

Departmental Disclosure Statement

Psychoactive Substances Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 May 2014

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Part One - General Policy Statement

Describe the policy objectives that this Bill seeks to achieve, and the reasons for them.

Describe how this Bill goes about trying to meet those objectives and why this approach is necessary or desirable.

The Psychoactive Substances Amendment Bill gives effect to the Government's decision to introduce legislation ending interim product approvals under the Psychoactive Substances Act 2013.

The principal Act addressed concerns about the availability of potentially harmful psychoactive products with little or no control over their ingredients, potency, place of sale, or purchase age. It contained transition arrangements to provide continuity to the market and reduce the risk of black market activity. There have been ongoing reports of serious adverse effects, which the regulator cannot attribute to particular products, meaning it cannot use its regulatory powers to effectively intervene.

The objectives of the legislation are: to revoke all interim product approvals, revoke all interim retail and wholesale licences; require the recall and disposal of all products for which interim product approval has been revoked; suspend the requirement that the Psychoactive Substances Regulatory Authority must consider product approvals until regulations come into effect; provide that no compensation is payable by the Crown for any loss or damages as a result of the amendments; and to prohibit data from animal testing being used for the purpose of supporting an application for approval of a psychoactive product.

Part Two - Background Material and Policy Information

Published reviews or evaluations

2.1 Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international agreements

2.2 Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3 Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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The RIS is accessible at:

- moh.govt.nz and
- <http://www.treasury.govt.nz/publications/informationrelease/ris>

2.3.1 If so, did the RIA team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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The RIS identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team in the Treasury.

2.3.2 Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary from, the policy options analysed in those regulatory impact statements?	NO
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2.4 Has further impact analysis become available for any aspects of the policy to be given effect by the Bill?	NO
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2.5 For the policy to be given effect by this Bill, is there analysis available on:	
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(a) The size of the potential costs and benefits?	NO
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(b) The potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
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Legislation to remove approval for interim products would negatively impact industry because it would result in all products immediately being taken off the market. Up to 161 retailers (including suspended retailers) and 9 manufacturers of psychoactive products will be affected and it is reasonable to assume that businesses will close if this option is progressed. The maximum impact is estimated at up to \$60 million dollars in foregone revenue to the industry. The most likely response by industry would be to off load excess supply through heavy discounting prior to the legislation coming into force. Some industry members may choose to wholesale their remaining supply to black market vendors such as gangs who we expect to take over trade in these products if this option is chosen.

2.6 For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
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(a) The level of effective compliance or non-compliance with applicable obligations or standards	NO
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(b) The nature and level of regulator effort put into encouraging or securing compliance	NO
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The proposal is for a total removal of approval for interim psychoactive products. It will be an offence to possess or sell any psychoactive product. The role of the regulator, and amount of regulator effort will not impact significantly on the costs and benefits of the proposal. The regulator does not have discretion in applying the proposed provisions.

Part Three - Testing of Legislative Content

3.1 What steps have been taken to determine whether the policy to be given effect by the Bill is consistent with New Zealand's international obligations?

New Zealand's international obligations were considered when the Psychoactive Substances Bill was developed and no such obligations were identified. There has been no further consideration of the New Zealand's international obligations in the development of the Bill given the earlier assessment.

Consistency with government's Treaty of Waitangi obligations

3.2 What steps have been taken to determine whether the policy to be given effect by the Bill is consistent with the principles of the Treaty of Waitangi?

Treaty principles were considered when the Psychoactive Substances Bill was developed. It was considered that the Bill was not inconsistent with the Treaty or Treaty principles. Given the narrow scope of the proposed amendments, there has been no further consideration of whether the amendment bill is consistent New Zealand's treaty principles.

Consistency with New Zealand Bill of Rights Act 1990

3.3 Has advice been provided to the Attorney General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990? (BORA)

YES

The Ministry of Justice was consulted on the Bill in terms of its consistency with BORA and it advised that the Bill did not breach BORA.

Offences penalties and court jurisdictions

3.4 Does the Bill create, amend or remove:

(a) Offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

NO

(b) The nature and level of regulator effort put into encouraging or securing compliance

NO

Privacy issues

3.5 Does the Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

NO

External consultation

3.6 Has there been any external consultation on the policy to be given effect by this Bill or on a draft of this Bill?

NO

Other testing of proposals

3.6 Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

NO

Part Four – Significant Legislative Features

Compulsory acquisition of private property

4.1 Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Changes in the nature of a tax

4.2 Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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4.3 Does this Bill affect rights, freedoms or impose obligations retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

4.4 Does this Bill:	
(a) create or amend a strict liability or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for offences, including for civil liability under a civil pecuniary penalty regime?	NO

Civil or criminal immunity

4.5 Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6 Does this Bill create or amend a decision-making power to make a determination about a person's rights obligations or interests protected or recognised by law, and that could have a significant impact on those rights, obligations or interests?	NO
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Henry VIII clauses

4.7 Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8 Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9 Does this Bill contain provisions (other than those noted above) that are unusual or call for special treatment?	NO
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