

Notes for Oral Submission to the Health Select Committee by the New Zealand Health Trust presented in April 2008

The Public Health Bill has significant potential for misuse of power by the regulator.

The following examples are illustrative.

Part 6 – Regulated activities, Subpart 1 – Objectives states **emphasis added**:

‘Clause 194 sets out the objective of this Part, which is to prevent, reduce, or eliminate the risks to public health associated with regulated activities. These are activities specified in Schedule 3. Schedule 3 currently specifies services connected with camping grounds, mortuaries, hairdressing, microwave ovens, plastic wrapping, and needles and syringes as regulated activities. **Restrictions imposed under this Part should, wherever practicable, be proportionate to those risks.**’

Australian officials were heard at a recent Complementary Healthcare Council seminar in Australia saying that the failed ANZTPA would soon be able to be introduced in New Zealand by regulation. Does this Bill provide the means to do that?

Section 240 states **emphasis added**:

‘Recommending additions to Schedule 3

In deciding whether to recommend that an activity be added to Schedule 3, the Minister must consider—

- whether the activity poses a risk to public health and, if so, the nature and **magnitude** of the risk:
- if the risk to public health is constituted by potential harm, the likelihood of that harm occurring:
- whether the risk of that harm is likely to be prevented, mitigated, or adequately managed by regulations:
- whether the activity is already regulated under another enactment.
- Before the Minister recommends that an activity be added to Schedule 3, the Minister must be satisfied that the activity **poses a risk to public health.**

Before the Minister recommends that an activity be added to Part 1 of Schedule 3, the Minister must be satisfied that it is appropriate that persons carrying on the activity be required to have 1 or more of the following:

- a current consent:
- an approved public health risk management plan:
- a periodic assessment of the activity.

In deciding on the substance of the recommendations under subsection (3), **the Minister must consider the nature of the activity, the seriousness of the risk posed by the activity, and the degree to which proposed requirements to be specified in regulations are**

proportionate to the risk posed by the activity.'

The above doesn't say how much risk is required before scheduling... needs to be significant... The proposed risk management model appended to the submission provides a useful risk scale.

Note: ANY activity could be regulated... this provision seems to provide a means for the introduction of the essence of the failed Australia New Zealand Therapeutic Products Agency.

New Zealand Health Trust Proposed Amendments

It is proposed that the Committee amend the Public Health Bill to include provisions similar to those in the Misuse of Drugs Amendment Act 2005 with requirement for Parliament to approve (or disapprove) regulations or orders in Council without the burden of legislative change:

'Scheduling restricted substances

33 Amendment to Schedule 4

(1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend Schedule 4 by—

(a) adding the name or description of any substance to Schedule 4, in order that it become a restricted substance; or

(b) removing the name or description of any substance from Schedule 4, in order that it no longer be a restricted substance.

(2) An Order in Council made under subsection (1) may not come into force except in accordance with a commencement order made under section 34.

(3) Sections 5 to 10 of the Regulations (Disallowance) Act 1989 do not apply to an Order in Council made under subsection (1).

(4) The Governor-General may, by Order in Council,—

(a) amend the name or description of any restricted substance named or described in Schedule 4, if the amendment is necessary for the purpose of making that name or description consistent with international scientific usage:

(b) update Schedule 4, if the update is necessary for the purpose of clarifying content or correcting drafting errors.'

'34 Procedure for bringing Order in Council into force

(1) Subject to subsection (2), the Governor-General may, by Order in Council, make a commencement order bringing any Order in Council made under section 33(1) into force.

(2) The commencement order may be made only after the Order in Council made under section 33(1) has been approved by resolution of the House of Representatives.

(3) A resolution of the House of Representatives approving an Order in Council made under section 33(1) may be made at any time after—

(a) the date that is 28 days after the date on which notice that the Order in Council has been made is given in the Gazette; or

(b) if the Gazette notice is given during the period commencing on 24 December in one year and ending on 15 January in the following year, 15 February of that following year.

(4) An Order in Council made under section 33(1) lapses if—

(a) a motion to approve the Order in Council is defeated; or

(b) no motion to approve the Order in Council is agreed to within 1 year of its date of making.'

Thank you for the opportunity to speak to you today.

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