

## **Part 2 Offences under the Misuse of Drugs Act 1975**

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# Overview

## Introduction

"Offence" and "crime" are words that are used interchangeably in statute, and there is no material difference between them. They may be described as any act or omission that is punishable on conviction under any enactment, and are demarcated into four categories as defined in section [6](#) of the Criminal Procedure Act 2011.

## Key offences

Section [6](#) of the Misuse of Drugs Act 1975 creates the key offences of dealing with controlled drugs of

- importing into or exporting from New Zealand any controlled drug
- produce or manufacture any controlled drug
- supply or administer, or offer to supply or administer, any class A or class B controlled drug to any other person, or otherwise deal in any such controlled drug
- supply or administer, or offer to supply or administer, any class C controlled drug to a person under 18 years of age
- sell, or offer to sell, any class C controlled drug to a person of or over 18 years of age
- have any controlled drug in their possession for the purpose of supply or sale set out in the bullet points above.

## Exceptions

It is not an offence to deal in controlled drugs:

- as provided in section [8](#) of the Act
- pursuant to a licence under the Act
- as otherwise permitted by regulations made under the Act.

# Importing or exporting any controlled drug

## Section/Act/Jurisdiction

- Section 6(1) (a) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and that they:

- imported into, or exported out of, New Zealand
- any controlled drug.

## Penalty

Liable on conviction to life imprisonment if the controlled drug is class A, or imprisonment for a term not exceeding:

- 14 years if the controlled drug is class B
- 8 years in any other case.

# Producing or manufacturing any controlled drug

## Section/Act/Jurisdiction

- Section 6(1) (b) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they produced or manufactured
- any controlled drug.

The production or manufacture must have gone beyond an attempt. Specialist evidence is called to determine what stage the process was at and whether the result was a controlled drug. You may also find that you can charge the suspect with possession of instruments.

If you are charging someone with producing or manufacturing a controlled drug (section 6(1) (b)), you must state the specific controlled drug that was being produced or manufactured. If the final product has not been obtained, and you are charging the person with attempting to produce or manufacture the drug, you can only infer what the final intended product was from the chemicals and equipment present and from any admissions made by the accused.

**Remember:** 'Producing' refers to changing the substance's form (for example, cannabis resin into oil) whereas 'manufacturing' involves changing the substance's actual structure (for example codeine into morphine).

## Penalty

Liable on conviction to life imprisonment if the controlled drug is class A, or imprisonment for a term not exceeding:

- 14 years where the controlled drug is class B
- 8 years in any other case.

# Supplying or administering, or offering to supply or administer, or dealing in any class A or B controlled drug

## Section/Act/Jurisdiction

- Section 6(1) (c) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they supplied or administered, or offered to supply or administer
- any class A or class B controlled drug
- to any other person

or

- otherwise dealt in any such controlled drug.

## Dealing (dealt)

Dealing includes supplying, selling, giving, distributing and swapping.

'Otherwise dealing' does not include supplying or administering, but does include bartering and exchanging.

A drug is supplied when the recipient is able to access it. If A places it in B's pocket without B's knowledge, A has supplied the drug, even if B rejects it on discovery.

A drug is regarded as sold when the seller agrees to sell a certain amount of it for a certain price, and the buyer agrees to pay that price for that amount.

The buyer of a drug is not usually charged as a party to the sale. However, the buyer is liable to a charge of procuring or possessing under section 7(1) (a).

## Otherwise dealing

The term 'otherwise dealing' includes actions that are not provided for elsewhere - for example, it would include bartering or exchanging.

**Remember:** Where the suspect's actions are covered specifically elsewhere, those specific charges should be preferred.

When it is possible to charge with a sale (for example) that should be the charge and not 'otherwise dealing'. *R v Hooper and Another* [1975] 2 NZLR 763 refers.

## Penalty



Liable on conviction to life imprisonment where controlled drug is class A or imprisonment for a term not exceeding 14 years where controlled drug is class B.

# Supplying or administering, or offering to supply or administer, any class C controlled drug to a person under 18

## Section/Act/Jurisdiction

- Section 6(1)(d) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they supplied or administered, or offered to supply or administer
- any class C controlled drug
- to a person under 18 years of age.

For notes on supplying and offering to supply, see '[Supplying class A or B controlled drug](#)'.

The age of the person receiving the drug is relevant to the seriousness of the crimes set out in section 6(1)(d) and (e). As *R v Forrest and Forrest* points out, the usual requirements for proof of age apply.

Production by a witness of her own birth certificate was not sufficient, there must be evidence identifying the witness as the person named in the certificate. [R v Forrest and Forrest](#) [1970] NZLR 545 refers.

## Penalty

Liable on conviction to 8 years imprisonment.

# Selling or offering to sell any class C controlled drug to a person of or over 18

## Section/Act/Jurisdiction

- Section 6(1)(e) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they sold, or offered to sell
- any class C controlled drug
- to a person of or over 18 years of age.

**Note:** When the receiver is 18 years or over the only offences are selling or offering to sell a Class C Controlled drug.

If intending to sell cannot be proven, you should lay the alternative charge of possession.

For the purposes of subsection 6(1)(e), if it is proved that a person has supplied a controlled drug to another person they must, until the contrary is proved, be deemed to have sold that controlled drug (s6(5)).

## Penalty

Liable on conviction to 8 years imprisonment.

# Possessing any controlled drug for any purpose set out in section 6(1)(c), (d) or (e)

## Section/Act/Jurisdiction

- Section 6(1)(f) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they had any controlled drug in their possession
- for any of the purposes set out in section 6(1) (c), (d) or (e) of the Act.

For the purposes of section 6(1)(f) Misuse of Drugs Act 1975, a person is presumed until the contrary is proved to be in possession of a controlled drug for any of the purposes in subsection (1)(c), (d), or (e) if he or she is in possession of the controlled drug in an amount, level, or quantity at or over which the controlled drug is presumed to be for supply (see section 2(1A)).

For an explanation of what constitutes possession see the commentary in Westlaw by clicking on these links:

- [‘Possession for a prescribed purpose’](#)
- [‘Elements of possession of a controlled drug’](#).

## Penalty

Liable on conviction to life imprisonment if the controlled drug is class A, or imprisonment for a term not exceeding:

- 14 years where the controlled drug is class B
- 8 years in any other case.

# Conspiring to commit an offence against section 6(1) - class A and B controlled drugs

## Section/Act/Jurisdiction

- Section 6(2A)(a) and (b) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they conspired with any other person (the common law definition of 'conspiracy' applies)
- to commit an offence against section 6(1) of the Act.

## Penalty

Liable on conviction to a term not exceeding:

- 14 years imprisonment where a class A controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed
- 10 years where class B controlled drug was the controlled drug or one of the controlled drugs in relation to which the offence was committed.

# Conspiring to commit an offence against section 6(1) - class C controlled drugs

## Section/Act/Jurisdiction

- Section 6(2A)(c) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they conspired with any other person (the common law definition of 'conspiracy' applies)
- to commit an offence against section 6(1) of the Act.

## Penalty

Liable on conviction to a term not exceeding 7 years imprisonment.

# Procuring, possessing, consuming, smoking or otherwise using any controlled drug

## Section/Act/Jurisdiction

- Section 7(1)(a) and (2) - Misuse of Drugs Act 1975.
- Category 2 offence.

For information relating to section 7 offences and defences, see '[Offences of possession/use of controlled drugs and possession of utensils](#)' in '[Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences](#)' of the '[Drugs](#)' chapter.

# Supplying or administering, or offering to supply or administer, or otherwise dealing in any class C controlled drug

## Section/Act/Jurisdiction

- Section [7\(1\)\(b\)](#) and (2) - Misuse of Drugs Act 1975.
- Category 2 offence.

For information relating to section [7](#) offences and defences, see '[Offences of possession/use of controlled drugs and possession of utensils](#)' in '[Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences](#)' of the '[Drugs](#)' chapter.



# Cultivating a prohibited plant

## Section/Act/Jurisdiction

- Section 9(1) and (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and that they cultivated any prohibited plant.

**Note:** The seeds need not be planted in soil. Moist tissue paper is sufficient.

As distinct from merely observing the plant growing, the defendant must have performed an act or series of acts that amounted to participating in the act of cultivation - [R v Griffiths](#) (1986) 2 CRNZ 175, 177 refers.

## Defence

In the case of the species *Papaver somniferum* (opium poppy), it is a defence to prove that the plant was not:

- intended to be a source of any controlled drug, or
- being developed as a strain from which a controlled drug could be produced.

(s9(4))

**Note:** The standard of proof is on the balance of probabilities.

## Penalty

Liable on conviction to 7 years imprisonment.

# Aiding, inciting, counselling or procuring an offence against a corresponding law of another country

## Section/Act/Jurisdiction

- Section [10\(1\)](#) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and they in New Zealand:

- aided, incited, counselled or procured the doing or omission of any act outside New Zealand if that act or omission:
  - was punishable under any law corresponding to section [6](#), [9](#), [12A](#) or [12AB](#) of the Act, and in force in that place, or
  - would, if done or omitted in New Zealand, have been an offence against any of those sections.

## Defence

It is a defence to a charge if the doing or omission of the act was not an offence under the law of the place where it was, or was to be, done or omitted.

(s [10\(4\)](#))

## Penalty

Liable on conviction for offences corresponding to section [6](#) to 14 years imprisonment, otherwise not exceeding 7 years imprisonment in any other case.

# Stealing, obtaining by false pretence or receiving a controlled drug

## Section/Act/Jurisdiction

- Section 11(1)(a) to (c) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and they:

- stole a controlled drug;

or

- with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by the false pretence,
- obtained possession of, or title to, a controlled drug, or
- procured a controlled drug to be delivered to anyone else;

or

- received a controlled drug obtained by:
  - any offence, or
  - any act wherever committed that, if committed in New Zealand, would constitute an offence,

knowing it had been dishonestly obtained, or being reckless as to whether or not the controlled drug had been stolen or dishonestly obtained.

## Penalty

Liable on conviction to imprisonment for a term not exceeding 7 years.

# Knowingly permitted premises or vehicle to be used to commit an offence against the Act

## Section/Act/Jurisdiction

- Section 12(1) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and:

- they knowingly permitted any premises, or
- any premises, or vessel, aircraft, hovercraft, motor vehicle or other mode of conveyance
- to be used to commit an offence against the Act.

## Penalty

Liable on conviction:

- Class A - 10 years
- Class B - 7 years
- Class C - 3 years.

# Equipment, material and substances used in production or cultivation of controlled drugs

## Section/Act/Jurisdiction

- Section [12A](#)(1) or (2) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and they:

- supplied, produced or manufactured any:
  - equipment, material, or
  - precursor substance

knowing that the equipment, material or substance is to be used in or for the commission of an offence against section [6](#)(1)(b) (produce or manufacture any controlled drug) or section [9](#) (cultivate any prohibited plants) of the Act,

or

- had in their possession any:
  - equipment or material, or
  - precursor substance

with the intention that the equipment, material or substance is to be used in or for the commission of an offence against section [6](#)(1)(b) or section [9](#) of the Act.

The distinction between the two sections is that under section [12A](#)(1) the defendant must know that the equipment, material, or substance is to be used in or for the commission of such an offence.

The knowledge required for the offences includes belief so that where the defendant believes the equipment, material or substance is to be used in the proscribed way it is irrelevant that such use is not intended by any recipient

Under section [12A](#)(2) it is an offence to possess any such equipment, material, or substance with the intention that it be used in the proscribed way.

## Points to be considered when determining a charge

Points that need to be considered when determining a charge under this section are:

- The necessary intent must be proved to have existed at the time the actus reus occurred.
- Proof of past use does not, of itself, prove the necessary intention which is directed at the future.
- Conduct that falls short of an attempt to commit an offence against section [6](#)(1)(b) may nevertheless be within section [12A](#)(2).

- Intention refers to the object the person has in view or intends to carry out.
- Section 12A(2) requires intention, personal to the accused, whereas the offences against section 12A(1) requires knowledge of what is intended to be done.
- Intention as to use does not require knowledge of how that use is made, but such knowledge may be evidence of the intention.
- Knowledge of how the use is made does not amount to intention that such use should be made, as the person may be indifferent as to what may happen.

[Moore v Police](#) 23/8/01, Randerson J, HC Tauranga AP11/01 refers.

An example of how awareness of some illegal purpose can fall short of an intention that a precursor substance is to be used in the manufacture of methamphetamine, is [Kelly v Police](#) 27/9/02, Salmon J, HC Gisborne AP9/02. There, the appellant had purchased pseudoephedrine tablets from a number of pharmacies, but there was no direct evidence of her intention. She told Police that she bought the tablets because she would do anything for cash, and that what would happen to them didn't really bug her. She said she was paid the balance of the \$40 that she had been given to buy the tablets, and that she hadn't done this sort of thing before. Salmon J held that the inference of guilt could not be drawn, as it was possible that she did not know of their use (and, therefore, did not intend that they should be used) to manufacture methamphetamine.

The penalty depends on the offence committed, and whether the information is laid summarily or indictably.

## Penalty

Liable on conviction for an offence against subsection:

- 12A(1) to imprisonment for a term not exceeding 7 years
- 12A(2) to imprisonment for a term not exceeding 5 years.

# Offence to knowingly import or export precursor substances for unlawful use

## Section/Act/Jurisdiction

- Section [12AB](#)(1)(a) or (b) - Misuse of Drugs Act 1975.
- Category 3 offence.

## What you must prove

You must prove the identity of the suspect and they:

- imported into New Zealand any precursor substance
- knowing that it will be used to commit an offence under section [6](#)(1)(b)

or

- exported from New Zealand any precursor substance knowing that it will be used to commit an offence under a provision of the law of the country to which the precursor substance is being exported that corresponds to an offence under section [6](#)(1)(b).

Section [12AB](#) creates offences of importing and exporting precursor substances. The necessary mens rea includes (in addition to the ordinary mental requirements for liability for importing or exporting) knowledge that the precursor substance will be used for an offence of producing or manufacturing a controlled drug. It seems clear, from the expression knowing that it will be used, that suspicion, and therefore recklessness, would be insufficient for liability.

## Penalty

Liable on conviction for an offence against section [12AB](#)(1) to imprisonment for a term not exceeding 7 years.

# Offence to import or export precursor substance without reasonable excuse

## Section/Act/Jurisdiction

- Section [12AC](#)(1) - Misuse of Drugs Act 1975.
- Category 2 offence.

## What you must prove

You must prove the identity of the suspect and they:

- without reasonable excuse,
- imported into, or exported from, New Zealand any precursor substance.

## Defences

Without limiting the circumstances under section [12AC](#)(1) in which a person may have a reasonable excuse, a person has a reasonable excuse if:

- they import a precursor substance into New Zealand in order that:
  - a medical practitioner, dentist, or veterinarian may, in the circumstances referred to in section [8](#)(2)(a), produce or manufacture a controlled drug from the precursor substance; or
  - a pharmacist or any person with the authority and under the immediate supervision of a pharmacist may, in any of the circumstances referred to in section [8](#)(2)(b), produce or manufacture a controlled drug from the precursor substance; or
  - the precursor substance be used for a lawful purpose (including, without limitation, an agricultural, commercial, or industrial purpose); or
  - the precursor substance that he or she is importing into, or exporting from, New Zealand has been lawfully supplied to that person for his or her own medical use; or
  - he or she exports a precursor substance from New Zealand in order that the precursor substance be used for a purpose that is authorised or lawful under the law of the country to which it is being exported.

By way of explanation, the effect of section [12AB](#)(3) is that, in order for a prosecution to be successful, the prosecution must negate beyond a reasonable doubt any reasonable excuse in dispute (being any matter raised as a reasonable excuse by the defendant).

## Without reasonable excuse

The list of reasonable excuses in section [12AC](#)(2) is non-exhaustive.

## Penalty

Liable on conviction of an offence under section [12AC](#)(1) to imprisonment for a term not exceeding 1 year or a fine not exceeding \$1,000, or both.



## Commission of offences outside New Zealand

### Dealing, cultivating offences etc outside New Zealand

Doing or omitting any act outside New Zealand that if done in New Zealand would constitute an offence against:

- section 6 (dealing with controlled drugs)
- section 9 (cultivating prohibited plants)
- section 12A (equipment, material, and substances used in production or cultivation of controlled drugs)
- section 12AB (knowingly importing or exporting precursor substance without reasonable excuse).

(s [12C](#))

### Drugs smuggling outside New Zealand

See these sections in the Misuse of Drugs Act 1975 for offences, penalties and defences:

- section 12D (application of sections 12E and 12F, supplementary provisions and definitions)
- section 12E (drugs smuggling outside New Zealand, etc.: controlled drugs)
- section 12F (drugs smuggling outside New Zealand, etc.: prohibited equipment or material).

# Possessing instruments to commit an offence against the Act

## Section/Act/Jurisdiction

- Section [13\(1\)\(a\)](#) or (aa) - Misuse of Drugs Act 1975.
- Category 2 offence.

## Offence of possessing of pipe or other utensil (not being a needle or syringe)

Information relating to section [13\(1\)\(a\)](#) offences and defences for possession of any pipe or other utensil (not being a needle or syringe), see '[Offences of possession/use of controlled drugs and possession of utensils](#)' in '[Part 15 - Police discretion with possession/use of controlled drugs and/or possession of utensils offences](#)' of the '[Drugs](#)' chapter.

## Offence of possessing a needle or syringe

### What you must prove

You must prove:

- the identity of the suspect
- they had in their possession for the purpose of committing an offence under the Act any needle or syringe:
  - that they obtained from a person (a **supplier**) who he or she could not have reasonably believed at the time of the acquisition was a pharmacist, pharmacy employee, approved medical practitioner, or an authorised representative; **or**
  - that another person (an **acquirer**) obtained on their behalf from a supplier who the acquirer could not have reasonably believed at the time the needle or syringe was obtained was a pharmacist, pharmacy employee, approved medical practitioner, or an authorised representative; **or**
  - other than a needle or syringe that they obtained in accordance with any regulations made under section [37](#) that regulate the sale, exchange, or supply of needles or syringes; **or**
  - other than a needle or syringe that the acquirer obtained on their behalf in accordance with any regulations made under section [37](#) that regulate the sale, exchange, or supply of needles or syringes.

(s. [13\(1\)\(aa\)](#))

Section [13\(1\)\(aa\)](#) provides exceptions to general liability for possession of needles or syringes for the purpose of committing an offence. It is for the prosecution to prove that such items were obtained outside the terms of [13\(1\)\(aa\)](#), as those terms are not phrased as exceptions to liability, but rather as part of the definition of the offence.

## Exemptions

No pharmacist, pharmacy employee, approved medical practitioner, or authorised representative commits an offence by selling or supplying any needle or syringe in accordance with any regulations made under

section 37 that regulate the sale, exchange, or supply of needles or syringes (s.[13\(2A\)](#)).

See: Part 3 - [Offences under the Health \(Needles and Syringes\) Regulations 1998](#).

## **Penalty**

Liable to imprisonment for a term not exceeding one year, or to a fine not exceeding \$500, or to both.

# Possessing the seed or fruit of a prohibited plant

## Section/Act/Jurisdiction

- Section [13](#) (1)(b) - Misuse of Drugs Act 1975.
- Category 2 offence.

## What you must prove

You must prove the identity of the suspect and:

- they had in their possession
- the seed or fruit (not in either case being a controlled drug)
- of any prohibited plant that they were not authorised under the Act to cultivate.

## Defence

In the case of the species *palavers somniferum*, the defence in section [9](#)(4) applies as if it referred to that plant's seed or fruit.

## Penalty

Liable to imprisonment for a term not exceeding one year or to a fine not exceeding \$500, or to both.

# False statements

## Section/Act/Jurisdiction

- Section 15 - Misuse of Drugs Act 1975.
- Category 2 offence.

## What you must prove

You must prove the identity of the suspect and they:

- for the purpose of obtaining, whether for themselves or any other person, the grant or renewal of any licence under the Act, or for any other purpose in relation to the Act:
  - makes any declaration or statement which to his knowledge is false in any particular;**or**
  - utters, produces, or makes use of any declaration or statement which to his knowledge is false in any particular; **or**
  - knowingly utters, produces, or makes use of any document that is not genuine.

## Penalty

Liable to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$1,000, or to both.

# Wilfully obstructing, hindering, resisting or deceiving

## Section/Act/Jurisdiction

- Section 16 - Misuse of Drugs Act 1975.
- Category 2 offence.

## What you must prove

You must prove the identity of the suspect and they:

- wilfully
- obstructed, hindered, resisted or deceived any other person who was executing any powers conferred on them by, or pursuant to, the Act.

## Penalty

Liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500, or to both (section 27 refers).

## Other offences under the Misuse of Drugs Act

Other offences include:

- refuses or neglects to comply with any demand or requisition of records and to inspect stocks (s19(4))
- publishes information from a statement regarding drug dependent persons (s20(5))
- contravenes Minister's prohibition notice of importation etc., of controlled drugs (s22(2) and (3))
- contravenes Minister's prohibition notice of prescribing etc. (s23(6))
- prescribe, administer, or supply controlled drug in certain case (s24(1))
- contravenes Minister's prohibition notice, prescribes or supplies controlled drug to restricted person (s25(2)(a))
- restricted person procures or attempts to procure controlled drug from person prohibited by notice (s25(2)(b)).

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