

24 April 2007

Hon Jim Anderton MP
Associate Minister of Health
Parliament Buildings
WELLINGTON

Dear Minister

Advice from the Expert Advisory Committee on Drugs on the presumption for supply of benzylpiperazine (BZP), phenylpiperazine and related substances

The Misuse of Drugs Act 1975 (the Act) enables you to recommend that an Order in Council is made to add a substance to a Schedule of the Act. Where a substance is to be added as a controlled drug, section 4(1B) enables you to also recommend that an Order in Council is made to amend Schedule 5 of the Act to specify the level or quantity at and over which any controlled drug is presumed to be for supply.

Before you can make a recommendation under section 4(1B) in relation to the amount, level, or quantity at and over which any controlled drug is to be presumed to be for supply, section 4B(3) of the Act requires that you must:

- consult with, and consider any advice given by, the Expert Advisory Committee on Drugs (EACD) about the amount, level, or quantity at and over which a controlled drug might be presumed to be for supply; and
- have regard to the matters listed in section 4B(4), specifically:
 - the amount of the drug that could reasonably be possessed for personal use, including, without limitation, levels of consumption, the ability of the drug to create physical or psychological dependence, and the specific effects of the drug; and
 - the amount, level, or quantity at and over which the drug is presumed to be for supply in other jurisdictions.

This letter is to provide you with advice from the EACD on the matters specified in section 4B(4) of the Act and to recommend a quantity of BZP, phenylpiperazine and related substances at or over which it might be presumed to be for supply.

On 15 February 2007, the Committee discussed five potential approaches to calculating what could be considered a reasonable level or quantity at and above which BZP, phenylpiperazine and related substances could be presumed to be for supply should the proposed classification of these substances take place. Below is a summary of the various approaches considered by the Committee.

- a. The Committee discussed using a timeframe as a basis for calculating a presumption amount for supply. This could be based on an average dose of two to three tablets during one weekly session. Assuming an average of 150mg of BZP per tablet, it would be possible to roughly estimate the amount of BZP required for a six-month or one year supply of BZP for recreational use and provide a reasonable basis to set the amount of BZP which could be presumed to be for supply.
- b. The Committee discussed whether it would be reasonable to relate the recommended gram and tablet amount. For instance, while many substances listed in Schedule 5 have an amount of five grams or 100 units, it may be appropriate in this case to schedule 15 grams or 100 tablets, as 100 tablets at an average of 150mg per tablet would equate to 15 grams.
- c. The Committee discussed a recommendation for presumption for supply based on the potency of the substance. Given that the Committee had previously acknowledged overseas research which considered BZP to be approximately 10 percent of the potency of dexamphetamine, a level for presumption of supply that recognises this difference in potency may be appropriate. However, it was felt that potency is captured in the classification of a substance, as it relates to the risk of harm.
- d. The Committee discussed the option of scheduling a higher limit, for example 20 grams, to account for the fact that other more potent Class A and B substances have a five gram limit. It was suggested that setting a large dose level (e.g. 100 doses) is unnecessary considering that BZP is not a drug that is generally taken daily, use is not likely to escalate substantially and available evidence indicates a relatively low potential for addiction. It was also noted that a recommendation based on a high upper limit would make the presumption for supply level irrelevant as no one would likely carry that amount and therefore it would be difficult to prosecute for supply without clear proof of a person selling BZP.
- e. The Committee considered a level of five grams or 100 tablets as this is consistent with the presumptions for supply of most other substances listed in Schedule 5 of the Misuse of Drugs Act 1975 and consistency will assist with enforcement. However, it was noted that the Committee should be free to recommend a level for supply that would be most appropriate for this substance and not just to achieve consistency with the levels for other substances. It was noted that there are existing exceptions, e.g. 28 grams is the level at which cannabis is considered to be for supply, which is different from that of other substances listed in Schedule 5.

The Committee also noted that BZP is available in powdered form or in one-gram sachets. It was noted that a presumption for supply of around five to ten grams in Schedule 5 could readily incriminate those who have BZP in powdered form or in high dose tablets. For example, a person in possession of six one-gram sachets of pure BZP for personal use in separate sessions could argue for personal use, as this would effectively equate to six 'doses'.

The Committee noted that manufacturers that are part of the Social Tonics Association of New Zealand state that they self regulate against selling BZP in powdered form, and that the prevalence of using BZP in this manner is low due to the ease of access to 'party pill' preparations. It is considered that sachets of BZP are currently mainly sold for export and not for domestic use.

It was noted that the presumption for supply was only the 'default' presumption of being considered to be a dealer. A lower level of a drug found in possession can also represent dealing, if proved. It was also noted that a range of factors are weighed up in deciding whether or not to prosecute a person for being in possession of an amount above the level of presumption for supply, and a prosecution is not 'automatic'.

The Committee carefully considered these different approaches and the impact of different levels for presumption for supply on people using BZP and related substances on enforcement activities.

Having weighed up the different issues and approaches carefully, the Committee agreed that it would be reasonable to recommend a threshold of five grams or 100 tablets, capsules, or other drug forms each containing some quantity of the drug as the level for the presumption for supply of BZP, phenylpiperazine and related substances in Schedule 5 of the Misuse of Drugs Act 1975.

Yours sincerely

Ashley Bloomfield (Dr)
Chair, Expert Advisory Committee on Drugs.