

## **Part 13 Psychoactive substances**

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# Policy statement and principles

## What

Primary issues Police may encounter in the current psychoactive substances climate are: import, manufacture, or sale of unapproved products without licence, or possession of unapproved products.

Product approvals are considered unlikely to occur until at least 2018 (likely longer).

The lead agency for the administration and enforcement of the [Psychoactive Substances Act 2013](#) is the Ministry of Health (MoH). The Regulatory Practice and Analysis Team (RPAT) administers the Act under the delegation of the Psychoactive Substances Regulatory Authority (PSRA).

There are currently no psychoactive substances that are approved products and no licensed retail premises. All outlets selling psychoactive substances through the internet are currently unlicensed and commit an offence against section [70](#) of the Act.

[ESR](#) is unable to declare whether a substance is psychoactive or not. Therefore, for evidential purposes, both the ESR analysis and a formal written statement from the PSRA/RPAT must be submitted to court.

## Why

Ensuring Police delivers enforcement to support regulating the availability of psychoactive substances in New Zealand to protect the health of, and minimise harm to, individuals who use psychoactive substances.

## How

Police will:

- in addition to powers under the Search and Surveillance Act 2012, exercise with discretion powers under the Psychoactive Substances Act 2012:
  - warrantless power to enter and search
  - power to enter and inspect licensed premises (note, currently there are no licensed premises)
  - power to demand information
  - power to seize and remove
- apply the Graduated Response Model (GRM) as the operating framework for providing a range of typically appropriate enforcement responses according to the assessed level of risk and offending
- conduct:
  - enforcement of retail outlets whether they are licensed, unlicensed or prohibited from selling psychoactive substances under the Act
  - psychoactive substances controlled purchase operations where appropriate
- respond, receive and investigate complaints of internet sale breaches.

# Overview

## Introduction

This chapter:

- details the lead agency, roles and responsibilities for:
  - regulating psychoactive substances; and
  - enforcing the [Psychoactive Substances Act 2013](#) (the Act) and its supporting [Psychoactive Substances Regulations](#)
- provides definitions of key terms used in legislation
- outlines the enforcement powers, offences and penalties under the Act
- sets good practice guidelines with:
  - visiting outlets prohibited from selling psychoactive substances; and
  - conducting psychoactive substances controlled purchase operations (PSCPO).

**Note:** This chapter provides guidance across all aspects of the Psychoactive Substances Act 2013. Since the Act was amended in 2014, revoking all interim product approvals, retail and wholesale licences, a number of these sections are not practically applicable at this time.

The following sections are of greatest relevance to operational employees at this time:

- Roles and responsibilities
- People under the influence of, or in withdrawal from, psychoactive substances
- Graduated Response Model (GRM)
- Police enforcement of retail outlets
- Enforcement powers
- Internet sales
- International controlled delivery of psychoactive substances

The following sections have been included to assist with interpretation of the Act as a whole, but have no practical applications until any product becomes approved, and/or retail and wholesale licences are issued.

**Note:** Product approvals are considered unlikely to occur until at least 2018 (likely longer).

These sections will therefore remain non-applicable until at least that time:

- Psychoactive substances controlled purchase operations (PSCPOs)
- Court imposing sentence for second or subsequent offence under Act
- Infringement offence notices

Where a section deals with both applicable and non-applicable situations, the latter will be indicated in italics for ease of reference.

# The Psychoactive Substances Act 2013

## Purpose of the Act

The [Psychoactive Substances Act 2013](#):

- regulates the availability of psychoactive substances in New Zealand;
- protects the health of individuals using psychoactive substances; and
- minimises harm to individuals using psychoactive substances.

It regulates previously unregulated psychoactive substances such as "party pills" and other legal highs in New Zealand. The Act applies to the importation, manufacture, sale, supply and possession of psychoactive substances or approved products for the primary purpose of inducing a psychoactive effect in an individual who uses the substance (s 5). Only those substances that can meet safety and manufacturing requirements will be allowed.

Prior to the Act there was no mechanism to prevent potentially harmful psychoactive substances being imported, manufactured, or sold unless they were scheduled in the [Misuse of Drugs Act 1975](#). The new Act provides a long-term and more effective solution as it restricts all psychoactive substances by default, and only allows the sale of those approved by a regulatory authority. This means the Government will no longer have to demonstrate a product is harmful before restricting it from being sold. Instead, manufacturers must demonstrate that a product which is a psychoactive substance or contains psychoactive substances, poses no more than a low risk to individuals using it before it can be legally sold.

The Act initially provided for an interim regime under which products already on the market were given 'interim approval' until a testing regime could be implemented, and could be legally imported, manufactured, or retailed by licence-holders. The Act was amended in May 2014, revoking all licences and product approvals. The approval process opened in November 2014, but with animal testing prohibited and no suitable alternative yet available, it is unlikely that any products will be submitted to the process for some time. It is also estimated that it would take at least two years for a product to complete the process once submitted. Licences for import, manufacture and research became available again in late 2014, but retail and wholesale licences are not yet available and are also unlikely to return for some time, and will remain largely irrelevant until any product is approved.

The Act provides for:

- an approval process for products
- a regulatory authority within the Ministry of Health
- the establishment of an expert advisory committee
- a licensing regime to carry out activities under the Act
- prohibitions on free-of-charge distribution of approved products and on certain types of advertising
- offences and penalties for breaches of the Act
- the establishment of an appeals committee
- regulation-making powers to prescribe retail restrictions.

## Principles under the Act

These principles under section 4 of the Act must be taken into account by any person or body performing functions, duties or exercising powers under the Act:

- A psychoactive product that is approved for use by individuals should pose no more than a low risk of harm to individuals who use it.
- Before a psychoactive product can be approved for use by individuals, the degree of harm posed by the product to individuals who use it should be assessed by the Authority on the basis of:
  - the advice of an expert advisory committee; and
  - evidence, including the results of preclinical and clinical trials.
- A psychoactive product that poses:
  - no more than a low risk of harm to individuals who use the product should be approved
  - more than a low risk of harm to individuals who use the product should be prohibited.
- A psychoactive product that has not been approved by the Authority should be prohibited, on a precautionary basis, until it has been assessed by the Authority and the Authority is satisfied that it poses no more than a low risk of harm to individuals who use it
- Animals must not be used in trials for the purposes of assessing whether a psychoactive product should be approved. **Note:** However, if a trial is undertaken overseas that involves the use of an animal, the advisory committee may have regard to the results, should the committee considers the trial shows that the psychoactive product would pose more than a low risk of harm to individuals using the product (s12).

## Psychoactive Substances Regulations

These regulations support enforcing the [Psychoactive Substances Act 2013](#):

- [Psychoactive Substances Regulations 2014](#)
- [Psychoactive Substances \(Fees and Levies\) Regulations 2014](#)
- [Psychoactive Substances \(Infringement Fees and Form of Notices\) Regulations 2014](#) **Note:** See also the paragraph 'Psychoactive Substances (Infringement Fees and Form of Notices) Regulations 2014' in the [Infringement offence notices](#) section of this part.

## Lead agency

The lead agency for the administration and enforcement of the Psychoactive Substances Act 2013 is the Ministry of Health (MoH). The [Regulatory Practice and Analysis Team \(RPAT\)](#) administers the Act under the delegation of the [Psychoactive Substances Regulatory Authority \(PSRA\)](#). Police should respond to MoH, the PSRA/RPAT and enforcement officers when assistance is requested. There may be times when [Police will investigate and undertake enforcement activities](#) in relation to the Act of their own accord (e.g. issuing [infringement offence notices](#)). This can occur when called upon directly by the public or when offences are discovered as a part of their ordinary duties.

## Enforcement and charging hierarchy

The provisions of the [Misuse of Drugs Act 1975](#), [Psychoactive Substances Act 2013](#) and the [Search and Surveillance Act 2012](#) must be considered and applied together. If offences relating to drugs and



psychoactive substances exist during a given operation or investigation, then substances defined in the Misuse of Drugs Act 1975 takes precedent over these substances defined in the Psychoactive Substances Act 2013 for enforcement and charging purposes.

## Definitions

Most definitions of words and terms used in this chapter and the Act can be found in section 8, Subpart 2 - Interpretation of the Act. Other definitions can also be found in these sections ([9](#), [55](#), [72](#) and [84](#)).

## Psychoactive Substances Regulations

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- [Psychoactive Substances Regulations 2014](#)
- [Psychoactive Substances \(Fees and Levies\) Regulations 2014](#)
- [Psychoactive Substances \(Infringement Fees and Form of Notices\) Regulations 2014](#)**Note:** See also the paragraph 'Psychoactive Substances (Infringement Fees and Form of Notices) Regulations 2014' in the [Infringement offence notices](#) section of this Part 13.

## Related information

Use this hyperlink <http://psychoactives.health.govt.nz/home> to access information about licensees and approved products.

**Note:** There are currently no:

- psychoactive substances that are approved products
- licensed individuals or businesses to retail or sell wholesale or sell products.

Individuals are able to apply for licences to import, manufacture, research, and sell unapproved products (to other licence holders only).

See '[Fake or fraudulently-presented evidence of age documents](#)' if you are enforcing the restriction on selling approved products to persons under 18 years for further guidance.

## Non-psychoactive products

### Non-psychoactive products defined

Non-psychoactive products are products that do not contain any ingredients considered psychoactive under the Act, and are therefore not subject to any of the Act's regulations. Such products often contain herbs such as damiana, salvia divinorum, etc.

### Labelling non-psychoactive products

A number of former psychoactive substance manufacturers and retailers began distributing new non-psychoactive versions of their products after psychoactive products were removed from shelves with the Amendment Act in 2014. Such products are typically explicitly labelled as "non-psychoactive" or "cannabinoid-free", and their packaging will list non-psychoactive ingredients. These products are legal, and their manufacture, sale, and use is not subject to any regulation.

### Mislabelling psychoactive products in the guise on non-psychoactive products

There have been multiple instances in which such products have been found to be intentionally mislabelled in the guise of non-psychoactive products when they do in fact contain psychoactive substances. Where such cases are suspected, liaison with [NDIB](#) and/or RPAT is recommended to ensure all available information is considered. RPAT may also be able to assist with testing of "non-psychoactive" products where a sample can be obtained but this will be decided on a case-by-case basis depending on the reliability and quantity of intelligence to suggest the product is falsely labelled, how widely available the product is, and any harm that has been reported through either enforcement or Health agencies in relation to the product.

RPAT maintains a list of non-psychoactive substances that have been brought to their attention, including manufacturer and distributor details, listed ingredients, and other reported or known ingredients if identified. They can also provide guidance on whether listed or identified ingredients should be considered psychoactive under the criteria of the Act.

## Roles and responsibilities

### Psychoactive Substances Regulatory Authority

The Act provides for a Psychoactive Substances Regulatory Authority (PSRA) within the Ministry of Health (MoH) to consider and grant approvals of psychoactive products, issue codes of practice in relation to the manufacture of psychoactive substances, issue licences and carry out monitoring, recall and audit functions. PSRA also appoints enforcement officers to enforce the Act.

### Regulatory Practice and Analysis Team (RPAT)

RPAT, a branch of Medsafe within the MoH, is the primary group responsible for administering the Act and can assist with regulatory or licensing issues and queries. RPAT operates under the delegation of the Psychoactive Substances Regulatory Authority and is responsible for determining whether a substance should be considered controlled under the Act. A brief of evidence from RPAT (on behalf of the PSRA), confirming a substance's psychoactive status, is usually required by the court to accompany testing results from ESR when prosecuting under the Act. RPAT can also facilitate contact with DHB-appointed enforcement officers where a multi-agency approach is appropriate. Contact [psychoactives@moh.govt.nz](mailto:psychoactives@moh.govt.nz)

RPAT maintains lists of:

- psychoactive substances (including their commonly known brand names) that are approved products
- individuals or body corporate who have applied for licences and the results of those applications
- people appointed as enforcement officers.

**Note:** RPAT runs a specific website for psychoactive substances. Click on this link <http://psychoactives.health.govt.nz/home>.

PSRA/RPAT are also responsible for regulating licence holders and approved products, and related offences, while Police are responsible for offences relating to un-licensed individuals and unapproved products.

### Roles and responsibilities of enforcement officers

Enforcement officers under their instrument of appointment from the Authority may:

- enforce:
  - all the provisions of the Act, except issue [infringement offence notices](#); or
  - only specified provisions of the Act; or
  - all the provisions of the Act except certain specified provisions; and
- exercise:
  - all enforcement powers; or
  - only specified enforcement powers; and
  - all limitations and restrictions (if any) that are imposed on the person's exercise of enforcement powers.

**Note:** Enforcement officers cannot issue infringement notices or exercise the warrantless search powers under section [77](#) of the Act.

## Roles and responsibilities of Police

The roles and responsibilities of Police include:

- responding to Ministry of Health, the Psychoactive Substances Regulatory Authority, Regulatory Practice and Analysis Team or enforcement officers' requests for assistance, including vetting of applicants applying for licence to sell approved products under regulation [3A](#) of the [Psychoactive Substances Regulations 2014](#)
- investigating offences in relation to the Act when circumstances indicate it is obvious Police should take a lead in the investigation (i.e. organised crime, as a part of another investigation into crimes relating to other Acts, or where the offending relates to unlicensed individuals or unapproved products)
- issuing [infringement notices](#) under section [74](#) of the Act to persons alleged to have committed an infringement offence
- seek out prevention opportunities with a view to minimising harm to individuals' health and well-being by fostering a culture of responsible consumption of approved products and reduce incidents of substance-related offending and victimisation.

### Note:

- In the case of simple possession offences applying discretion with enforcing infringement offences under the Act by issuing warnings rather than serving an infringement notice or filing a charging document, unless the issuing of the warning is inappropriate in the circumstances.
- Enforcement of the regulatory aspects of the Act should be left to enforcement officers, unless:
  - there is a risk to any person;
  - there is potential for violence; or
  - use of force is required.

## Who to contact for guidance?

This section contains the following topics:

- National Drug Intelligence Bureau (NDIB)
- Regulatory Practice and Analysis Team (RPAT)
- District Prevention Managers
- National Criminal Investigations Group (NCIG)

### National Drug Intelligence Bureau (NDIB)

NDIB has a dedicated psychoactive substances analyst who can provide guidance around the application of the Act and other information contained in this chapter, along with technical and operational expertise around psychoactive substances (and non-psychoactive substances) themselves. This includes information on the market, effects, pricing, and slang as well as other intelligence. NDIB can also facilitate liaison with Ministry of Health and New Zealand Customs Service as necessary. Contact [ndib@police.govt.nz](mailto:ndib@police.govt.nz)

### District Prevention Managers

The District Prevention Managers are designated as District leads for matters pertaining to the Act. They can provide guidance at the District level on operational or strategic activity, and determine whether elevation to a cross-District or national level is needed.

### National Criminal Investigations Group (NCIG)

NCIG are the strategic lead for psychoactive substances within Police at the national level. They can provide guidance around national strategy and policy in regards to the Act and should be notified of any activity which has national impact. NCIG also encompasses the covert operations group and the cybercrime unit, for cases involving covert work or internet sales etc.

# People under the influence of, or in withdrawal from psychoactive substances

## Use and withdrawal symptoms

Research from medical practitioners indicates that for some users of psychoactive substances, dangerous adverse effects can occur. These may include hypertension, tremor, convulsions, hallucinations, lowering of inhibitions and in some cases paranoid behaviour.

Physiological side effects associated with synthetic cannabinoid use in particular can include fast and irregular heartbeat (including palpitations), hypertension, rapid breathing, seizures, delayed reaction time, vomiting and dizziness.

In very severe cases, more toxic effects have been reported such as convulsions, agitation, excess sedation, psychotic episodes and myocardial infarction. These reactions pose a high risk to the user of severe poisoning or death.

The duration of the effects experienced by users depends on the exposure dose and the tolerance of the users but can last anywhere from 4-24 hours.

<b>Synthetic Cannabis Effects</b>		
	<b>Physical</b>	<b>Mental</b>
<b>Short Term</b>	<ul style="list-style-type: none"> <li>- Seizure</li> <li>- Dizziness</li> <li>- Nausea &amp; Vomiting</li> <li>- Tremors</li> <li>- Hypertension</li> <li>- Rapid heart rate and breathing</li> <li>- Abdominal or chest pain</li> </ul>	<ul style="list-style-type: none"> <li>- Psychosis</li> <li>- Paranoia (including fear of dying)</li> <li>- Hallucinations</li> <li>- Racing thoughts</li> <li>- Memory loss</li> </ul>
<b>Long Term</b>	<ul style="list-style-type: none"> <li>- Hyperemesis (aka constant vomiting, can occur after as little as two weeks use)</li> <li>- Persistent cough with mucus</li> <li>- During withdrawal:</li> <li>- Constipation</li> <li>- Difficulty eating/weight loss</li> </ul>	<ul style="list-style-type: none"> <li>- Recurring psychotic episodes</li> <li>- Depression</li> <li>- During withdrawal:</li> <li>- Panic attacks</li> <li>- Insomnia</li> <li>- Severe confusion/disorientation</li> </ul>

**Note:** The above information relates primarily to synthetic cannabis. Due to the relative novelty of both synthetic cannabis and other psychoactive substances, and the absence of long term research, the full

effects and risks of the various substances available are not yet known. Note also that effects may differ depending on the particular chemical contained within a substance.

## Enforcement risk

The side effects of use and withdrawal pose a risk to Police employees and members of the community (e.g. vendors may be targeted for robbery/burglary by addicts who cannot afford products).

Police employees must consider the risks their enforcement tactics could present to themselves, public and the individuals with these symptoms.

The dissociative state sometimes experienced by psychoactive substance users may also mean they are unable to recognise and therefore alert Police employees of symptoms indicating a serious medical issue that could pose a risk while they are kept in custody.

Users with pre-existing mental health conditions tend to be particularly susceptible to the side effects, compounding the risk to Police and others.

**Note:** Toxic symptoms generally last only 3-4 hours, but some of the psychological problems induced by cannabinoids may be irreversible.

Awareness of the addiction, withdrawal symptoms, enforcement risk and applying the [TENR - Operational threat assessment](#) and Tactical Options Framework (see PDF below) will assist with mitigating that risk.

-

 [Tactical options framework \(PDF\)](#)

147.26 KB

## Where to go to obtain help

There are a number of services available to help people suffering addiction and withdrawal problems from taking psychoactive substances or are concerned about someone who is suffering addiction and withdrawal.

People should be referred to their local District Health Board, Alcohol and Drug Services listed in the front of the telephone book under District Health Board services in the 'Hospitals and other health service providers' section.

Sufferers, addicts and people concerned about someone's addiction and withdrawal can also be referred to the nationwide toll-free Alcohol Drug Helpline service on 0800 787 797. A trained counsellor will take their call, and can advise on where they can get further help.

Adverse reactions to products should also be reported to Centre for Adverse Reactions Monitoring (CARM) at [carmnz@stonebow.otago.ac.nz](mailto:carmnz@stonebow.otago.ac.nz). This should preferentially be made in conjunction with a health professional where possible. PSRA/RPAT have the power to revoke product approvals should adverse reactions be reported.

Further information is available to the public at:

- Ministry of Health website <http://psychoactives.health.govt.nz/home>
- National Poisons Centre via [www.poisons.co.nz](http://www.poisons.co.nz) or 0800 POISON (0800 764 766)



# Graduated Response Model (GRM)

## Introduction

The Graduated Response Model (GRM) is an operating framework that:

- provides Police a greater degree of consistency with psychoactive substances enforcement good practice
- enables Police to determine the appropriate enforcement tools to apply, depending on the potential risk of harm arising from the entity (premises) under investigation (**Note:** The GRM does not replace the [TENR](#) operational threat assessment of the present or potential danger a suspect presents to themselves, other members of the public or Police)
- provides a process that identifies the most suitable Police response.

## GRM drivers

There are three major drivers towards applying GRM:

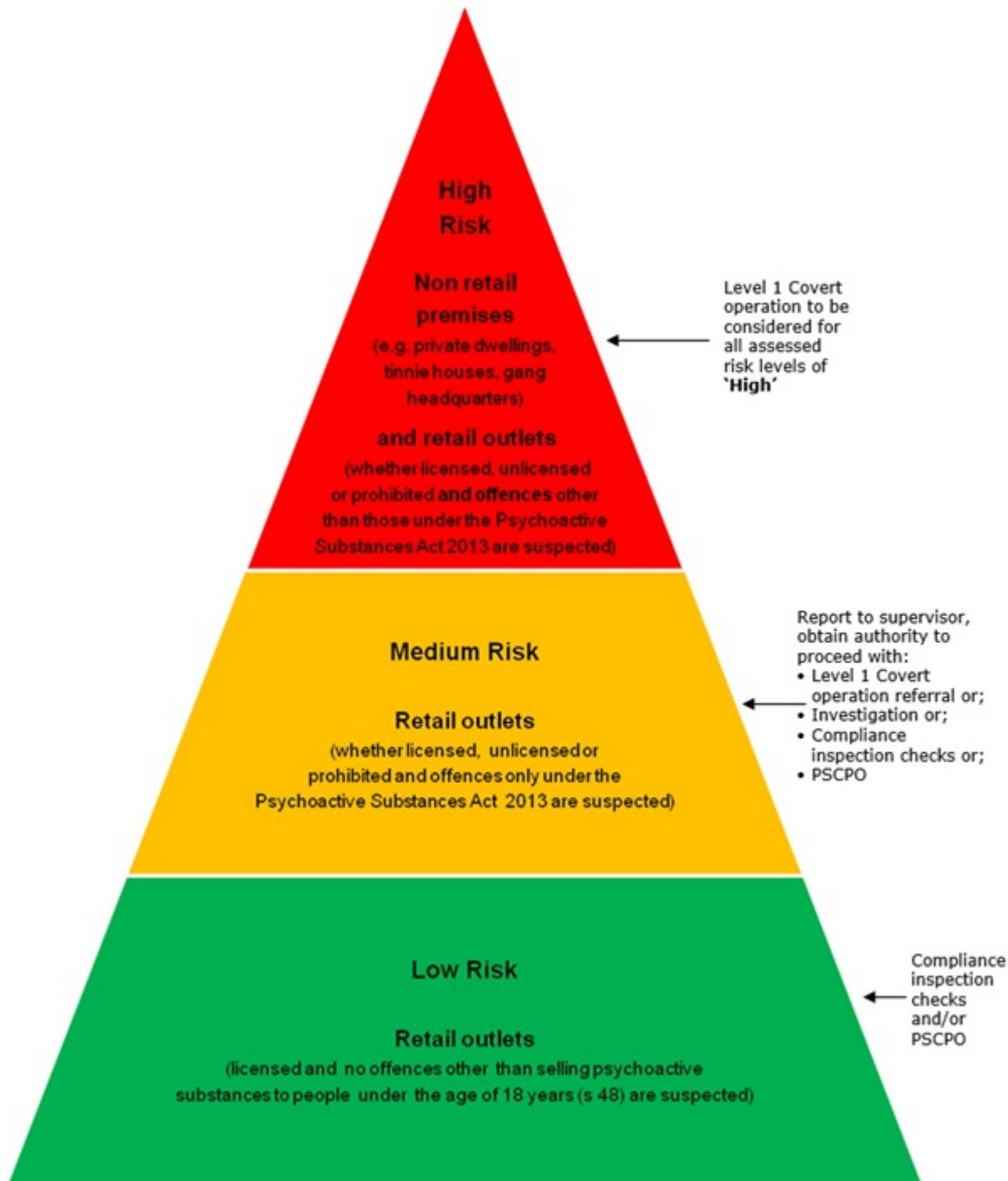
- Non-retail premises (e.g. private dwellings, tinnie houses, gang headquarters etc.) are not only prohibited from selling psychoactive substances, but are likely to involve organised criminal activity that extends beyond selling psychoactive substances to sales of illegal drugs (e.g. cannabis, LSD, BZP etc.) and other crimes.
- Unlicensed premises and prohibited retail outlets (e.g. dairies, service stations, convenience stores, premises selling alcohol etc.) also pose risk for those involved with enforcement that must be assessed before deciding on the appropriate enforcement tool to apply.
- Retail outlets that are licensed under the [Psychoactive Substances Act 2013](#).

**Consideration should also be given towards whether the product is approved or not. Unapproved products pose much greater risk to the public than approved products as they have not been assessed as low risk of harm.**

Compliance with Psychoactive Substances Act 2013 requirements can be encouraged through dialogue with licensed retail outlets. PSRA/RPAT are the lead agencies to ensure regulatory compliance. Should compliance slip or is absent, then PSRA/RPAT may take enforcement action to sanction breaches. **Note:** Seeking compliance should always be considered before resorting to legal proceedings.

## GRM diagram

The GRM provides a range of typically appropriate enforcement responses according to the assessed level of risk and offending posed from individual premises selling psychoactive substances. The basic model can be summarised in this diagram.



### Gradual Response Model (GRM)

The GRM diagram above demonstrates the categories of risk and the required [enforcement response](#) to each risk category.

## Calculating risk

Determining risk is calculated as follows:

- **High risk** includes non-retail premises (e.g. private dwellings, tinnie houses, gang headquarters), whether or not other criminal activities is suspected of being committed at the premises. Also includes retail outlets (whether licensed, unlicensed or prohibited) where offences other than those under the Psychoactive Substances Act 2013 are suspected of occurring.
- **Medium risk** includes only retail outlets that are:

- licensed under section 16 of the Psychoactive Substance Act 2013, or
  - unlicensed, or
  - prohibited under section 52 of the Psychoactive Substances Act 2013 (e.g. dairies, service stations, convenience stores, premises selling alcohol, etc.)
  - and, offences **only** under the Psychoactive Substances Act 2013 are suspected.
- **Low risk** includes only retail outlets that are licensed under section 16 of the Psychoactive Substance Act 2013 and **no** offences other than selling psychoactive substances to people under the age of 18 years (s 48 of the Psychoactive Substances Act 2013) are suspected. **Note: There are currently no licensed retail outlets.**

If you are in doubt about calculating the risk, discuss with your supervisor or manager for guidance.

## **Policing response to calculated risk**

The following action must be taken with these calculated risks:

Risks	Action
High risk	<p>Level 1 covert operation is usually required. You must in the first instance report the matter to your supervisor for referral and authority from your district's District Manager: Criminal Investigations to conduct a level 1 undercover operation.</p> <p><b>Note:</b> Do <b>not</b> conduct PSCPOs or retail outlets compliance inspection checks.</p>
Medium risk	<p>You must in the first instance report the matter to your supervisor for authority to proceed with:</p> <ul style="list-style-type: none"> <li>- Level 1 covert operation referral (where there is any previous history of confrontation or information which suggests the safety of anyone or property may be compromised)</li> <li>- investigation (may involve search warrant and prosecution)</li> <li>- conducting retail outlet compliance inspection with <u>DHB</u> enforcement officers in circumstances where there is no detectable risk of harm to people or property. See, '<a href="#">Police enforcement of retail outlets</a>' section in this chapter.</li> <li>- a PSCPO in the following circumstances: <ul style="list-style-type: none"> <li>- when advised by the Manager: Undercover Programme that the deployment falls outside a Level 1 deployment</li> <li>- solely to gather evidence of offences involving selling psychoactive substances to people under the age of 18 years (s 48); and</li> <li>- there is no detectable risk of harm to people or property. See, '<a href="#">Psychoactive substances controlled purchase operations (PSCPOs)</a>' section in this chapter.</li> </ul> </li> </ul>
Low risk	<p>You may conduct retail outlets compliance inspection checks and PSCPOs.</p> <p>See:</p> <ul style="list-style-type: none"> <li>- '<a href="#">Police enforcement of retail outlets</a>' section in this chapter.</li> <li>- '<a href="#">Psychoactive substances controlled purchase operations (PSCPOs)</a>' section in this chapter.</li> </ul> <p><b>Note:</b> As retail outlets are unable to obtain licences at this point, no circumstances will currently fall into this 'low risk' category.</p>

**Note:** The reason restrictions are placed on using PSCPOs is the potential risks involved and because legislative protection or immunity from civil or criminal liability is limited to persons under the age of 18 years who buys a psychoactive substance or an approved product at the request of a constable or enforcement officer acting in the course of their duties (section 48 (2) refers). It is an offence if a person aged 18 years or over is used to purchase an unapproved substance.

## Police enforcement of retail outlets

Follow these steps for the enforcement of retail outlets whether they are licensed, unlicensed or prohibited from selling psychoactive substances (e.g. dairies) under the Act.

Step	Action
1	Calculate the risk (high, medium, low) under the graduated response model (GRM). See ' <a href="#">Calculating risk</a> ' in this chapter.
2	Take action according to the risk by following these links ( <a href="#">High</a> or <a href="#">Medium</a> ).
3	<p>If practicable, endeavour to have a <a href="#">DHB</a> appointed enforcement officer accompany you when inspecting:</p> <ul style="list-style-type: none"> <li>- licensed retail outlets (<b>Note: There are currently no licensed retail premises</b>)</li> <li>- unlicensed retail outlets</li> <li>- retail outlets prohibited from selling psychoactive substances: <ul style="list-style-type: none"> <li>- dairies</li> <li>- convenience stores</li> <li>- grocery stores or supermarkets</li> <li>- service stations or motor vehicle service and repair premises</li> <li>- any premises where alcohol is sold or supplied under an alcohol licence</li> <li>- any premises that are not a fixed permanent structure (e.g. tent, marquee)</li> <li>- any vehicle or other conveyance (e.g. a mobile street cart).</li> </ul> </li> </ul> <p>(<a href="#">s52</a>)</p> <p>Either RPAT or the National Drug Intelligence Bureau can assist Police employees in establishing contact with appointed enforcement officers in their region.</p>

Step	Action
4	<p>If you:</p> <ul style="list-style-type: none"> <li>- believe a search of a place, vehicle or other thing will find evidential material; and</li> <li>- suspect an offence under the Act has been committed, is being committed or is about to be committed;</li> </ul> <p>then apply the <a href="#">search hierarchy principles</a>, and consider applying for a search warrant under the Act.</p> <p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>- See <a href="#">warranted and warrantless powers to enter and search</a> in this chapter for further guidance about entry and search.</li> <li>- For warrantless entries and/or searches, complete a notification on the Search and Surveillance system as required under section 169 of the Search and Surveillance Act. (s77)</li> <li>- There is no specific power to search a person under the Psychoactive Substances Act 2013.</li> <li>- Some warrantless entry and search powers under the <a href="#">Search and Surveillance Act 2012</a> may be applicable. See <a href="#">Part 3 - Warrantless powers to search places, vehicles and things</a> of the 'Search' chapter for further guidance. Note sections 20 and 21 warrantless drug searches will not be available if you believe the product is a psychoactive substance.</li> <li>- MOH maintains a list of licence-holders on their website. They will also maintain a list of approved psychoactive substances (including their commonly known brand names) once product approvals begin to be granted (<a href="http://psychoactives.health.govt.nz/home">http://psychoactives.health.govt.nz/home</a>).</li> </ul> <p><b>Note: There are currently no psychoactive substances that are approved products.</b></p>
5	<p>Investigate any offences under the Act you detect. Likely offences include:</p> <ul style="list-style-type: none"> <li>- Selling/supplying/offering to sell or supply psychoactive substances that are not approved products (power to arrest, 2 years imprisonment, \$500,000 fine for body corporate, s70).</li> <li>- Selling an approved product from an unauthorised place (no power to arrest, \$10,000 fine for individual, \$50,000 fine for body corporate, s52).</li> <li>- Possessing a psychoactive substance that is not an approved product (\$500 fine, s71).</li> </ul>

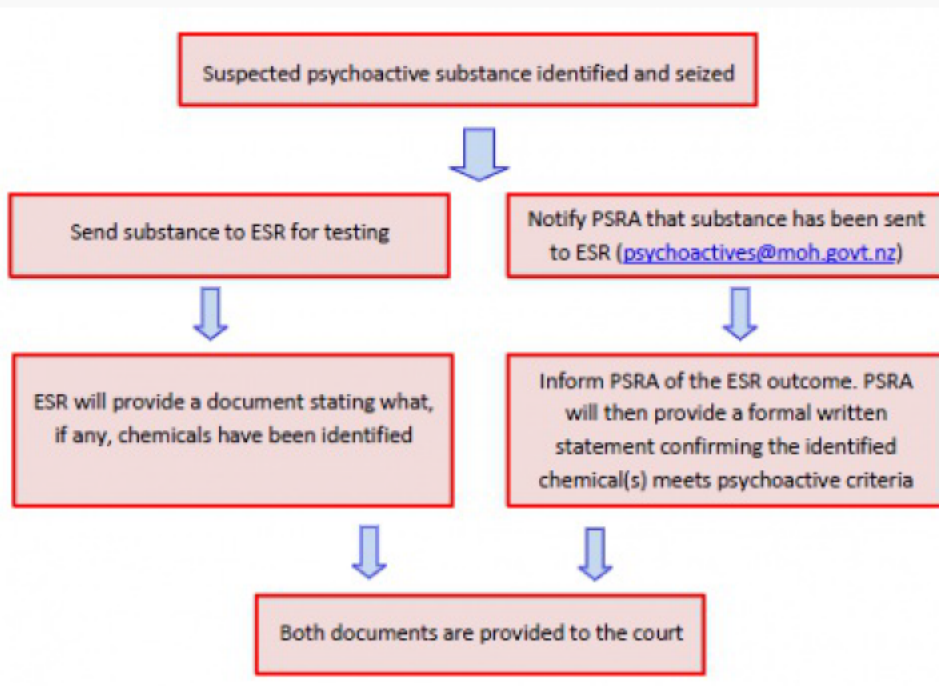
Step	Action								
6	<p>Seize and remove psychoactive substances, approved products and evidential material. See <a href="#">power to enter and inspect licensed premises</a> in this chapter.</p> <p>Examples include:</p> <table border="1" data-bbox="148 371 1501 909"> <thead> <tr> <th data-bbox="148 371 954 427">If...</th> <th data-bbox="954 371 1501 427">then...</th> </tr> </thead> <tbody> <tr> <td data-bbox="148 427 954 555">the offence of possession of unapproved products should be detected,</td> <td data-bbox="954 427 1501 555">the entire stock of unapproved products may be seized and removed.</td> </tr> <tr> <td data-bbox="148 555 954 734">the offence involves any approved products being sold, supplied or offered for sale and supply from unlicensed or prohibited retail outlets,</td> <td data-bbox="954 555 1501 734">all psychoactive substances or products whether approved or not may be seized and removed.</td> </tr> <tr> <td data-bbox="148 734 954 909">a PSCPO is conducted and the licensed premises sells an approved product to a minor,</td> <td data-bbox="954 734 1501 909">only the approved product that is the subject of the sale may be seized and removed.</td> </tr> </tbody> </table> <p><b>Notes:</b></p> <p>The power to seize:</p> <ul style="list-style-type: none"> <li>- psychoactive substances is contained in the forfeiture section under the Act (s82)</li> <li>- evidential material is under the <a href="#">Search and Surveillance Act 2012</a>.</li> </ul>	If...	then...	the offence of possession of unapproved products should be detected,	the entire stock of unapproved products may be seized and removed.	the offence involves any approved products being sold, supplied or offered for sale and supply from unlicensed or prohibited retail outlets,	all psychoactive substances or products whether approved or not may be seized and removed.	a PSCPO is conducted and the licensed premises sells an approved product to a minor,	only the approved product that is the subject of the sale may be seized and removed.
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a PSCPO is conducted and the licensed premises sells an approved product to a minor,	only the approved product that is the subject of the sale may be seized and removed.								
7	<p>Complete these notifications:</p> <ul style="list-style-type: none"> <li>- 'Drugs search and seizure notification', go to Ten One homepage, &gt; notifications &gt; Drugs search and seizure' .</li> </ul> <p><b>Note:</b> A drug category 'Psychoactive Substance' must be added to the notification.</p> <ul style="list-style-type: none"> <li>- if a warrantless entry and search is conducted, then a 'Warrantless entry and search notification' may be completed either: <ul style="list-style-type: none"> <li>- in the Search and Surveillance system, or</li> <li>- on CheckPoint with a mobility device.</li> </ul> </li> </ul> <p><b>Note:</b> You must complete a warrantless search notification as required under section <a href="#">169</a> of the Search and Surveillance Act. (s<a href="#">77</a>)</p>								

Step	Action
8	<p data-bbox="145 174 1501 257">Receipt and store seized psychoactive substances as exhibits and arrange destruction in accordance with <a href="#">Part 11 - Custody, storage and disposal of controlled drugs</a> in the 'Drugs' chapter.</p> <p data-bbox="145 302 239 336"><b>Notes:</b></p> <ul data-bbox="223 369 1501 728" style="list-style-type: none"><li data-bbox="223 369 1501 492">- For further guidance relating to the recording, custody, storage and disposal of psychoactive substances, see <a href="#">Part 12 - Procedures applying to seized and produced things</a> in the 'Search' chapter</li><li data-bbox="223 504 1501 728">- Disposal of psychoactive substances may be carried out when:<ul data-bbox="303 548 1501 728" style="list-style-type: none"><li data-bbox="303 548 1501 593">- forfeited to the Crown under the Act;</li><li data-bbox="303 604 1501 683">- dealt with in accordance with Subpart 6 of Part 4 of the Search and Surveillance Act 2012 relating to procedures applying to seized or produced materials;</li><li data-bbox="303 694 1501 728">- voluntarily delivered to Police for destruction.</li></ul></li></ul>



**StepAction****9 Testing**

ESR analysis can indicate the presence of certain psychoactive substances, but is unable to declare whether it is psychoactive. Therefore, for evidential purposes, both the ESR analysis and a formal written statement from the PSRA/RPAT (which provides expert evidence on that particular substance) must be submitted to court. The process that should be taken is as follows:



# Psychoactive substances controlled purchase operations (PSCPOs)

**Note: There are currently no licensed retail outlets, and therefore no premises to which this section can be applied at this time. Any outlet selling psychoactive substances without licence is committing an offence under section [70](#) of the Act and is therefore outside the criteria for conducting a PSCPO.**

## Introduction

The stages and procedures for conducting psychoactive substances controlled purchase operations (PSCPOs) are similar to '[Alcohol controlled purchase operations](#)' (ACPO) in the [Alcohol chapter](#). To avoid duplication of instructions, hyperlinks are included throughout this section to guide you with conducting a PSCPO.

## Who has responsibility for PSCPOs?

The agency leading the investigation has responsibility for conducting PSCPOs. This will usually be the [DHB](#) or [PHU](#) employing the appointed enforcement officers.

## Restriction with applying PSCPOs

PSCPOs must only be applied to retail outlets with medium/low risk (i.e. suspected of selling psychoactive substances to people under the age of 18 years ([s48](#)), but no other offences suspected including those under the [Psychoactive Substances Act 2013](#), and when advised by the Manager: Undercover Programme that the deployment falls outside a Level 1 deployment.

## Multi-agency approach

PSCPOs are highly successful when working in partnership with health agencies (public health units), enforcement officers and trained volunteers. Sharing strengths, expertise and information results in efficiency gains and the likelihood of success with:

- monitoring and enforcement
- intelligence collection
- multi-agency collaboration
- prosecution
- psychoactive substance-harm reduction.

## PSCPO participants

The main participants involved in PSCPOs are:

- Police

- Enforcement officers appointed by the Authority under section [76](#)
- Health agencies (public health units)
- Approved volunteers aged between 15 to 17 years for operations verifying the sale and supply of psychoactive substances (including approved products) to minors.

**Note:** Ensure the volunteer has:

- been suitably vetted
- no integrity issues (e.g. 'wagging', smoking at school, risky adolescent behaviour)
- ability to give evidence.

## Stages and procedures for PSCPOs

The stages and procedures under CPOs in the [Alcohol](#) chapter can be applied to PSCPOs with the necessary modifications. For example, references to:

- Off-licensed or on-licensed premises should be replaced with place and premises
- [DLA](#) inspectors should be replaced with enforcement officers.

Use these hyperlinks to the CPOs instructions for guiding you with conducting PSCPOs:

- [Stages of controlled purchase operations:](#)
  - table details stages, arranged in order of occurrence.
- [Pre-operation planning:](#)
  - consultation
  - responsibilities
  - tactics
  - sample operation order.
- [Resources:](#)
  - sharing resources with other agencies.
- [Prospective volunteers:](#)
  - choosing sources for finding volunteers
  - mandatory selection criteria
  - volunteers, age (15-17 years):
    - act and look age
    - dress standards
    - truthfulness.
- [Keeping volunteers safe and their identity protected:](#)
  - ensuring safety of volunteers
  - protecting volunteer's safety.
- [Operation briefing:](#)
  - guide to conducting a pre-PSCPO briefing.
- [Visiting places or premises:](#)

- 'test run'
- 'real thing'
- when a sale is made
- mandatory requirements for places or premises visited.
- **Post PSCPO action and follow-up:**
  - post PSCPO action
  - interviews
  - documents - modify these ACPOA forms to fit the PSCPO situation:
    - Controlled purchase operations - information for parents, caregivers and volunteers form
    - Volunteer briefing and acknowledgement form
    - Volunteer controlled purchase operation notes form
    - Licensed premises visit summary form
    - Sample follow-up letter - no sale from CPO letter
    - Sample follow-up letter - completed sale from CPO letter
  - follow-up meetings.
- **Post PSCPO options:**
  - working with retailers and staff
  - district court prosecutions
  - publicity.
- **Post options and follow-up action:**
  - Debriefing.

## **Fake or fraudulently-presented evidence of age documents**

Like the [Sale and Supply of Alcohol Act 2012](#) the Act supports the use of approved evidence of age documents and the approved evidence of age system to enforce the restriction on selling approved products to persons under 18 years.

(s49)

Follow this hyperlink to view the nationally standardised way of dealing with [fake or fraudulently-presented evidence of age documents](#).

## Enforcement powers

### Warranted power to enter and search

An issuing officer may issue a search warrant in relation to a place, vehicle or other thing if, on application made by an enforcement officer or constable in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, the issuing officer is satisfied that there are reasonable grounds:

- to suspect that an offence has been, is being, or is about to be committed against the Psychoactive Substances Act 2013; and
- to believe that the search will find evidential material in respect of the offence in or on the place, vehicle or other thing.

(s 79)

Note:

- Search of private premises must be under warrant (s 79 of the Act). Where a threat to evidence exists and private premises are involved, consideration should be given to entering and securing a premise under section 117 of the Search and Surveillance Act 2012 whilst a warrant is being obtained.
- The general provisions relating to search, surveillance and inspection powers of Part 4 of the Search and Surveillance Act 2012 apply, including the requirements for the content and mode of application
- Use the [Search and Surveillance system](#) to make an application for a search warrant
- The provision authorising the application for a search warrant is section 79 of the Psychoactive Substances Act 2013
- Sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a warrant issued to a named constable or to every constable (does not apply to enforcement officers).

### Warrantless power to enter and search

If you have reasonable grounds to...	you may...
<ul style="list-style-type: none"> <li>- believe that it is not practicable to obtain a warrant; and</li> <li>- believe that there is a psychoactive substance in or on the place, vehicle or other thing; and</li> <li>- suspect that in or on the place, vehicle or other thing an offence of:               <ul style="list-style-type: none"> <li>- importing or manufacturing a psychoactive substance without a licence; or</li> <li>- selling, supplying or offering to sell or supply, or possessing with intent to sell or supply a psychoactive substance that is not an approved product has been, is being, or is about to be committed in respect of that substance; and</li> </ul> </li> <li>- believe that, if entry and search is not carried out immediately, evidential material relating to the suspected offence will be destroyed, concealed, altered or damaged</li> </ul>	<p>enter and search a place (except <a href="#">private premises</a>, e.g. dwelling), vehicle or other thing without warrant.</p> <p><b>Note:</b> Occupied hotel and motel rooms may not be searched under s 77, because they are private premises: <a href="#">Rihia v R</a> [2016] NZCA 200 at [3], [7].</p>

(s [77](#))

**Note:** You should always consider obtaining a search warrant first, before using this warrantless entry and search power.

## Powers in relation to synthetic cannabis

Synthetic cannabis substances 5F-ADB and AMB-FUBINACA are class A controlled drugs under Part [1](#) of Schedule 1 of the Misuse of Drugs Act 1975. Powers under the [Search and Surveillance Act 2012](#) may be used in relation to class A controlled drugs.

### Power to enter and inspect licensed retail premises

You may at any reasonable time...	to ascertain...
enter and inspect any retail premises (or any part of the premises)	whether the licence holder is complying with the provisions of the Act and the conditions of the licence. This means you may: <ul style="list-style-type: none"><li>- require the production of any licence or records (that are required by the Act to be kept</li><li>- examine and make copies of the licence or records</li><li>- require the licence holder or any person appearing to be in charge of the retail premises (or any part of the premises) to provide any information or assistance reasonably required by relating to the duties of the licence holder or the person in charge.</li></ul>

(s [78](#))

**Note:** There are 4 offences under section 78 that can be committed for a person not complying with the entry and inspection requirements:

- refusing or failing to allow entry to retail premises
- delaying entry to retail premises
- refusing or failing to produce licence or any records
- refusing or failing to provide assistance or information.

### Power to demand information

#### Where offence against section 49 suspected

Under section [80](#) of the Act:

you may at any time...	if you had reasonable grounds to suspect...	and you had reasonable grounds to believe that the person who sold the product:
require a person to give their: <ul style="list-style-type: none"> <li>- name and address; and</li> <li>- date of birth,</li> </ul>	that within the previous 14 days an approved product was sold to a person under the age of 18 years at a place	<ul style="list-style-type: none"> <li>- is at the place, then you <b>must not</b> require a person suspected of being under the age of 17 years to give their name, address and date of birth, unless there is:               <ul style="list-style-type: none"> <li>- no other person who appears to be in charge of the place; or</li> <li>- another person appearing to be in charge of the place, but that other person is suspected of also being under the age of 17 years</li> </ul> </li> </ul> <p style="text-align: center;"><b>or</b></p> <ul style="list-style-type: none"> <li>- is not present at the place, then you may require any other person appearing to be in charge of the place (or any part of the place) to give the name, address and date of birth of the person you have reasonable grounds to believe sold the product, but you <b>must not</b> require a person you suspect is under the age of 17 years to provide that information, if the other person is in the place concerned and appears to be of or over the age of 17 years.</li> </ul>

**Note:** The power to demand information under section [80](#) of the Act must only be used for, and only to the extent necessary for, finding out the name and address of the person you believe sold an approved product to a person under the age of 18 years. If the address is not known within the knowledge of the person asked, then the name and any other identifying information within that person's knowledge that relates to the person you believed sold an approved product.

## Where offence against other sections suspected

If you have reasonable cause to suspect ...	you may...
that a person has committed, is committing, or is attempting to commit an offence against: <ul style="list-style-type: none"> <li>- section <a href="#">48</a> (under 18 years buying /possessing psychoactive substances, approved or otherwise)</li> <li>- section <a href="#">50</a> (supplying approved products to persons under 18 years)</li> <li>- section <a href="#">71</a> (possessing psychoactive substance that is not approved product)</li> </ul>	require the person to provide particulars of their: <ul style="list-style-type: none"> <li>- full name and address; and</li> <li>- date of birth.</li> </ul>

**Note:** If you believe on reasonable grounds that any particulars (name, address and date of birth) are false, you may require the person to provide satisfactory evidence of the particulars.

(s81)

## Forfeiture

### Power to seize and remove

If you have reasonable grounds to believe...	you may...
that an offence against the Act has been, is being, or is about to be committed in respect of: <ul style="list-style-type: none"><li>- the psychoactive substance; or</li><li>- approved product</li></ul>	seize and remove: <ul style="list-style-type: none"><li>- the psychoactive substance; or</li><li>- approved product.</li></ul>

(s82)

### Forfeiture to the Crown

A psychoactive substance or approved product is forfeited to the Crown if:

- a person is found guilty of an offence against the Act in respect of a psychoactive substance or approved product seized; or
- it is seized by Police from a person under the age of 18 years who is issued with an infringement notice in respect of an offence against section:
  - 48 (under 18 years buying /possessing psychoactive substances);
  - 50 (supplying approved products to persons under 18 years);
  - 71 (possessing psychoactive substance that is not approved product); and

the infringement fee is later paid.

### Acquittal after seizure

If the person is acquitted of an offence against the Act, the psychoactive substance or approved product seized under section 82:

- may be collected from the relevant Police station within 28 days of the acquittal by or on behalf of the person, or if the person is under 18 years, by the person's parent or guardian; and
- if not collected within that time, may be disposed of in any manner the Commissioner of Police directs.

### Applicability of Search and Surveillance Act 2012

If the forfeiture and disposal after acquittal requirements do not apply in respect of a psychoactive substance or approved product that is seized under section 82, then subpart 6 of Part 4 of the Search and Surveillance Act 2012 applies. See [Part 12 - Procedures applying to seized and produced things](#) in the Search chapter for further guidance.



## Internet sales

This section provides guidance and an understanding of the roles of the Psychoactive Substances Regulatory Authority (PSRA), Regulatory Practice and Analysis Team (RPAT), Police and joint agency response relating to how the agencies will manage and respond to the illicit advertising and offering to sell psychoactive substances over the internet.

**Note: There are currently no licensed retail outlets, and therefore no premises to which this section can be applied at this time. Any outlet selling psychoactive substances without licence is committing an offence under section [70](#) of the Act and is therefore outside the criteria for conducting a PSCPO.**

## Introduction

Internet sales of approved products by license holders are monitored by RPAT with Police being responsible for monitoring illicit internet sales.

The regulatory and enforcement approach for monitoring internet sales is to share information and intelligence with Ministry of Health and PSRA, and investigate complaints of alleged internet sales offences that meet specific criteria. See '[Recording, assessing and deciding course of action with internet sales case](#)' for specific criteria.

## Internet sale offences

Internet sale is defined under section [8](#) of the Psychoactive Substances Act 2013. An internet sale in relation to an approved product means:

- a sale (whether by retail or wholesale),
- that requires the internet to have been used,
- between a seller whose business offers the product for sale, and
- a purchaser or person acting on behalf of the purchaser who is at a different location to the seller's place of business, and
- the sale contract contains reference to delivery of the product.

Internet sale offences include:

- offering to sell approved product over the internet in a way that does not comply with prescribed restriction or prescribed requirement (see 'Internet sales of approved products' in this chapter) ([s53](#))
- sells, supplies, offers to sell or supply, or possesses a psychoactive substance that is not an approved product with intent to sell or supply ([s70](#))

## Internet sale does not include texting and email

Texting and email messages on mobility devices and personal computers between a seller and a person

containing a term providing for the product to be delivered by or on behalf of the seller to the purchaser, or to a place or person chosen by the purchaser does not constitute an internet sale. However, to offer to sell or supply psychoactive substances through email or texting is an offence under the Act (sections [27](#) for approved product without a licence and [70](#) for unapproved product refer).

## Internet sales of approved products

Under regulation [7A](#) of the Psychoactive Substances Regulations 2014 a retailer who offers approved products by Internet sale on an Internet site must:

- display in a prominent place:
  - the licence holder's name
  - the licence number
  - the date on which the licence expires
  - either a legible image of the licence or a clearly identified link to a legible image of the licence
- require any prospective purchaser to declare, by ticking on-screen box, that they are 18 years of age or over
- if the prospective purchaser is purchasing an approved product for the purpose of providing the approved product to another person (person B), require the prospective purchaser to declare, by ticking an on-screen box, that person B is 18 years of age or over
- require the prospective purchaser to make the declarations required with ticking the on-screen box:
  - when the prospective purchaser first enters the Internet site
  - immediately before the sale of any approved substance is completed.

## Roles and responsibilities of PSRA with internet sales

The PSRA/RPAT are responsible for regulation and licensing of the psychoactive substance business including but not limited to:

- enforcing and regulating internet sales compliance with the Act and Regulations by licensees including those who sell psychoactive substances through the internet
- referring complaints for investigation to Police in an agreed format
- sharing internet sales information and intelligence with Police that indicates:
  - suspected organised crime activity involving offences under other enactments (e.g. [Misuse of Drugs Act 1975](#), [Medicines Act 1981](#), [Crimes Act 1961](#))
  - recidivist offending by unlicensed persons advertising and/or selling over the internet.

## Roles and responsibilities of Police with internet sales

The roles and responsibilities of Police with internet sales of psychoactive substances include:

- responding to PSRA/RPAT requests for assistance
- receiving complaints or detecting offences of unlicensed person selling over the internet
- investigating unlicensed persons:
  - offering to sell approved product over the internet ([s53](#))

- offering to sell or supply product that is not approved over the internet (s70).

**Note:** These offences must meet an assessment criteria (see the paragraph titled, '[Recording and assessment of internet sales case](#)' in this section).

## Information sharing and cross agency approach to managing internet sales

MoH/PSRA/RPAT and Police have a shared interest in managing the risk of internet sales of psychoactive substances in New Zealand. Sharing information and intelligence enhances the operational environment to better enable case management, investigations and decision making.

NDIB and PSRA/RPAT currently share assessment of information to determine the appropriate agency to manage resolution of all Act breaches, including internet sales. See the flow chart at [Annex 1](#) to better understand how the cross agency approach operates. The practice will form the basis for developing information sharing protocols (a psychoactive substances annex for attachment to the existing MOU with MoH).

At the District level information sharing with enforcement officers appointed from the Authority will build joint operational capability.

See the '[Intelligence](#)' chapter for guidance to help you engage with our health sector partners. The chapter explains why collecting 'information' from the widest range of sources including MoH and PSRA is important, and how, once collated and analysed it can be used to generate quality intelligence, analysis and knowledge of products and behaviours to improve our collective understanding of cyber enabled offending such as internet sales. NDIB can also assist frontline staff in establishing relationships with PSRA, RPAT and appointed enforcement officers.

## Police response to reports of internet sales offences

Internet sales information and reports of offences may be made directly to Districts or to the National Criminal Investigations Group and NDIB at PNHQ. Police will apply the case management process to reports of internet sales offences.

Take this action if you receive information about internet sales.

Step	Action
1	<p><b>PNHQ</b> receiving information of internet sales from the PSRA or other sources are to be referred to <b>NDIB</b> to:</p> <p>collect, assess and clear the information into two categories:</p> <ul style="list-style-type: none"><li>- intelligence for appropriate dissemination; or</li><li>- an offence complaint referred to the relevant District for case management processing (see <a href="#">Case management</a> process below)</li></ul> <p>refer offence complaints to the District Prevention Manager and District Intelligence Manager to arrange case management.</p>
2	<p><b>Districts</b> receiving information of internet sales from the public or <b>NDIB</b> are to:</p> <ul style="list-style-type: none"><li>- disseminate intelligence as appropriate</li><li>- in the event of an alleged offence:<ul style="list-style-type: none"><li>- create the case using the appropriate offence code from the psychoactive substances offence series and apply all the action steps of the <a href="#">case management</a> procedure below</li><li>- those that meet the criteria for further investigation, technical assistance from the Cybercrime Unit under the National High Tech Crime Group at PNHQ may be sought. Email: <a href="mailto:contact@nc3.govt.nz">contact@nc3.govt.nz</a></li></ul></li></ul>

## Case management of internet sales offences

Offences involving unlicensed person selling psychoactive substances over the internet that come to your notice must be recorded, managed and monitored under the defined processes from collection of the initial offence details through to case closure in the '[Case management](#)' chapter.

### Recording, assessing and deciding course of action with internet sales case

The first report of a suspected offence of unlicensed person selling psychoactive substances over the internet leads to the creation of a case.

Follow this link for further information about the ten stage workflow in the '[Case management](#)' chapter.

### Aggravating factors requiring investigation

In addition to conducting the case management process, should your analysis of the internet sales case reveal one or more of the following aggravators then an investigation must be commenced:

- part of organised crime
- connected with other serious offences being, or suspected of being, or having been committed
- the psychoactive substance offending is recidivous
- vulnerable people are being targeted with internet sales (e.g. children and young persons, people with disabilities)

- sale of unapproved products.

## Case identified for further investigation

If your internet sales case using the case management model or aggravating factors analysis identifies further investigation, you will find useful information by using the links in the following subparagraphs.

### Cyber-enabled crime

Click on this link to view a [practical guide and poster for investigators](#) investigating cyber-enabled crime such as internet sales of psychoactive substances.

### Carrying out search powers under search warrant

If you require information out of 'the cloud' that is not 'open source' or is locked down and not available by consent, a search warrant or remote access search warrant will be required. There are issues and limitations for the investigator with obtaining and executing warrants for information in the cloud.

See the section titled Cloud computing in '[Part 5 - Carrying out search powers with or without warrants](#)' of the 'Search' chapter for guidance.

### Searching for and seizing computer material

If your investigation extends to the search and seizure of 'intangible data' held in data storage devices such as computers or mobile phones, see the section titled 'Searching for and seizing computer material' in '[Part 5 - Carrying out search powers with or without warrants](#)' of the 'Search' chapter for guidance about:

- what computer material can be searched and seized
- search of a computer with or without warrant
- remote access searches authorised by warrants
- procedures for carrying out searches, accessing computers, securing evidence and creating forensic copies.

### Decision to charge or issue formal warning

See the chapters:

- '[Charging decisions](#)' for guidance with the decision making process
- '[Formal warnings](#)' for information about eligibility criteria for formal warnings and actions/responsibilities process.

## Court imposing sentence for second or subsequent offence under Act

The following orders will have little impact at this stage as their prohibitions/restrictions apply to approved products only, that are unlikely to exist for some time.

The PSRA may be able to permanently revoke or refuse any of an individual's licence(s), including research, manufacture, and import licences, on these grounds, depending on the relevant regulations and conditions under which licences were granted.

Employees should liaise with PSRA/RPAT to determine whether such action may be able to be taken on a case-by-case basis, as appropriate.

If a person has been convicted of any offence under the Act and within 2 years of being sentenced for that offence, is convicted of another offence under the Act, then the Court may in imposing sentence for the second or subsequent offence (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order:

- prohibiting:
  - the sale of any approved products by or on behalf of the person (including Internet sale); and/or
  - the sale of any approved products at the place or on the premises at which the second or subsequent offence occurred;
- imposing any conditions and/or restrictions on:
  - the sale of any approved products by or on behalf of the person (including Internet sale); and/or
  - the sale of any approved products at the place or on the premises at which the second or subsequent offence occurred.

The order must state:

- the date that it takes effect (may be the date it is made or a later date)
- the date that it expires (must be a date not less than 4 weeks and not more than three months after the date it takes effect)

(s [65](#))

# Infringement offence notices (IONs)

## Offences

Infringement offences specified in the Psychoactive Substances Act 2013 include:

- Buying or possession of psychoactive substances by minors [offence code W450] ([s48](#))
- Supply of psychoactive substances to minors in a public place [offence codes: (W451, supply to person under the age of 18 years) and (W452, intention that it be supplied either directly or indirectly to a person who is under the age of 18 years)] ([s50](#))
- Possession of psychoactive substances that is not an approved product by adults [offence code W453] ([s71](#)).

## IONs not available

The infringement offence notice regime has not been developed due to the cost and minimal number of infringement offences under the Act being committed.

**Note:** If proceedings are to be commenced, then file a charging document and serve a summons.

## International controlled delivery of psychoactive substances

An enforcement officer, constable, Customs officer, or an officer of a relevant law enforcement agency (who is involved in an international controlled delivery and there is an agreement with):

- does not commit an offence against the Act by reason of taking part in the international controlled delivery; and
- unless the officer or constable is acting in bad faith, is not subject to any criminal or civil liability as a result of taking part in the international controlled delivery.

(s84)

### Related information

See, the section titled '[Police and Customs powers relating to delivery of drugs](#)' in the 'Search chapter', 'Part 3 - Warrantless powers to search places, vehicles and things' for further information about controlled deliveries.



## Annex 1 - Cross agency approach

Note: PSRA and RPAT are primarily responsible for the regulatory aspects of the Act (i.e. approved products and licence-holders). Police are primarily responsible for the illicit psychoactive substance market (i.e. unapproved products and unlicensed individuals and organisations).

