In Confidence

Office of the Minister of Health

Cabinet Social Wellbeing Committee

CLASSIFYING SUBSTANCES UNDER THE MISUSE OF DRUGS ACT 1975

Proposal

1. I seek Cabinet agreement to classify or reclassify a range of substances under the Misuse of Drugs Act 1975 (MoDA), and for some of the substances set quantities at and above for which it is presumed they are for supply.

Relation to government priorities

2. This is not a government priority.

Executive summary

3. The substances proposed to be classified or reclassified are becoming more available, used harmfully, and implicated in deaths and hospital admissions in New Zealand. They are being seized by New Zealand Police ("Police") and New Zealand Customs Service ("Customs") and detected at music festivals attended by the volunteer drug checking organisation KnowYourStuffNZ.

4. I have received advice from the Expert Advisory Committee on Drugs (the "Advisory Committee") that current controls and restrictions on these substances do not adequately reflect their potential harms and risks. The Advisory Committee recommends they are classified under MoDA. I accept the Advisory Committee's recommendations and propose to classify the substances that are listed in paragraph 27. This will bring our regulatory framework up to date with current expert and international practice and advice.

5. Classifying the substances will mean heavier penalties can be imposed, and Police and Customs will have increased investigative powers to deter importers, manufacturers and dealers of the substances. Interrupting supply of harmful substances to those who personally use them harmfully is a key part of a health response.

6. Classification will also allow New Zealand to meet international obligations under the United Nations' Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. Many of the substances in this Cabinet paper are listed in the Conventions. This means their production and trade are to be subjected to strict controls to limit their use to medical and scientific purposes. As a Party to these Conventions, New Zealand is required to include these substances in our domestic drug control regime in the appropriate schedules to fulfil treaty obligations.

7. The Advisory Committee has also recommended quantities be set for five groups of substances for which they will be presumed to be for supply. This is based on their potency, how much tends to be used at one time, and international experience. I accept the Advisory Committee's recommendations and propose presumption of supply limits be set for the substances in paragraph 29. This will help target dealers, manufacturers and importers, and drive down supply.

8. To give effect to these classifications and presumption of supply limits, Orders in Council, once made, must be affirmed by resolution of the House. This means they will be tabled in the House and referred to the appropriate Select Committee for consideration under Standing Order 330 (Affirmative resolution procedure). If an affirmative resolution is made by the House, the Orders in Council will be brought into force by commencement Orders.

Background: Disrupting supply of controlled drugs is a key part of a health-based approach

9. The Government is committed to a health-based approach to reduce alcohol and other drug related harm. Across government a range of measures are being worked on that aim to prevent or reduce negative health, social and legal impacts associated with drug use. Classifying harmful substances under MoDA sits alongside these measures and can help to prevent harm by disrupting supply. The measures include:

    9.1. increased spending on specialist alcohol and drug services,

    9.2. creating a licensing regime for drug checking, and

    9.3. reviewing the implementation of the Police discretion whether to prosecute for personal possession and use of drugs and specifying the need to consider a health-based approach.

10. Disrupting the supply and availability of the substances referred to in this paper will reduce and minimise harm with enormous benefits for our community. The New Zealand Drug Harm Index 2016 estimated the social cost of illicit drug use at $33,800 per year per dependent user and $2,300 per year per casual user. The social costs include personal harm to an individual, community harm and the cost of interventions by agencies to address the harms associated with illicit drug use.

11. Substances are classified as controlled drugs under MoDA because of their risk of harm. Once classified more severe penalties can be imposed under MoDA, and consequently Police and Customs have the search and seizure powers under the Search and Surveillance Act 2012 they need to disrupt supply and reduce the availability of the substances to people who use or misuse them. Class-specific powers and consequences are set out in Appendix 1.

12. The Police discretion under section 7(5) of MoDA whether to prosecute someone they find possessing a controlled drug for personal use, and to consider whether a health-centred approach would be more beneficial, took effect on 13 August 2019 under an amendment to MoDA. Enforcement efforts are focussed on those who cause the most harm by importing, manufacturing and supplying controlled drugs. The Ministry of Health is working closely with Police to review the implementation of the amendments.

13. Police advise that many of these drugs are currently not commonly used in New Zealand and are therefore not often being seized. The proposed classifications will give enforcement agencies the investigative tools and powers needed to intervene if these substances become

even more common, and importantly, help to prevent an increase in these dangerous substances arriving on our shores and becoming the next substance of choice for domestic dealers.

The ABC classification system is based on the potential risk of harm

14. Under MoDA, controlled drugs are classified in three schedules according to the potential risk of harm. Schedule 1 (Class A) are considered to pose a very high risk of harm, Schedule 2 (Class B) a high risk of harm, and Schedule 3 (Class C) a moderate risk of harm. Schedule 4 that includes precursor substances which are commonly used as ingredients in the manufacture of illicit substances.

15. Maximum penalties are assigned to each Schedule or Class commensurate with the level of harm attributed to the controlled drugs in the particular Schedule or Class. For example, any activity such as importing, manufacturing and supplying Schedule 1 Class A drugs has a maximum penalty of life imprisonment, while the supply of Schedule 3 Class C drugs to a minor has a maximum penalty of 8 years imprisonment.

16. The substances proposed to be classified or reclassified include precursor substances, drug analogues and prescription medicines. They are listed in paragraph 27 and ordered according to the Schedule or Class recommended by the Advisory Committee.

Precursor substances can be used to manufacture illicit drugs

17. Precursor substances are chemicals that can be used to manufacture other drugs for example methamphetamine and fentanyl. Benefits of classifying precursors include:

    17.1. Police experience is that individuals identified as possessing precursor substances are importers, manufacturers and suppliers, noting that some of these individuals may consume drugs;

    17.2. Police can take enforcement activity prior to the substances being manufactured into the final substance and identify drug manufacturing networks early on; and

    17.3. increasing the risk of detecting drug suppliers and manufacturers. The increased penalties for manufacture and supply should also act as a deterrent to offending.

Drug analogues can be diverted to the illicit market

18. Drug analogues are chemical compounds that have a structure substantially similar to that of any controlled drug. The benefit of classifying these substances by name is so they are included in the schedules that reflect their risk of harm and will therefore be subject to the appropriate controls under MoDA. For example, it is proposed to classify mephedrone and methylone which have stimulant effects similar to amphetamines and are often sold as MDMA.

Prescription medicines will continue to be available with tighter controls

19. Legitimate therapeutic access to prescription medicines continues once substances are classified. For example, fentanyl is already a Class B3 controlled drug and continues to be prescribed for chronic or severe pain.

20. Classification under MoDA means prescription medicines can be more tightly controlled. The tighter controls reflect the need to restrict access to and minimise the risk of controlled drugs

being misused. Tighter controls include not supplying a controlled drug more than once on that same prescription, or more than 7 days after the date of the prescription or in a quantity that, having regard to the dose and frequency of dose, is greater than a quantity sufficient for use for a period of 1 month (regulation 31 Misuse of Drugs Regulations 1977).

21. Classifying prescription medicines will also enable Police to take enforcement action such as search and surveillance which increases the risk of detection for importing, manufacturing and supply offending.

22. Once prescription medicines are classified, exemptions to certain requirements under the Misuse of Drugs Regulations 1977 may be required so the substances can still be accessed for therapeutic purposes in a similar way as prior to it being classified. For example, it is proposed to classify tramadol but exempt it from the strict secure storage requirements, such as storing it in a cupboard constructed of metal or concrete (regulation 28 Misuse of Drugs Regulations 1977).

New Zealand has international treaty obligations

23. Many of the substances are scheduled in the United Nations' Single Convention on Narcotic Drugs 1961, the Convention on Psychotropic Substances 1971 and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. Together the Conventions establish international control measures with the aim of ensuring that psychoactive substances are available for medical and scientific purposes, while preventing them from being diverted into illegal channels. The treaties also include general provisions on the trafficking and use of psychoactive substances.

24. As a Party to these Conventions, New Zealand is required to include these substances in our domestic drug control regime in the appropriate schedules.

The Advisory Committee considers the risk of harm the substances pose

25. The Advisory Committee established under MoDA advises the Minister of Health on drug classification matters. It carries out medical and scientific evaluations of controlled drugs and any other narcotic or psychotropic substances. Advisory Committee members include people with expertise in pharmacology, toxicology, drug and alcohol treatment, and psychology; a Police employee, a Ministry of Justice employee with appropriate expertise in matters relating to the justice system, and a person representing the views of drug treatment services.

26. In assessing the risk of harm, the Advisory Committee must consider and advise me on the likelihood or evidence of drug abuse, specific effects of the drug, any risks to public health, the potential for the drug to cause death and the ability of the drug to create dependence. The Advisory Committee must also consider if the drug has any therapeutic use, the international classification and experience of the drug, and any other relevant matters.

27. I am required under MoDA to consult with, and consider any advice given by the Advisory Committee before recommending that an Order in Council is made to amend the schedules of MoDA. The Advisory Committee has recommended, and I propose the classification of the substances in the following classes:

Substance	Current classification	Advisory Committee considerations	Advisory Committee recommendation
Schedule 1 (Class A)			
α-Pyrrolidinovalerophenone (α-PVP)	Controlled drug analogue	α-PVP has been implicated in a number of fatalities internationally. It is associated with violent behaviour, both self-harming and directed at other people and property. It has no known therapeutic value and is only used recreationally.	Class A controlled drug. Evidence suggests that α-PVP poses a very high risk of harm in line with methamphetamine.
Amides and carbamates of methamphetamine	Uncertainty whether these would be controlled under MoDA as controlled drug analogues	Amides and carbamates can be used as protecting groups for methamphetamine. It is very easy to convert controlled drugs with a protecting group back to the parent-controlled drug. There was a seizure of t-boc-methamphetamine as part of a joint operation between Customs and Police.	Class A controlled drug as it is very easy to convert to methamphetamine which poses a very high risk of harm.
Specified fentanyl analogues: Cyclopropylfentanyl Methoxyacetylfentanyl Carfentanil Ocfentanil Acetylfentanyl Butyrfentanyl 4-Fluoroisobutyrfentanyl (4-FIBF) Acryloylfentanyl Furanylfentanyl Tetrahydrofuranylfentanyl (THF-F)	Controlled drug analogues	Harmful use of fentanyl analogues and other opioids is an emerging trend internationally. There are concerns that this international trend will spread to New Zealand, resulting in a larger opioid-dependent population. There are deaths and other significant harms associated with the use of these substances internationally as well as in New Zealand. These substances have no known therapeutic use. Cyclopropylfentanyl and Methoxyacetylfentanyl are listed in the UN Convention on Psychotropic Substances 1971.	Class A controlled drugs as the evidence suggests that they pose a very high risk of harm.

Substance	Current classification	Advisory Committee considerations	Advisory Committee recommendation
Specified synthetic opioids: U-47700 U-48800 U-49900	Psychoactive substance when used for the primary purpose of inducing a psychoactive effect [1]	U-47700 and U-49900 were considered due to seizures at the New Zealand border. U-48800 was considered due to its similarity to U-47700 and U-49900, and potential for similar abuse. In 2017, U-47700 was also included in Schedule I of the UN Single Convention on Narcotic Drugs 1961. These synthetic opioid analgesics demonstrate adverse effects like those seen in other opioids. They are liable to similar abuse and health risks to controlled opioids such as heroin, fentanyl and morphine.	Class A controlled drugs as the evidence suggests that they pose a very high risk of harm, and to align with other synthetic opioids such as fentanyl analogues.
Schedule 2 Part 1 (Class B1)			
Fentanyl (from Class B3) with an exemption from Regulation 22 of the Misuse of Drugs Regulations 1977	Prescription medicine and a Class B3 controlled drug	Abuse of fentanyl and other opioids is an emerging trend internationally. There are concerns this trend that will spread to New Zealand, resulting in a larger opioid-dependent population. There are significant harms and deaths associated with the misuse of fentanyl internationally.	Class B1 controlled drug, with an exemption from Regulation 22 of the Misuse of Drugs Regulations 1977 which requires Ministerial approval to administer, prescribe or supply. This will allow fentanyl to be used therapeutically.
Specified synthetic cannabinoids: AB-PINACA AB-CHMINACA AB-FUBINACA MDMB-CHMICA 5F-AKB-48	Controlled drug analogues	Synthetic cannabinoids are a large category of drugs and some of these have been implicated in multiple deaths in New Zealand since 2017.	Class B1 controlled drugs as the evidence suggest they pose a high risk of harm.
XLR-11 JWH-018 AM-2201 5F-PB-22 UR-144	Psychoactive substances when used for the primary purpose of inducing a psychoactive effect		
MT-45	Psychoactive	MT-45 is a synthetic opioid that	Class B1 controlled drug as

[1] A psychoactive substance under the Psychoactive Substances Act 2013 is a substance, mixture, preparation, article, device, or a thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the substance for the primary purpose of inducing a psychoactive effect.

Substance	Current classification	Advisory Committee considerations	Advisory Committee recommendation
	substance when used for the primary purpose of inducing a psychoactive effect	has been used harmfully internationally. It is also included in Schedule I of the UN Single Convention on Narcotic Drugs, 1961.	the evidence suggests that MT-45 poses a high risk of harm.
Ethylone N-Ethyl pentylone	Controlled drug analogues	Ethylone and N-ethyl pentylone were detected in 2017 and early 2018 in NZ at every music festival attended by a volunteer drug testing organisation. N-ethyl pentylone was found to be the most common synthetic cathinone in samples purported to be MDMA. Ethylone is listed in the UN Convention on Psychotropic Substances 1971.	Class B1 controlled drugs as evidence suggests they pose a high risk of harm and have no therapeutic value.
Para-methoxymethylmethamphetamine (PMMA)	Controlled drug analogue	PMMA was considered due to scheduling under the UN Convention on Psychotropic Substances 1971.	Class B1 controlled drug as evidence suggests that PMMA poses a high risk of harm and to align with MDMA.
Schedule 2 Part 2 (Class B2)			
Methylone Mephedrone	Controlled drug analogues	Mephedrone and methylone were considered as they are both included in Schedule II of the UN Convention on Psychotropic Substances 1971. They have stimulant effects similar to amphetamines and other cathinones and are often sold as MDMA. Internationally, methylone has been implicated in a number of fatalities.	Class B2 controlled drugs as evidence suggests that they pose a high risk of harm in line with the risk profile of other synthetic cathinones.
Lisdexamfetamine	Prescription medicine	At the time it was considered lisdexamfetamine was not controlled in NZ. Since then, a new medicines application has been received by Medsafe to distribute lisdexamfetamine in NZ. There is evidence that amphetamine-based products usually prescribed for ADHD are used harmfully.	Class B2 controlled drug to align with drugs used for the same indications.
Schedule 3 Part 1 (Class C1)			
Flubromazolam	Prescription medicine	Flubromazolam was referred to the Advisory Committee from the Medicines Classification Committee, due to the scheduling of the substance as a Schedule 9	Class C1 controlled drug due to its lack of therapeutic use and the risk of dependency, misuse or illicit use.

Substance	Current classification	Advisory Committee considerations	Advisory Committee recommendation
		Prohibited Substance in Australia. Flubromazolam currently has no therapeutic uses and is only sought for research and recreational purposes. It is being sold online as a more accessible and powerful substitute to tightly regulated therapeutic benzodiazepines.	
Schedule 3 Part 2 (Class C2)			
Tramadol	Prescription medicine	Tramadol was considered by the Advisory Committee on several occasions due to recent consideration by the WHO Expert Committee on Drug Dependence (ECDD) and an increasing number of prescriptions and seizures in New Zealand.	Class C2 controlled drug with exemption from Regulation 28 of the Misuse of Drugs Regulations 1977 dealing with storage. List in Schedule 1C of the Misuse of Drugs Regulations 1977 so that midwives can continue to prescribe to treat pain. Midwives can only prescribe Schedule 1C controlled drugs, whereas other medical professionals such as medical practitioners and nurse practitioners can prescribe any controlled drugs.
Schedule 3 Part 5 (Class C5)			
Zopiclone	Prescription medicine	Data indicates that zopiclone is potentially being used in excessive amounts in New Zealand. There are reports of patients visiting multiple pharmacies and doctors to obtain zopiclone.	Class C5 controlled drug under MoDA to remain consistent with benzodiazepines as they have a similar risk profile and are used in the same way.
Zolpidem	Prescription medicine	Similarity to zopiclone and is included in Schedule IV of the UN Convention on Psychotropic Substances 1971.	
Schedule 4 Part 1 (Precursor substances)			
Precursor substances of fentanyl: Propionyl chloride 1-phenethyl-4-piperidone (NPP) and its salts 4-piperidone and its salts	Not controlled under MoDA Except for N-phenyl-1-(2-phenylethyl) piperidin-4-amine which is considered a controlled drug	Due to the rise in abuse and misuse of fentanyl following numerous deaths overseas, the Advisory Committee considered these substances as a preventive measure to inhibit the potential abuse and misuse of fentanyl as they are used in the manufacture of fentanyl.	Include in Schedule 4 of MoDA. Note: The Advisory Committee did not specify which Part of Schedule 4 to include these substances. The Ministry of Health recommends Part 1 of Schedule 4 to align with the

Substance	Current classification	Advisory Committee considerations	Advisory Committee recommendation
Norfentanyl and its salts 1-phenethylpiperidin-4-ylidenephenylamine and its salts N-phenyl-4-piperidinamine and its salts N-phenyl-1-(2-phenylethyl) piperidin-4-amine	analogue of fentanyl		United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.
Schedule 4 Part 2 (Precursor substances)			
Precursors of methamphetamine: Hypophosphorous acid Red phosphorous Phosphorous acid Iodine Hydriodic acid	Not controlled under MoDA	These substances were considered as they are commonly used in the manufacture of methamphetamine.	Include in Part 2 of Schedule 4 of the MoDA as precursor substances.

Possessing small quantities of *very high,* or *high risk of harm,* controlled drugs will lead to a presumption that they are being supplied

28. Under MoDA if a person possesses 56 grams or more of a substance, they are presumed to be possessing the substance with the intent to supply it to another person. This approach carries the risk that people who possess and use large quantities of controlled drugs, could be presumed to be suppliers, leading to enforcement action. I consider this risk needs to be balanced against being able to act effectively and minimise harm from those who supply very harmful substances to others.

29. MoDA allows the presumption of supply limit to be set at less than 56 grams for different substances. The presumption of supply limits can only be set in MoDA through the same Order in Council that schedules the substance or moves a substance to a different schedule. The Advisory Committee has recommended, and I propose, that presumption of supply limits be set for five groups of substances:

    29.1 specified synthetic cannabinoids (250 milligrams, whether or not contained in a substance, preparation, or mixture, except when contained on plant material, and at 28 grams for plant material containing any of the specified synthetic cannabinoids)

    29.2 specified fentanyl analogues (0.5 grams, whether or not contained in a substance, preparation, or mixture, or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug)

29.3 specified synthetic opioids (0.5 grams whether or not contained in a substance, preparation or mixture)

29.4 ethyl and N-Ethyl pentylone at (5 grams or 100 doses, whether or not contained in a substance, preparation or mixture, or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug)

29.5 PMMA (5 grams, whether or not contained in a substance, preparation, or mixture).

Impact on the pharmaceutical industry

30. The Ministry of Health has consulted with industry, including the holders of licences to Deal in and Possess Controlled Drugs, on the proposed classification and reclassification of these substances. Most of the responses in the consultation were supportive of the changes.

31. A concern was raised by the pharmaceutical industry regarding the costs associated with additional storage requirements for tramadol if it becomes a Class C2 controlled drug. However, an exemption from Regulation 28 will mitigate this.

32. Lisdexamfetamine, an amphetamine-based medicine used to treat ADHD, has not been consulted on with industry as there is only one supplier of lisdexamfetamine in New Zealand. The supplier is aware of the proposed scheduling as a controlled drug. Medsafe is keeping in touch with the supplier regarding the scheduling process. Lisdexamfetamine was consented for distribution on 1 April 2021.

Financial Implications

33. There are no financial implications from the proposals in this paper.

34. It is possible that Police and Customs having access to greater powers for a greater number of substances could lead to an increase in prosecutions and therefore respective use of court time. The Ministry of Justice, the Ministry of Health and District Health Boards may also experience increased demand for the specialist Alcohol and Other Drug Treatment Courts and specialist drug treatment programmes due to identification and referral of people who use drugs to support services. The objectives of the Alcohol and Other Drug Treatment Courts is to help repeat offenders deal with their drug addiction and criminal behaviour through intensive therapeutic interventions.

35. Higher penalties for the misuse of these substances will impact on sentence lengths, and therefore could increase the size of the prison population. However, stopping the substances before they become available to people who may use drugs harmfully, will significantly reduce the cost of drug harms to communities.

Legislative Implications

36. Orders in Council will be required to schedule the substances in MoDA.

37. Amendments to the Misuse of Drugs Amendment Regulations 1977 will be required to:

37.1. exempt fentanyl from regulation 22 which requires Ministerial approval to administer, prescribe or supply; and

37.2. exempt tramadol from the secure storage requirements in regulation 28 and list it in Schedule 1C so that midwives can prescribe it along with other medical professionals such as medical practitioners and nurse practitioners.

Regulatory Impact Statement

38. The Regulatory Quality Team at the Treasury determined that the decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment. Most of the decisions are essential (the minimum necessary) to comply with international obligations that are binding on New Zealand, and where they are not, the associated impacts on businesses, individuals or not-for profit entities are minor.

Te Tiriti o Waitangi analysis

39. Māori are disproportionately likely to suffer from drug harm, including physical and mental health impacts, and justice system sanctions. Māori are over-represented in our prison populations. These are systemic, long-standing and complex issues and not specific to the proposal in this paper.

40. Classifying more substances under MoDA could lead to further convictions for Māori, and others. However, the misuse and abuse of controlled drugs is a major public health problem and the aim is to disrupt supply to minimise harm to individuals, whānau and communities. Enforcement powers and penalties focussing on those who cause the most harm by importing, manufacturing and supplying controlled drugs, and the Police discretion to consider whether prosecution is required in the public interest for personal use, or whether a health-centred approach would be more beneficial, may mitigate any increase.

Population implications

41. Māori disproportionately experience more harm from drugs. As mentioned above these are systemic, complex and long-standing issues, not specific to the proposals in this paper.

42. Increasing punishment as a response to crime generally leads to higher incarceration rates and negative and often long-lasting flow-on effects for whānau and communities of those sent to prison. However, enforcement powers and penalties that are focussed on those who import, manufacture and supply controlled drugs and not the people who use them, may mitigate any increase.

43. I note that some illicit drugs carry higher risks for people with particular physical and mental health conditions. For example, some drugs can interact with prescription medications, such as antidepressants, with adverse effects for the consumer.

44. I also note that more males are prosecuted for drug related offences than females. In 2019/2020, 79% of people charged with drug offences were male (4,724 people) and from 2010/2011 to 2019/2020 the number of males charged with drug offences has fluctuated between 78% - 82% of all people charged with drug offences.

45. Data on drug convictions and referrals to health services continues to be monitored.

Human Rights implications

46. Presumption of supply limits engage with section 25(c) of the New Zealand Bill of Rights Act 1990 (NZBORA) – the right of everyone charged with an offence to be innocent until

proven guilty. This is because the legal burden of proof shifts to the accused to prove on the balance of probabilities (not the higher threshold of beyond reasonable doubt) that they were not supplying the drug and that the drug was intended for personal use. Previous Attorneys-General have concluded, in respect of other drugs, that the reverse burden is inconsistent with section 25(c) of the NZBORA.

47. The limitation of the right may be justified if it can be shown that there is a rational and proportionate connection between the objective and the presumption. This would require looking at whether the presumptive level for each drug was set on the basis that possession at those levels would correspond with either a high probability or a near certainty that the quantity of drugs was possessed for the purpose of supply. For example, if a substance is extremely potent, then it may be argued that a large amount is unlikely to be for personal use only, in which case the limitation may be justified. This approach would reduce or avoid the possibility of wrongful convictions.

Consultation

48. The Police, Customs, the Department of Corrections and the Ministry of Justice were consulted, and feedback incorporated into this Cabinet paper.

Communications

49. Customs, Police, the Institute of Environmental Science and Research, holders of Licences under the Psychoactive Substances 2013 Act, and holders of controlled drug licences under MoDA will be notified of the changes, if the proposed classifications are agreed to by Cabinet and the Orders are made.

50. The public will be informed in due course if the proposed classifications are agreed to, and the Orders are made.

51. The Ministry of Health has ongoing conversations with industry stakeholders, and they will be informed if the proposed classifications are agreed to, and the Orders are made.

Proactive Release

52. I intend to proactively release this Cabinet paper in accordance with Cabinet Office Circular CO (18) 4.

53. As required by MoDA, the Ministry of Health will publish on its website the agendas, reports and minutes from the Advisory Committee meetings once the classification process has been completed.

Recommendations

I recommend that the Committee:

1 **Note** that the Expert Advisory Committee on Drugs considered the following substances and recommended the following scheduling changes under the Misuse of Drugs Act 1975, which I have considered in making the following recommendations:

Substances to be included in Schedule 1 (Class A)

1.1. α-Pyrrolidinovalerophenone (α-PVP)

1.2. amides and carbamates of methamphetamine

1.3. specified fentanyl analogues (cyclopropylfentanyl, methoxyacetylfentanyl, carfentanil, ocfentanil, acetylfentanyl, butyrfentanyl, 4-Fluoroisobutyrfentanyl (4-FIBF), acryloylfentanyl, furanylfentanyl and tetrahydrofuranylfentanyl (THF-F)

1.4. specified synthetic opioids U-47700, U-48800, and U-49900

Substances to be included in Schedule 2 Part 1 (Class B1)

1.5. fentanyl reclassified from a Class B3 controlled drug with an exemption from Regulation 22 of the Misuse of Drugs Regulations 1977

1.6. specified synthetic cannabinoids UR-144, 5F-PB-22, MDMB-CHMICA, 5F-AKB-48, XLR-11, JWH-018, AM-2201, AB-FUBINACA, AB-PINACA and AB-CHMINACA

1.7. ethylone and N-Ethyl pentylone

1.8. para-methoxymethylmethamphetamine (PMMA)

1.9. MT-45

Substances to be included in Schedule 2 Part 2 (Class B2)

1.10. methylone and mephedrone

1.11. lisdexamfetamine

Substance to be included in Schedule 3 Part 1 (Class C1)

1.12. flubromazolam

Substances to be included in Schedule 3 Part 2 (Class C2)

1.13. tramadol with an exemption from Regulation 28 of the Misuse of Drugs Regulations 1977 and included in Schedule 1C of the Misuse of Drugs Regulations 1977

Substances to be included in Schedule 3 Part 5 (Class C5)

1.14. zopiclone and zolpidem

Substances to be included in Schedule 4 Part 1

1.15. precursor substances of fentanyl (propionyl chloride, 1-phenethyl-4-piperidone and its salts, 4-piperidone and its salts, norfentanyl and its salts, 1-phenethylpiperidin-4-ylidenephenylamine and its salts, N-phenyl-4-piperidinamine and its salts, and N-phenyl-1-(2-phenylethyl)piperidin-4-amine)

Substances to be included in Schedule 4 Part 2

1.16. precursors commonly used in the manufacture of methamphetamine (hypophosphorous acid, red phosphorous, phosphorous acid, iodine and hydriodic acid)

Presumption of supply limits

1.17. for synthetic cannabinoids UR-144, 5F-PB-22, MDMB-CHMICA, 5F-AKB-48, XLR-11, JWH-018, AM-2201, AB-FUBINACA, AB-PINACA and AB-CHMINACA be set at 250 milligrams whether or not contained in a substance, preparation, or mixture, except when contained in plant material, and at 28 grams for plant material containing any of the specified synthetic cannabinoids

1.18. for the specified fentanyl analogues cyclopropylfentanyl, methoxyacetylfentanyl, carfentanil, ocfentanil, acetylfentanyl, butyrfentanyl, 4-Fluoroisobutyrfentanyl (4-FIBF), acryloylfentanyl, furanylfentanyl and tetrahydrofuranylfentanyl (THF-F) be set at 0.5 grams (whether or not contained in a substance, preparation, or mixture) or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug

1.19. for the specified synthetic opioids (U-47700, U-48800, and U-49900) be set at 0.5 grams whether or not contained in a substance, preparation or mixture

1.20. for ethyl and N-Ethyl pentylone be set at 5 grams or 100 doses (whether or not contained in a substance, preparation or mixture) 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug

1.21. for para-methoxymethylmethamphetamine (PMMA) be set at 5 grams whether or not contained in a substance, preparation, or mixture

2 **Note** that I am required under the Misuse of Drugs Act 1975 to consult with, and consider any advice given by the Expert Advisory Committee on Drugs before recommending that an Order in Council is made to amend the schedules of the Misuse of Drugs Act

3 **Note** that the proposed changes are in line with the Government's approach to drug harm reduction particularly to disrupt the supply of drugs

4 **Agree** to schedule the substances in recommendations 1.1-1.16 as recommended by the Expert Advisory Committee on Drugs

5 **Agree** to set the presumption for supply limits for the substances in 1.17-1.21 as recommended by the Expert Advisory Committee on Drugs

6 **Note** that a presumption of supply limit can only be set via an Order in Council when that substance is being scheduled or rescheduled in the same Order

7 **Note** that a presumption of supply limit for these substances could only be set by an amendment bill if the presumption of supply limits proposed by the Expert Advisory Committee on Drugs are not progressed as part of this proposed Order in Council

8 **Agree** to amend the Misuse of Drugs Regulations as required to give effect to the recommendations in 1.5 and 1.13

9 **Authorise** the Ministry of Health to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendations.

Authorised for lodgement
Hon Andrew Little
Minister of Health

Appendix 1 - Class specific powers and consequences

1 If a substance is classified as a Class A controlled drug, the maximum penalty for import, supply or manufacture would be life imprisonment, while the penalty for possession would be up to six months imprisonment and/or up to $1,000 fine. Warrantless search of places, vehicles and people, and limited use of a surveillance device without a warrant is allowed under certain circumstances under the Search and Surveillance Act 2012. These powers and consequences would apply to α-PVP, amides and carbamates of methamphetamine, specified fentanyl analogues and specified synthetic opioids.

2 If a substance is classified as a Class B controlled drug, the penalty for import, supply or manufacture would be up to 14 years imprisonment, while the penalty for possession would be up to three months imprisonment and/or up to $500 fine. The proposed scheduling will allow warrantless search of places, vehicles and people, and limited use of a surveillance device without a warrant under certain circumstances under the Search and Surveillance Act 2012. This would apply to lisdexamfetamine (as Class B2), fentanyl (as Class B1), methylone and mephedrone (as Class B2), MT-45 (as Class B1), the specified synthetic cannabinoids, ethylone and N-ethyl pentylone and PMMA (as Class B1).

3 If a substance is classified as a Class C controlled drug, the penalty for import, supply or manufacture would be up to eight years imprisonment, while the penalty for possession could be, in some circumstances, up to three months imprisonment and/or up to a $500 fine. This would apply to zopiclone and zolpidem (as Class C5), flubromazolam (as Class C1) and tramadol (as Class C2).

4 Scheduling precursor substances under Schedule 4 of MoDA would not affect legitimate use of these substances, but it would increase powers for Customs to investigate importation syndicates, including the ability to conduct controlled deliveries. Specific penalties also apply for supplying, producing or manufacturing a precursor substance knowing it is to be used to commit an offence. This would apply to the seven specified precursors of fentanyl and five specified precursors of methamphetamine.