



People Against Prisons Aotearoa

Submission to the Health Committee on the Misuse of Drugs (Medicinal Cannabis) Amendment Bill

People Against Prisons Aotearoa (PAPA), formerly *No Pride in Prisons*, is a prisoner advocacy organisation established in early 2015. *PAPA* advocates for incarcerated people with respect to various issues, including those of housing, prison placement, access to medical and counselling services, complaints of sexual and other physical assault, and cruel and inhumane treatment by the Department of Corrections. *PAPA* has recently campaigned around the use of solitary confinement in New Zealand prisons.

We are united in the belief that prisons are inherently violent places and imprisonment must be entirely avoided. We see prisons as treating the symptoms of injustice, rather than the root causes. The criminalisation of drug use only increases the prevalence of the misuse of drugs. We are in favour of full decriminalisation of supply, possession, and consumption of illicit drugs. We hold that the misuse of drugs ought to be treated as a health concern, rather than a criminal one.

It is for these reasons that we support the Misuse of Drugs (Medicinal Cannabis) Amendment Bill, and would like to suggest further amendments to the Misuse of Drugs Act 1975.

This submission has been written on behalf of *PAPA* by Kate McIntyre and Mackenzie Valgre.

PAPA wishes for its members to appear before the committee to present this submission.

Contact details for the purposes of this submission are:

Kate McIntyre - *PAPA* Parliamentary Advocacy Coordinator

Phone: 020 4111 9922

Email: govtadvocacy@papa.org.nz

INTRODUCTION

People Against Prisons Aotearoa supports the proposed Misuse of Drugs (Medicinal Cannabis) Amendment Bill, and recommends the following additions:

1. Clauses 5 and 6 of the Bill should be amended. The possession and use of illicit cannabis, and the possession of utensils, should not be classed as a criminal offense if a person has been diagnosed with a condition resulting in chronic pain, **regardless of whether or not that person is terminally ill.**
2. An additional clause should be added. People with criminal convictions for possession and use of illicit cannabis, and for the possession of utensils, for the purpose of alleviating chronic pain **should have those convictions expunged from their records.**

PART 1: EXTENDING THE STATUTORY DEFENSE

The proposed Misuse of Drugs (Medicinal Cannabis) Amendment Bill would allow people found in possession or use of cannabis and utensils a statutory defense if they can provide evidence that they suffer from a terminal illness. *PAPA* proposes that this statutory defense should be extended to all people who suffer from health conditions resulting in chronic pain, regardless of whether their condition is terminal.

In New Zealand, the supply, possession, and consumption of products containing cannabis is a criminal offense, with some exceptions. Medicinal cannabis, including Sativex and cannabidiol, can be prescribed to patients with approval from the Ministry of Health in special circumstances where it can have positive health effects.¹ Sativex can be used by people who suffer from multiple sclerosis, and cannabidiol removes the psychoactive properties from cannabis.² However the process of legally obtaining medicinal cannabis in New Zealand is long and expensive. Sativex can cost patients more than \$1000 per month.³ Those who do not obtain cannabis through legal channels can be sentenced to time in

¹ "Medical Cannabis," New Zealand Drug Foundation, accessed 20 March 2018, <https://www.drugfoundation.org.nz/policy-and-advocacy/medicinal-cannabis/>

² Ibid

³ Ibid

prison.⁴ This is a significant barrier for low-income people in accessing healthcare treatment which works for them. It reflects a double-standard enshrined in New Zealand law in which low-income people are disproportionately criminalised for possession and use of the same products which high income people are able to afford and obtain legally.

Establishing the infrastructure to easily supply medicinal cannabis to health patients at a low cost in New Zealand will take time to develop and implement. While it is being developed, people will still continue to supply, possess, and consume illicit cannabis for medicinal purposes. This was acknowledged by the Minister of Health Dr. David Clark in the first reading of the Bill.⁵ Dr. Clark presents this as his justification for proposing a statutory defense for the possession and use of illicit cannabis and utensils for terminally ill people.⁶ This is outlined in clauses 5 and 6 of the Bill.

However, the scope of this defense is too narrow. Illicit cannabis will continue to be used by people who are not terminally ill, but suffer from conditions resulting in chronic pain, for the purposes of alleviating that pain.

The penalties for possession and use of Class C drugs, which cannabis falls under, is 3 months imprisonment or a \$500 fine.⁷ The penalty for possession of utensils used for the purpose of taking drugs is 1 year imprisonment or a \$500 fine.⁸ This means that people found to possess and/or use cannabis, and utensils used for the purposes of taking cannabis, can risk being sentenced to time in prison. As this Bill currently reads, people who suffer from chronic pain, but who are not terminally ill, will have no statutory defense, and can continue to be imprisoned for possession and use of cannabis and utensils.

In prison, it is difficult to access quality healthcare. Research commissioned by the National Health Committee has found it is very common for prisoners to have their medication suspended, permanently or temporarily, upon entering prison.⁹ Four reports were released to the public under the Crimes of Torture Act in late 2016 by the Office of the Ombudsman.

⁴ "Illicit drugs - offences and penalties," New Zealand Police, accessed March 20 2018
<http://www.police.govt.nz/advice/drugs-and-alcohol/illicit-drugs-offences-and-penalties>

⁵ "Misuse of Drugs (Medicinal Cannabis) Amendment Bill - First Reading," New Zealand Parliament, accessed March 20 2018
https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20180130_20180130_24

⁶ Ibid

⁷ "Illicit drugs - offences and penalties," New Zealand Police, accessed March 20 2018
<http://www.police.govt.nz/advice/drugs-and-alcohol/illicit-drugs-offences-and-penalties>

⁸ Ibid

⁹ National Health Committee, *Health in Justice: Kia Piki te Ora, Kia Tika! – Improving the health of prisoners and their families and whānau : He whakapiki i te ora o ngā mauhere me ō rātou whānau* (Wellington: Ministry of Health, 2010), 94-5

These reports have found poor healthcare and disability support in New Zealand prisons. Access to a doctor is limited. 60% of prisoners questioned at Invercargill¹⁰ and 62% of prisoners questioned at Otago¹¹ reported that they found it “difficult” or “very difficult” to see a doctor. The overall quality of healthcare in prison was rated as “bad” or “very bad” by 38% of Manawatu respondents,¹² 42% of Otago respondents,¹³ and 43% of Invercargill respondents.¹⁴

The COTA reports find New Zealand prisons to have inadequate disability support. 52% of respondents at Manawatu,¹⁵ 64% of respondents at Invercargill,¹⁶ and 69% of respondents at Otago¹⁷ who have reported having a physical disability responded that they felt “inadequately supported” or “unsupported” in their disability.

These findings are consistent with *PAPA*’s experiences advocating for individual prisoners. One woman who has written to *PAPA* told us that she had to wait 7 months to see a doctor to receive treatment for severe back pain. In another case, our advocates have had to resort to crowdfunding to provide a prisoner with a wheelchair.¹⁸

The unintended effect of maintaining laws which allow people with chronic pain to be sentenced to time in prison for the possession and use of illicit cannabis and utensils, would be to enable further limitations on their access to healthcare, medication, and disability support. Effectively, they would be punished for taking measures to alleviate chronic pain, and placed in an environment where access to pain relief and healthcare needs will be even more difficult for them.

The Misuse of Drugs (Medicinal Cannabis) Amendment Bill is a step towards more humane drug laws in New Zealand. It recognises that terminally ill people should not be punished for their attempts to alleviate pain, and that placing them in prison would be unjust and

¹⁰ Peter Boshier, “COTA Report: Report of the unannounced inspection of Corrections Service Arohata Prison Under the Crimes of Torture Act 1989” (Wellington: Office of Ombudsman, 2016)

¹¹ Peter Boshier, “COTA Report: Report of the unannounced inspection of Corrections Service Otago Corrections Facility Under the Crimes of Torture Act 1989” (Wellington: Office of Ombudsman, 2016)

¹² Peter Boshier, “COTA Report: Report of the unannounced inspection of Corrections Service Manawatu Prison Under the Crimes of Torture Act 1989” (Wellington: Office of Ombudsman, 2016)

¹³ Peter Boshier, “Otago COTA Report 2016”

¹⁴ Peter Boshier, “COTA Report: Report of the unannounced inspection of Corrections Service Invercargill Prison Under the Crimes of Torture Act 1989” (Wellington: Office of Ombudsman, 2016)

¹⁵ Peter Boshier, “Manawatu COTA Report 2016”

¹⁶ Peter Boshier, “Invercargill COTA Report 2016”

¹⁷ Peter Boshier, “Otago COTA Report 2016”

¹⁸ “Wheelchair for Disabled Prisoner,” Givealittle, accessed March 21 2018
<https://givealittle.co.nz/cause/wheelchair-for-disabled-prisoner>

inhumane.¹⁹ It would continue to be unjust and inhumane for people with chronic pain, who are not terminally ill, to be imprisoned for the same actions. The statutory defence outlined in clauses 5 and 6 must be extended to all people suffering from conditions that result in chronic pain.

PART 2: EXPUNGE PREVIOUS CRIMINAL CONVICTIONS

PAPA recommends that people who have been previously convicted for possession and use of illicit cannabis and utensils for medicinal purposes should have these convictions expunged from their records, and any fines paid should be re-compensated.

As we have argued in Part 1 of this submission, access to quality healthcare and disability services is difficult in prison, and prison is a hostile environment for people with chronic pain. However, time spent in prison can also disrupt people's lives and have lifelong negative impacts. It can result in people losing jobs, being unable to pay rent or mortgages, and family and community ties being severed.²⁰ The National Health Committee finds that there is often no official transfer of an ex-prisoner's health records as they reintegrate, and the medications they need will often not be attainable.²¹

Furthermore, housing and employment can legally be denied to people with a criminal record, as the Human Rights Act 1993 does not protect people from discrimination on the basis of past criminal convictions.²² This disproportionately affects people with disabilities, particularly people with mobility impairments, who are already disadvantaged in housing and renting markets in attempting to secure accommodation which is wheelchair accessible.²³ Discrimination on the basis of criminal convictions can result in de facto discrimination against people with disabilities by landlords, property managers, and potential employers.

Given that this Bill is motivated by compassionate concerns towards health patients, and given that criminal convictions can have lifelong and ongoing negative effects on people's lives, formerly convicted users of medicinal cannabis must be able to rebuild their lives free

¹⁹ "Misuse of Drugs Act (Medicinal Cannabis) Amendment Bill - First Reading," New Zealand Parliament

²⁰ National Health Committee, *Health in Justice: Kia Piki te Ora, Kia Tika!*

²¹ *Ibid*

²² Human Rights Act 1993, s 21, accessed March 20 2018, <http://www.legislation.govt.nz/act/public/1993/0082/latest/whole.html#DLM304212>

²³ "Disabled tenants shut out of market", *Radio New Zealand*, 22 November 2017, accessed March 21 2018, <https://www.radionz.co.nz/national/programmes/ninetonoon/audio/2018622554/disabled-tenants-shut-out-of-market>

of stigma and discrimination for unjust criminal convictions. Past convictions for the possession and use of illicit cannabis and utensils for medicinal purposes must be expunged from people's records.

PART 3: OVERHAUL OF NEW ZEALAND DRUG LAWS

Providing a defense for the use of medicinal cannabis is a legislative action which *PAPA* supports, but it does not go far enough to reduce the harm associated with drug use. ***PAPA* calls upon the government to decriminalise supply, possession, and consumption of all illicit substances.**

Drug use is not something New Zealand can avoid. 44% of adults in New Zealand will consume an illicit drug at some point in their lives, and 94% will try alcohol.²⁴ Rather than reducing harm, legislating drug use as a criminal offence places people further at risk. It often means that consumption of drugs occurs in unsafe circumstances while also preventing users from accessing help.²⁵

Furthermore, prison is demonstrably not a rehabilitative environment. 80% of all offending in New Zealand is related to drugs and/or alcohol, yet only 5% of prisoners will receive drug and alcohol treatment.²⁶ Alongside a lack of rehabilitation, imprisonment results in reduced self-control and increased impulsive, risk-taking behaviour.²⁷

We strongly suggest that the government repeals the Misuse of Drugs Act 1975. This should be replaced by legislation that is backed by current research. At least 16 countries have already decriminalised drug use, a move that the Global Health Organisation and United Nations have encouraged other countries to follow.²⁸ Evidence demonstrates that this often leads to a decrease, not an increase, in drug use and associated harm.²⁹ Portugal

²⁴ "Drug Use in New Zealand," New Zealand Drug Foundation, accessed March 19 2018, <https://www.drugfoundation.org.nz/policy-and-advocacy/drugs-in-nz/>

²⁵ "Joint United Nations statement on ending discrimination in health care settings" World Health Organisation and United Nations, accessed March 18 2018, <http://www.who.int/mediacentre/news/statements/2017/discrimination-in-health-care/en/>

²⁶ "Drug Treatment Units in New Zealand Prisons: Are they enough?" Just Speak, accessed March 18, 2018 http://www.justspeak.org.nz/drug_treatment_units_in_new_zealand_prisons

²⁷ Jesse Meijers et al., "Reduced Self-Control after 3 months of Imprisonment; A Pilot Study," *Frontier in Psychology* 9, (2018)

²⁸ Ibid; "Joint United Nations statement on ending discrimination in health care settings" World Health Organisation and United Nations

²⁹ Ibid

decriminalised all drug use 16 years ago and has since seen reduced drug use, fewer HIV infections, and fewer drug-related fatalities.³⁰

While decriminalisation of personal possession and use of illicit drugs is important, as long as its supply remains illegal, it is still contradictory to the overall goal of harm reduction. Most people use drugs without serious harm and treating supply as a criminal offence means that the supply of drugs cannot be regulated.³¹ To achieve substantial harm reduction, supply, possession, and consumption of illicit drugs must be decriminalised.

RECOMMENDATIONS

PAPA would like to reiterate our recommendations to the Health Committee.

1. A statutory defense for the possession and use of illicit cannabis and/or utensils should be extended to people with conditions resulting in chronic pain who are not terminally ill. Criminal convictions against people with chronic pain for possession and use of cannabis and utensils is inhumane and would exacerbate their already problematic health conditions.
2. People who have been previously convicted for possession and use of cannabis and/or utensils for medicinal purposes should have past convictions expunged from their records. If this Bill passes into law, the government recognises that those convictions were unjust. They should be relieved of the stigma and discrimination against them for having a criminal record.
3. The Misuse of Drugs (Medicinal Cannabis) Amendment Bill should be recognised as a stepping stone towards more humane, research-based drug laws in New Zealand. The criminalisation of supply, possession, and consumption of illicit drugs causes more harm than good and exacerbates the negative health effects illicit drugs can cause to people and communities. The Misuse of Drugs Act 1975 must be repealed and replaced by legislation which treats the misuse of drugs as a health concern, rather than a criminal one.

³⁰ Ibid

³¹ New Zealand Drug Foundation, *Whakawātea te Huarahi*