

Review of Drug Utensils Regulation

A discussion document

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MANATŪ HAUORA



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We want your feedback

The review of the regulation of drug utensils is part of the Government's programme to deliver on the National Drug Policy 2015 to 2020. The review seeks to understand the effectiveness of these regulations in achieving health and social outcomes for New Zealanders.

What qualifies as a drug utensil depends on the context. Put simply, a drug utensil is anything that is used as an aid to take drugs. This can include bongs, vaporisers (including repurposed e-cigarettes) and household items repurposed to be used as drug utensils (eg, knives, spoons, plastic bottles and hoses).

We want to know what you think about the goals we have suggested, the effectiveness of current regulation, and any other options that could better support the goals of the National Drug Policy. Your views will help inform options for any changes to approaches to drug utensils in the future.

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Introduction

Purpose

The Ministry of Health is reviewing the regulations on drug utensils to ensure they support the goal of the National Drug Policy 2015 to 2020, ‘to minimise harm from alcohol and other drug use and promote and protect health and wellbeing’ for all New Zealanders.

Approach

This review looks at whether current regulations will improve social outcomes and support the Government’s drug policy goals. This review will help inform options for any changes to approaches to drug utensils in the future.

The discussion document supports the harm minimisation goals of the National Drug Policy, and:

- proposes evaluation criteria to test the costs and benefits of our current drug utensils regulations and weighs this against alternative regulatory options
- assesses the status quo against the evaluation criteria
- identifies alternative options and assesses them against the evaluation criteria.

Context

The National Drug Policy identifies alcohol and other drug issues as health matters that need to be addressed proportionately, compassionately and innovatively. The goal of the policy is to minimise harm from alcohol and other drugs, and to promote and protect the health and wellbeing of New Zealanders. It does this by balancing three strategic approaches:

- problem limitation (reducing harm from alcohol and other drugs that is already occurring, such as through treatment services and access to safer equipment)
- demand reduction (reducing the desire to use alcohol and other drugs, such as through education, advertising and marketing restrictions, and community resilience)
- supply control (reducing the availability of alcohol and other drugs, such as through border control, domestic enforcement and market regulation).

One of the National Drug Policy’s priority areas is ‘Getting the Legal Balance Right’. This is to ensure our drug laws, and their enforcement, effectively balance the three strategic approaches above. This means considering the health and wellbeing of people who use drugs, their family and peers, and the wider community. This discussion document seeks views on whether a revised approach to drug utensils regulation might be more effective in achieving the goal of the National Drug Policy. In doing so, it considers the recommendation in the Law Commission’s 2011 report *Controlling and Regulating Drugs – Review of the Misuse of Drugs Act 1975* that it should no longer be an offence to possess utensils for the purpose of using drugs.

Scope

This document asks whether the current regulation of drug utensils is effective in achieving the goal and objectives of the National Drug Policy. In particular, the focus is on utensils that people use to take controlled drugs (eg, bongs to smoke cannabis).

A review of the law about possession or supply of controlled drugs is not within the scope of this discussion document.

How to have your say

Your feedback is important. The final pages of this document explain how to submit your comments to the Ministry of Health.

Policy objectives

The main purpose of this review is to understand whether the regulation of drug utensils delivers on the National Drug Policy's goal to minimise harm from alcohol and other drug use, and promote and protect health and wellbeing. This objective has been broken down into five criteria:

- harm prevention (particularly for young people)
- harm reduction
- proportionality
- cost-effectiveness
- ease of implementation.

Harm prevention

All drug use carries a risk of harm, both to people who use drugs and to society. Some drugs (eg, methamphetamine) result in higher social cost and total harm per user than other drugs¹ and are a priority for Government. Drug use can lead to physical and mental health issues and dependence issues, which can also cause relationship and employment difficulties, family violence or property crime. Young people are particularly vulnerable because their brains are still developing, and early use can cause substance-related problems later in life. Prevention and delay of drug use will reduce these harms.

Utensils are one way of administering or consuming controlled drugs, but their availability is not necessarily a good measure for preventing drug harm. Once a choice has been made to take drugs, any means can be found to achieve this, regardless of the availability or legality of drug utensils.

Harm reduction

The way that drugs are taken can increase or decrease the risk of personal harm. For example, access to safe and clean needles prevents the spread of blood-borne viruses such as HIV and Hepatitis C.

Vaporisers have the potential to reduce harm when used to smoke illegal or legal drugs and can also be a safer alternative to injecting drugs.

Proportionality

Criminal penalties are one of the most serious ways to deter people from harmful or risky behaviours. Contact with the criminal justice system can result in the loss of liberty and loss of property and have long-term negative consequences on people because of the stigma of a criminal conviction.

¹ McFadden Consultancy. 2016. *Research Report: The New Zealand Drug Harm Index 2016*. Wellington: Ministry of Health.

There are two questions to be asked when it comes to proportionality:

1. Is the behaviour so unacceptable, that the negative impacts of criminalising the behaviour are outweighed by the importance of punishment and deterrence?

Relevant considerations for whether a criminal offence is justified include:

- how much the behaviour causes or risks causing harm
- whether that harm is to public or private interests
- whether the behaviour is adequately addressed elsewhere in criminal law or could be addressed without criminalisation
- the wider implications of criminal penalties on a person's future in light of the harm caused.

2. Is the maximum fine or sentence for the behaviour in proportion to the harm done or risked (relative to penalties for other offences)?

Relevant considerations for whether the maximum penalty is proportionate include:

- how the penalty compares with related drug offences
- how the penalty compares with other criminal offences.

Cost-effectiveness

When assessing the outcomes of various policy approaches, it is important to consider how effectively the Government is using tax payer money. There are a number of interventions that may be used to address the complex issues behind drug use. If these interventions are not working, then we need to rethink our approach and find more cost-effective solutions.

Ease of implementation

It is important that regulations are designed to use resources effectively, achieve the desired outcomes and be implemented as intended. Regulations need to be clear enough for border enforcement officers to make timely decisions on whether or not an item is prohibited. The same applies to police who need to make prosecution decisions in relation to drug utensils offences.

Question 1

Do you support the five proposed evaluation criteria: harm prevention, harm reduction, proportionality, ease of implementation and cost effectiveness?

Why or why not? What alternative criteria would you propose?

Do you think they should have different weightings?

Why or why not? What weighting would you propose?

The status quo

This section covers the following aspects of the status quo:

- regulatory settings (legal definitions and provisions relating to drug utensils)
- regulatory practice (how the legal provisions are enforced)
- availability and use (ability of people to obtain a drug utensil and patterns of use).

Regulatory settings

Legal definitions

Under the Misuse of Drugs Act 1975, it is a criminal offence to:

- supply, import or offer for sale specified drug utensils
- possess a drug utensil if it is intended to be used for the commission of an offence against the Act, such as consuming a controlled drug, with specified exemptions for needles and syringes obtained through the needle exchange programme.

The Misuse of Drugs Act empowers the Minister of Health to specify via Notice in the New Zealand Gazette (the Notice) which particular drug utensils the Act applies to, and the conditions under which those utensils can be sold or possessed for sale/supply.

Prohibitions on supplying, importing or offering for sale apply only to drug utensils specified by the Minister in the Notice (currently this includes cannabis and methamphetamine utensils, such as bongs and pipes).

The prohibition on drug utensils possession applies to any object (including knives and water bottles) if it can be proven that it was used to take a controlled drug. Specific exemptions for needles and syringes are in place to allow access to safe and clean needles, to reduce vein harm and prevent the spread of blood-borne viruses such as HIV and hepatitis C. Regulations allow for access to needles and syringes through a pharmacist, pharmacy employee, approved medical practitioner or authorised representative.

Penalties

The penalties for supplying, importing or offering a drug utensil for sale is up to three months imprisonment and/or a fine of up to \$1,000 (or \$5,000 for a body corporate). Utensils imported in breach of the Notice are prohibited goods for the purposes of the Customs and Excise Act 1996 and are subject to the general penalties imposed by section 209 of that Act, as well as being liable to seizure and forfeiture.²

The penalty for possessing a drug utensil is up to one year's imprisonment, and/or a fine of up to \$500.

² A fine of up to \$5,000 for an individual or \$25,000 for a body corporate may be imposed on an absolute liability basis or a term of imprisonment of up to six months or a fine of up to \$10,000 for an individual or \$50,000 for a body corporate where the offence was committed knowingly.

By way of comparison with alcohol and other drug-related laws:

- the maximum imprisonment term for possession of a Class C drug (eg, cannabis) is three months (with a provision that imprisonment is only to be imposed in exceptional cases) and six months for a Class A drug (eg, methamphetamine)
- possessing or consuming alcohol in breach of a Local Alcohol Ban attracts an infringement fee of \$250
- personal possession of an unapproved psychoactive substance attracts an infringement fee of \$300.

If compared to an offence that facilitates a crime, for example possessing tools that assist with stealing things, there is a maximum penalty of one year imprisonment, which is far lower penalty than the offence of theft which has a maximum of seven years (for property exceeding \$1,000 in value).

Legal provisions relating to utensils

Supply, import and offer for sale

Section 22(1A) of the Act empowers the Minister of Health to issue notices by Gazette to prohibit supply, import and offering for sale of drug utensils (and identifiable components thereof) other than needles and syringes either absolutely or conditionally. Notices have been in place prohibiting the import and supply of cannabis utensils since 1999 and methamphetamine utensils since 2003. Changes were introduced through the current Misuse of Drugs (Prohibition of Cannabis Utensils and Methamphetamine Utensils) Notice 2014 to also prohibit importation of component parts and 'offer for sale', which covers displays of utensils for the purpose of sale in addition to prohibition at point of sale.

Under the Notice:

- a cannabis utensil means a bong, a hash pipe or a roach clip with pincer or tweezers action with one or more prohibited features (as set out in the Notice)
- a methamphetamine utensil, means a pipe with features as set out in the Notice, including a bowl with a stem and mouthpiece, but does not include a pipe manufactured to smoke tobacco.

Vaporisers

Vaporisers are devices used to vaporise the active ingredients of plant material and/or chemicals for the purpose of inhalation, and can be used as an alternative administration method to smoking illicit drugs or other substances.

While the Notice does not use the term vaporisers, two Customs Appeal Authority rulings have interpreted the term 'hash pipe' as capturing them, meaning they can be seized on import. The Authority further considered that vaporisers did not have to be manufactured for the purpose of administering illicit drugs to be captured by the Notice, only that they have the notified features. This is still an area of law that requires clarification to keep pace with developments in technology.

Hookah pipes

The 2014 Notice removed 'hookah' from its list of cannabis utensils. This is because these pipes are intended for smoking shisha tobacco and there was no evidence that these pipes were also being used for the consumption of cannabis in New Zealand.

Personal possession

Section 13(1)(a) of the Act prohibits possession of any pipe or other utensil (not being a needle or syringe) used 'for the commission of an offence against this Act'. The courts have interpreted section 13(1)(a) as capturing any implement used to consume drugs, not only those that were actually designed for drug consumption. For example, ordinary kitchen knives have been found to be drug utensils when used to combust cannabis.

Section 13(1)(aa) prohibits the possession of a needle or syringe. There is an exception to this where the needle was acquired in accordance with regulations made under the Act, such as from an authorised needle exchange programme.

Exemptions for needles and syringes

Section 13(1)(aa) does not apply to possession of a needle or syringe obtained in accordance with regulations made under Section 37 of the Act. Section 37 empowers the Governor General to make regulations relating to when a needle or syringe can be possessed, and to regulate the sale, supply or exchange of needles or syringes. Additionally, section 117(1A) Health Act 1956 empowers the Governor General to make regulations relating to the importation, sale, exchange, supply, use, and disposal of needles and syringes and to empower or require the Director-General of Health to set more detailed requirements. These regulations led to the establishment of the Needle Exchange Programme where people can access clean needles and exchange or dispose of used needles through dedicated peer-based outlets and subscribed pharmacies.

Regulatory practice

New Zealand Customs Service and New Zealand Police enforce laws relating to the import of utensils through border control. New Zealand Police enforce laws relating to supply, offer for sale and possession of utensils.

Import, supply and offer for sale

All enforcement and charges in relation to the import have been laid through the Customs and Excise Act 1996.

No charges have been laid against anyone for the sale of utensils within New Zealand under any Act.

Personal possession

The number of overall charges laid for drug utensil possession under section 13 of the Misuse of Drugs Act has been steadily declining over the last five years from 4217 in 2009 to 1265 in 2014 (a drop of 70 percent). This may be due to a decrease in enforcement rather than a decrease in utensil use.

The figures on the next page show drug utensil possession charges under s13 of the Misuse of Drugs Act for the last 10 years. Men are four to five times more likely than women to be charged with a utensils offence relating to cannabis and three times more likely to be charged with a utensils offence relating to drugs other than cannabis (eg, Methamphetamine).

Māori and Pacific peoples are disproportionately charged and convicted for drug utensils possession. For example, a Māori male is on average 2.5 times more likely than a European male to be charged with a drug utensils offence involving cannabis.³

Figure 1: Number of drug utensil charges by year

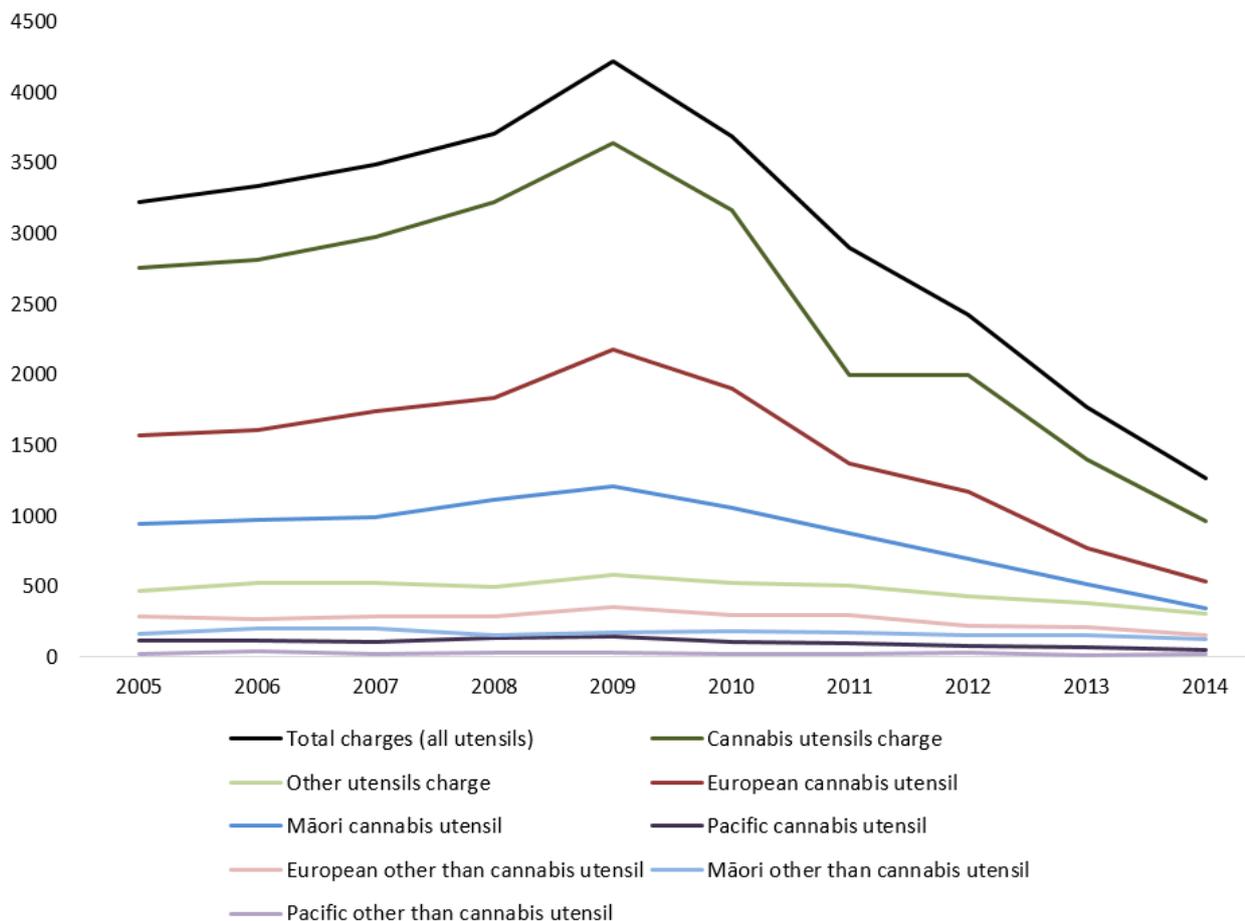


Table 1: Utensil charges (for cannabis or other drug) over last 10 years

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
	Total utensil charges for all drugs	3220	3335	3490	3707	4217	3685	2899	2419	1768	1265
	Utensil charge related to cannabis	2757	2815	2970	3217	3634	3164	1994	1994	1391	961
	Utensil charge related to drugs other than cannabis	463	520	520	490	583	521	500	425	377	304
Cannabis	European	1566	1606	1736	1834	2170	1899	1365	1170	767	535
	Māori	938	969	988	1113	1208	1057	868	695	507	340
	Pacific	114	113	105	135	144	107	94	73	63	48
Other drug (not cannabis)	European	279	268	280	287	351	290	294	215	205	150
	Māori	156	203	202	151	172	180	167	155	146	122
	Pacific	13	35	22	27	28	22	17	29	12	18

³ Averaged over nine years 2005–2014.

Availability and use of drug utensils

Availability

Despite the threat of criminal penalties, prohibited drug utensils can easily be ordered online or purchased in specialty stores, tobacconists and novelty shops (generally under different names than those set out in the Notice). As a substitute for purpose-made products, people can also repurpose ordinary household items, such as knives, drink bottles and lightbulbs.

Access to new needles and syringes is permitted and actively encouraged through approximately 200 outlets around New Zealand as part of the Needle Exchange Programme (NEP). Outlets also receive and safely dispose of used needles and syringes, and some provide information and advice about preventing the transmission of blood borne diseases. Many outlets provide a free new for old 'one-for-one' service funded by the Ministry of Health to encourage single use and safe disposal. Ninety percent of NEP outlets are pharmacies and the rest are peer based needle exchanges, including several mobile delivery services for rural areas. Access to new needles and syringes can be problematic in small towns and rural areas.

Use

It is difficult to precisely determine the number of people using utensils to consume controlled drugs or whether the utensils are purchased or homemade. We do have estimates of drug use from the New Zealand Health Survey and data from the Needle Exchange Programme on the distribution of needles.

In 2012/13, 13 percent of New Zealand adults aged 15 and over reported using one or more drugs in the last 12 months. 50 percent reported having used one or more drugs at least once in their lifetime. Of those who reported use in the past year, 11 percent used cannabis or synthetic cannabis, 2.3 percent used hallucinogens/psychedelics, 2.1 percent used miscellaneous drug substances, 1.2 percent used opioids/sedatives and 1.1 percent used amphetamine-type stimulants (including methamphetamine). Of these drugs:

- cannabis and synthetic cannabinoids are typically smoked using rolling papers, pipes or bongs (homemade or bought), vaporisers or other utensils such as knives for 'spotting'
- methamphetamine is typically smoked in pipes (homemade or bought) but can also be injected, swallowed or snorted
- opiates (from naturally-occurring alkaloids found in the opium poppy plant) are typically injected
- opioids (synthetic drugs that produce opiate-like effects) are typically swallowed in pill form or injected
- other drugs, such as ecstasy, hallucinogens and stimulants such as Ritalin, do not usually require a utensil.

In 2014, over 3.3 million needles were distributed nationally through the needle exchange program, with 76 percent of these via the free one-for-one scheme.

Question 2

What evidence or other information can you provide to improve the description of drug utensils and their availability and use?

Review of the status quo

This section assesses the status quo against the five evaluation criteria and identifies areas for improvement.

Harm prevention

The purpose of the Notice is to reduce the availability and visibility of drug utensils (other than needles and syringe). Similarly, the purpose of the possession offence is to send a clear and consistent message about the harmfulness of drugs.

Visibility of utensils through sales and marketing may have a role in normalising and thereby encouraging drug use, particularly for young people. Prohibition may deter some retailers from displaying and marketing prohibited products in a highly visible way, but it has not completely eliminated the practice. Some retailers, for example, have R18 sections of their stores and websites.

In the case of needles, most studies have shown that providing sterile needles to people who inject drugs does not increase the incidence of drug use. There does not appear to be any scientific studies of the effects of drug paraphernalia, such as bongs, pipes and roach clips, on drug use. Nor is there any evidence that preventing people from having drug paraphernalia has any effect on the desire to use drugs. Additionally, in the absence of a specialised product, utensils can easily be made from ordinary household items, such as knives, drink bottles and lightbulbs. Alternatively, drugs can be consumed or absorbed into the body without the use of utensils. If a person has already made a decision to use illegal drugs, they are unlikely to be influenced by additional penalties for possessing drug utensils.

Harm reduction

New Zealand has been extremely successful at preventing the spread of HIV among people who inject drugs through the Needle Exchange Programme. In 1996, less than 50 people who had confirmed HIV infections stated that they had a history of injecting drug use. New Zealand currently enjoys one of the lowest rates of HIV infection amongst people who inject drugs in the OECD (0.5 percent).

However, there are gaps in the current regulatory environment for needles and syringes. Not all associated paraphernalia are included in the regulations (such as wheel filters that remove clumps in crushed pills to reduce the risk of vein damage). The prescriptive nature of the regulations mean that the Needle Exchange Programme cannot always make use of improved equipment, as it may not fall within the regulation definitions.

The current regulatory environment is also unresponsive to the harm reduction potential of other utensils. Prohibition is a blunt instrument and does not provide an opportunity to regulate manufacturing standards, promote the use of less harmful devices or to provide education on safer ways to use drugs. For example there is growing scientific evidence that use of vaporisers reduces harm from smoke inhalation. Conversely, and contrary to popular belief, there is only limited and highly contested evidence that water-pipes and solid filters do anything to improve the THC/tar ratio in cannabis smoke.

Proportionality

When considering proportionality, we need to consider our two earlier questions:

1. Is the behaviour so unacceptable that the negative impacts of criminalising the behaviour are outweighed by the importance of punishment and deterrence?

A drug-related conviction can have a life-long effect on a person's ability to obtain employment and housing, and to travel outside New Zealand. This is particularly the case for offences resulting in a custodial sentence, which cannot be concealed under the Criminal Records (Clean Slate) Act 2004. These implications create barriers for a person wanting to address their drug dependency issues and live in recovery. For an offence to be established, the Crown must establish that the purpose of possessing the utensil was to consume a controlled drug (or commit some other offence against the Act). It should be noted that utensil prosecutions may occur alongside prosecutions for other drug-related offending, so a conviction may still result in relation to those other charges.

2. Is the maximum fine or sentence for the behaviour proportionate to the harm done or risked (relative to penalties for other offences)?

The maximum imprisonment term relating to possession of a drug utensil is double that for possession of a Class A drug (one year for utensil, six months for Class A drug). This raises questions as to whether people who use drugs with a utensil are treated unequally to those who use drugs without utensils.

The maximum imprisonment term for the import, supply and offer for sale of utensils is set at the same level as possession of a Class C drug for an individual (three months), and/or a fine of up to \$1,000 (or \$5,000 for a body corporate). The Misuse of Drugs Act empowers the Minister of Health to specify via Notice in the New Zealand Gazette the particular items that the Act applies to and conditions under which those items could legitimately be sold or possessed for sale/supply. This process lacks the scrutiny and public participation requirements of regulations or primary legislation. The Notice is also less accessible to the public as it does not qualify for publication on the New Zealand legislation website (legislation.govt.nz).

As noted on page 6, by way of comparison, possessing or consuming alcohol in breach of a Local Alcohol Ban attracts an infringement fee of \$250, and personal possession of an unapproved psychoactive substance attracts an infringement fee of \$300.

Cost-effectiveness

There are costs associated with enforcement and prosecution and also social impacts – all of which can be influenced by enforcement practice and policies. Strict enforcement policies may result in higher costs than an enforcement policy that is more discretionary.

It is not possible to assess the costs associated directly with enforcing current regulations, as enforcement of utensil provisions is rarely, if ever, done in isolation.

Ease of implementation

It is important that regulations can be implemented practically and with clarity for both the public and enforcement agencies. Regulations that are difficult to enforce or that rely heavily on discretionary enforcement can result in inconsistent application and public uncertainty.

In practice, people can readily order drug utensils online and purchase them in stores such as tobacconists and novelty shops (generally under different names than those set out in the Notice). Customs Officers are required to make decisions at the border on imported utensils, which at times can be difficult where function, design and technological developments are rapidly changing. Similarly, police must apply enforcement policies to ensure the best use of their resources in delivering effective community outcomes.

Summary of assessment of settings

Table 2: Assessment of the current regulatory settings

Objective	Pros and cons	(✓ = <i>pro</i> / x = <i>con</i> / ~ = <i>mixed benefits</i>)
A. Harm prevention	~ No evidence that the current utensils regulations or the way they are enforced deters drug use.	
B. Harm reduction	~ Some utensils may have the potential to reduce harm compared with other utensils. The current regulations do not enable the consideration of harm reduction.	
C. Proportionality	~ 1) Drug utensils enable people to commit an offence but do not in themselves produce a social harm. A drug-related conviction can have a life-long effect on a person's ability to obtain employment and housing and to travel outside New Zealand. 2) Criminal penalties for possessing drug utensils are greater than the penalties for using the associated controlled drugs.	
D. Cost-effectiveness	~ Providing an assessment of the costs associated with enforcing current regulations is difficult to assess, as enforcement of utensils provisions is rarely, if ever, done in isolation.	
E. Ease of implementation	~ There are challenges for border enforcement as there is continual evolution in drug utensils design.	

Question 3

Do you agree with the above assessment of the current regulations? Why or why not?

What evidence or other information do you have to support your position?

Assessment of options

This section outlines two high-level options for improving the current situation – enhanced status quo and replacing possession prohibition with regulations to restrict and manage supply – and outlines potential costs and benefits as compared with the objectives set out earlier in the document. A number of sub-options are identified within each of these two high-level options, which could be considered independently or combined for a preferred package.

Option 1: enhanced status quo. This option would continue with prohibition but would change some settings to meet certain objectives. The sub-options are set out below. Option 1(c) would require an amendment to the Act.

- a) Clarify legal definitions of drug utensils in the Notice.
- b) Develop operating guidance for the enforcement of the Notice (this could be to prioritise or de-prioritise enforcement).
- c) Reduce criminal penalties for personal possession of drug utensils.

Option 2: replacing possession prohibition with regulations to restrict and manage supply. This option would remove all prohibition on utensils and replace it with regulations to inform and reduce harm. The sub-options identified are set out below. All sub-options would require an amendment to the Act. Changes may include:

- restricting location of sale
- prohibiting sale to minors
- prohibiting or restricting marketing
- restricting possession in public places
- establishing infringement regulations and/or confiscations to support sub-options
- requiring harm information in relation to utensils use
- creating licensing regulations for retailers and online sellers.

In developing these options, comparisons were made with legal drug markets in New Zealand (alcohol, tobacco and new psychoactive substances (NPS)), and comparisons to overseas models, specifically Australian and United Kingdom models for drug utensils regulation regimes. These comparisons are set out in the appendix.

Additionally, two extreme options for the regulation of drug utensils were considered to be undesirable. These were:

1. continuing to prohibit but increasing penalties and enforcement (this would exacerbate issues of proportionality and implementation cost increases without any gain in harm prevention or reduction)
2. repealing prohibitions without creating any new, product-specific regulations (this would have no cost or implementation issues but would exacerbate risks around harm prevention and reduction due to the inability to control marketing, product quality and sale – particularly to minors).

Question 4

Do you agree that the two high-level options are the right ones to consider:

- 1) enhanced status quo (to make changes to drug utensils notices, operational enforcement and criminal penalties) and
- 2) replacing the possession prohibitions with regulations to restrict and manage supply?

If not, what alternatives would you suggest?

Question 5

Do you think that the sub-options for Option 1 are adequate?

What other sub-options would you like to see in Option 1 and why?

Question 6

Do you think that the sub-options for Option 2 are adequate?

What other sub-options would you like to see in Option 2 and why?

Option 1: Enhanced status quo

Table 3: An initial assessment of Option 1: Enhanced status quo

Objective	Pros and cons	(✓ = pro / x = con / ~ = mixed benefits)
A. Harm prevention	<p>~ There is no evidence that the current utensils regulations or the way they are enforced has any deterrent effect on drug use. It is difficult to determine if drug use behaviour will be influenced by a change in enforcement policies, reduced penalties or clarified application of the Notices.</p> <p>~ If a decision was made to prioritise enforcement of utensils supply regulations, this may reduce people's exposure to these products and any 'normalisation' messages in relation to drug use. (Such a decision may work against the other recommendations of this option.)</p>	
B. Harm reduction	✓ Utensils with the potential to reduce harm (compared to other utensils) could be excluded from the list of utensils that cannot be imported, supplied or offered for sale. An enforcement policy that also deprioritises utensils possession would be consistent with the harm reduction policy.	
C. Proportionality	<p>~ 1) A drug-related conviction can have a life-long effect on a person's ability to obtain employment and housing, and to travel outside of New Zealand – even if the punishment is reduced.</p> <p>2) Criminal penalties for possessing drug utensils are out of step with the associated penalties for possession of a drug. Reducing criminal penalties enables penalties to better reflect the potential level of harm.</p>	
D. Cost-effectiveness	~ Clarifying legal definitions in the Notice may reduce discretion at the border, making implementation of import provisions quicker and more consistent for enforcement officers and reduce the risk of challenge to decisions. However, it is unlikely that definitional changes will remove the requirement for interpretation and judgement completely.	
E. Ease of implementation	~ Discretion is still required with changes to Notices or enforcement policies. Discretion can present challenges to enforcement agencies. In order to decrease penalties, primary legislation would need to be changed.	

Question 7

Do you agree with the potential pros and cons outlined for Option 1? Why or why not? What evidence or other information do you have to support this view?

Option 2: Replacing possession prohibition with regulations to restrict and manage drug utensils supply

Table 4: An initial assessment of Option 2 compared with the status quo

Objective	Pros and cons	(✓ = pro / x = con / ~ = mixed benefits)
A. Harm prevention	<p>✓ Given that drug utensils are already displayed and sold in stores despite prohibition, regulations on retail display, marketing, location and age of purchase (similar to smoking) would reduce access to and visibility of these products by minors. This could reduce any messaging that drug use – particularly by young people – is normal. Retailers could be required to display information on drug use risks and where to seek appropriate support and assistance.</p> <p>~ Given the current ability to access dedicated utensils or make substitutes, it is unlikely that solely shifting to a regulated market for drug utensils would have any impact on levels of drug use.</p>	
B. Harm reduction	<p>✓ Regulating the supply of drug utensils would provide greater opportunities to publicise health messages on drug use, including ways to seek help or reduce risk and consumption. This may result in safer practices, and greater visibility of support services all for drug users.</p>	
C. Proportionality	<p>✓ 1) Removing the criminal offence may better enable a harm minimisation response.</p> <p>2) Supply of drug utensils could be regulated in a targeted manner that promotes harm minimisation. The detail of these regulations would require further analysis.</p>	
D. Cost-effectiveness	<p>~ Removing prohibition would remove the requirement and cost of border control and other enforcement operations. New costs would arise to monitor sales and supply to minors and any public use offences.</p>	
E. Ease of implementation	<p>x Would require regulatory oversight, including establishment and some enforcement (eg, in relation to sale to minors and retail requirements). This would incur establishment cost and transfer the cost of implementation to another part of central or local government. Some of these costs could be mitigated by expanding an existing regulatory role, for example in relation to regulation of tobacco.</p>	

Question 8

Do you agree with the potential pros and cons outlined for Option 2? Why or why not? What evidence or other information do you have to support this view?

Next steps

Following closure of submissions, we will collate and summarise your feedback, inform submitters and publish the summary of submissions on the Ministry of Health's website.

Appendix: Comparison with other approaches

New Zealand approaches to other drugs

	Sale and supply	Labelling and advertising	Offences and penalties
Tobacco	<ul style="list-style-type: none"> Prohibited to supply people under 18 (minors) in public places (but not for example, a private home). Selling toy tobacco products or products resembling tobacco products to minors is prohibited. No specific prohibition on the sale or supply to minors of tobacco-related implements or equipment, such as pipes, filters or cigarette paper. 	<ul style="list-style-type: none"> Advertising is absolutely prohibited. No display of tobacco products is permitted, even within retail premises. Retailers cannot display information in written form indicating that tobacco products are available for sale on their price, on request and no more. Health warnings must be prominently displayed on tobacco products. Tobacco plain packaging legislation currently before Parliament will remove branding such as trademarks from tobacco products and introduce standardised fonts and colours. 	<ul style="list-style-type: none"> Fines are either civil or criminal depending on the nature of the offence. Sale of tobacco products to a minor is punishable by an infringement notice issued by the Ministry of Health (effectively this is an instant fine of up to \$500 for an individual or \$1,000 for a body corporate). Subsequent breaches are criminal offences and attract fines of up to \$5,000 for individuals or \$10,000 for a body corporate. Breaches of the advertising provisions attract criminal fines of up to \$50,000. Plain packaging legislation will introduce still harsher penalties, with fines of up to \$250,000 being suggested.
New psychoactive substances (NPS)	<ul style="list-style-type: none"> Sale to minors is absolutely prohibited, whether in public or in private. Only approved NPS may be sold and only by a retailer who holds a licence. Minors may not be employed to sell NPS. NPS may not be sold from dairies, convenience stores, supermarkets, service stations or mobile locations. Territorial authorities may develop local approved products policies defining geographical areas from which NPS may be sold. 	<ul style="list-style-type: none"> Public advertising of NPS is prohibited. NPS may only be advertised within the retail premises from which they are sold, and advertising may not be visible or audible outside the premises. The content of NPS advertising is strictly controlled, and is limited to the provision of objective information about the product, such as active ingredients and the appropriate quantity of any active ingredient. Advertising may not contain any suggestion that a product is safe, and must not appeal to minors. 	<ul style="list-style-type: none"> Minors who buy NPS are liable to fines of up to \$500. Sale of NPS to minors is punishable by a fine of up to \$5,000 for an individual, or \$10,000 for a body corporate. Supply of NPS to a minor in a public place is punishable by a fine of up to \$2,000, as is employment of a minor to sell NPS.

	Sale and supply	Labelling and advertising	Offences and penalties
Alcohol	<ul style="list-style-type: none"> • Purchase age of 18. • A licence is required to sell alcohol. • Hours of sale are restricted. • Sale or supply of alcohol to intoxicated people is prohibited. • Territorial authorities may draw up local alcohol policies defining the geographical areas in which alcohol may be sold or restricting the sale of alcohol from locations close to certain premises, such as schools. 	<ul style="list-style-type: none"> • Advertising that promotes excessive drinking, is aimed at minors, or promotes discounts over 25 percent is prohibited. • Discounts may be advertised within licensed premises as long as they are not visible or audible from outside the premises. 	<ul style="list-style-type: none"> • Licensees or managers who sell alcohol to minors, or who permit its sale to minors, are liable to a fine of up to \$10,000. Licences may also be suspended for up to seven days. • Other people who sell alcohol to minors may be fined up to \$2,000. • Social supply of alcohol to minors attracts a fine of up to \$2,000. • Breaches of the advertising provisions attract fines of up to \$10,000 and/or suspension of a licence for up to seven days.

Drug utensils approaches in Australia and the United Kingdom

	Sale, supply and possession	Advertising	Offences and penalties
New South Wales	<ul style="list-style-type: none"> • New South Wales' Drug Misuse and Trafficking Act 1985 contains provisions prohibiting the sale of drug utensils or their supply in connection with sale. • The Act also prohibits 'the possession of any item of equipment for use in the administration of a prohibited drug'. • The Act's prohibition on drug utensils possession is not absolute, with two major exceptions. The first is possession of syringes and needles for intravenous drug use. The second is a blanket exception for any equipment designed to make the intravenous consumption of prohibited drugs safer. 	<ul style="list-style-type: none"> • The Act prohibits the display of drug utensils for commercial purposes. 	<ul style="list-style-type: none"> • Breaches of these provisions are punishable by fines of up to 20 penalty units or up to two years' imprisonment. A penalty unit in New South Wales is A\$110.

	Sale, supply and possession	Advertising	Offences and penalties
Victoria	<ul style="list-style-type: none"> Victoria's Drugs, Poisons and Controlled Substances Act 1981 differs from most other Australian regulatory regimes by including only explicit prohibitions on certain kinds of drug utensils. The Act names and bans the sale and display for sale of cocaine kits, meth pipes, cannabis water pipes, bong components and bong kits. There is a blanket prohibition on the supply of meth pipes. In the case of the other named utensils, the Act only bans their supply in connection with commercial activity (this prohibition is similar to other states' prohibition on supply in connection with sale). There is no prohibition on the possession of drug utensils. The Act mandates the return of seized drug utensils if the reason for their seizure no longer exists. 	<ul style="list-style-type: none"> There are no explicit prohibitions on advertising. However, display is banned, and the ban on sale would in practice prevent advertising. While hookah pipes can be sold, no more than three can be displayed in a retail outlet at any one time. 	<ul style="list-style-type: none"> Offences against the drug utensils provisions are punishable by fines. There is no provision for prison sentences. Most fines for sale and display are 60 penalty units for a natural person or 300 penalty units for a body corporate. A penalty unit in Victoria is A\$151.67. Penalties for breaches of the meth pipe provisions are higher, with fines of 240 penalty units for a natural person or 600 penalty units for a body corporate. Penalties for displaying more than three hookah pipes in a retail outlet are 10 penalty units for a natural person or 50 penalty units for a body corporate.
Queensland	<ul style="list-style-type: none"> Queensland's Drugs Misuse Act 1986 prohibits the possession of any item 'for use in connection with the administration, consumption or smoking of a dangerous drug', with the exception of hypodermic needles and syringes. Possession of any item which has been used in the past for the consumption of illegal drugs is also illegal. Of note is the broad definition of drug utensils: anything, without limitation (except for the needles and syringes exception), which can be used for consuming drugs is prohibited. Supply is not explicitly prohibited, except for supply of needles or syringes by someone who is not a medical practitioner or pharmacist. Sale is not prohibited, but the blanket prohibition on possession would, in practice, make possessing utensils for the purpose of selling them illegal. 	<ul style="list-style-type: none"> There are no explicit prohibitions on advertising drug utensils for sale. 	<ul style="list-style-type: none"> The maximum penalty for possessing a drug utensil is two years' imprisonment.

	Sale, supply and possession	Advertising	Offences and penalties
South Australia	<ul style="list-style-type: none"> • South Australia's Summary Offences Act 1953 and its amendments prohibit the sale of drug utensils absolutely. • Supply is prohibited if it is in connection with sale (the Act leaves the nature of this connection open). • The definition of drug utensils is very broad, and includes a provision allowing police to define items as intended for drug use as they find them. • The Act does not explicitly prohibit drug utensil possession. 	<ul style="list-style-type: none"> • There are no specific provisions about advertising drug utensils. • However, since the Act's definition of 'sell' includes to 'offer or agree to sell, barter or exchange' drug utensils and to 'expose [drug utensils] for sale, barter or exchange', advertising them is implicitly banned. 	<ul style="list-style-type: none"> • Selling drug utensils, or supplying them in connection with sale, is punishable by a fine of up to \$10,000 or imprisonment for up to two years for an individual, or by a fine of up to \$50,000 for a body corporate. • Directors or managers of body corporates that sell drug utensils are liable for the same penalties as individuals unless it can be proven that they could not have prevented the sale by the exercise of reasonable diligence.
Western Australia	<ul style="list-style-type: none"> • Section 7B of Western Australia's Misuse of Drugs Act 1981 prohibits the sale and possession of drug utensils. • The Act defines drug utensils as any item used to prepare, manufacture or administer a prohibited drug. • This definition is very broad and implicitly leaves open to police discretion whether an item is a drug utensil. • Possession, however, is only an offence if an item is discovered with drug residue on it. Supply of drug utensils is not explicitly prohibited. 	<ul style="list-style-type: none"> • Display for sale in a retail outlet is prohibited. The Act leaves the definition of 'retail outlet' open. 	<ul style="list-style-type: none"> • Sale and display for sale of drug utensils is punishable by a fine of \$10,000. Sale to a minor is punishable by a fine of \$24,000 and/or two years imprisonment. • Possession of a drug utensil with drug residue present on it is punishable by a fine of \$36,000 and/or three years' imprisonment. • The Act classifies drug utensil offences as simple offences. Under Western Australian state law, simple offences are minor criminal offences tried in a magistrate's court and differ from indictable offences, which are more serious offences heard in a higher court.

	Sale, supply and possession	Advertising	Offences and penalties
Tasmania	<ul style="list-style-type: none"> Tasmania's Misuse of Drugs Act 2001 includes a prohibition on possessing any item 'used or designed to be used' for preparing, smoking, inhaling, administering or taking a controlled drug. The Act also prohibits the possession of any item apparently intended for drug use but which requires modification or addition to be ready for use. There is no exception for needles or syringes, as in other states. Of note, as with Queensland and Western Australia, is the broad, open-ended definition of a drug utensil. There is no explicit prohibition on sale or supply. However, as with Queensland, possessing a stock of utensils for selling or supplying would be illegal under the blanket prohibition on possession. 	<ul style="list-style-type: none"> There are no explicit prohibitions on advertising drug utensils. 	<ul style="list-style-type: none"> The Act imposes a maximum penalty of a fine not exceeding 50 penalty units. In Tasmania, a penalty unit is A\$154.
United Kingdom	<ul style="list-style-type: none"> The supply of drug utensils is illegal under section 9(a) of the UK's Misuse of Drugs Act 1971. Similar to the New South Wales legislation, supply of hypodermic needles is exempted. Possession is not explicitly banned, except for the possession of 'any pipes or other utensils made or adapted for use in connection with the smoking of opium' under section 9. Although section 9(a) remains in effect, in practice it is rarely used due to the failure of a number of prosecutions under it. Amendments to regulations have also exempted a number of articles (swabs, utensils for the preparation of a controlled drug, citric acid, filters, ascorbic acid, and water ampoules of up to 2 ml) from section 9(a). 	<ul style="list-style-type: none"> There are no explicit restrictions on advertising drug utensils for sale. 	<ul style="list-style-type: none"> Breaches of section 9 are punishable by fines of up to £400 or 12 months' imprisonment for a summary offence, or fines of up to £5,000 or up to 14 years' imprisonment for indictable offences. Breaches of section 9(a) attract fines of up to £5,000 or up to six months' imprisonment.

Review of Drug Utensils Regulation – Submission form

July 2016

Making a submission

This form will help you respond to the discussion points in *Review of Drug Utensils Regulation: A discussion document*. We invite you to use this template, although we will accept submissions in any form. You may raise other matters that are not mentioned here, and you do not have to answer every question.

All submissions that fall within the scope of this review and that are received before the closing date will be considered. The closing date for submissions is **5 pm on Tuesday, 20 September 2016**.

There are two ways you can make a submission:

- email your submission to:

utensilsreview@moh.govt.nz

or

- mail your comments to:

Drug Utensils Discussion Document
Ministry of Health
PO Box 5013
WELLINGTON 6145

If you are emailing your submission in PDF format, please also send us the Word document.

Submitter details

It will help us analyse submissions if you provide some information about yourself. However, this is optional, and you can leave this table empty if you wish.

This submission was completed by: *(name)* _____
Address: *(street/box number)* _____
(town/city) _____
Email: _____
Organisation (if applicable): _____
Position (if applicable): _____

Are you submitting this as *(tick one box only in this section)*:

- an individual or individuals (not on behalf of an organisation)
 on behalf of a group or organisation(s)?

We intend to publish all submissions on the Ministry's website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry's website, please tick this box:

- Do not publish this submission

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

- Remove my personal details from responses to Official Information Act requests

Please indicate which sector(s) your submission reflects

(you may tick more than one box in this section):

- | | |
|--|--|
| <input type="checkbox"/> Māori | <input type="checkbox"/> Professional association |
| <input type="checkbox"/> Pacific | <input type="checkbox"/> Justice sector |
| <input type="checkbox"/> Asian | <input type="checkbox"/> Education sector |
| <input type="checkbox"/> Consumers/families/whānau | <input type="checkbox"/> Social sector |
| <input type="checkbox"/> Service provider | <input type="checkbox"/> Academic/research |
| <input type="checkbox"/> Non-governmental organisation | <input type="checkbox"/> Local government |
| <input type="checkbox"/> Public health organisation | <input type="checkbox"/> Industry |
| <input type="checkbox"/> Primary health organisation | |
| <input type="checkbox"/> District health board | <input type="checkbox"/> Other <i>(please specify)</i> : |

Questions

Question 1

Do you support the five proposed evaluation criteria: harm prevention, harm reduction, proportionality, ease of implementation and cost effectiveness?

Yes

No

Why or why not? What alternative criteria would you propose?

Do you think they should have different weightings?

Yes

No

Why or why not? What weighting would you propose?

Question 2

What evidence or other information can you provide to improve the description of drug utensils and their availability and use?

Question 3

Do you agree with the assessment of the current regulations?

Yes

No

Why or why not? What evidence or other information do you have to support your position?

Question 4

Do you agree that the two high-level options are the right ones to consider:

- 1) enhanced status quo (to make changes to drug utensils notices, operational enforcement guidance and criminal penalties) and
- 2) replacing the possession prohibitions with regulations to restrict and manage supply?

Yes

No

If not, what alternatives would you suggest?

Question 5

The sub-options for Option 1 are:

- a) clarify legal definitions of drug utensils in the Notice
- b) develop operating guidance for the enforcement of the Notice (this could be prioritise or de-prioritise enforcement)
- c) reduce criminal penalties for personal possession of drug utensils.

Do you think that these sub-options are adequate?

Yes

No

What other sub-options would you like to see in Option 1 and why?

Question 6

The sub-options for Option 2 are:

- a) restricting location of sale
- b) prohibiting sale to minors
- c) prohibiting or restricting marketing
- d) restricting possession in public places
- e) establishing infringement regulations and/or confiscations to support sub-options
- f) requiring harm information in relation to utensils use
- g) creating licensing regulations for retailers and online sellers.

Do you think that these sub-options are adequate?

Yes

No

What other sub-options would you like to see in Option 2 and why?

Question 7

Do you agree with the potential pros and cons outlined for Option 1?

Yes

No

Why or why not? What evidence or other information do you have to support this view?

Question 8

Do you agree with the potential pros and cons outlined for Option 2?

- Yes
 No

Why or why not? What evidence or other information do you have to support this view?

Any other comments