

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

(Dr Deb Foskey)

Drugs of Dependence (Cannabis for Medical Conditions Trial) Amendment Bill 2005

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Drugs of Dependence (Cannabis for Medical Conditions Trial) Amendment Bill 2005

A Bill for

An Act to amend the *Drugs of Dependence Act 1989*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Drugs of Dependence (Cannabis for Medical Conditions Trial) Amendment Act 2005*.

2 Commencement

This Act commences on a date fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Legislation amended

This Act amends the *Drugs of Dependence Act 1989*.

4 New part 9A

insert

Part 9A Cannabis for medical conditions trial

Division 9A.1 Definitions for pt 9A

159A Definitions for pt 9A

In this part:

approval means an approval under division 9A.2.

cannabis cultivation licence means a licence under division 9A.3.

category 1 application—see section 159B (3).

category 2 application—see section 159B (4).

category 3 application—see section 159B (5).

conventional—a medical treatment for a symptom is **conventional** if it is a medical or surgical treatment that is generally accepted by the Australian medical community as a treatment for the symptom.

licence means a cannabis cultivation licence.

medical condition means a medical condition in relation to which an approval may be given.

medical declaration means a declaration under section 159C.

nominated person means—

- (a) for an application for a cannabis cultivation licence—the person nominated as mentioned in section 159K (4) (e); and
- (b) for a cannabis cultivation licence—the person nominated under the licence to cultivate cannabis for the holder of the licence.

terminal illness means a medical condition for which the prognosis is death within 1 year.

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Division 9A.2 Approval of cannabis for medical conditions

159B Application for approval

- (1) A person may apply in writing to the chief health officer for approval to possess and use cannabis.

Note If a form is approved under s 205 for an application, the form must be used.

- (2) The application may be a category 1, category 2 or category 3 application.
- (3) A **category 1 application** is an application for approval to possess and use cannabis for the mitigation of a symptom of a terminal illness or its treatment.
- (4) A **category 2 application** is an application for approval to possess and use cannabis for the mitigation of any of the symptoms mentioned in an item in table 159B, column 3 (or prescribed by regulation) of a medical condition mentioned in the item, column 2 (or prescribed by regulation).

Table 159B

column 1 item	column 2 medical condition	column 3 symptom
1	cancer	severe nausea
	AIDS	cachexia
	HIV infection	anorexia
		weight loss
		severe pain

column 1 item	column 2 medical condition	column 3 symptom
2	multiple sclerosis spinal cord injury or disease	persistent muscle spasms severe pain
3	epilepsy	seizures

- (5) A **category 3 application** is an application for approval to possess and use cannabis for the mitigation of a symptom of any other medical condition or its treatment.

Note If a form is approved under s 205 for an application, the form must be used.

- (6) The application must be signed by the applicant and must state—
- (a) the applicant's name and date of birth; and
 - (b) the contact details for the applicant prescribed by regulation; and
 - (c) whether the applicant or someone nominated by the applicant would cultivate the cannabis for which the approval is sought; and
 - (d) that the applicant has discussed with the doctor providing the medical declaration for the application—
 - (i) the likely risks and benefits of using cannabis; and
 - (ii) how the applicant would administer the cannabis and manage its use.
- (7) The application must be accompanied by—
- (a) a medical declaration by a doctor in accordance section 159C; and

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- (b) for a category 3 application—an additional medical declaration by another doctor in accordance with section 159D.
- (8) A regulation may prescribe additional matters that an application, or a declaration accompanying an application, must state or be accompanied by.

159C Medical declaration

- (1) A medical declaration mentioned in section 159B (7) (a) must be signed by the doctor making it and must state—
 - (a) the doctor’s name; and
 - (b) the contact details for the doctor prescribed by regulation; and
 - (c) the applicant’s medical condition; and
 - (d) the symptom associated with the condition or its treatment that is the basis for the application; and
 - (e) that the doctor has discussed with the applicant—
 - (i) the likely risks and benefits of using cannabis; and
 - (ii) how the applicant would administer the cannabis and manage its use.
- (2) For a category 1 application, the medical declaration must also state that—
 - (a) the applicant suffers from a terminal illness; and
 - (b) the prognosis for the applicant is death within 1 year; and
 - (c) all conventional treatments for the symptoms of the illness or its treatment have been tried or considered.

- (3) For a category 2 or 3 application, the medical declaration must also state that—
- (a) the doctor specialises in an area of medicine (stated in the declaration) relevant to the treatment of the applicant’s medical condition; and
 - (b) all conventional treatments for the symptom of the condition have been tried or considered and each of them is medically inappropriate for 1 or more of the following reasons:
 - (i) the treatment has been ineffective;
 - (ii) the applicant has experienced an allergic reaction to the drug used as a treatment, or there is a risk that the applicant would experience cross-sensitivity to a drug of that kind;
 - (iii) the applicant has experienced an adverse drug reaction to the drug used as a treatment, or there is a risk that the applicant would experience an adverse drug reaction based on a previous adverse drug reaction to a drug of the same kind;
 - (iv) the drug used as a treatment has resulted in an undesirable interaction with another medication being used by the applicant, or there is a risk that this would happen;
 - (v) the drug used as a treatment is contraindicated;
 - (vi) the drug under consideration as a treatment has a similar chemical structure and pharmacological activity to a drug that has been ineffective for the applicant.

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159D Additional medical declaration for category 3 application

The additional medical declaration mentioned in section 159B (7) (b) must be signed by the doctor making it and must state—

- (a) the doctor’s name; and
- (b) the contact details for the doctor prescribed by regulation; and
- (c) that the doctor specialises in an area of medicine (stated in the declaration) relevant to the treatment of the applicant’s medical condition; and
- (d) that the doctor—
 - (i) has reviewed the applicant’s medical records and the information provided in the medical declaration given under section 159B (7) (a) for the application; and
 - (ii) has discussed the applicant’s case with the doctor who made that declaration; and
 - (iii) has discussed with the applicant—
 - (A) the likely risks and benefits of using cannabis; and
 - (B) how the applicant would administer the cannabis and manage its use.

159E Decision on approval application

- (1) The chief health officer must—
 - (a) approve the application; or
 - (b) refuse to approve the application.

- (2) If the application is in accordance with section 159B, the chief health officer must approve the application.
- (3) However, the chief health officer must refuse the application if—
 - (a) for a category 3 application—the applicant is not an adult; or
 - (b) any information in the application is false or misleading; or
 - (c) the chief health officer has reasonable grounds for disagreeing with anything stated in a medical declaration accompanying the application;
 - (d) for a category 1 application—
 - (i) the applicant has already held approvals based on category 1 applications for 2 years; and
 - (ii) the additional requirements (if any) prescribed by regulation are not satisfied.
- (4) Subsection (3) (d) does not prevent the chief health office giving an approval based on a category 2 or 3 application to a person who has previously held approvals based on category 1 applications for 2 years.
- (5) If the chief health officer proposes to refuse the application, the chief health officer must tell the applicant, give the applicant a stated reasonable time to make representations to the chief health officer about the application and consider any representation made within that time.
- (6) An approval must be given in writing and must state—
 - (a) the name and date of birth of the person to whom it is given; and
 - (b) the person’s home address; and

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- (c) the symptom, and the associated medical condition (or its treatment), for which the approval is given; and
- (d) the date of issue; and
- (e) the date of expiry.

159F Approval conditions

- (1) An approval is subject to—
 - (a) any conditions stated in the approval; and
 - (b) any conditions prescribed by regulation.
- (2) The conditions stated in the approval must include—
 - (a) the condition that cannabis possessed under the approval may only be used for the purpose of the approval; and
 - (b) a condition requiring the holder to ensure that the holder's medical condition, and the impact of using cannabis, is monitored regularly by the holder's doctor; and
 - (c) a condition about the maximum quantity of cannabis the holder may possess at any time.
- (3) The conditions stated in the licence may include any other conditions the chief health officer considers appropriate.

159G Notice of decision on approval application

The chief health officer must give written notice of the decision on the application to—

- (a) the applicant; and
- (b) the doctor who provided the medical declaration under section 159C for the application; and

- (c) if an additional medical declaration was provided under section 159D for the application—the doctor who provided that declaration.

159H Operation of approval

An approval is effective for the period (not longer than 1 year) stated in the approval.

159I Authorised activity under approval

- (1) The holder of an approval may possess and use cannabis in accordance with the approval.
- (2) A person assisting the holder of the approval may possess cannabis to administer it to the holder, and administer it to the holder, in accordance with the approval.

159J Cancellation of approval

- (1) The chief health officer may cancel an approval if the chief health officer believes, on reasonable grounds, that the holder, or the nominated person (if any), has contravened a condition of the approval.
- (2) If the chief health officer proposes to cancel an approval, the chief health officer must tell the holder, give the holder a stated reasonable time to make representations to the chief health officer about the proposed cancellation and consider any representation made within that time.
- (3) The cancellation takes effect on the day the notice of cancellation is given under section 198A.

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Division 9A.3 Licence to cultivate cannabis for medical conditions

159K Application for cannabis cultivation licence

- (1) A person may apply, in writing, to the chief health officer for a licence allowing the person, or someone nominated by the person, to cultivate cannabis for the purpose of an approval under division 9A.2.

Note If a form is approved under s 205 for an application, the form must be used.

- (2) Application may only be made by a person who—
- (a) holds an approval under division 9A.2; or
 - (b) has applied for the approval; or
 - (c) applies for the approval when applying for the licence.
- (3) If subsection (2) (b) or (c) applies, the chief health officer must decide the approval application before considering the licence application.
- (4) The application must be signed by the applicant and must state—
- (a) the applicant's name and date of birth; and
 - (b) the contact details for the applicant prescribed by regulation; and
 - (c) if the applicant holds an approval—the issue date of the approval; and
 - (d) if the applicant does not hold an approval—whether subsection (2) (b) or (c) applies to the applicant; and

- (e) whether the applicant or someone nominated by the applicant would cultivate the cannabis; and
 - (f) the street address of the place where the cannabis is proposed to be cultivated (the *cultivation place*); and
 - (g) a description of the cultivation area at that place; and
 - (h) the street address of the place where the cannabis is proposed to be kept; and
 - (i) the security measures proposed to be taken for—
 - (i) the cultivation place; and
 - (ii) the place where the cannabis is to be kept.
- (5) If the applicant does not own or live at the cultivation place, the application must be accompanied by the written consent of the owner of the place to the cultivation of cannabis at the place.
- (6) If the application is to allow someone nominated by the applicant to cultivate the cannabis, the application must be accompanied by a declaration by that person in accordance with section 159L.
- (7) A regulation may prescribe additional matters that an application, or any declaration accompanying an application, must state or be accompanied by.

159L Declaration by nominated person

A declaration mentioned in section 159K (6) must be signed by the person making it and must state—

- (a) the person's name and date of birth; and
- (b) the contact details for the person prescribed by regulation; and
- (c) that the person—

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- (i) has not been found guilty or convicted in the previous 5 years of an offence involving drugs that is prescribed by regulation; and
- (ii) consents to cultivating cannabis for the applicant for the purpose of an approval under division 9A.2.

159M Decision on cannabis cultivation licence application

- (1) The chief health officer must—
 - (a) approve the application; or
 - (b) refuse to approve the application.
- (2) If the application is in accordance with section 159K, the chief health officer must approve the application.
- (3) However, the chief health officer must refuse the application if—
 - (a) the applicant does not hold an approval under division 9A.2; or
 - (b) the applicant, or the nominated person (if any)—
 - (i) is not an adult; or
 - (ii) is the holder of, or nominated person for, another cannabis cultivation licence; or
 - (iii) has had a cannabis cultivation licence revoked in the past 5 years; or
 - (c) any information in the application is false or misleading; or
 - (d) the chief health officer is not satisfied that the proposed security measures stated in the application are adequate; or
 - (e) the proposed cultivation place is the cultivation place under another cannabis cultivation licence.

- (4) If the chief health officer proposes to refuse the application, the chief health officer must tell the applicant and give the applicant a stated reasonable time to make representations to the chief health officer about the application and consider any representation made within that time.
- (5) A cannabis cultivation licence must state—
 - (a) the name and date of birth of the person to whom it is issued; and
 - (b) the person's home address; and
 - (c) who is authorised to cultivate cannabis under the licence; and
 - (d) the cultivation place; and
 - (e) the date of issue; and
 - (f) the date of expiry.

159N Cannabis cultivation licence conditions

- (1) A cannabis cultivation licence is subject to—
 - (a) any conditions stated in the licence; and
 - (b) any conditions prescribed by regulation.
- (2) The conditions stated in the licence must include—
 - (a) the condition that cannabis cultivated under the licence may be used only for the purpose of the approval to which the licence relates; and
 - (b) the condition that cannabis may only be cultivated at the cultivation place stated in the licence; and
 - (c) conditions about—

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- (i) the maximum number of plants that may be under cultivation at any time under the licence; and
 - (ii) the maximum amount of cannabis (not more than a trafficable quantity) that may be kept at any time under the licence; and
 - (iii) records that must be kept by the licence holder.
- (3) The conditions stated in the licence may include any other conditions the chief health officer considers appropriate.
- (4) In this section:

trafficable quantity, of cannabis, means a quantity of cannabis that is a trafficable quantity of cannabis under the Criminal Code, chapter 6 (Serious drug offences).

159O Notice of decision on cannabis cultivation licence application

The chief health officer must give written notice of the decision on the application to—

- (a) the applicant; and
- (b) if a nominated person declaration was provided under section 159L for the application—that person.

159P Operation of cannabis cultivation licence

A licence is effective for the period (not longer than 1 year) stated in the licence.

159Q Authorised activity under cannabis cultivation licence

- (1) A person authorised under a cannabis cultivation licence to cultivate or keep cannabis may cultivate or keep cannabis in accordance with the licence.
- (2) A nominated person for a cannabis cultivation licence may supply cannabis in accordance with the licence to the holder of the licence.

159R Cancellation of cannabis cultivation licence

- (1) The chief health officer may cancel a cannabis cultivation licence if the chief health officer believes, on reasonable grounds, that the holder, or the nominated person (if any), has contravened a condition of the licence.
- (2) If the chief health officer proposes to cancel a licence, the chief health officer must tell the licence holder, give the licence holder a stated reasonable time to make representations to the chief health officer about the proposed cancellation and consider any representation made within that time.
- (3) The cancellation takes effect on the day the notice of cancellation is given under section 198A.

Division 9A.4 Other matters

159S Register

- (1) The chief health officer must keep a register of—
 - (a) approvals given under division 9A.2; and
 - (b) licences issued under division 9A.3.

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- (2) The register—
 - (a) must include the information prescribed by regulation; and
 - (b) may include anything else the chief health officer considers appropriate.

159T Review of operation of pt 9A

- (1) The Minister must arrange for a committee (the *review committee*) to review the operation of this part as soon as practicable after 2 years of its operation.
- (2) The review committee must consist of 5 or more people appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (3) The Minister must try to ensure that the following people are appointed as members:
 - (a) a person nominated by the chief executive who is to be the chair of the committee;
 - (b) a person to represent the interests of the medical profession;
 - (c) a person to represent the interests of the police;
 - (d) 1 or more people to represent the interests of people suffering from any of the medical conditions mentioned in table 159B;
 - (e) a person to represent the community generally;

-
- (4) The review committee must give a report of its review to the Minister within 6 months after the day the committee is appointed.
 - (5) The report must include a recommendation about whether or not the cannabis for medical conditions trial should continue.
 - (6) The Minister must present the review committee's report to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

159U Expiry of pt 9A

This part expires 3 years after the day it commences.

5 Prohibited substances—possession, administration and disposal
New section 171 (4) (da)

insert

- (da) a person who possesses cannabis in accordance with—
- (i) an approval under division 9A.2 (Approval of cannabis for medical conditions); or
 - (ii) a licence under division 9A.3 (Licence to cultivate cannabis for medical conditions); or

6 Section 171 (4)

renumber paragraphs when Act next republished under Legislation Act

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7 New section 171 (6) and (7)

insert

- (6) Subsection (2) and subsection (3) do not apply to the administration of cannabis in accordance with an approval under division 9A.2 (Approval of cannabis for medical conditions).
- (7) Subsections (4) (da) and (6) and this subsection expire 3 years after the day they commence.

8 Schedule 2, new items 25 to 30

insert

25	refusing under section 159E an application for approval to possess and use cannabis	the applicant for approval
26	giving an approval under section 159E to possess and use cannabis subject to conditions	the applicant for approval or anyone else whose interests are affected by the decision
27	cancelling under section 159J an approval to possess and use cannabis	the holder of the approval

28	refusing under section 159M an application for a cannabis cultivation licence	the applicant for the licence
29	giving an approval under section 159M for a cannabis cultivation licence subject to conditions	the applicant for the licence or anyone else whose interests are affected by the decision
30	cancelling under section 159R a cannabis cultivation licence	the licence holder

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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