; and
- took reasonable precautions and exercised due diligence to prevent the sale.

Clause 48(3) provides that it is defence to a charge of supplying an approved product to a person under the age of 18 years 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.

Clause 49 provides that it is an offence for a person to employ a person aged under the age of 18 years to sell approved products on behalf of the person (whether at a place where approved products are sold or by Internet sale).

Other restrictions, prohibitions, and requirements relating to approved products

Clauses 50 to 60 impose restrictions, prohibitions, and requirements on approved products, including restrictions, prohibitions, and requirements relating to—

- places of sale:
- Internet sale:
- free-of-charge distribution:
- advertising, labelling, and packaging:
- health warnings, signage, display, storage, and record-keeping.

The detail of the restrictions, prohibitions, and requirements is to be prescribed in regulations made under *clause 83* and, in each case, contravening a restriction, prohibition, or requirement is an offence.

Prohibitions and restrictions on convicted persons selling approved products

Clause 61 enables a court to prohibit or restrict a person from being involved in selling approved products if the person is sentenced for an offence under the Bill and, within 2 years of being sentenced for that offence, the person is convicted of another offence under the Bill. It also enables the court to prohibit or restrict the sale of approved products at the place at which the second offence occurred and by Internet sale. Contravening the court-imposed prohibition or restriction is an offence.

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

Clause 62(1) creates offences relating to psychoactive substances that are not approved products, including offences in relation to—

- selling or supplying a psychoactive substance that is not an approved product:
- offering to sell or supply a psychoactive substance that is not an approved product:

- possessing a psychoactive substance that is not an approved product with the intention to sell or supply the psychoactive substance to any person.

The maximum penalty for the offences on conviction is a term of imprisonment not exceeding 2 years. *Clause 62(2)* clarifies that an offence is not committed under *clause 62(1)* if the person holds a licence to sell that applies to the psychoactive substance.

Clause 63 creates an offence relating to the personal possession of a psychoactive substance that is not an approved product. The maximum penalty for the offence on conviction is a fine not exceeding $500. *Clause 63(2)* clarifies that an offence is not committed under *clause 63(1)* if the person holds a licence to sell that applies to the psychoactive substance.

Infringement offences

Clauses 64 to 67 create infringement offences in relation to—

- a person under 18 years buying an approved product (*clause 46*):
- supplying an approved product to a person under 18 years (*clause 48*):
- personal possession of a psychoactive substance that is not an approved product (*clause 63*).

The infringement fee is to be prescribed by regulations made under *clause 83*, but may not exceed $500.

Subpart 3—Enforcement

Enforcement officers

Clause 68 enables the Authority to appoint enforcement officers to enforce the provisions of the Bill.

Enforcement powers

Clause 69 empowers an enforcement officer or a constable who has reasonable grounds to believe there is a psychoactive substance in a place and an offence has been, is being, or will be committed against any of *clauses 24, 25, or 62* (which are offences punishable by a term of imprisonment) to enter that place without a search warrant. *Clause 69(2)* provides that the warrantless power to enter and search

may not be exercised in respect of a dwellinghouse or other residential accommodation. *Clause 69(3)* specifies the powers that may be exercised by an enforcement officer or a constable undertaking the warrantless entry.

Clause 70 provides for the issue of a search warrant to an enforcement officer or a constable to enter and search a place, vehicle, or other thing, if the enforcement officer or constable has reasonable grounds—

- to suspect that an offence under the Bill has been committed, is being, or will be committed; and
- to believe that the search will find evidential material in respect of the offence.

Clause 70(2) and (3) apply the provisions of Part 4 of the Search and Surveillance Act 2012 (with specific exclusions) to a search warrant issued to an enforcement officer or constable.

Clause 71 empowers an enforcement officer or a constable who has reasonable grounds to believe that a psychoactive substance that is not an approved product was sold to a person under the age of 18 years at a place in contravention of *clause 47* to require a person who the officer or constable has reasonable grounds to believe sold the substance to that person to—

- give their name and address and date of birth; or
- require a person in charge of the place to give the name and address and date of birth of the other person who sold the substance to the person under the age of 18 years.

However, *clause 71(3)* provides that a person under the age of 17 years must not be required to give his or her name and address and date of birth unless there is no other person in the place who seems to be in charge of it, or there is another person in the place who seems to be in charge of it but that person is also under the age of 17 years.

Clause 71(4) provides that a person under the age of 17 years must not be required to give the name and address of any other person if the other person is in the place and is 17 years of age or older.

Clause 71(5) provides that the powers to require identifying information must be used only for finding out the names and addresses of people believed to have sold approved products to a person under the age of 18 years.

Clause 72 empowers a constable who has reasonable grounds to suspect that a person has committed, is committing, or is attempting to commit an offence against *clause 63* (which relates to personal possession of a psychoactive substance by a person under 18 years) to require the person to provide the constable with his or her full name and address and date of birth. *Clause 72(3)* provides that where a person, without reasonable excuse, fails or refuses to provide the particulars and persists in doing so after being cautioned by the constable, the person may be arrested, without warrant, by the constable.

Clause 73 provides for the forfeiture to the Crown of psychoactive substances and approved products where a person is found guilty of an offence against the Bill in respect of the substance or product.

Offences relating to enforcement

Clause 74 creates offences in respect of—

- obstructing an enforcement officer or a constable who is performing any functions or duties or exercising any powers under the Bill; and
- failing to provide any information required by an enforcement officer or a constable under *clause 71 or 72* or providing any information that the person knows, or ought to have known, is false or misleading in any material respect.

International controlled delivery of psychoactive substances

Clause 75 provides for the international controlled delivery of psychoactive substances. The provision is based on section 12D of the Misuse of Drugs Amendment Act 1978 and provides that an international controlled delivery occurs when an enforcement officer, a constable, a Customs officer, or an officer of another relevant law enforcement agency allows a psychoactive substance to be imported with a view to identifying persons involved in offences. *Clause 75(2) and (3)* confirm that the liability of any person charged with an offence under the Bill is not affected by the international controlled delivery and that enforcement officers, constables, Customs officers, or officers of other relevant law enforcement agencies do not themselves commit an offence by taking part in the delivery.

Subpart 4—Other powers of Authority

Clause 76 enables the Authority to recognise a person or body as a recognised authority for the purposes of the Bill.

Clause 77 provides that the Authority may recognise laboratories for the purposes of the Bill.

Clause 78 provides for the recall and destruction of approved products in certain circumstances.

Clause 79 enables the Authority to provide an export certificate in respect of an approved product.

Subpart 5—Other matters

Duty to notify adverse reactions

Clause 80 imposes a duty on licence holders and the person who applied for approval of an approved product to notify the Authority if the licence holder or person becomes aware of any adverse reaction arising from its use by individuals (whether in New Zealand or overseas).

Regulations

Clause 81 authorises regulations to be made on the recommendation of the Minister declaring any substance, mixture, preparation, article, device or thing to be or not to be a psychoactive substance for the purposes of the Bill.

Clause 82 authorises regulations to be made on the recommendation of the Minister prescribing fees and charges to enable the recovery of the direct and indirect costs of the Authority, the advisory committee, and the appeals committee.

Clause 83 authorises regulations to be made on the recommendation of the Minister relating to other matters, including regulations—

- prescribing the information that must be supplied in an application for a licence or approval of a psychoactive product and matters that the Authority must take into account in deciding an application:
- prescribing restrictions or prohibitions on the places or premises from which approved products may be sold:
- prescribing restrictions or requirements relating to the Internet sale of approved products:

- prescribing restrictions or requirements relating to the advertising, packaging, and labelling of approved products:
- prescribing requirements relating to the health warnings to accompany approved products:
- prescribing restrictions or requirements relating to signage to be displayed when approved products are sold:
- prescribing restrictions or requirements relating to quantity or form of approved products that may be sold or supplied together at any one time and the maximum dosage or serving of an approved product that may be sold or supplied at any one time:
- prescribing restrictions or requirements relating to the storage or display of approved products:
- prescribing the infringement fee payable in respect of an infringement offence (which may not exceed $500) and the form of infringement notices and reminder notices for infringement offences:
- prescribing procedures for the advisory committee and the appeals committee:
- prescribing record-keeping requirements in relation to approved products:
- providing for any other matters contemplated by the Bill, necessary for its administration, or necessary for giving it full effect.

Delegation of Authority's functions, duties, or powers

Clause 84 enables the Authority to delegate any of its functions, duties, or powers under the Bill.

Relationship with other enactments

Clause 85 states the relationship between the Bill and the Hazardous Substances and New Organisms Act 1996.

Clause 86 provides that the Customs and Excise Act 1996 (with certain specified exceptions) applies 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.

Review of Act

Clause 87 provides that the Ministry must conduct a review of the policy and operation of the Bill no later than 5 years after its commencement.

Transitional provision

Clause 88 and *Schedule 1* contain a transitional provision permitting the sale of a psychoactive product that was being lawfully sold throughout the period of 6 months before the commencement of the Bill. The psychoactive product may continue to be sold after the commencement of the Bill but only if an application is made to the Authority for approval of the product within 30 days of the commencement of the Bill.

Amendments to Search and Surveillance Act 2012

Clause 89 amends section 45 of the Search and Surveillance Act 2012 to enable enforcement officers and constables to undertake trespass surveillance and use interception devices in order to obtain evidential material in relation to offences against *clauses 24, 25, or 62* of the Bill (which are offences punishable by a term of imprisonment).

Amendments to Children, Young Persons, and Their Families Act 1989

Clause 90 amends section 272 of the Children, Young Persons, and Their Families Act 1989 so that when a young person is charged with an infringement offence under this Bill, the District Court may hear and determine the information.

Consequential amendments and revocation

Clause 91 consequentially amends, repeals, and revokes other enactments as specified in *Schedule 2*.

Hon Peter Dunne

Psychoactive Substances Bill

Government Bill

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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 **1 August 2013**.

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.

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 using 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:

(c) a psychoactive product that poses more than a low risk of harm to individuals using 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 for the primary purpose of inducing a psychoactive effect in an individual using the substance.

(2) **Schedule 1** contains a transitional provision that affects 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 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 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) 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 after 5 years:

(ix) providing for the circumstances in which psychoactive substances that were being lawfully sold throughout the period of 6 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 only a guide to the general scheme and effect 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,—

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 digital medium

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

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 product means a 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

distributor means a person engaged in the business of selling approved products otherwise than at retail only

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

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

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

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

(a) has been entered into using the Internet 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 the following licences:

(a) a licence to manufacture:

(b) a licence to import:

(c) a licence to sell

licence to import, **licence to manufacture**, and **licence to sell** mean, in each case, a licence granted under **section 15**

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, with the authority of the Prime Minister, 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

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

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

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

regulations means regulations made under this Act

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

supply—

(a) includes distribute or give; but

(b) does not include sell

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:

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

Meaning of psychoactive substance

9 Meaning of psychoactive substance

In this Act, unless the context otherwise requires, **psychoactive substance**—

(a) 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; and

(b) includes—

(i) an approved product:

(ii) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind or belonging 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; but

(c) does not include—

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

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

(iii) a medicine as defined in section 3 of the Medicines Act 1981 or a related product as defined in section 94 of that Act:

(iv) a herbal remedy (as defined in section 2(1) of the Medicines Act 1981):

(v) a dietary supplement (as defined in regulation 2A of the Dietary Supplements Regulations 1985):

(vi) any food (as defined in section 2 of the Food Act 1981):

(vii) any alcohol (as defined in section 5(1) of the Sale and Supply of Alcohol Act 2012) unless the alcohol contains a psychoactive substance within the meaning of **paragraph (a) or (b)** that is not alcohol:

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

(ix) a substance, mixture, preparation, article, device, or thing that is, or that is of a kind or belonging 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.

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

- (a) pharmacology:
- (b) toxicology:
- (c) neurosciences:
- (d) medicine:
- (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) on the advice that the advisory committee provides to the Authority:
- (b) on the use of external experts to assist the advisory committee.

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

Part 2
Psychoactive substances and approved products

Subpart 1—Licences to import, manufacture, and sell psychoactive substances

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 a psychoactive substance:
- (b) a licence to manufacture a psychoactive substance:
- (c) a licence to sell a psychoactive substance that is not an approved product.

(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 or not to grant a licence.

(2) An application for a licence lapses if the 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—

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

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

(c) that the applicant is a fit and proper person to hold the licence.

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

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

(b) whether there has in the past 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 in the future 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

(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, advise the Authority 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 that the licence holder must not sell or supply a psychoactive substance that is not an approved product in New Zealand except to a person who holds a licence to manufacture.

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

(a) keep, in some place of security 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.

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 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 any regulations made under this Act:

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

(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 import, manufacture, sale, or supply of psychoactive substance in breach of licence conditions

(1) A person must not import a psychoactive substance in breach of any conditions of a licence to import.

(2) A person must not manufacture a psychoactive substance in breach of any conditions of a licence to manufacture.

(3) A person must not sell or supply a psychoactive substance that is not an approved product in breach of any conditions of a licence to sell.

(4) A person who contravenes **subsection (1), (2), or (3)** 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 1 year 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 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 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 that person under this section; and

(d) the 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** that requires the person to do, or 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).

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 applicant does not provide an application that complies 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 or not to approve a psychoactive product as an approved product.

(2) An application for approval of a product lapses if the requested 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 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, the date that is 5 years after the application for approval to which that information relates was received by the Authority

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 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 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 in relation to 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, 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 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 approved products

41 Register of approved products

(1) The Authority must keep and maintain a register of approved products.

(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 the exercise of the person's powers, under this Act or any other enactment.

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

Subpart 3—Appeals against 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 in the regulations relating to the conduct of its proceedings, regulate its own procedure.

43 Appeals against Authority's decisions

(1) A person may appeal to the appeals committee against any decision of the Authority—

- (a) to refuse to approve a psychoactive product as an approved product:
- (b) to impose a condition on the approval of a psychoactive product:
- (c) to revoke an approval in relation to an approved product:
- (d) to refuse to grant the person a licence:
- (e) to impose a condition on a licence:
- (f) to suspend or cancel a licence.

(2) The appeal must be made within 60 days after the decision appealed against is given, or within such 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)** 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.

44 Appeals committee may refer appeals back for reconsideration

(1) The appeals committee may in any case, 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 questions of law

An appeal against a determination 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 approved products

(1) A person under the age of 18 years commits an offence if the person buys an approved product.

(2) **Subsection (1)** does not apply to a person who buys an approved product at the request of a constable 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; and

(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 (1)** if the defendant proves that—

(a) the sale to the person aged under 18 years occurred without the defendant's knowledge; and

(b) the defendant took reasonable precautions and exercised due diligence in order to prevent the sale.

(4) Without limiting **subsection (3)**, the defendant has a defence if the defendant proves that he or she—

(a) had sighted an approved evidence of age document indicating that the person buying the approved product was aged 18 years or over; and

(b) reasonably believed that the approved evidence of age document—
(i) was valid; and
(ii) related to the person to whom the approved product was sold.

(5) It is not a defence to a charge under **subsection (1)** that—
(a) the person to whom the approved product was sold was buying it for or 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 concerned was sold was buying it for or 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

(1) A person must not 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 $500.

(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)**, the defendant has a defence if the defendant proves that he or she—
(a) had sighted an approved evidence of age document indicating that the person to whom the approved product was supplied was aged 18 years or over; and
(b) reasonably believed that the approved evidence of age document—
(i) was valid; and
(ii) related to the person to whom the approved product was supplied.

(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 an 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, or on behalf of, or as an agent for a person aged 18 years or over.

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

(7) **Subsection (1)** applies irrespective of any liability that may attach to a person who has sold 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 Restrictions and prohibitions on place of sale of approved products

(1) This section applies to an approved product to which a prescribed restriction or prohibition relating to place of sale applies.

(2) A person must not sell an approved product from a place or an Internet site that does not comply with the prescribed restriction or prohibition.

(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.

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 Internet sale to which a prescribed restriction or prescribed requirement applies.

(2) A person must not offer an approved product for 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, distributor, 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, distributor, 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 Part.

(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; and

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

Compare: 2005 No 81 s 42

53 Prohibitions, restrictions, and requirements relating to advertising 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 (other than 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 to which a prescribed restriction or prescribed requirement relating to advertising applies in a way that does not comply with that restriction or requirement.

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

(a) in the case of an importer or a manufacturer of a psychoactive substance, to a fine not exceeding $50,000:

(b) in the case of any other person, to a fine not exceeding $10,000.

Compare: 2005 No 81 s 43

54 Restrictions and requirements relating to labelling approved products

(1) A person must not sell or supply an approved product to which a prescribed restriction or prescribed requirement relating to labelling applies with a label 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; and

(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 approved products

(1) A person must not sell or supply 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; and

(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 or supply an approved product to which a prescribed requirement relating to a health warning applies without a health warning that complies with that 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; and

(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 or supplies 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; and

(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 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; and

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

60 Requirement to keep records relating to approved products

(1) A person who, in the course of any business, imports, prepares, processes, manufactures, packs, stores, carries, delivers, or sells any approved product must—

(a) keep, in some place of security 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; or

(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 any or all 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 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) the court thinks fit on any or all of the following:

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

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 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 an approved product):

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

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

(3) An infringement notice (or a copy of it) sent 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.

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 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 other than 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) An enforcement officer or a constable may enter a place if the enforcement officer or constable has reasonable grounds to believe that—

(a) there is a psychoactive substance at the place; and
(b) an offence has been, is being, or will be committed against any of **section 24, 25, or 62** in relation to that substance in that place.

(2) **Subsection (1)** does not apply to a dwellinghouse or other residential accommodation.

(3) An enforcement officer or a constable who enters a place under **subsection (1)** may—
(a) use any force in respect of the place that is reasonable for the purposes of carrying out the search and any lawful seizure:
(b) inspect the place:
(c) take photographs or videos of the place:
(d) copy any documents or records (of any kind) relating to a psychoactive substance:
(e) seize anything that is the subject of the search or anything else that may be lawfully seized:
(f) inspect any article or material (for example, advertising material and display signage) in relation to which a restriction or requirement is imposed by or under this Act.

(4) **Subsection (2)** does not prevent an enforcement officer or a constable from entering a dwellinghouse or other residential accommodation and exercising the powers referred to in **subsection (3)**—
(a) under authority conferred by or under an enactment (including another provision of this Act); or
(b) with the occupier's consent.

(5) An enforcement officer or constable who is exercising powers under this section in respect of or in a place, must,—
(a) if a person in charge of the place is present on initial entry, identify himself or herself to the person in charge as an enforcement officer or a constable; and
(b) in the case of an enforcement officer who is asked by a person in charge to do so, produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both; and
(c) explain to the person in charge that the authority to enter is under this section.

Compare: 2005 No 81 s 56

70 Warranted power to enter and search

(1) An issuing officer (within the meaning of section 3 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, or will be committed against this Act; and

(b) to believe that the search will find evidential material in respect of the offence in 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 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 cause 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 the 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 the person's knowledge 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 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 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 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 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 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 the Commissioner of Police directs.

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, 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 the substance is to pass through or into; and

(b) with a view to identifying persons involved in the commission of an offence under this Act that would, if done or committed in New Zealand, be an offence under this Act.

Compare: 1978 No 65 s 12D

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 in respect of psychoactive substances that require the person or body to assess conformity against, or compliance with, criteria that are equivalent to or more robust than those under this Act; or

(b) is engaged in an area of work that requires the person or body to assess conformity against, 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 an order of the kind referred to in **subsection (2)** (a **recall order**) to—

(a) the importer or manufacturer of an approved product; or

(b) a retailer of an approved product that is known to the Authority.

(2) The recall order is 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 to individuals using the product.

(3) On receipt of a recall order, the importer or manufacturer 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; and

(c) advise any retailer of the approved product known to the importer or manufacturer that a recall order has been issued in respect of the approved product.

(4) A person who fails to comply, in any respect, with a recall order issued under **subsection (1)** or any requirement of **subsection (3)** commits an offence and is liable on conviction,—

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

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

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 to individuals using the approved product.

Subpart 5—Other matters

Duty to notify adverse reactions

80 Duty 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 psychoactive 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—
(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 commits an offence if the person contravenes **subsection (1)**.

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

(6) In this section, **adverse reaction** means an unwanted or harmful reaction experienced by an individual using the psychoactive substance that is suspected to have arisen from, or be related to, use of the substance.

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 regulations are reasonably necessary or expedient for achieving the purposes of this Act; 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 regulations.

82 Regulations relating to fees and charges

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing the fees or charges payable to enable the recovery of the direct and indirect costs of the Authority, the advisory committee, and the appeals committee incurred in—

(a) administering this Act:

(b) enforcing and monitoring compliance with this Act:

(c) publicising and informing people about this Act:

(d) doing anything else authorised or required by this Act.

(2) Examples of the costs that may be recovered include—

(a) the cost of processing applications:

(b) the costs of issuing licences or export certificates:

(c) the costs of funding enforcement officers:

(d) the costs of providing, operating, and maintaining systems, registers, or other processes in connection with the administration of this Act:

(e) the costs of services provided by third parties to the Authority (for example, laboratories).

(3) Regulations made under **subsection (1)** may specify—

(a) the matters in respect of which fees or charges are payable:

(b) the amounts of fees or charges or the method or rates by which they are to be assessed:

(c) the persons or classes of persons liable for payment of the fees or charges:

(d) the particular products or classes of products or particular licences or classes of licences to which the fees or charges apply:

(e) the circumstances in which a penalty for default in payment is payable or in which the payment of the whole or a part of those fees or charges may be remitted or waived:

(f) the manner in which the fees or charges are to be paid.

(4) 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 regulations.

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

(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, for example,—

(i) restricting or prohibiting the sale of approved products from places or premises of a specified

kind (for example, an Internet site or non-fixed premises such as a vehicle):

(ii) restricting or prohibiting the sale of approved products from certain types of retail premises (for example, premises where alcohol is sold):

(iii) restricting or prohibiting the sale of approved products from, or in proximity to, places where children or minors gather (for example, schools or recreational facilities):

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 Internet sale, for example,—

(i) restricting the offer of approved products on Internet sites containing material designed to appeal to children or that associate approved products with youth culture:

(ii) requiring that certain information (such as the ingredients contained in the approved product) be visible on the Internet site when people browse, enter, or otherwise access the site, or a requirement that measures are taken to ensure that people younger than the age of 18 years cannot enter, browse, or otherwise access the Internet site:

Advertising restrictions or requirements

(d) prescribing restrictions or requirements relating to the location, manner, way, medium, or form in which—

(i) approved products are advertised:

(ii) advertising of approved products, if undertaken, is to appear, for example, a requirement that advertising for approved products include certain information (such as the ingredients contained in the approved product):

Labelling restrictions or requirements

(e) prescribing restrictions or requirements relating to the manner, way, medium, and form in which—

(i) approved products are labelled, for example, restrictions relating to labelling designed to appeal to children or that associates approved products with youth culture:

(ii) the labelling of approved products must appear for the purposes of sale or supply, or both, 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 or supply, or both, 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 or supply, or both, 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 or supply, or both, 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 or supply, or both, 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 requirements—

(i) that health warnings accompany approved products for the purposes of sale or supply, or both, and the information that must be specified or included in the warnings:

(ii) as to the manner, way, medium, or form in which health warnings are, if required, to accompany approved products (such as a requirement that the health warning is to be on the label or advertising of a package containing an approved product):

Signage requirements

(i) prescribing requirements—

(i) relating to signage that is to be displayed when approved products are sold:

(ii) as 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 or supplied together at any one time:

(ii) the maximum dosage or serving of an approved product that may be sold or supplied 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 or supply, or both, 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 for the purposes of sale or supply, or both, for example, a restriction that an approved product must not be displayed in a particular place or a requirement relating to the position in a shop where approved products are visible from the street:

Infringement offences

(l) prescribing the infringement fee payable for an infringement offence:

(m) prescribing the form of infringement notices and a reminder notice for infringement offences, and any other particulars contained in infringement notices and reminder notices:

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 regulations.

(3) Regulations made under this section may—

(a) apply to psychoactive substances or approved products generally or to a particular class or description of psychoactive substances or approved products specified or described in the regulations:

(b) make different provision for different classes or descriptions of psychoactive substances or approved products.

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 delegation:

(e) may be revoked at any time by notice to the delegate.

(3) A person who is delegated any functions, duties, or powers 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.

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 sections 209 and 231 to 235C 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.

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 of the review.

(2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

Transitional provision

88 Transitional provision

The transitional provision set out in **Schedule 1** has 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

Amend or revoke the enactments specified in **Schedule 2** as set out in that schedule.

Schedule 1

ss 5(2), 88

Transitional provision

1 Transitional provision for products sold before commencement of Act

(1) This section applies to a psychoactive product that was being lawfully sold throughout the period of 6 months before the commencement of this Act.

(2) The psychoactive product may continue to be sold after the commencement of this Act, but only if,—

(a) no later than 30 days after the commencement of this Act, an application has been made to the Authority under **section 31** for approval of the product; and

(b) the Authority has accepted the application.

(3) The Authority may, at any time, if it is satisfied that the continued sale or supply of the product poses more than a low risk of harm to individuals using the product, recall a product to which this section applies under **section 78** as if were an approved product and that section applies with any necessary modifications to the recall of the product.

(4) To avoid doubt, this section 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 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.

Search and Surveillance Act 2012 (2012 No 24)

In the Schedule, insert in its appropriate alphabetical order:

Act	Section	Brief description of power	Which provisions in Part 4 apply
Psychoactive Substances Act **2013**	**70**	Enforcement officer 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)

Part 1—*continued*

Summary Proceedings Act 1957 (1957 No 87)

In section 2(1), definition of **infringement notice**, insert after paragraph (j):

"(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 subclause 2(1)(s) of Schedule 4; and

"(ii) only meets the minimum degree of hazard specified in subclause 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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