

Part 14 Medicinal cannabis

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Overview

Introduction

The [Misuse of Drugs \(Medicinal Cannabis\) Amendment Act 2018](#) amending the [Misuse of Drugs Act 1975](#):

- introduces an exception and a statutory defence for people [requiring palliation](#) to possess and use cannabis and to possess a cannabis utensil; and
- provides a regulation-making power to enable the setting of standards that products manufactured, imported, and supplied under licence must meet; and
- amends [Schedule 2](#) of the Act so that [cannabidiol](#) (CBD) and CBD products are no longer classed as controlled drugs.

Government medicinal cannabis measures/principles

While there is a legal pathway for people to obtain cannabis on prescription from a medical practitioner, access to affordable cannabis products remains problematic for

New Zealanders. The measures in the amendment Act are intended to improve access to medicinal cannabis and are guided by the principles of fairness, quality and safety, and compassion.

Intent of Misuse of Drugs (Medicinal Cannabis) Amendment Act 2018

The provision of an exception and a statutory defence for people [requiring palliation](#) to possess and use cannabis and possess cannabis utensils is intended as a compassionate measure until affordable quality products are available under a proposed medicinal cannabis scheme. It is well known that some people requiring palliation are choosing to self-medicate with cannabis.

The provisions are not intended to encourage people [requiring palliation](#) to use cannabis, but to exempt them from the legal prohibition for possessing, using, or intending to use, cannabis for [palliation](#) of their illness.

Purpose of these instructions

The purpose of these instructions are to guide frontline staff with understanding and implementing the exception and statutory defence for people [requiring palliation](#) to possess and use cannabis and possess cannabis utensils

Table of definitions

The following table defines key terms arising from the amendment to the [Misuse of Drugs Act 1975](#) and these instructions.

Term	Description

<p>CBD product</p>	<p>CBD product means a product that:</p> <ul style="list-style-type: none"> - contains cannabidiol; and - either: <ul style="list-style-type: none"> - does not contain a specified substance; or - 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 - does not contain any other controlled drug; and - does not contain a psychoactive substance (as defined in section 9 of the Psychoactive Substances Act 2013. <p>(s2A(1))</p>
<p>Controlled drug analogue</p>	<p>Controlled drug analogue means any substance, such as the substances specified or described in Part 7 of Schedule 3 to this Act, that has a structure substantially similar to that of any controlled drug; but does not include:</p> <ul style="list-style-type: none"> - any substance specified or described in Schedule 1 or Schedule 2 or Parts 1 to 6 of Schedule 3 to this Act - any pharmacy-only medicine or prescription medicine or restricted medicine within the meaning of the Medicines Act 1981 - an approved product within the meaning of the Psychoactive Substances Act 2013 - a non-psychoactive THC analogue. <p>(s2)</p>
<p>Medical practitioner</p>	<p>Medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine.</p> <p>(s2)</p>

<p>Non-psychoactive THC analogue</p>	<p>Non-psychoactive THC analogue means a substance that:</p> <ul style="list-style-type: none"> - occurs naturally in cannabis; and - is not capable of inducing more than a minor psychoactive effect, by any means, in a person; and - has a structure substantially similar to: <ul style="list-style-type: none"> - a tetrahydrocannabinol; or - an isomer, ester, or ether of a tetrahydrocannabinol; or - an ester or ether of an isomer of a tetrahydrocannabinol; or - a salt of any substance described in the three sub-bullets above. <p>(s2)</p>
<p>Nurse practitioner</p>	<p>Nurse practitioner means a health practitioner who:</p> <ul style="list-style-type: none"> - is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing and whose scope of practice permits the performance of nurse practitioner functions; and - holds a current practising certificate. <p>(s2)</p>
<p>Palliation</p>	<p>Palliation is a kind of care that make patients with terminal illnesses feel better, even though the care cannot cure the patient.</p>
<p>Requires palliation</p>	<p>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.</p> <p>(s2(1B))</p>

<p>Specified substance</p>	<p>Specified substance means a substance that:</p> <ul style="list-style-type: none"> - naturally occurs in cannabis; and - is <ul style="list-style-type: none"> - a tetrahydrocannabinol; or - an isomer, ester, or ether of a tetrahydrocannabinol; or - an ester or ether of an isomer of a tetrahydrocannabinol; or - a salt of any substance described in the three sub-bullets above; or - a substance that has a structure substantially similar to any substance - described in the four sub-bullets above; and - for substances listed in the second to fifth sub-bullets above, is capable of inducing more than a minor psychoactive effect, by any means, in a person. <p>(s2A(2))</p>
<p>To smoke</p>	<p>To smoke means:</p> <ul style="list-style-type: none"> - to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant; and - includes to smoke, hold, or otherwise have control over an ignited product or thing whose customary use is or includes the inhalation from it of the smoke produced from its combustion or the combustion of any part of it; but - does not include to hold or have control over an ignited product or thing customarily used as incense. <p>(s2(1) of Smoke-free Environments Act 1990)</p>

Legislative amendments to the Misuse of Drugs Act involving medicinal cannabis

Medicinal cannabis defences

Proceedings for possessing and using cannabis

Section [7\(3A\)](#) provides in any proceedings for possessing and using cannabis as follows:

*“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, the defendant 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 requiring palliation.*”

Proceedings for procuring, possessing, consuming, smoking or otherwise using cannabis

Section [8\(6A\)](#) provides in any proceedings for procuring, possessing, consuming, smoking or otherwise using cannabis as follows:

*“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.”*

Proceedings for possessing pipe or other utensil for purpose of possessing and using cannabis

Section [13\(1A\)](#) provides as follows:

*“In any proceedings for 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, the defendant 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 requiring palliation.”*

Other amendments to the Misuse of Drugs Act involving medicinal cannabis

Review and report on operation of exception and a statutory defence

Section [35E](#) is new and provides for the Minister to require the Ministry of Health to undertake a review of the operation of the exception and defence provisions inserted into the Act by new subclauses, sections [7\(3A\)](#) and [8\(6A\)](#), and to report on their implementation and whether any amendments to those provisions are necessary or desirable. This is a once-only review, to be conducted when these provisions have been in force for 2 years, and must be completed and reported on not later than 12 months from the commencement of the review.

Revocations

[Schedule 2](#) is amended to provide for the revocation of a number of provisions of Schedule 2, which schedules Class B controlled drugs.

Consequential amendments to Misuse of Drugs Regulations

There are consequential amendments to the Misuse of Drugs Regulations 1977. All the amendments relate to the status of CBD products.

Policy and practice for palliation patients who use cannabis

Introduction

People found in possession or using cannabis and/or utensils who claim as a defence that they require [palliative](#) care are required to produce a certificate from a [medical practitioner](#) or [nurse practitioner](#) supporting their defence.

Procedure for dealing with people claiming to be palliation patients who possess/use cannabis

Follow these steps when a person is found:

- in possession of cannabis
- using cannabis
- in possession of cannabis utensils

and claims the possession/use is for [palliation](#).

Step	Action
1	Use discretion throughout this process remembering to apply the Government's intended principles of fairness, quality and safety, and compassion.
2	Verify the quantity of cannabis is less than the quantity for possession of supply under section 6 (dealing with controlled drugs). Note: If the cannabis is in an amount, level, or quantity at or over which the cannabis is presumed to be for supply, then the procedural steps in this table do not apply and a criminal investigation should be commenced.
3	Ask to view the certificate from a medical practitioner or nurse practitioner certifying that the person requires palliative care. Note: The certificate should have a printed letterhead that clearly identifies the practitioner, their medical practice and premises. The identity of the person requiring palliation must be clearly stated.
4	If the person produces the certificate, then no offence of possession/use is committed. The person may retain their cannabis and no further action needs to be taken.

5	<p>If the person:</p> <ul style="list-style-type: none"> - does not have the certificate of palliation in their possession, or - unable, refuses to make the certificate readily available <p>then you may:</p> <ul style="list-style-type: none"> - request they produce the certificate within 7 days to a Police station of their convenience - identify yourself (name and QID) - search and seize cannabis as an exhibit, (see 'Search' chapter for search and seizure powers authorising lawful search and seizure, 'Part - 12 Procedure applying to seized and produced things' and 'Exhibit and property management' for handling, securing and disposal of exhibit) - enter the 7 day request event into NIA, so the person reporting to a Police station with their certificate can be identified and noted on NIA - after 7 days verify on NIA whether person has produced certificate. <p>Note: There is no legislative power to enforce the 7 day request, but as a matter of practice this should enable a person who legitimately possessed the cannabis or utensil to provide the certificate required to justify their possession/use of the cannabis/utensil.</p>
6	Verify the identity of the person found possessing/using cannabis/utensil.
7	<p>Should the person fail or refuse to produce the certificate after 7 days, then use your discretion in determining the resolution (e.g. whether to charge, warn or apply other resolution).</p> <p>See these chapters for further guidance with deciding resolution:</p> <ul style="list-style-type: none"> - 'Case management' - 'Formal warnings' - 'Part 8 - Drug prosecutions' in the 'Drugs' chapter - 'Charging decisions'.
8	<p>If the person produces a certificate, but you are not satisfied that it is genuine, you may question/investigate further, by making inquiry with the person who is alleged to have issued the certificate.</p> <p>Note: Do not apply for and execute a production order or search warrant without first obtaining a legal opinion from Legal Services.</p>
9	Where it is confirmed that the person is lawfully entitled to possession of the seized cannabis or utensils, they are to be returned to the person under receipt.

10	<p>Comply with the National Recording Standard when recording:</p> <ul style="list-style-type: none">- possession and use of cannabis- possession of utensils- clearance of offences. <p>See the Drug offences coding guide and the Recording clearances: quick reference guide for accuracy with recording the event in NIA.</p>
11	<p>For further guidance, contact:</p> <ul style="list-style-type: none">- Legal Services for legal advice- National Criminal Investigations Group (NCIG) at PNHQ for policy and practice advice.

Smoking cannabis in smoke-free work places and public areas

People who claim as a defence that they require [palliative](#) care and produce a certificate from a [medical practitioner](#) or [nurse practitioner](#) to support their smoking of cannabis, have no defence for offences committed under the [Smoke-free Environments Act 1990](#).

[To smoke](#) cannabis in smoke-free work areas and certain public areas (e.g. schools, early childhood education and care centres, aircraft, certain areas of hospitals, licensed premises and restaurants etc.) constitute an offence under the Act. See Part [1](#) of the Act for clarification of work places and those public areas that are prohibited from smoking or where restrictions may apply.

One of the purposes of the Act is to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused through smoking by others. Individuals may make complaints to [enforcement officers](#) appointed by the Director-General of Health (sections [15](#) and [16](#) of the Act refer) for enforcement purposes. Police may assist enforcement officers should palliative care smokers become uncooperative.

Operating a vehicle under the influence of cannabis

If the person is driving a motor vehicle and suspected to be under the influence of cannabis, then drug impairment testing must be applied. There is no statutory defence for the driver under the amendment Act. See '[Part 3 - drug impaired driving](#)' in the 'Alcohol and drug impaired driving' chapter for the procedure with conducting a compulsory impairment test (CIT).

What remains illegal after the medicinal cannabis amendment?

It remains illegal under the Misuse of Drugs Act 1975:

- for anyone to supply or grow cannabis whether for personal use or for supply to a person who has an exception and a statutory defence to possess and use cannabis under this Act
- to supply, possess for the purpose of sale or supply, or offer for sale a pipe or other utensil, or identifiable component of a pipe or other utensil whose sale, possession for the purpose of sale or supply, or offering for sale (as the case may be) is prohibited by a notice issued under subsection (1A) (this includes supplying or procuring utensils prohibited by a notice under subsection (1A) to a person who has an exception and a statutory defence to possess and use cannabis under the Act)
- for premises (such as a rest home or care home) to be used for the sale or supply of cannabis under the Act.

It remains illegal under the Land Transport Act 1998 to drive under the influence of drugs.

Frequently asked questions

Q. What legal requirement is placed on a medical practitioner or nurse practitioner certifying a patient requires palliation to be exempt from possessing and using cannabis?

- A. *The patient has an advanced progressive life-limiting condition and is nearing the end of their life.*

Q. Is it a defence in proceedings for a person to supply cannabis to a person who has a certificate from a medical practitioner or nurse practitioner certifying they require palliation?

- A. *No. It remains an offence for anyone to sell or supply cannabis to a patient with a certificate certifying palliation. The exception and statutory defence for people requiring palliation is limited to their possession, procurement, consumption, smoking or otherwise use of cannabis and to possessing cannabis utensil.*

Q. If a person does not have a certificate of palliation in their possession can you demand them to produce the certificate within 7 days?

- A. *No. There is no offence for failing/refusing to produce certificate within 7 days and no statutory power to demand production of the certificate. A request may be made and the person has the right to consent to the request. The 7 day request provides the opportunity for Police to reconsider how to proceed towards resolution (no offence satisfied/charge/warn/other resolution) of the event. Be sure to record the 7 day request event in NIA.*

Q. Can cannabis or cannabis utensil be seized from a person found in possession, who claims to have the certificate certifying their palliation, but is unable to produce the certificate?

- A. *Yes. There is reason to believe that the person may not have a certificate and is therefore committing an offence of possessing cannabis/cannabis utensil. There are search and seizure powers under the Search and Surveillance Act 2012 that may be used.*

Q. A person is found operating a vehicle under the influence of cannabis and produces a certificate from a medical practitioner or nurse practitioner certifying they require palliation, can they be required to undergo a compulsory impairment test (CIT)?

- A. *Yes. There is no exception or statutory defence for operating a vehicle under the influence of cannabis.*

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