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Misuse of Drugs (Medicinal Cannabis) Amendment Bill CAB Paper

To: Hon Dr David Clark, Minister of Health

Purpose

This report provides you with the *Misuse of Drugs Amendment Bill: Approval for Introduction* Cabinet paper for Cabinet on Monday 18 December 2017.

Key points

- The paper seeks Cabinet's approval to introduce the Misuse of Drugs (Medicinal Cannabis) Amendment Bill that will:
 - provide an exception and a statutory defence for terminally ill people to possess and use illicit cannabis and a statutory defence to possess cannabis utensils
 - provide a regulation-making power to enable the setting of standards that products manufactured, imported, and supplied under licence must meet, and
 - deschedule cannabidiol as a controlled drug.
- The Bill can be introduced in the week of 18 December 2017 to meet the Government's 100-day action to introduce legislation to improve equitable access to medicinal cannabis for people with a terminal illness or chronic pain. This requires going directly to Cabinet rather than the Cabinet Legislation Committee. Your office will need to make a request to the Cabinet Office to go directly to Cabinet.
- Talking points for the Cabinet paper are attached as Appendix One.
- A copy of the Misuse of Drugs (Medicinal Cannabis) Amendment Bill is attached. Parliamentary Counsel Office will send copies of the Bill to Cabinet Office, who will organise distribution.
- The Ministry will work with your office to prepare any media responses.

Recommendations

The Ministry recommends that you:

- a) **Agree** to lodge the paper with Cabinet Office by 10am, Thursday 14 December **Yes/No**



Hannah Cameron
Deputy Chief Policy Officer
Strategy & Policy

Minister's signature:

Date:

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Consultation with other agencies

1. The provisions in the Misuse of Drugs (Medicinal Cannabis) Amendment Bill reflect the decisions in the *Medicinal Cannabis: 100-Day Action* Cabinet paper and were generally supported by other agencies.
2. Police were concerned that the exception and statutory defence in the draft Bill did not cover possession of a cannabis utensil. This creates a risk that a terminally ill person who was covered by the statutory defence for possession and use of illicit cannabis could still be charged and convicted of possession of a drug utensil. This would be inconsistent with the intent of the provisions which is to give terminally ill people comfort that they have protection from criminal proceedings.
3. The Bill has been amended to include possession of a cannabis utensil for the statutory defence provision only. Possession of a utensil is an offence under the Act if it is for the purpose of committing an offence (the offence being using illicit cannabis). This means the exception provision does not need to include possession of a utensil as a terminally ill person would not be committing an offence if s/he has a certificate from a medical practitioner or nurse practitioner.
4. The Ministry of Justice reiterated its concern that the Bill does not include a statutory defence for family/whānau and friends who supply illicit cannabis to a terminally ill person. The Ministry of Health does not support extending the statutory defence for supply by family/whānau and friends. This would significantly broaden the proposal and risk unintended consequences.
5. Customs have previously raised concerns that descheduling CBD and CBD products with up to two percent other cannabinoids so they are prescription medicines only, could result in an increase in illicit imports of CBD products (and therefore impact on Customs' resources as they would need to be verified before release). Imports could be illicit because individuals are importing CBD without a prescription or because the product has more than the allowed two percent of other cannabinoids. However, any prescription medicine intercepted at the border by Customs that requires verification is referred to a Medsafe enforcement officer to determine whether it has been legally imported. This means the impact on Customs of any increase in CBD imports requiring verification will be minimal.

Nurse Practitioners can certify a person has a terminal illness

6. The Bill allows a medical practitioner or a nurse practitioner to certify that a person has a terminal illness. Nurse practitioners are qualified to undertake this role, there is no reason to limit certification to medical practitioners only.

Next steps

7. The Ministry of Health will develop a Cabinet paper in the new year with further detail on the proposed Medicinal Cannabis Scheme, including start-up and ongoing costs of an agency. This will go to Cabinet in March next year to enable relevant consideration for Budget 2018.
8. The Ministry of Health will liaise with your office regarding a media statement on the Bill and the Medicinal Cannabis Scheme. This will be supported by more information on the Ministry of Health website.

Appendix One: Speaking notes – Misuse of Drugs (Medicinal Cannabis) Amendment Bill

- I propose the Misuse of Drugs (Medicinal Cannabis) Amendment Bill be introduced to improve access to medicinal cannabis.
- The Bill will:
 - introduce an exception and a statutory defence for terminally ill people to possess and use illicit cannabis
 - provide a regulation-making power to enable the setting of standards that products manufactured, imported, and supplied under licence must meet, and
 - deschedule cannabidiol (CBD) as a controlled drug.

Compassionate approach to people with a terminal illness

- The exception and statutory defence is a compassionate approach for a group of people where the usual concerns about product quality and safety are different. It acknowledges that currently some terminally ill people are choosing to use illicit cannabis to relieve their symptoms.
- The exception means that a person who has certification that they are terminally ill, does not commit an offence if they possess or use illicit cannabis.
- The statutory defence is a defence against prosecution where a person is unable to produce immediate evidence of a terminal illness at the time of questioning by Police but is able to produce evidence in court.

If needed, possession of a drug utensil

- Possession of a drug utensil is an offence under the Misuse of Drugs Act if it is for the purpose of committing an offence eg, it is used to inhale an illicit drug. The exception provision does not need to include possession of a utensil as a terminally ill person would not be committing an offence if s/he has a certificate from a medical practitioner or nurse practitioner.
- The statutory defence provision does include possession of a cannabis utensil. If possession of a cannabis utensil is not included in the statutory defence provision, there is a risk that a terminally ill person could be charged and convicted of possession of a utensil. This would be inconsistent with the intent of the exception and statutory defence provisions.
- The exception and statutory defence provisions do not provide a supply route for terminally ill people. My proposed Medicinal Cannabis Scheme will address supply, as it will make quality cannabis products available through import and domestic cultivation.
- I do not propose extending an exception and statutory defence to family/whānau and friends of the terminally ill for supplying to them. This would significantly broaden the proposal. Terminally ill people have a range of support networks, it would not be possible to tightly define who an exception and statutory defence should cover.
- Also, extending the proposal could risk unintended consequences. A person could set up a business supplying illicit cannabis to terminally ill people and argue that the exception and statutory defence cover this activity.

Enabling product made to a quality standard

- I am committed to the development of a Medicinal Cannabis Scheme that enables people, including those with a terminal illness or chronic pain, to access cannabis products made to a quality standard on prescription from their medical practitioner. I want these products to be affordable and readily accessible.
- Most cannabis products produced internationally do not meet the quality and efficacy requirements of therapeutic product regulators such as Medsafe. The Amendment Bill establishes a regulation-making power to set quality standards for domestically manufactured and imported cannabis products.
- The ability to set and require minimum quality standards for cannabis products will improve patient safety and give medical practitioners some confidence about the quality of available products.

Deschedule cannabidiol

- Cannabidiol (CBD) is a substance found in cannabis that has potential therapeutic value and little or no psychoactive properties.
- Descheduling CBD reflects the advice of the Expert Advisory Committee on Drugs. The Committee reviewed the classification of CBD last year and advised that, given CBD's potential therapeutic value, and little or no psychoactive properties it could be descheduled from the Act, making it a prescription medicine only.
- The Committee also considered that allowing up to two percent of other natural cannabinoids usually found in cannabis as contaminants in a CBD product would be appropriate. This is because currently no pure CBD-only products made to reliable quality standards are available. The amendments for CBD will allow a CBD product, to no longer be a controlled drug.

END.