

Psychoactive Substances Bill

**Submission of the
New Zealand Police Association**

**Submitted to the
Health Committee**

1 May 2013

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About the New Zealand Police Association

The New Zealand Police Association (the Association) is a voluntary service organisation representing nearly 8,700 sworn police members across all ranks. The Association also represents more than 2,500 non-sworn members, who carry out invaluable support roles across the full spectrum of policing. Members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

In putting together this submission, the Association has consulted with members who have first-hand experience in the matters addressed by this bill.

Introduction and summary

1. The Police Association welcomes the Psychoactive Substances Bill, and believes it should proceed with some amendments.
2. There is ample evidence accumulating on a daily basis that so-called 'legal highs' may pose significant health risks, and their use is also increasingly linked to issues of addiction and crime. Consumers of these products labour under the belief – albeit misguided – that the fact such products are legal means they must be safe or relatively harmless. Knowing that this is not the case, and in light of the fact the nature of the products makes banning of specific substances merely a temporary fix, a new approach to regulation is required in order to ensure unsafe products are not (lawfully) sold. The Association believes the Bill's approach of placing the onus on suppliers of new substances to demonstrate the safety of products prior to sale should achieve this aim.
3. The Association's submission focuses on the following matters in the Bill, which we believe require the Committee's particular attention:
 - Age restrictions
 - Licensing of sellers
 - Internet advertising
 - Packaging restrictions
 - Research required to support review of Act's effectiveness
 - Transitional provisions
 - Excise tax
 - Drug-impaired driving

Background: Legal highs in New Zealand

4. New Zealand has a growing problem with so-called 'legal highs'. Psychoactive substances such as synthetic cannabinoids are highly addictive drugs, possibly even more so than many illicit drugs. Almost daily our newspapers are filled with reports of the harm caused by these drugs to users and their local communities.
5. Police are seeing a clear link between an increase in addiction to legal highs and an increase in crime – aggravated robbery and theft of legal highs from dairies and other retail outlets as people steal to fuel their addiction. Police are also reporting an increase in violent episodes and domestic violence attributed to legal highs.
6. Health effects include psychosis, nausea, vomiting, paranoia, seizures, heart attacks, kidney damage and 'out of control' behaviour. Very little is known about the long term effects of these drugs, and their potential adverse effect on the developing brain of a young person¹.
7. Users are attracted to the drugs primarily because they are legal, yet mimic the intoxicating effects of various illicit drugs. The fact of their legal status means there is no direct legal risk associated with their use; there is no risk of failing a workplace drug test; and users assume that because the substances are legal, they must be safe or pose negligible health risk – on the logic that, if the substance was dangerous, people wouldn't be allowed to sell it at all, let alone in a corner store.
8. Those working in health and law enforcement know that this is a naïve approach. The current legal status of these substances owes nothing to their safety, and everything to the difficulty of adequately regulating or banning them under existing legislative provisions. As fast as one substance can be banned, a replacement substance will enter the market in its place.

Impact on law enforcement

9. At present, because of their legal status, police have no role in regulating these substances. However, like the health sector, police are increasingly dealing with the consequences of use of these substances. Aggravated robberies and burglaries targeting stockists of the products, as well as crime committed to fund legal high addiction, are becoming increasingly common.
10. Policing of current bans of specific substances is problematic because a replacement product might bear the same product name and branding, but be chemically composed of a substance which is not banned. There is currently no labelling requirement to indicate what the psychoactive ingredient is.
11. While it is likely that some black market will persist for banned substances or substances that are not approved, the experience with BZP indicates that overall usage of a substance that is no longer legal will drop dramatically once that key point of attraction

¹ According to comments made by toxicologist Leo Schep of the National Poisons Centre to the New Zealand Herald in April 2013.

and ubiquity of supply is removed². The labelling requirements of this legislation should greatly assist police in establishing the legal status of any particular substance encountered, and the offence provisions around possession, sale, and supply will give police the tools to take action when either unapproved substances are encountered, or approved substances are supplied in breach of age or other restrictions.

12. We note that **clause 68** also allows for the appointment of enforcement officers to ensure compliance with the legislation. While this is a matter outside the scope of the Committee's consideration, it will be important to ensure that enforcement is sufficiently resourced to ensure the regime's effectiveness: especially in absence of a licensing regime for retailers of approved substances (see below).

General comments on policy issues

Age restrictions

13. **Clauses 46-49** impose age restrictions for both the sale and purchase of approved substances. The Association fully supports imposition of age restrictions; though it would be our strong preference that the minimum age be 20. This is the same minimum age Association members believe should apply to the sale and purchase of liquor.
14. The Sale of Liquor Act 1989 and its successor, the Sale and Supply of Alcohol Act 2012 (not yet in force) also contain sections related to age restrictions. The Sale of Liquor Act provisions are very similar to those proposed in this Bill, in that a defence is available to a charge of supplying an underage drinker if the seller believed on reasonable grounds that the person supplied was 18 years or older. However, following on-going concern about alcohol supplied to underage drinkers, the new Sale and Supply of Alcohol Act 2012 has significantly raised the onus on suppliers by limiting the available defence only to situations where they were shown an evidence of age document (Sale and Supply of Liquor Act 2012, s 239(6)). This will place far greater onus on alcohol suppliers to ask for and sight identification.
15. The Association queries why this Bill would introduce a defence to a charge of breaching age restrictions which has already been found to be wanting in the context of sale and supply of another legal recreational drug (alcohol). We submit that the defence provisions in **clauses 46-49** should be aligned with the provisions of the Sale and Supply of Alcohol Act 2012, not the Sale of Liquor Act 1989, so that suppliers of psychoactive substances are required to sight an evidence of age document in order to assure themselves they have complied with the law in supplying to a younger customer.

Licensing of sellers

16. **Clauses 50 and 51** allow for Internet sales of approved but restricted substances. This raises concern that the age restrictions provided for by **clauses 46-49** will be easily

² The report "Recent Trends in Illegal Drug Use in New Zealand, 2006-2011", from Massey University's Social and Health Outcomes Research and Evaluation School of Public Health, released in July 2012, showed that the use of Benzylpiperazine (BZP), a principle psychoactive ingredient in a range of legal highs called 'party pills', dropped dramatically after it was banned in April 2008. Prohibition of the drug greatly reduced the availability of the drug and increased its price.

circumvented, in spite of any Internet age verification requirements which might be imposed by regulations made under the Act (**clause 83(1)(c)**).

17. While it is true that alcohol is currently able to be sold over the Internet, those who do so must first be issued with a license and comply with the conditions of that license in supplying alcohol by this means. In addition to prosecution, failure to comply with the license could lead to cancellation of the license and difficulty in having a license granted in future. This at least provides some incentive to ensure liquor is not supplied to underage purchasers. Sellers of approved psychoactive substances will not be required to be licensed; and thus will not be subject to the same discipline.
18. The Bill's current licensing provisions (**Part 2, Subpart 1**) provide for licensing only of those involved in the importation, manufacture, and wholesale, but not retail, levels of the industry. This is because retailers will be dealing with products that have gained approval for sale: no license is required to sell approved products.
19. The Association believes there should be a licensing regime for retailers of psychoactive substances, in line with the licensing regime applying to the sale of alcohol.

Internet advertising

20. The Association supports the ban on online advertising provided for by **clause 53(1)(c)**. However, it is important offence provisions apply also to websites (or other media) which accept for publication advertising of psychoactive substances. Otherwise, there is weak disincentive for publishers (especially website publishers) to accept such advertising: particularly because, due to the nature of Internet content, such advertising is temporary and will likely carry only a very small risk of detection by regulatory authorities. Once advertising has been removed from a website, there may also be evidential problems in securing a conviction of the advertiser.

Packaging restrictions

21. The Bill provides for greater restrictions on the packaging and advertising of psychoactive substances in **clauses 54, 55 and 56**. The Association supports the move to require information such as ingredients lists, safety messages, medical help details and standardised dosages on packaging of approved products. These requirements will greatly assist in law enforcement. However, we would caution against any substance being evaluated as 'low risk of harm' only when used in accordance with safety guidelines. Clearly, guidelines such as 'do not use with alcohol' are highly unlikely to be adhered to by users who are, essentially, engaging in recreational drug use.

Research required to support review of Act's effectiveness

22. **Clause 87** provides for the Ministry to conduct a review of the policy and operation of the Act and prepare a report for the Minister no later than five years after the commencement of the Act. The Association agrees that the effectiveness of the new regime needs to be closely monitored, since this is a new approach to regulating an extremely fast-moving industry. That monitoring ought to be continuous, and not solely

at the five-year mark. We also query whether five years is too long, given the pace of change in this industry: three may be more appropriate.

23. It is critical in conducting a review of the effectiveness of the new regime that there is robust benchmark data to compare to: otherwise, there will be little basis for drawing firm conclusions about its impact, and much room for speculation and argument amongst interested parties. The Association is concerned that, at present, too little comprehensive research has been conducted into either the 'legal highs' market (consumer usage patterns, price factors, marketing and so on), or the consequences of use of the substances themselves (physiological/psychological/health impacts of short or long term use, interactions with alcohol and other drugs, association with crime, and their aggregate impact on health, law enforcement and other social services).
24. There is more than sufficient evidence of harm already that the lack of benchmark research is no good reason to delay passage of the Bill; however, it is in our view imperative that such research be commissioned as soon as possible so as to provide the best possible evidence on which to evaluate the effectiveness of the new regime when it is reviewed in the future.
25. We understand there is also considerable international attention being given to this legislation and interest in its impact. With the introduction of this regime, New Zealand is at the forefront of regulatory efforts internationally to address the growing 'legal highs' industry. It is important that the evidence we gather of the new approach's effectiveness (or otherwise) is robust and credible.

Transitional provisions

26. The Association has serious concerns about the transitional provisions detailed in **Schedule 1**. As it is currently drafted, the great likelihood is that many current 'legal highs' will continue to be sold for some time after the passage of this legislation, despite not having been approved. Essentially, all that will be required for continued sale is that the supplier of the product has lodged an application for approval. Depending on the Regulatory Authority's treatment of that application (and the adequacy of resourcing provided to the Authority), and the responsiveness of the applicant to requests for further information, the approval process could conceivably drag on for months or years; during which time the product could continue to be sold.
27. The Association believes that all products containing unapproved substances should simply be required to be withdrawn within 30 days after the commencement of the Act. The industry has had ample involvement in the formulation of this legislation to understand that a new regime is coming, and adjust its business practices accordingly. Balanced against the demonstrable harm caused by many of these products, there is no good argument for allowing the continued sale of unapproved products post the introduction of the new regulatory regime.

Excise tax

28. The Association believes that psychoactive substances should be subject to an excise tax, as alcohol and tobacco currently are. Such a tax would provide a revenue stream

able to be applied to (*inter alia*) research into the substances, and treatment of harms which may arise despite the new regulatory regime.

Drug-impaired driving

29. At present the Land Transport Act 1998 does not prohibit driving while under the influence of 'legal highs'. In order to be charged with a drug-impaired driving offence under section 57A of the Land Transport Act 1998, a person must both fail an impairment test, and have evidence of a "controlled drug or prescription drug" in their blood.
30. Drivers impaired by a 'legal high' psychoactive drug, such as a synthetic cannabinoid, clearly pose a risk to road users. This is both because the drug mimics the intoxicating effects of various illicit drugs, and also, according to media reports, because usage can cause seizures. In one widely reported case, seizures brought on by synthetic cannabinoid use resulted in a user being banned from driving for twelve months³.
31. Police Association members have told us that they are now regularly encountering drivers affected by 'legal highs'. In the words of one highly experienced Road Policing member: "From my experience [in dealing with impaired drivers]... substance abuse of legal highs greatly affects the user – even more than cannabis."
32. It is imperative that driving while under the influence of a psychoactive substance (whether an approved or unapproved substance) is brought within the ambit of the drug-impaired driving offence under section 57A of the Land Transport Act 1998. We recommend that the definition of a "controlled drug" in the Land Transport Act be amended to include psychoactive substances. This will allow drivers impaired by such substances to be prosecuted if they fail an impairment test, and a blood test shows a psychoactive substance in their system.

Conclusion

33. The Association welcomes this Bill as a timely effort to bring some regulatory control to an industry which, right now, is causing demonstrable harm through the widespread and uncontrolled sale of products which are only able to be distributed in this way because we lack a suitable legislative framework to control them.
34. While we support the Bill, there are a number of important matters for the Committee to address in its consideration of the Bill. These matters are outlined above, in the body of our submission.
35. As a final comment, the Association notes that much of the detail which will determine how the new regime operates will be determined by the Psychoactive Substances Regulatory Authority, or by regulations made under **clauses 81-83**. For example, the Regulatory Authority will establish exactly what the approval threshold of 'low risk of harm' actually means; and whether that harm assessment considers such factors as interactions with other substances such as alcohol or prescription drugs, the likelihood of

³ K2 Ruined My Life, Northern Advocate, 27 April 2013.

users exceeding recommended dosages, or the consumable form in which a substance is supplied: for example, whether any smoking products will be approved, in spite of the overwhelming evidence of the causal links of smoking to various respiratory diseases, and the concentrated efforts of health authorities to reduce or eliminate smoking.

36. Regulations, and decisions by the Regulatory Authority, will ultimately determine the effectiveness, or otherwise, of the new regime. While this matter is outside the scope of the Committee's consideration of this Bill, we caution that it will be imperative that the Regulatory Authority is appropriately resourced to perform the role expected of it.
37. Thank you for the opportunity to submit on this Bill. The Association requests to appear before the Committee to speak in support of this submission.

Greg O'Connor

PRESIDENT