

17 January 2013

Dominic Perrottet MP
Parliament of New South Wales
Macquarie Street
Sydney
NSW 2000
Australia

Dear Sir

Parliamentary committee inquiry into law reform issues regarding synthetic drugs

Thank you for your letter of 6 December 2012 to Oliver Poppelwell requesting further information on New Zealand's experience in relation to the regulation of synthetic drugs. Our response is based on information provided by New Zealand enforcement agencies and the Ministry of Health (the Ministry).

The use of temporary class drug notices under the Misuse of Drugs Act 1975, and the extension of notices after the initial one year ban period

Since August 2011, 33 substances have been placed under temporary class drug notices. 31 temporary class drugs are synthetic cannabis-like substances; one is the stimulant DMAA (1,3-dimethylamylamine); and one is the phenyltropane stimulant RTI-126 (2 β -(1,2,4-oxadiazol-5-methyl)-3 β -phenyltropane).

To date, the initial temporary bans on 20 drugs have expired and new notices have been issued renewing the bans for a further 12 months. A temporary notice can only be renewed on one occasion and only for the purpose of allowing sufficient time for the responsible government minister to obtain the required advice on its permanent classification. It is expected that the Expert Advisory Committee on Drugs, as it is statutorily required to do, will assess all temporary class drugs and make recommendations on their classifications before the notices begin reaching their final expiry dates in August 2013.

The enforcement of temporary class drug notices and the success of such enforcement

The New Zealand Customs Service reports that it carried out in excess of 100 interceptions in the period from August 2011 to November 2012 involving substances covered by temporary notices. The quantity of drugs seized and forfeited was approximately 800 kilograms. However, the majority was seized immediately following

the first temporary bans as 'returned products' from other countries. The quantity forfeited as new imports over the period was approximately 50 kilograms.

The Customs Service has recently commenced some prosecutions of persons for importing in breach of the temporary notice provisions.

New Zealand Police is yet to commence a prosecution for commercial supply (possession of a temporary class drug is not an offence). This is due to a number of factors, including the (low) quantities of product seized, costs associated with testing, continued use of new substances that have yet to be scheduled as temporary class drugs, and genuine confusion about the legislation and product ingredients by shop retailers.

The police focus has been on educating enforcement staff and working with local authorities and retailers to improve compliance with the temporary class drug provisions. Most shop owners have been compliant with approaches by police and have voluntarily chosen to give up products to police or stop selling them. If shop owners do this voluntarily no further action has been taken.

The minority of retailers who are found continuing to sell have been targeted by health enforcement agents and police officers. Some have received warnings for breaching the Misuse of Drugs Act. A small number of prosecutions are also underway for the sale of smokable synthetic cannabis products to persons under 18 years, which is a breach of the Smoke-free Environments Act as they are covered by the definition of herbal smoking products.

The Ministry believes the use of temporary class drug notices and the approaches taken by enforcement to have been relatively successful, although the provisions were only intended to be a short term solution until the proposed regime for new psychoactive substances is in place. The legislation is expected to be before the New Zealand Parliament early this year and passed by late-2013.

The temporary notices have resulted in an estimated 50 to 100 products containing synthetic cannabis substances and a number of 'party pill' products containing DMAA being removed from retail sale. In particular, the Ministry believes the notices have significantly reduced the availability of these products to persons under 18 years.

Search and seizure powers provided to law enforcement officers with regards to substances that are subject to temporary class drug notices, particularly procedures regarding seizures from retailers of substances that are subject to such notices

The temporary class drug provisions classify a substance as if it is a Schedule 3, Part 1 (Class C1) controlled drug in the Misuse of Drugs Act. Search and seizure powers are the same as for any other Class C drug¹, with the provision for enforcement officers to

¹ In New Zealand, Class C controlled drugs include plant forms of cannabis, coca leaf and benzylpiperazine (BZP)

obtain search warrants, gain entry and seize any substance found. They also provide for the use of emergency non-search warrant authorised search and seizure.

Enforcement agencies are required to test products they suspect may contain temporary class drugs in order to confirm a substance is covered by a temporary notice, before prosecution is considered or initiated.

Restrictions and controls on the sale and supply via the internet of substances that are subject to temporary class drug notices

As with other controlled drugs, it is prohibited to supply temporary class drugs via the internet. Internet purchases have been made by authorities for the purposes of testing products, identifying their active ingredients and placing the substances under temporary notice. The Ministry has been generally satisfied with the level of compliance with the temporary class drug provisions by New Zealand based websites following the introduction of temporary bans and we are not aware of significant on-going domestic internet sales. There have been no prosecutions to date in relation to internet trading.

I hope this is of assistance to the Committee.

Yours sincerely

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