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Medicinal cannabis: Lodgement of Cabinet paper seeking permission to draft a Supplementary Order Paper

To: Hon Dr David Clark, Minister of Health

Purpose

This report provides you with the *Medicinal cannabis: Supplementary Order Paper* Cabinet paper for consideration by the Social Wellbeing Cabinet Committee on 7 November 2018.

Key points

- The paper seeks Cabinet's approval to instruct the Parliamentary Counsel Office to draft a Supplementary Order Paper (SOP) to amend the Misuse of Drugs (Medicinal Cannabis) Amendment Bill.
- This paper incorporates amendments to the Bill agreed during coalition consultation and replaces the *Medicinal cannabis: Supplementary Order Paper* Cabinet paper sent to your office on 24 September.
- The key amendment is to the exception and statutory defence provisions of the Bill, which allow patients with a terminal illness to use illicit cannabis as a compassionate measure. The paper proposes replacing the definition of 'terminal illness' with 'palliation'.
- The other amendments agreed as part of coalition consultation are to permit licence holders to use locally sourced cannabis plants, fruit, or seeds and for regulations to be made within a year of the Bill coming into force.
- The amendments recommended to the Health Committee during its deliberation on the Bill which assist in the operation of the Medicinal Cannabis Scheme have not been altered.
- Talking points for the Cabinet paper are attached as Appendix one.

Recommendations

The Ministry recommends that you:

- a) **Agree** to lodge the paper with Cabinet Office on Friday 2 November 2018 **Yes/No**

Todd Krieble
Acting Deputy Director-General
Systems Strategy & Policy

Minister's signature:

Date:

Contacts:	[Redacted]	[Redacted]
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1. The Misuse of Drugs (Medicinal Cannabis) Amendment Bill 2017 is currently awaiting its second reading in the House. The Health Committee was unable to reach agreement to recommend that the Bill proceed before it was reported back to the House in July 2018. This means the Bill went back to the House with no amendments.
2. The attached Cabinet paper seeks approval to instruct the Parliamentary Counsel Office to draft a Supplementary Order Paper to amend the Bill. The changes we are seeking approval for were recommended to the Health Committee during its deliberation on the Bill or agreed during coalition consultations.
3. The key proposed change is to the exception and statutory defence provisions for people with a terminal illness to use illicit cannabis as a compassionate measure. The proposal to replace the term 'terminally ill' with the term 'palliation' emerged during coalition consultation. Palliation means an approach that aims to alleviate pain and suffering for a person with an advanced progressive life limiting condition who is nearing end of life.
4. This change is expected to increase the number of patients covered by the provisions. The number of New Zealanders who could benefit from palliative care is approximately 25,000 per year. We expect this group would be eligible under by the proposed definition of palliation, though it is not known how many would choose to use illicit cannabis.
5. The other changes that emerged during coalition discussions are to permit licence-holders to use locally sourced cannabis plants, fruit, or seeds and require regulations to be made within a year of the Bill coming into force.
6. The medicinal cannabis scheme will require all stages of cultivation and production to be licensed. There is no obvious reason to preclude licence holders from using varieties of cannabis that are established in New Zealand.
7. The other proposed changes will:
 - move the proposed exception provision so that it is located with similar provisions that already exist in the Act
 - allow quality standards to be set for all stages of production and for all relevant products, and allow criteria for when they apply to be set
 - require regulations on quality standards and the licensing system to come into effect no later than a year after the Bill comes into force
 - allow relevant health professionals to more easily find out important information about quality products
 - control only those substances found in cannabis that are related to the main psychoactive component of cannabis, and are capable of producing a psychoactive effect
 - allow cannabidiol products to contain cannabinoids that are not capable of producing a psychoactive effect and a small amount of cannabinoids that are capable of producing a psychoactive effect.
8. The proposed amendments do not represent a change in policy.
9. We do not intend to proactively release this paper until the Supplementary Order Paper has been tabled in the House during the Committee stage of the Misuse of Drugs (Medicinal Cannabis) Amendment Bill.

END.

Appendix One: Talking Points for the Medicinal Cannabis: Supplementary Order Paper

- This paper seeks agreement for Parliamentary Counsel Office to draft changes to the Misuse of Drugs (Medicinal Cannabis) Amendment Bill.
- The Bill makes three key changes:
 - It provides people who have a terminal illness a defence to the charge of possessing and using cannabis;
 - It will allow us to make regulations to set quality standards for medicinal cannabis products;
 - It removes cannabidiol from the Misuse of Drugs Act, so that it is no longer a controlled drug.
- The Health Committee could not reach agreement on the Bill. As a result, the Bill was reported back to the House with no amendments.
- I propose making a number of changes to improve the Bill through a Supplementary Order Paper. These changes were recommended to the Health Committee during its consideration of the Bill or emerged during coalition consultation on this paper.
- I propose changing the exception and statutory defence provisions.
- These currently allow people with a terminal illness to use illicit cannabis as a compassionate measure. Only people with less than 12 months to live are eligible.
- We are changing the Bill to better capture the group of people that will be eligible for the exception and statutory provisions. Under this change, people receiving palliation will be eligible for the exception and statutory defence.
- Palliation is an approach that aims to alleviate pain and suffering for a person with an advanced progressive life limiting condition, who is nearing end of life. I consider this a better description of the group of patients the compassionate provisions were designed for.
- I expect this change to increase the number of people covered by the exception and statutory defence provisions. Health data tells us that currently approximately 25,000 New Zealanders could benefit from palliative care. I expect this group of patients would be covered by the definition of palliation, though it is not known how many would choose to use illicit cannabis.
- I also propose changing the Bill, so that the quality standard regulations will only name the standards that must be met. The detail of the quality standards would be published by the Director-General of Health separately. This would allow the Director-General to update the quality standards faster, as they would not have to change the Regulations to update the standards.
- I propose requiring the regulations to be made no later than a year after the Bill comes into force. Coalition consultation raised the option of a nine month timeframe. I do not believe this is achievable. We need to follow a quality policy process with opportunities for public and stakeholder input.
- My other proposals are to:
 - enable health practitioners to access information on which medicinal cannabis products meet the quality standards
 - move the position of the defence for people who have a terminal illness so that it is located with similar provisions in the Act
 - control only those substances found in cannabis that are related to tetrahydrocannabinols (THCs) and are capable of producing a psychoactive effect
 - change the definition of cannabidiol products in the Bill. Cannabidiol has little to no psychoactive effect and will be descheduled by the Bill so it is no longer a controlled drug. The current definition of a cannabidiol product specifies that it contains less than two percent of any other cannabinoid. We only need to limit the amount of cannabinoids that produce a psychoactive effect. The SOP will change this provision, so the two percent threshold only applies to cannabinoids that produce a psychoactive effect.

- Allow a licence holder under the scheme to use locally sourced cannabis plants, fruit, and seeds. We will require all stages of medicinal cannabis cultivation and production to be licenced, there is no obvious reason to prohibit the use of varieties that are already established in New Zealand.
- The proposed amendments do not represent a change in the policy agreed by Cabinet.
- If approved, the SOP will be introduced during the Committee of the whole House stage of the Bill.