

Departmental Disclosure Statement

Misuse of Drugs (Pseudoephedrine) Amendment Bill

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 | Manatū Hauora.

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.

8 February 2024

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	8

Part One: General Policy Statement

In accordance with the Government's commitment to allow the sale of cold medication containing pseudoephedrine, the purpose of this Bill is to change the classification of pseudoephedrine as a controlled drug. This legislation will reclassify pseudoephedrine from a Class B2 to a Class C3 controlled drug under the Misuse of Drugs Act 1975, so that cold and flu products containing pseudoephedrine can be sold in pharmacies without a prescription.

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?	YES
<p>Tackling methamphetamine: indicators and progress reports by the Department of the Prime Minister and Cabinet. Published between October 2009 and October 2014. Available at the following webpage: Tackling methamphetamine Department of the Prime Minister and Cabinet (DPMC).</p> <p>Methamphetamine in New Zealand: What is currently known about the harm it causes? Report by the Evidence Based Policing Centre, NZ Police. Published July 2021. Available at the following webpage: methamphetamine-in-new-zealand.pdf (police.govt.nz).</p> <p>Report on recent trends in illegal drug use in New Zealand 2006–2016, findings from the Illicit Drug Monitoring System. Social and Health Outcomes Research and Evaluation (SHORE), College of Health, Massey University. Available at the following webpage: Microsoft Word - IDMS report combined.docx (squarespace.com).</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	N/A

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Regulatory Impact Statement: Allowing sales of cold medicines containing pseudoephedrine. Ministry of Health. 12 January 2024. Available at the following webpage: Regulatory impact statements Ministry of Health NZ.</p>	
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
<p>The requirement for quality assurance of regulatory impact statements was suspended for decisions relating to 100-Day Plan proposals taken within the 100 days.</p>	

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 materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Qualitative analysis of the potential costs and benefits is available in the RIS (see 2.3.).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
There is a risk that pseudoephedrine is diverted for the manufacture of methamphetamine. Police and Customs enforcement capacity may impact on associated costs and benefits. Details of this are outlined in the RIS (see 2.3.).	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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

The classification of pseudoephedrine as a precursor substance under the Misuse of Drugs Act 1975 is consistent with the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

Consistency with the government's Treaty of Waitangi obligations

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

Population implications of the policy, including for Māori, were considered in the development of the RIS (see 2.3.).

Consistency with the 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?

NO

The Bill of Rights Act vetting is in progress with the Ministry of Justice. The Misuse of Drugs (Pseudoephedrine) Amendment Bill 2024 is expected to comply with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

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

NO

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

Privacy issues

3.5. Does this 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?

YES

The Ministry conducted limited external consultation on the policy with agencies and representatives of affected stakeholder groups. Further detail can be found in the RIS (see 2.3.).

Other testing of proposals

3.7. 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
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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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Charges 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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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	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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Powers to make delegated legislation

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 any provisions (other than those noted above) that are unusual or call for special comment?	NO
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