

2004

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Ms Kerrie Tucker)

Drugs of Dependence (Cannabis for Medical Conditions) Amendment Bill 2004

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Drugs of Dependence (Cannabis for Medical Conditions) Amendment Bill 2004

A Bill for

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

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

2003 207B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Drugs of Dependence (Cannabis for Medical Conditions) Amendment Act 2004*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Legislation amended

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

4 New part 9A

insert

Part 9A Cannabis for medical conditions

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.

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 under the regulations) of a medical condition mentioned in the item, column 2 (or prescribed under the regulations).

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
2	multiple sclerosis	persistent muscle spasms
	spinal cord injury or disease	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 under the regulations; and

- 1 (c) whether the applicant or someone nominated by the applicant
2 would cultivate the cannabis for which the approval is sought;
3 and
4 (d) that the applicant—
5 (i) has discussed the risks of using cannabis with the doctor
6 providing the medical declaration for the application; and
7 (ii) consents to the cannabis use recommended by the doctor
8 in the medical declaration.
- 9 (7) The application must be accompanied by—
10 (a) a medical declaration by a doctor in accordance section 159C;
11 and
12 (b) for a category 3 application—an additional medical declaration
13 by another doctor in accordance with section 159D.
- 14 (8) The regulations may prescribe additional matters that an application,
15 or a declaration accompanying an application, must state or be
16 accompanied by.
- 17 **159C Medical declaration**
- 18 (1) A medical declaration mentioned in section 159B (7) (a) must be
19 signed by the doctor making it and must state—
20 (a) the doctor's name; and
21 (b) the contact details for the doctor prescribed under the
22 regulations; and
23 (c) the applicant's medical condition; and
24 (d) the symptom associated with the condition or its treatment that
25 is the basis for the application; and

- 1 (e) the doctor's recommendation about the following for the
2 applicant (the *recommended use*):
- 3 (i) the daily dosage of cannabis;
- 4 (ii) how it should be administered;
- 5 (iii) the period (no longer than 1 year) for which it should
6 continue; and
- 7 (f) that the recommended use of cannabis would mitigate the
8 symptom;
- 9 (g) that the benefits to the applicant from the recommended use of
10 cannabis would outweigh any risks associated with the use.
- 11 (2) For a category 1 application, the medical declaration must also state
12 that—
- 13 (a) the applicant suffers from a terminal illness; and
- 14 (b) the prognosis for the applicant is death within 1 year; and
- 15 (c) all conventional treatments for the symptoms of the illness or
16 its treatment have been tried or considered.
- 17 (3) For a category 2 or 3 application, the medical declaration must also
18 state that—
- 19 (a) the doctor specialises in an area of medicine (stated in the
20 declaration) relevant to the treatment of the applicant's medical
21 condition; and
- 22 (b) all conventional treatments for the symptom of the condition
23 have been tried or considered and each of them is medically
24 inappropriate for 1 or more of the following reasons:
- 25 (i) the treatment has been ineffective;
- 26 (ii) the applicant has experienced an allergic reaction to the
27 drug used as a treatment, or there is a risk that the

- 1 applicant would experience cross-sensitivity to a drug of
2 that kind;
- 3 (iii) the applicant has experienced an adverse drug reaction to
4 the drug used as a treatment, or there is a risk that the
5 applicant would experience an adverse drug reaction
6 based on a previous adverse drug reaction to a drug of the
7 same kind;
- 8 (iv) the drug used as a treatment has resulted in an
9 undesirable interaction with another medication being
10 used by the applicant, or there is a risk that this would
11 happen;
- 12 (v) the drug used as a treatment is contraindicated;
- 13 (vi) the drug under consideration as a treatment has a similar
14 chemical structure and pharmacological activity to a drug
15 that has been ineffective for the applicant.

16 **159D Additional medical declaration for category 3 application**

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

- 20 (a) the doctor's name; and
- 21 (b) the contact details for the doctor prescribed under the
22 regulations; and
- 23 (c) that the doctor specialises in an area of medicine (stated in the
24 declaration) relevant to the treatment of the applicant's medical
25 condition; and
- 26 (d) that the doctor—
- 27 (i) has reviewed the applicant's medical records and the
28 information provided in the medical declaration given
29 under section 159B (7) (a) for the application; and

- 1 (ii) has discussed the applicant's case with the doctor who
2 made that declaration; and
3 (iii) agrees with the statements mentioned in
4 section 159C (1) (f) and (g) made by that doctor.

5 **159E Decision on approval application**

- 6 (1) The chief health officer must—
7 (a) approve the application; or
8 (b) refuse to approve the application.
9 (2) If the application is in accordance with section 159B, the chief
10 health officer must approve the application.
11 (3) However, the chief health officer must refuse the application if—
12 (a) any information in the application is false or misleading; or
13 (b) for a category 1 application—
14 (i) the applicant has already held approvals based on
15 category 1 applications for 2 years; and
16 (ii) the additional requirements (if any) prescribed under the
17 regulations are not satisfied.
18 (4) Subsection (3) (b) does not prevent the chief health office giving an
19 approval based on a category 2 or 3 application to a person who has
20 previously held approvals based on category 1 applications for
21 2 years.
22 (5) If the chief health officer proposes to refuse the application, the
23 chief health officer must tell the applicant, give the applicant a
24 reasonable time to make representations to the chief health officer
25 about the application and consider any representation made within
26 that time.

- 1 (6) An approval must be given in writing and must state—
2 (a) the name and date of birth of the person to whom it is given;
3 and
4 (b) the person's home address; and
5 (c) the symptom, and the associated medical condition (or its
6 treatment), for which the approval is given; and
7 (d) the date of issue; and
8 (e) the date of expiry.

9 **159F Approval conditions**

- 10 (1) An approval is subject to—
11 (a) any conditions stated in the approval; and
12 (b) any conditions prescribed under the regulations.
13 (2) The conditions stated in the approval must include—
14 (a) the condition that cannabis possessed under the approval may
15 only be used for the purpose of the approval; and
16 (b) a condition about the maximum quantity of cannabis the holder
17 may possess at any time (not more than 30 times the daily
18 dosage recommended for the holder).
19 (3) The conditions stated in the licence may include any other
20 conditions the chief health officer considers appropriate.

21 **159G Notice of decision on approval application**

- 22 The chief health officer must give written notice of the decision on
23 the application to—
24 (a) the applicant; and

- 1 (b) the doctor who provided the medical declaration under
2 section 159C for the application; and
3 (c) if an additional medical declaration was provided under
4 section 159D for the application—the doctor who provided that
5 declaration.

6 **159H Operation of approval**

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

9 **159I Authorised activity under approval**

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

15 **159J Cancellation of approval**

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

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 under the regulations; 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

- 1 (f) the street address of the place where the cannabis is proposed
2 to be cultivated (the *cultivation place*); and
- 3 (g) a description of the cultivation area at that place; and
- 4 (h) the street address of the place where the cannabis is proposed
5 to be kept; and
- 6 (i) the security measures proposed to be taken for—
7 (i) the cultivation place; and
8 (ii) the place where the cannabis is to be kept.
- 9 (5) If the applicant does not own or live at the cultivation place, the
10 application must be accompanied by the written consent of the
11 owner of the place to the cultivation of cannabis at the place.
- 12 (6) If the application is to allow someone nominated by the applicant to
13 cultivate the cannabis, the application must be accompanied by a
14 declaration by that person in accordance with section 159L.
- 15 (7) The regulations may prescribe additional matters that an application,
16 or any declaration accompanying an application, must state or be
17 accompanied by.

18 **159L Declaration by nominated person**

- 19 A declaration mentioned in section 159K (6) must be signed by the
20 person making it and must state—
- 21 (a) the person's name and date of birth; and
- 22 (b) the contact details for the person prescribed under the
23 regulations; and
- 24 (c) that the person—
25 (i) has not been found guilty or convicted in the previous
26 5 years of an offence involving drugs that is prescribed
27 under the regulations; 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 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 reasonable time to make representations to the chief health officer about the application and consider any representation made within that time.

- 1 (5) A cannabis cultivation licence must state—
- 2 (a) the name and date of birth of the person to whom it is issued;
- 3 and
- 4 (b) the person's home address; and
- 5 (c) who is authorised to cultivate cannabis under the licence; and
- 6 (d) the date of issue; and
- 7 (e) the date of expiry.

8 **159N Cannabis cultivation licence conditions**

- 9 (1) A cannabis cultivation licence is subject to—
- 10 (a) any conditions stated in the licence; and
- 11 (b) any conditions prescribed under the regulations.
- 12 (2) The conditions stated in the licence must include—
- 13 (a) the condition that cannabis cultivated under the licence may be
- 14 used only for the purpose of the approval to which the licence
- 15 relates; and
- 16 (b) conditions about—
- 17 (i) the maximum number of plants that may be under
- 18 cultivation at any time under the licence; and
- 19 (ii) the maximum amount of cannabis (not more than a
- 20 trafficable quantity) that may be kept at any time under
- 21 the licence; and
- 22 (iii) records that must be kept by the licence holder.
- 23 (3) The conditions stated in the licence may include any other
- 24 conditions the chief health officer considers appropriate.

(4) In this section:

trafficable quantity—see section 160 (1).

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

A person authorised under a cannabis cultivation licence to cultivate or keep cannabis may cultivate or keep cannabis in accordance with 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 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.
- (2) The register—
- (a) must include the information prescribed under the regulations; and
 - (b) may include anything else the chief health officer considers appropriate.

159T Review of operation of pt 9A

- (1) The Minister must review the operation of this part as soon as practicable after 2 years of its operation.
- (2) The Minister must present the report of the review to the Legislative Assembly within 6 months after the review begins.
- (3) This section expires 3 years after the day it commences.

5 Cultivation of prohibited plants

New section 162 (6)

insert

- (6) This section does not apply to the cultivation of cannabis in accordance with a licence under division 9A.3 (Licence to cultivate cannabis for medical conditions).

6 Sale or supply—cannabis
New section 165 (2A)

insert

(2A) Subsection (1) also does not apply to—

- (a) the supply or possession of cannabis by a person in accordance with an approval under division 9A.2 (Approval of cannabis for medical conditions); or
- (b) the supply or possession of cannabis by a person in accordance with a licence under division 9A.3 (Licence to cultivate cannabis for medical conditions).

7 Section 165

renumber subsections when Act next republished under Legislation Act

8 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

9 Section 171 (4)

renumber paragraphs when Act next republished under Legislation Act

- 1 **10 New section 171 (6)**
- 2 *insert*
- 3 (6) Subsection (2) and subsection (3) do not apply to the administration
- 4 of cannabis in accordance with an approval under division 9A.2
- 5 (Approval of cannabis for medical conditions).
-

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2004.
- 2 **Notification**
Notified under the Legislation Act on 2004.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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