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Cabinet paper: Medicinal cannabis for the terminally ill and patients with chronic pain: 100-Day Action

To: Hon. Dr David Clark, Minister of Health

Purpose

You have requested a Cabinet paper seeking approval to a scheme to improve equitable access to medicinal cannabis.

Key points

- The Cabinet paper seeks approval to:
    - amend the Misuse of Drugs Act 1975 (the Act) to provide a statutory defence for possession and use of cannabis for people with a terminal illness, and
    - improve access to cannabis products made to a sufficient standard.
- This health report provides further information on the following key points for your consideration:
    - the legislative approach to setting up a medicinal cannabis scheme
    - proposal to set up a Committee to provide advice on prescribing cannabis products, and
    - descheduling CBD-only products from the Act.
- To meet the 100 day commitment deadlines, the final paper will need to be submitted to Cabinet office on Monday 20 November.

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Cabinet paper: Medicinal cannabis for the terminally ill and patients with chronic pain: 100-Day Action

1. The Cabinet paper seeks approval to provide a statutory defence for terminally ill people who use illicit cannabis, and approval of a medicinal cannabis scheme. This health report provides an overview of changes to the draft Cabinet paper.

Background

2. Following your meeting with officials on Tuesday 14 November, the draft Cabinet paper has been amended. There are three key changes in the updated paper: setting up an advisory committee; having an alternative legislative approach; and clarifications to the CBD proposal.

Legislative approach

3. Regardless of whether the statutory defence is supported, we recommend progressing with an amendment bill to set up a medicinal cannabis scheme.
4. Under the Act, licences are issued for the cultivation, import, manufacture and supply of cannabis. The Act does not currently allow the Ministry to set quality standards for cannabis.
5. We propose that the Amendment Bill allows the Ministry to set minimum quality standards for cannabis products both imported and manufactured in New Zealand. This will help ensure that cannabis products supplied are effective and safe.
6. The Amendment Bill will also set up an agency to oversee cultivation of cannabis. This will ensure that we comply with the United Nations Single Convention on Narcotic Drugs.
7. We intend to seek Cabinet approval for a regulatory scheme by March 2018, which will enable relevant considerations for Budget 2018.

Advisory committee

8. The paper proposes that an advisory committee will be set up to provide guidance around the prescribing process, including whether to retain the pre-approval requirement.
9. The committee would be set up under Section 5 of the Act, which allows the Minister to appoint an advisory committee to advise them on any controlled drug matters.
10. This is an interim measure until the medicinal cannabis scheme is underway. The ongoing need for a committee will be further considered as part of the development of the agency.

CBD changes

11. The Expert Advisory Committee (the Committee) on Drugs recommended that CBD be descheduled with an allowance of up to two percent of other cannabinoids found in cannabis. The two percent threshold recognises that naturally-derived CBD products from the cannabis plant are very likely to contain other cannabinoids.
12. In response to the Committee's advice, the previous Government removed a number of controlled drug requirements. This was as an interim measure until an opportunity was available to deschedule CBD via an amendment bill.
13. The Ministry proposes using the Misuse of Drugs Amendment Bill to deschedule CBD, but not CBD products containing up to two percent of other cannabinoids.
14. We recognise that descheduling CBD only products would have no impact on product availability, as there are none available currently. However, the benefit of retaining CBD products with up to two percent of other cannabinoids under the controlled drug legislation is that they can be part of the medicinal cannabis scheme, and unconsented products would be subject to the safety and quality standards set by the proposed agency. We expect doctors would be more likely to prescribe CBD products if they can be assured that they meet quality and safety standards.

Agency feedback

15. The Ministry received feedback from New Zealand Police, Ministry of Justice, Treasury, PHARMAC, Customs, the Ministry for Pacific People, and Oranga Tamariki.

16. Police are supportive in principle of a legislative provision to give terminally ill people who use illicit cannabis reassurance that they will not face criminal conviction. Their preference is to defer agreeing a particular legislative mechanism (i.e. a statutory defence) to allow further consideration. Police want to ensure any legislative provision is workable and doesn't create unintended consequences. Justice were broadly supportive of the paper, and advised that the Bill would be more workable if the affected person held documentation certifying that they had a terminal illness.

17. Feedback received from other agencies was minor, and mostly dealt with issues that would be addressed by an agency, or that will be addressed through the regulatory impact analysis.

Next steps

18. The Cabinet paper will be presented at the Cabinet Business Committee (CBC) meeting on Wednesday 22 November at 9:30am. The paper must be lodged on Monday 20 November.

19. The Cabinet paper potentially may be amended after the CBC meeting to reflect discussions before being submitted to Cabinet.