

22 June 2017

Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Misuse of Drugs (Medicinal Cannabis and Other Matters) Amendment Bill

Purpose

1. We have considered whether the Misuse of Drugs (Medicinal Cannabis and Other Matters) Amendment Bill ('the Bill'), a member's Bill in the name of Julie Anne Genter MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 19(1) (freedom from discrimination). Our analysis is set out below.

The Bill

3. The Bill has amends the Misuse of Drugs Act 1975 to make a specific exemption for any person with a qualifying medical condition to cultivate, possess or use the cannabis plant and/or cannabis products for therapeutic purposes, provided they have the support of a registered medical practitioner.

Consistency of the Bill with the Bill of Rights Act

Section 19(1) – Freedom from discrimination

4. Section 19(1) of the Bill of Rights Act affirms the right to be free from discrimination on the prohibited grounds set out in the Human Rights Act 1993 ('the Human Rights Act').
5. The key questions determining whether legislation limits the freedom from discrimination are:¹
 - a. does the legislation draw a distinction on one of the prohibited grounds of discrimination under the Human Rights Act?
 - b. if so, does the distinction involve disadvantage to one or more classes of individuals?

¹ See, for example, *Atkinson v Minister of Health and others* [2010] NZHRRT 1; *McAlister v Air New Zealand* [2009] NZSC 78; and *Child Poverty Action Group v Attorney-General* [2008] NZHRRT 31.

6. A distinction will arise if the legislation treats two comparable groups of people differently on one or more of the prohibited grounds of discrimination. Whether disadvantage arises is a factual determination.²
7. Section 21(1)(h) of the Human Rights Act prohibits discrimination on the basis of disability, which includes physical disability or impairment and physical illness. By limiting access to cannabis to only those with a qualifying medical condition, the Bill could be seen as unlawfully discriminating against those without a qualifying medical condition.
8. The purpose of this limit is to ensure that only those who need cannabis for their medical condition can obtain access to it with support from a registered medical practitioner. To the extent that this limit creates a material disadvantage to those without a qualifying medical condition, we consider it justifiable. This is the approach taken to all medicine that requires approval from a medical practitioner: only those who need the medicine can receive it. It would be beyond the purpose of the Bill to allow any person access to cannabis, irrespective of whether they have a qualifying medical condition. We also consider that the limit impairs the right no more than is reasonably necessary and is due proportion to the objective of the Bill.
9. We therefore consider that the Bill appears to be consistent with the right to freedom from discrimination affirmed in s 19(1) of the Bill of Rights Act.

Conclusion

10. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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² See, for example, *Child Poverty Action Group v Attorney-General* above n 2 at [179]; and *McAlister v Air New Zealand* above n 2 at [40] per Elias CJ, Blanchard and Wilson JJ.