House of Representatives

Supplementary Order Paper

Tuesday, 4 December 2018

Misuse of Drugs (Medicinal Cannabis) Amendment Bill

Proposed amendments for the consideration of the Committee of the whole House

Key:

- **<u>this is inserted text</u>**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
- **NOT have the status of an as-reported version of the Bill.**

Explanatory note

This Supplementary Order Paper (**SOP**) amends the Misuse of Drugs (Medicinal Cannabis) Amendment Bill.

As introduced, the Bill provided an exception and a defence to the offence of possessing and using cannabis for people with a terminal illness. This SOP proposes to broaden the exception and defence so that they apply to people who require palliation. A person requires palliation if, in the opinion of a medical practitioner or nurse practitioner, the person has an advanced progressive life-limiting condition and is nearing the end of their life.

This SOP proposes to give further guidance about the regulation-making power to prescribe minimum quality standards for products that contain controlled drugs. The proposed amendments—

- allow minimum quality standards to be prescribed for a product or for the processes by which a product is cultivated, manufactured, produced, imported, or supplied; and
- allow minimum quality standards to apply generally to a product, or only if specified criteria are met; and
- ensure that minimum quality standards that relate to products containing cannabis cannot require that the variety of plant contained in the product was brought into New Zealand with authorisation, if the variety is established in New Zealand at the time the product is manufactured or produced; and
- require the Minister of Health to recommend the making of regulations setting minimum standards for products containing cannabis no later than 1 year after the date on which the Bill comes into force.

This SOP also proposes—

- to exempt substances that naturally occur in cannabis from being controlled under the Misuse of Drugs Act 1975 if the substances are not capable of inducing more than a minor psychoactive effect; and
- to amend the definition of CBD product to reflect that such products may potentially contain small amounts of THC-related psychoactive substances.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2018&no=177&

The Honourable Dr David Clark, in Committee, to propose the amendments shown in the following document.

Hon Dr David Clark

Misuse of Drugs (Medicinal Cannabis) Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Misuse of Drugs (Medicinal Cannabis) Amendment Act **2017**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Misuse of Drugs Act 1975 (the **principal Act**).

4 Section 2 amended (Interpretation)

(1) In section 2(1), insert in ~~its~~ their appropriate alphabetical order:

~~**CBD product** means a product that—~~

~~(a) contains cannabidiol; and~~

~~(b) if it contains other cannabinoids usually found in cannabis, contains those cannabinoids in a quantity that, in total, constitutes no more than 2% of the total quantity of cannabinoids in the product; and~~

~~(c) does not contain any other controlled drug; and~~

~~(d) does not contain a psychoactive substance (as defined in section 9 of the Psychoactive Substances Act 2013)~~

~~**terminal illness** means an illness from which a person can reasonably be expected to die within 12 months~~

CBD product has the meaning given in **section 2A**

non-psychoactive THC analogue means a substance that—

(a) occurs naturally in cannabis; and

(b) is not capable of inducing more than a minor psychoactive effect, by any means, in a person; and

(c) has a structure substantially similar to that of—

(i) a tetrahydrocannabinol; or

(ii) an isomer, ester, or ether of a tetrahydrocannabinol; or

(iii) an ester or ether of an isomer of a tetrahydrocannabinol; or

(iv) a salt of any substance described in **subparagraphs (i) to (iii)**

(2) In section 2(1), definition of **controlled drug analogue**, after paragraph (c), insert:

(d) a non-psychoactive THC analogue

(3) After section 2(1A), insert:

(1B) In this Act, a person **requires palliation** if, in the opinion of a medical practitioner or nurse practitioner, the person has an advanced progressive life-limiting condition and is nearing the end of their life.

4A New section 2A inserted (Meaning of CBD product)

After section 2, insert:

2A Meaning of CBD product

(1) **CBD product** means a product that—

(a) contains cannabidiol; and

(b) either—

(i) does not contain a specified substance; or

(ii) contains specified substances in an amount that is no more than 2% of the sum of the amount of cannabidiol and the amount of specified substances in the product; and

(c) does not contain any other controlled drug; and

(d) does not contain any other psychoactive substance (as defined in section 9 of the Psychoactive Substances Act 2013).

(2) In this section, **specified substance** means a substance that—

(a) naturally occurs in cannabis; and

(b) is—

(i) a tetrahydrocannabinol; or

(ii) an isomer, ester, or ether of a tetrahydrocannabinol; or

(iii) an ester or ether of an isomer of a tetrahydrocannabinol; or

(iv) a salt of any substance described in **subparagraphs (i) to (iii)**; or

(v) a substance that has a structure substantially similar to that of any substance described in **subparagraphs (i) to (iv)**; and

(c) for substances listed in **paragraph (b)(ii) to (v)**, is capable of inducing more than a minor psychoactive effect, by any means, in a person.

5 Section 7 amended (Possession and use of controlled drugs)

~~(1) In section 7(2), replace "subsection (3)" with "subsections **(2A)** and (3)".~~

~~(2) After section 7(2), insert:~~

~~(2A) A person who contravenes subsection (1)(a) does not commit an offence if the person—~~

~~(a) procures, possesses, consumes, smokes, or otherwise uses any plant or plant material of the genus *Cannabis*, any cannabis preparation, or any cannabis fruit or seed; but~~

~~(b) has a certificate from a medical practitioner or nurse practitioner certifying that the person has a terminal illness.~~

(3) After section 7(3), insert:

(3A) In any proceedings for an offence against subsection (1)(a) in respect of possessing or using any plant or plant material of the genus *Cannabis*~~;~~ or any cannabis preparation,~~ or any cannabis fruit or seed,~~ the defendant~~ may provide evidence that~~ has a defence if, at the time of the possession or use, the defendant had been diagnosed by a medical practitioner or nurse practitioner as~~ having a terminal illness~~ requiring palliation.

(4) In section 7(4), replace "subsection (3)" with "subsections (3) or **(3A)**".

~~(5) After section 7(4), insert:~~

5A Section 8 amended (Exemptions from sections 6 and 7)

After section 8(6), insert:

(6A) Despite section 7(1)(a), a person who has a certificate from a medical practitioner or nurse practitioner certifying that the person requires palliation may procure, possess, consume, smoke, or otherwise use any plant or plant material of the genus *Cannabis* or any cannabis preparation.

6 Section 13 amended (Miscellaneous offences)

After section 13(1), insert:

(1A) However, in any proceedings for an offence against subsection (1)(a) of possessing a pipe or other utensil (not being a needle or syringe) for the purpose of possessing or using any plant or plant material of the genus *Cannabis*~~;~~ or any cannabis preparation,~~ or any cannabis fruit or seed,~~ the defendant~~ may provide evidence that~~ has a defence if, at the time of possessing the pipe or other utensil, the defendant had been diagnosed by a medical practitioner or nurse practitioner as~~ having a terminal illness~~ requiring palliation.

~~**7 Section 14 amended (Licences)**~~

~~After section 14(1), insert:~~

~~(1A) Without limiting subsection (1), the Governor-General may, by Order in Council on the recommendation of the Minister, make regulations to prescribe the minimum quality standard that must be met by a product or class of product—~~

~~(a) that contains a controlled drug; and~~

~~(b) that may be manufactured, imported, or supplied under a licence granted under this Act.~~

8 New section 35E inserted (Review and report on operation of ~~section 7(2A) and (3A)~~ sections 7(3A), 8(6A), and 13(1A))

After section 35D, insert:

Review of certain provisions

35E Review and report on operation of ~~section 7(2A) and (3A)~~ sections 7(3A), 8(6A), and 13(1A)

(1) The Minister must, not later than 2 years after the commencement of this section, require the Ministry of Health—

(a) to commence a review of the operation of ~~section 7(2A) and (3A)~~ **sections 7(3A), 8(6A), and 13(1A)** since the commencement of those subsections; and

(b) to prepare a report on the review for the Minister.

(2) The review and report required under **subsection (1)** must be completed within 12 months of the review commencing.

(3) As soon as practicable after receiving the report, the Minister must present a copy of it to the House of Representatives.

(4) The report on the review must include recommendations to the Minister on—

(a) the implementation of the exception and defences provided by ~~section 7(2A) and (3A) for persons who are terminally ill~~ **sections 7(3A), 8(6A), and 13(1A)** for people who require palliation; and

(b) whether any amendments to those provisions are necessary or desirable.

8A New section 37A inserted (Regulations setting minimum quality standards)

After section 37, insert:

37A Regulations setting minimum quality standards

(1) Without limiting section 37, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations to prescribe the minimum quality standard that must be met by a product or class of product—

(a) that contains a controlled drug; and

(b) that may be cultivated, manufactured, produced, imported, or supplied under a licence granted under this Act.

(2) Regulations made under this section may prescribe minimum quality standards for the product or for the processes by which the product is cultivated, manufactured, produced, imported, or supplied.

(3) Regulations made under this section may—

(a) apply generally to a product or class of products; or

(b) apply to a product or class of products only if specified criteria are met.

(4) Regulations made under this section that relate to products that contain any part of any plant of the genus *Cannabis*, cannabis fruit, or cannabis seed must not require that the variety of plant contained in the product was brought into New

Zealand with authorisation, if the variety is established in New Zealand at the time the product is manufactured or produced.

(5) The Minister must, no later than 1 year after the date on which the Misuse of Drugs (Medicinal Cannabis) Amendment Act **2018** comes into force, recommend the making of regulations under this section that relate to products that contain any part of any plant of the genus *Cannabis*, cannabis fruit, or cannabis seed.

~~*Revocations*~~

9 Schedule 2 amended

(1) In Schedule 2, Part 1, clause 1,—

~~(a) in the item relating to **Cannabis** preparations, after "material", insert ", other than a CBD product":~~

(a) in the item relating to cannabis preparations, after "processing", insert "(but does not include a CBD product)":

(b) in the item relating to tetrahydrocannabinols, after "controlled drug", insert "or a CBD product~~,~~".

~~(2) In Schedule 2, Part 1, clause 2, after "clause 1", insert ", other than cannabidiol (an isomer of tetrahydrocannabinol) and any other isomers of tetrahydrocannabinols when in a CBD product, ".~~

(2) In Schedule 2, Part 1, clause 2, after "designation", insert ", except for isomers of tetrahydrocannabinols if the isomers naturally occur in cannabis and are not capable of inducing more than a minor psychoactive effect, by any means, in a person".

(3) In Schedule 2, Part 1, clause 3, after "possible", insert ", except for esters and ethers of tetrahydrocannabinols or of isomers of tetrahydrocannabinols if the esters and ethers naturally occur in cannabis and are not capable of inducing more than a minor psychoactive effect, by any means, in a person".

(4) In Schedule 2, Part 1, clause 4, after "clause 3", insert ", except for the salts of tetrahydrocannabinols or the salts of the substances excluded from clauses 2 and 3 if the salts naturally occur in cannabis and are not capable of inducing more than a minor psychoactive effect, by any means, in a person".

Consequential amendments to Misuse of Drugs Regulations 1977

10 Regulations amended

(1) This section amends the Misuse of Drugs Regulations 1977.

(2) In regulation 2, revoke the definition of **CBD product**.

(3) Revoke regulation 14A (which relates to the authority to import CBD products).

(4) Revoke regulation 22(2)(c) (which relates to the approval of a CBD product).

(5) Revoke regulation 28(4)(f) (which provides an exception for CBD products from certain custody requirements).

(6) Revoke regulation 29(1A) (which exempts the supply of CBD products from certain prescription requirements).

(7) In regulation 31A(2), delete "or, in the case of a CBD product, 3 months".

(8) Revoke regulation 48(3) (which disapplies Part 6 in relation to CBD products).

Wellington, New Zealand:
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