133 Molesworth Street
PO Box 5013
Wellington 6140
New Zealand
T+64 4 496 2000

6 May 2022

s 9(2)(a)

By email: s 9(2)(a)
Ref: H202203233

Tēnā koe s

Response to your request for official information

Thank you for your request to the Ministry of Health (the Ministry) under the Official Information Act 1982 (the Act) on 18 February 2022 for:

> *"Any briefings, reports, aide memoires, or memos relating to misuse of prescription opioids or the use of illegal opioids in New Zealand, including but not limited to any documents referencing opioid overdoses or an opioid crisis, since January 1, 2020. Where any document falls under the scope of this request, please release it in full, including sections which might otherwise be considered out of scope."*

Please accept my apologies for the delay in responding to your request which was extended under section 15 of the Act and was due to you on 22 April 2022.

The Ministry has identified one document within the scope of your request, an aide-memoire to Hon Andrew Little, Minister of Health, *Meeting with the New Zealand Drug Foundation.* It is attached and some information has been withheld under section 9(2)(a) to protect personal privacy and section 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time. As noted in the document, a publicly available attachment has also been removed.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Ministry website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests.

Nāku noa, nā

Philip Grady
Acting Deputy Director-General
Mental Health and Addiction

MINISTRY OF HEALTH
MANATŪ HAUORA

Aide-Mémoire

Meeting with the New Zealand Drug Foundation

Date due to MO:	22 March 2021	**Action required by:**	N/A
Security level:	IN CONFIDENCE	**Health Report number:**	20210340
To:	Hon Andrew Little, Minister of Health		

Contact for telephone discussion

Name	Position	Telephone
Richard Taylor	Group Manager, Addiction	s 9(2)(a) [redacted]
Toni Gutschlag	Deputy Director-General, Mental Health & Addiction	

MINISTRY OF HEALTH
MANATŪ HAUORA

Aide-Mémoire

Meeting with the New Zealand Drug Foundation

Date due:	22 March 2021
To:	Hon Andrew Little, Minister of Health
Security level:	IN CONFIDENCE **Health Report number:** 20210340

Details of Meeting:

DATE: Wednesday 24 March 2021
TIME: 11.30am-12.15pm
VENUE: 6.1 Executive Wing

Purpose of Meeting:

Sarah Helm, newly-appointed Chief Executive of the New Zealand Drug Foundation, has asked to meet with you to discuss a health-based approach to drugs.

Attendees from the NZ Drug Foundation:

- Sarah Helm - Executive Director
- Khylee Quince - Board Chair
- Ben Birks Ang - Deputy Director, Programmes
- Kali Mercier - Policy and Advocacy Manager

Comment:

- Ministry officials are available to attend this meeting at your request.

Toni Gutschlag
Deputy Director-General
Mental Health & Addiction

Talking points on the New Zealand Drug Foundation

Background on the New Zealand Drug Foundation

Background

1. The New Zealand Drug Foundation (the Foundation) is a long-serving charitable trust that works to prevent and reduce drug-related harm in New Zealand.

2. The Ministry of Health (the Ministry) contracts the Drug Foundation for services valuing $1.95 million per annum. These contracts include:

   a) public health services to prevent drug-related harm including the development of healthy public policy, support for actions at the community level and the provision of information to help the public understand drug-related harms

   b) Tūturu, a whole school approach to reducing alcohol and other drug (AOD) related harm where health and education services work together to improve the wellbeing of students

   c) help-seeking information and resources (online and print) for people who use illicit drugs and psychoactive substances

   d) support for the COVID-19 psychosocial response through the delivery of a general population campaign and targeted messaging for people who are in recovery or dependent on AOD

   e) services to reduce the harm from synthetic cannabinoids through a localised, community specific public health approach.

3. In the lead up to the 2020 cannabis referendum, the Drug Foundation openly supported law reform to legalise cannabis and helped to fund the pro-legalisation campaign.

4. Sarah Helm took up the post of Executive Director at the Drug Foundation in late 2020 replacing Ross Bell who had been in the role 16 years.

5. The Drug Foundation has six board members, including Khylee Quince (Associate Professor and Director of Māori and Pacific Advancement at AUT School of Law) who has recently been appointed as Chair.

6. The Drug Foundation has listed a number of priority areas for discussion that are covered at a high level in this briefing. The Ministry can provide more detailed information on any of the topics at your request. If time permits, a discussion on how alcohol and other drug issues will be addressed following the Health and Disability System Review would be welcome.

s 9(2)(f)(iv) [redacted]

s 9(2)(f)(iv)

8. s 9(2)(f)(iv)

Drug Foundation Briefing to the Incoming Parliament

9. The Drug Foundation Briefing to the Incoming Parliament:

   a) labels the Misuse of Drugs Act 1975 'outdated', and states there are 'ongoing gaps in treatment availability, and underinvestment in prevention, public education and early intervention is creating a vicious cycle for people who use illicit drugs'

   b) brings attention to the disproportionate harm alcohol causes and continued concerns surrounding synthetic psychoactive substances

   c) highlights equity issues - Māori are both more likely to be harmed by drugs and by Aotearoa's drug laws

   d) raises concerns about the effect of COVID-19 both on New Zealanders' drug use and on their access to treatment services, as well as the knock-on effects the pandemic may have on people's psychosocial wellbeing

   e) calls on the Government to act on recent 'excellent' reports, such as – the Health and Disability System Review, He Ara Oranga, and Whakamaua (the Māori Health Action Plan)

   f) states there is a 'mood for change' amongst the public in how Aotearoa addresses AOD harm.

10. The Drug Foundations' Briefing to the Incoming Parliament has five high-level recommendations:

   a) 'Reform our laws to treat drug use as a health issue'

   b) 'Reduce inequities for Māori'

   c) 'Strengthen education and keep young people in school'

   d) 'Invest more effectively in education, prevention, harm reduction, and treatment'

   e) 'Develop innovative solutions to reduce drug harm in communities'.

11. The Briefing to the Incoming Parliament is attached as Appendix B and the December 2020 'State of the Nation' report as Appendix C.

Changing international context

United States Approach

12. As part of the 2020 federal elections, a further four States voted to legalise adults' recreational use of cannabis. This now means that 14 states have legalised cannabis use, and a further 16 states have decriminalised it.

13. In November 2020, Oregon decriminalised the possession of many previously illegal drugs, such as heroin, methamphetamine, LSD and oxycodone. The law came into effect in February 2021. People found in possession of small amounts of drugs are being referred to health-based services, or now face a small fine.

14. The Drug Foundation states that in some parts of the US, a proportion of tax revenue from the sale of cannabis is reinvested in helping people apply for expungement of cannabis convictions, as well as education and healthcare.

Australian Approach

15. As of January 2020, Australian Capital Territory removed most penalties for the use, possession and growth of small quantities of cannabis.

16. New South Wales' Cabinet is currently looking into a tiered depenalisation model of all drugs, with criminal charges only occurring after a fourth offence. Individuals found a second or third time in a 12-month period would face fines.

Misuse of Drugs Act

Medicinal Cannabis Amendment

17. The Misuse of Drugs (Medicinal Cannabis) Amendment Act 2018 amended the Misuse of Drugs Act (MODA) to create an exception and a statutory defence for terminally ill people to possess and use medicinal cannabis products. The Amendment Act also provided for cannabidiol (CBD) and CBD products to no longer be controlled drugs. However, these products remain as prescription medicines controlled under the Medicines Act 1981.

18. Following the commencement of the Misuse of Drugs (Medicinal Cannabis) Regulations 2019, the Medicinal Cannabis Scheme (the Scheme) came into effect on 1 April 2020. The Scheme is intended to enable access to good quality medicinal cannabis products for patients with a prescription. Progress on medicinal cannabis has been slower than expected, mostly due to COVID-19.

19. As Minister of Health, you recently approved a six-month extension to the transition period for the medicinal cannabis scheme, to give medicinal cannabis companies more time to demonstrate that they meet quality standards.

Police Discretion Amendment

20. The Misuse of Drugs Amendment Act 2019 amended Section 7 of MODA to:

a) re-affirm the ability of NZ Police to use discretion when considering whether to prosecute people for personal possession and use of drugs

b) introduce provisions to allow substances to temporarily be treated as controlled drugs while further information is sought.

21. Both the Ministry and Police agree that health professionals, rather than frontline officers, are best placed to make decisions on whether a person requires health intervention.

22. A referral pathway to the AOD helpline, enabled by the MODA amendments, launched in August 2019. It is funded by the Ministry and delivered by Homecare Medical Ltd.

23. As of the end of February 2021, 825 individuals had been referred to the AOD helpline by Police. The helpline has received a total of 128 unique contacts (and 156 total contacts) via the MODA pathway. Please note this data has not been publicly released.

24. There is an apparent drop-off between the numbers referred by Police, and the number of people engaging in support. Underlying reasons for non-engagement may include individuals' desires to manage their issues themselves without outside support, scepticism or a lack of clarity on what support may entail, whether they own a mobile phone, or a reluctance to give their phone number to Police.

25. The Ministry of Health is currently reviewing the above provisions. The Ministry will provide a report on the Police discretion provision by the end of June 2021, and a report on the other two provisions by the end of August 2021.

26. The Drug Foundation are petitioning for the replacement of MODA. Their BIM has a particular focus on the Police discretion amendment, stating that it doesn't make meaningful progress towards reducing the disproportionate number of Māori in the criminal justice system.

Health-based approaches to alcohol and other drugs

27. The Government is committed to a health-based approach to reduce drug-related harm. Broadly-speaking, a health approach can be defined as:

    a. Provision of harm reduction or treatment support, as opposed to arrest or criminal justice/court processes

    b. Non-judgemental approaches that destigmatise seeking help

    c. Approaches that prevent harm and intervene earlier in the development/experience of drug harm.

28. The Ministry has identified harm reduction as a particular area for development within the addiction sector. Most treatment services in New Zealand are abstinence-based, and while for some people a period of abstinence is necessary (for example where continued consumption of alcohol is life-threatening), for many others it is not a realistic short-term goal, creating a barrier to accessing any help. Harm reduction advice – broadly, how to reduce or be safer in use of substances – can help prevent more significant harm from occurring, encourage early help-seeking by reducing the stigma associated with asking for support and lead to contemplation of greater change or abstinence in the longer term.

29. The Ministry will provide you with more in-depth advice on this issue and opportunities for change by the end of April 2021. Some examples of current health-based approaches to drugs are as follows:

Drug Checking

30. The Ministry's work on health-based harm reduction measures includes an amendment to MODA which enables the appointment of drug checking service providers, enables appointed providers to operate with legal certainty, and provides that it is not an offence to host an appointed provider.

31. Drug checking is a harm reduction approach which tests the composition of illicit drugs and provides non-judgemental drug harm reduction advice to people who consume illicit drugs. The Drug Foundation are strongly in support of it.

32. One provider has so far been appointed, *KnowYourStuffNZ*. The Drug Foundation has been helping *KnowYourStuffNZ* to run some of its static clinics.

33. Through the 2020/2021 summer period, drug checking showed that around 40 percent of purported MDMA samples brought in for testing were actually dangerous synthetic cathinones, such as eutylone. *KnowYourStuffNZ* found that 75 percent of people whose drugs were found to be eutylone chose not to consume them. This is likely to have prevented significant drug harm, potentially including hospitalisation and death.

34. s 9(2)(f)(iv) [redacted]

35.

High Alert

36. The Drug Information and Alert Aotearoa NZ network, and its associated website *High Alert*, is a central point for all drug related data. It is funded by the Ministry of Health (through Proceeds of Crime funding [CAB-18-MIN-0620 refers] and led by a partnership between the Ministry of Health, Police, and Customs. The network includes professionals from across the health and social sector, such as ambulance services, emergency departments, Public Health Units, addiction treatment providers, Needle Exchange Programmes, GPs, and City Missions.

37. This network shares their own intelligence about drug harm they are seeing in their areas and also receives information from *High Alert* about drug harm across the country. People are able to use highalert.org.nz to both report dangerous substances and get notifications when drug harm is happening in their communities.

38. The Drug Foundation's Briefing to the Incoming Parliament states that *High Alert* will help save lives.

Te Ara Oranga

39. Te Ara Oranga is a community-based methamphetamine harm reduction initiative, based in the Northland region.

40. It enables an integrated approach across health, Police and the community, with a kaupapa Māori focus, to reduce drug-related harm and support priority populations to have better health, social and justice outcomes.

41. Since its launch in October 2017, the programme has supported more than 2300 people. In particular, around a third of people who have accessed support have not been previously engaged with services, meaning that Te Ara Oranga is breaking down barriers to treatment and support.

Drug Education & Schools

42. The Ministry funds the Drug Foundation to run *Tūturu*, a whole school approach to reducing alcohol and other drug (AOD) related harm.

43. Following the successful pilot of *Tūturu* in 11 New Zealand secondary schools, the contract with Drug Foundation for this work was recently extended until 30 June 2022. Future options for the initiative will be considered within the wider AOD services framework and as part of the commissioning review.

44. The *Tūturu* framework provides a continuum of strategies with a strong focus on systems change, primary prevention and early intervention. *Tūturu* enables schools to establish a system for promoting student wellbeing, develop student agency and critical-thinking skills, and proactively offer support to young people who need it. This is a model that could potentially be enhanced to address a wider range of issues.

Naloxone

45. Naloxone was reclassified in 2016 to allow for supply without a prescription when it was supplied in an approved emergency kit. 'Approved' means that the kit needs to have consent to market from Medsafe, has consumer-focused information on use during an opioid overdose. The reclassification was intended to provide a measure of control over the distribution of an over-the-counter naloxone product. All other supplies of naloxone must be prescribed.

46. Medsafe approved an emergency kit for Nyxoid intranasal spray in August 2020. The Nyxoid intranasal spray is not funded but PHARMAC is open to a funding application. The non-funded price of the intranasal spray is approximately $80 and is a barrier to access. As yet, there has been little uptake of the Nyxoid product.

47. Police, Customs, ESR and some other Crown agencies were given authorisation by Medsafe in 2019 to hold and use naloxone in first aid kits without a prescription.

48. The Ministry is aware of the need to make naloxone more readily available, and is committed to meeting with relevant parties to identify ways to support access.

admin@drugfoundation.org.nz
+64 4 801 6303

4th Floor
265 Wakefield Street

PO Box 3082
Wellington
Aotearoa
New Zealand

AT THE HEART OF THE MATTER. NZ DRUG FOUNDATION.
Te Tūāpapa Tarukino o Aotearoa

New Zealand Drug Foundation briefing to Minister Little

To support our meeting on **24 March 2021**

Tēnā koe, Minister Little

We look forward to meeting with you on 24 March.

This briefing is structured to follow our proposed agenda for the meeting:

- **PART ONE** – Progress towards a health-based approach
- **PART TWO** – The changing international context, and a new approach in the United States
- **PART THREE** – Taking a health-based approach to drugs: health interventions
- **PART FOUR** – Taking a health-based approach to drugs: law change
- **PART FIVE** – Medicinal cannabis
- **PART SIX** – Improving health data for better health outcomes

If time permits we would also like to discuss with you two of our most harmful substances: methamphetamine and alcohol; and hear your thoughts on how alcohol and other drug issues will be addressed in the Health and Disability System Review.

Yours faithfully,

Sarah Helm

Executive Director

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug debates for more than 30 years, promoting healthy drug policy and developing and incubating innovative services to address drug harm.

PART ONE – Progress towards a health-based approach

We are moving in the right direction

1. Progress under your Government has been met with wide support, and has built on the public mood for change in how we address drug harm in Aotearoa.

2. We thank you for your efforts to transform our punitive system into a model that favours a health and social approach. In particular, the increased investment in treatment, your willingness to invest in novel approaches, the new funding and renewed energy that has come to the sector over your last term and into this one.

3. Cross-agency engagement under your Government is helping to develop new approaches. A noteworthy area of success from our perspective has been funding and cross-agency support for a school-wide approach led by the Drug Foundation, Tūturu. This project helps to reduce drug and alcohol-related harm and keep students in school. An independent evaluation found Tūturu helped change how schools deal with alcohol and other drugs, moving the focus from punitive to pastoral[1].

4. Another successful cross-agency programme has been a group of projects on "peer crowds" led by the NZ Drug Foundation. These aim to reduce alcohol-related harm and improve wellbeing for targeted groups of young people. An independent evaluation of these projects found that they "are an excellent example of how multiple-partner, cross-sector projects can operate successfully".

5. Finally, your forward-thinking decision to legalise drug checking will save lives, as will the new High Alert early warning system, launched last year. We provide an overview below of the roll out of these two hugely valuable harm reduction initiatives.

High Alert – a new 'early warning' system off to a great start

6. After many years pushing for a cross-sector system that could alert people to the emergence of new and dangerous substances, or new drug use trends,

[1] New Zealand Council for Educational Research. (2020). Tūturu "has changed the focus from punitive to pastoral": Learnings and outcomes from the second year of Tūturu. Wellington. New Zealand Council for Educational Research.

we were thrilled with the launch of High Alert under your Government last year.

7. High Alert is led by the National Drug Intelligence Bureau (made up of Police, Customs and the Ministry of Health) and a range of community and government partners, including the Drug Foundation. When a new drug of concern is identified, High Alert pushes out warnings to their networks and the media.

8. Since its launch last year, High Alert has published nine notifications about substances of concern circulating in New Zealand, and numerous articles on how to be safer when using drugs.

9. High Alert collates information from a full range of sources, including emergency departments, customs, police and NGOs. This has improved the quality of the information that members of the public have access to and has significantly raised the profile of notifications around harmful substances.

Legalisation of drug checking – a successful first few months

Demand has increased significantly due to the change in legal status

10. Your Government's announcement of new legislation to legalise drug checking was a great step forward for harm reduction. Thank you for moving so swiftly to change the legislation. We were pleased to see such wide public support and so little opposition to this initiative. Legal drug checking is likely to save many lives.

11. The Drug Foundation partners with KnowYourStuffNZ to provide this service. Since the change in legal status we have held a number of clinics together with our partners, and have run orientation events at Otago, Lincoln, Canterbury and Victoria Universities.

12. We have noticed attendance at these events increase significantly from previous years. At our Auckland clinic, there was a two-hour wait time and about 30 people needed to be turned away because there was not time to check their drugs before the premises closed. Similarly, KnowYourStuffNZ was invited to attend more festivals over the summer than they have capacity (or equipment) to cover.

13. People feel far more confident to come forward to test their substances now that they know they do not face a legal risk. We consider this to be a very successful start.

Legal drug checking is already paying dividend in terms of harm reduction

14. Figures released by KnowYourStuffNZ in January showed the vast majority of people who attended drug checking services over the summer chose not to take the harmful cathinone eutylone when testing showed that it was not MDMA – the substance many thought they had purchased.

15. Around 75% with samples of eutylone said they wouldn't take the substance, and a further 15% said they weren't sure whether they would take it. Members of the public also let KnowYourStuffNZ know they had independently decided not to take a substance after reading generic advice provided by High Alert and partner organisations.

The next step is to make the service more available

16. Drug checking is an essential component of harm reduction. Combined with the High Alert early warning system, New Zealand is now in a significantly better place to respond to any future crisis. The next step for drug checking will be to upscale the service so anyone who needs to can access it - not just at festivals and events.

We recommend:

a) Provide seed funding urgently to enable KnowYourStuffNZ to hire someone full-time to train new volunteers. This would ensure we can meet current demand and be ready for the next festival season.

b) Fund a comprehensive roll-out of the service. We'd like to see the service available across the country for anyone who needs it, and have been working with the Ministry to develop a model for how this could work.

c) Currently, every person who attends drug checking has a personalised harm reduction conversation. Sometimes this is the first time they have spoken to someone honestly about drugs and this helps them to make a fully informed decision. We recommend the new legislation locks in a requirement for these conversations to happen so that the service continues to be an effective harm reduction initiative.

PART TWO – a changing international context, and a new approach in the United States of America

18. Over the past few years, the world has not been standing still in the way countries treat drug use. Efforts to move towards a health approach in New Zealand are not radical in this context, but part of an accelerating international movement towards change.

19. We provide an overview of key recent international developments below.

Changing context in the United States

Federal moves to adopt a harm reduction approach and decriminalise cannabis

20. The new regime in the United States has declared a change in direction away from a punitive and towards a health-based approach. This is significant, as the country that first brought us the war on drugs, and that has been so wedded to this approach for decades, is now turning away from it.

21. The United States' Office of the National Drug Control Policy has recently declared their five policy priorities[2]. These show a fundamental shift towards a health and social focus:

    i. The Workforce: Advancing recovery-ready workplaces and expanding the addiction workforce.

    ii. Racial Equity: Confronting racial equity issues related to drug policy.

    iii. Prevention: Supporting evidence-based prevention efforts, related to both supply and demand reduction.

    iv. Harm Reduction: Enhancing evidence-based harm reduction efforts.

    v. Treatment: Expanding access to evidence-based treatment, including by lifting burdensome restrictions on medications for opioid use disorder.

22. To our knowledge, this is the first time that racial equity and harm reduction have made it to the United States drug policy.

23. Backing up this shift in policy direction, the United States House recently passed the **Marijuana Opportunity Reinvestment and Expungement (MORE) Act**. If the Bill progresses, cannabis would be descheduled from the Controlled Substances Act and decriminalised at the federal level.

[2] According to an internal email from the ONDCP Acting Director on 4 February, reproduced here: https://www.aaap.org/announcing-president-bidens-new-team-and-priorities-at-ondcp/

State-level developments, including decriminalisation of all drugs in Oregon

24. Alongside federal-level changes, individual states continue to push ahead with reform.
25. This year, **Oregon** became the first state to decriminalise possession all drugs, including heroin, methamphetamine and LSD. Those found in possession of small amounts of drugs now face a small fine or a health assessment that could lead to addiction counselling.
26. At the latest United States election, cannabis became legal for adult use in four additional states, bringing the total number of states with legal cannabis to fourteen. Another sixteen states have decriminalised its use.

Highlights from other countries moving towards a health-based approach

27. The shift towards treating drug use as a health and social issue is gathering pace as this becomes internationally recognised as best practise. Some recent highlights are listed below.
28. **In Australia, ACT** has removed most criminal penalties from the statute for the use and possession of cannabis, and for growing a small number of plants at home[3].
29. **New South Wales** is currently in Cabinet discussions about whether to introduce a decriminalisation model for all drugs that is very similar to that proposed by our Law Commission in its 2011 report. A person caught with drugs would get a warning on the first offence in a given year, a fine on the subsequent two offences and a conviction only on a fourth offence.
30. **In Mexico**, the Supreme Court declared the prohibition on personal use and cultivation of cannabis to be unconstitutional in 2018. The lower house of Congress approved a bill to decriminalise cannabis just this month.
31. **In Norway**, a government bill put before Parliament in February proposes that the use and possession of small quantities of drugs for personal use would no longer be punishable as a criminal offence. People caught with drugs will be referred to a mandatory meeting with a municipal counselling service (as in Portugal).
32. **In Malta**, the Prime Minister announced in February that cannabis possession and possibly also cultivation will be decriminalised. Cabinet is currently discussing a White Paper for consultation.

[3] Note that the ACT government refers to this as decriminalisation rather than legalisation. Selling cannabis remains illegal, as do other offences such as smoking in front of a young person, or in a public place.

33. **In Canada**, as you know, cannabis sales have been regulated since October 2018. Faced with a growing opioid crisis, Canada now proposes to develop a Bill that would reduce the criminalisation of all drug use. Police officers would be instructed only to prosecute for use or possession where it is not appropriate to deal with an individual using a warning or a referral to alternative measures.

Impact of drug law changes on young people appears positive

34. How law reform may affect young people is a concern for politicians weighing up the options. The good news is law reform appears to improve health outcomes for young people, especially if done with their needs in mind.

Cannabis legalisation

35. In Canada, cannabis was legalised with strict age limits. A year after legalisation, government statistics showed past-three-month use rates among 15- to 17-year-olds had declined from 19.8% to 10.4%. Rates of use for 15-24 year-olds remained constant.

36. In the United States, where regulatory models are less public-health focused, the outcome for school age students is similar. A meta-analysis of 1.4 million young people[4] found in states that had legalised, young people were 8% less likely to use cannabis than before, and 9% less likely to use frequently.

Decriminalisation of all drugs

37. In Portugal, use of all drugs was decriminalised in 2001 at the peak of a heroin crisis and the country invested heavily in prevention, treatment and harm reduction. The changes led to a radical drop in HIV and other needle-borne illnesses, and a reduction in drug-related criminality.

38. Drug use among adolescents decreased for several years following decriminalisation, before increasing ten years after legalisation back to 2003 levels[5]. This trend tallies with a significant body of evidence from around the world showing no clear relationship between the punitiveness of a country's drug laws and its rates of drug use. Instead, drug use tends to rise and fall in line with broader cultural, social or economic trends.

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[4] "Association of Marijuana Laws with Teen Marijuana Use. New Estimates from the Youth Risk Behavior Surveys". Anderson et al, Jama Pediatrics, 2019
https://jamanetwork.com/journals/jamapediatrics/fullarticle/2737637

[5] Multiple references are available for this statistic at https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight

PART THREE – Taking a health-based approach to drugs: health interventions

39. It is important that New Zealanders are able to access a full range of evidence-based support options for drug and alcohol use at the time they need them. Unfortunately, this vision is far from the current reality. People face long waiting lists and struggle to access the support they need.

We need to intervene earlier

40. As the Mental Health and Addiction Inquiry report, He Ara Oranga, recommends, we need to focus more on healthy approaches to drugs and alcohol for the whole population, and provide support options well before an individual starts to experience serious problems. This is more effective and more compassionate – not to mention cheaper - than waiting to be the ambulance at the bottom of the cliff.

41. 1.2 million New Zealanders are estimated to be at moderate to high risk of problematic substance use, according to the New Zealand Health Survey, yet nearly half of those will experience no clear symptoms to indicate they may be at risk. When we start the conversation when people are struggling, we miss most of the people we are trying to reach.

42. Of the 8.9% – or roughly 100,000 people – who experience severe symptoms, only around half receive alcohol or other drug support each year[6], meaning that even for people who are struggling, our services fall well short of what is needed.

We need a focus on behaviour change

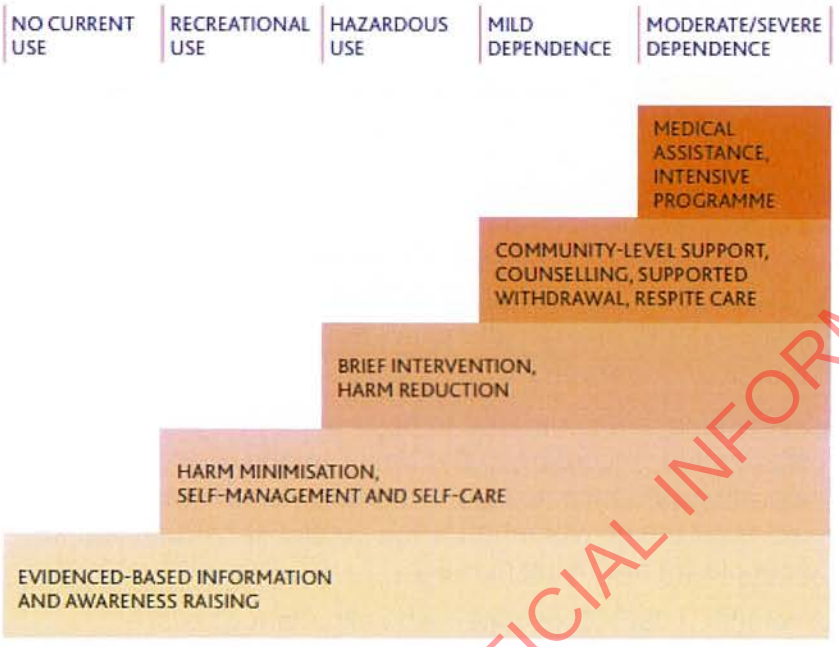
43. The Drug Foundation is the only organisation working to develop health and policy approaches to prevent harm for the million people who are at risk of problematic substance use but experiencing mild-moderate (or no) symptoms. More investment is needed to reach all these users.

44. At the moment, stigma impacts people's ability to be honest about their drug use and access help earlier. Much like HIV-AIDs and mental health issues, we need to address stigma to empower New Zealanders to act, seek help, and discuss problematic drug use with loved ones.

[6] Ministry of Health. (2020). Mental Health Data Explorer 2016/17: New Zealand Health Survey [data file]. Retrieved from https://minhealthnz. shinyapps.io/nz-health-survey-2016- 17-mental-health-explorer/

We can make a real impact by targeting all levels of use

45. He Ara Oranga recommended increasing the range of mental health and addiction services to target people at all levels of need. To be most effective, we need targeted approaches for each group shown in the diagram below, from those who don't use drugs at all to those who are severely dependent.



Source: National Committee for Addiction Treatment (NCAT), Shaping the Sector.[40]

Increased funding has been welcome, but significant challenges continue

46. The funding increase allocated in 2019's Budget has ensured some of the existing services that were in danger of collapse are now more sustainable. The funding increase also made it possible to scale up new approaches to treatment that had been piloted within some well-established services and primary care providers. This includes a number of new beds in addiction treatment facilities, managed withdrawal services, and peer support.

47. Despite these welcome investments, there are still large holes in treatment provision across the country, and extremely long waiting lists in some areas. Many service providers have yet to see any improvements in funding. People who seek treatment do not always get it. This can mean a window of opportunity is lost to support that person, sometimes forever.

48. Covid-19 has added a new urgency to these existing issues, putting stress on existing services as people deal with ongoing job and housing insecurity and mental health challenges caused by the pandemic.

49. In addition, most current services are focused on helping people in crisis. We need to ensure that new services are developed to support the million people at risk of experiencing problems from alcohol and other drugs who are not currently in crisis. This means ensuring funding and innovation is ring-fenced and supported for this group of people.

We recommend:

a) An immediate increase in funding for services, so they can respond to challenges brought by Covid-19.

b) Funding approaches that prevent and reduce harm across the whole spectrum of use, not just for people experiencing long-term harms from addiction. For example by:

- Setting up a dedicated and centralised innovation fund to develop approaches for the million people at risk of experiencing problems from alcohol and other drugs who are not currently in crisis.
- Developing approaches for people who are not currently accessing addiction services by training support organisations in appropriate mutual-aid models[7].
- Developing and rolling out regular 'check ups' for people to identify if their substance use is causing problems and receive personalised advice online and in primary and community care settings such as GP practices and pharmacies.

c) Funding a behaviour change campaign to destigmatise accessing support for drug issues. This would mobilise people to have conversations with loved ones about their drug use, encourage them to access harm reduction services such as drug checking, and empower people to ask for help when they need it. Good examples of similar campaigns in the past include Like Minds, Like Mine, and the National Depression Initiative.

[7] 'Mutual-aid' models support people to help others in a similar situation, and do not require an 'expert' or health professional to lead them. The NZ Drug Foundation has shared a proposal with the Ministry of Health for how such a model could be resourced and successfully implemented.

Increasing the availability of Naloxone to prevent deaths from a future opioid crisis

50. Naloxone saves lives by reversing an overdose from opioid poisoning, when given quickly. It is widely distributed in North America so that people have the best chance of survival from overdose.
51. Naloxone is technically available in New Zealand, but in practice people who need it cannot get it and do not know how to use it.
52. Several deaths have occurred overseas recently when people bought what they thought was MDMA and inadvertently took fentanyl –a potent opioid. We urgently need to prepare our public health infrastructure in case that situation occurs in New Zealand.
53. Being prepared to save lives means providing training, ensuring products are affordable, developing distribution pathways, and ensuring first responders (police, paramedics) have naloxone and are trained to use it.

We recommend

54. Reclassifying Naloxone so that it does not require a prescription to access, and subsidising products.
55. Providing funding for training and distribution to ensure frontline health professionals have it and know how to use it.

PART FOUR – Taking a health-based approach to drugs – law change

56. We all want a happier, healthier, more equal New Zealand. Unfortunately, New Zealand's current drug law stands in the way. The Misuse of Drugs Act 1975 (MoDA) criminalises those who struggle with their drug use rather than supporting them.
57. Every year, thousands more New Zealanders are left with a conviction that impacts on mental health, livelihoods, relationships, travel, housing and education. The assumption made in our 46-year-old legislation is that legal sanctions will be a deterrent to use – but the evidence does not support this.
58. Convicting people does nothing to deter use, and because our policy is so focused on that approach, we are able to achieve very little in terms of reducing drug harm in the country. Instead, legal penalties compound harms for the people who are most impacted by drug harm.
59. Recent changes to the Misuse of Drugs Act were very welcome but haven't had the impact hoped for in dramatically reducing the number of convictions for low-level drug offences. We outline some solutions to this below.
60. We also briefly cover some specific options for cannabis here. Despite a disappointing result in the referendum last year, we believe the Government has a strong mandate for some form of law reform on cannabis - we explain our reasoning below.

The MoDA review has led to improvements but changes have been slower than hoped

61. As you know, a new amendment to MoDA, passed in August 2019, means Police may only prosecute for possession and use of drugs if it is required in the public interest. They must determine whether a health-centred or therapeutic approach would be more beneficial to the public interest than a prosecution.
62. The amendment was introduced as a stop-gap fix of MoDA in response to the synthetics crisis, and it sent a clear signal that your Government intends to treat drug use as a health and social issue. Thank you for your part in that.
63. If the law change was working as intended, we would expect to see court actions decrease, and non-court actions, including warnings, increase. The number of proceedings brought overall should also fall or remain the same.
64. Early indications show that court actions for low-level offences went down slightly in the 10 months after the law change compared to the same ten-month period in the previous year, from 1247 in 2018/19, to 1096 the

following year[8]. While this is positive, it does not reflect the level of reduction that was anticipated by the law change.

65. It is concerning that the total number of proceedings brought for low-level drug offences appears to be going up (sometimes called 'net-widening'). In other words, we appear to be seeing more proceedings in total, even though fewer of those result in a court action.

66. It's too early to calculate the full impact of the law change. Arrests fluctuate significantly according to the time of year, and Covid lockdowns had a big impact on policing during part of that ten-month period. However, we can say that the impact has been significantly less than expected or hoped.

The only real solution is to overhaul the Misuse of Drugs Act

67. While it may be possible to make a series of incremental changes to the discretion clause to gradually reduce the number of convictions for low–level offences, we feel strongly that taking this approach would be unsatisfactory for two key reasons:

    a) Firstly, this approach would keep possession offences firmly tied up within a criminal justice framework. This contradicts the Government position that drug use should be treated as a health and social issue. No matter how effective any changes to the law, some people will continue to be prosecuted for possession and use offences. Our focus as a country will continue to be punitive.

    b) Secondly, further tweaks to MoDA will do not address the long list of issues with the Misuse of Drugs Act that have built up over the 46 years of its existence. It is a piecemeal, messy, inconsistent, and harmful Act.

68. Overhauling the Misuse of Drugs Act would bring us into line with international best practice and put into effect recommendations from the Mental Health and Addiction Inquiry, the Safe and Effective Justice Advisory Group, the conclusions of the Law Commission's 2011 legislative review, and the current National Drug Policy. It would also be the most effective way to support the wellbeing of all our communities.

[8] National Drug Intelligence Bureau (2020). Health referrals and drug use/possession charges [data file]. Obtained 10 August 2020 by Derek Cheng under the Official Information Act 1982

With an overhaul of MoDA we could implement a suite of urgently needed changes

69. The Misuse of Drugs Act needs to be replaced with a modern, fit-for-purpose drug law that treats drug use and possession as a health and social issue. In replacing the MoDA 1975 we could achieve the following.

Remove discrimination against Māori

70. Our current law leaves discretion in the hands of Police as to whether to prosecute for drug possession, resulting in worse outcomes for Māori. Removing criminal penalties for drug use entirely would lead to better outcomes.

Reclassify scheduled drugs to ensure consistency and fairness

71. Drugs are supposed to be scheduled in accordance with the level of danger they pose to the person using them, but the classification system is full of inconsistencies and no longer accords with what we know about the harms caused by different drugs – including alcohol and tobacco. As scientific knowledge on drugs has progressed, it's time to review the drugs under the different schedules.
72. We understand the Police are keen to reschedule MDMA for example– this is one of many substances that needs re-examining.

Create a new Class D

73. A review should include a consideration of whether the schedules themselves continue to be fit for purpose. For example, a Class D could be included for lower harm substances that should be regulated. A new Class D could replace the non-functioning Psychoactive Substances Act.

Reassess levels at which possession of drugs is presumed to be for the purposes of supply – and switch the burden of proof

74. Levels at which a person found with a drug is presumed to be in possession for the purposes of supply are currently set low in MoDA. Supply charges carry a greater penalty than possession alone. This means that people who are addicted to a substance or use heavily for other reasons can receive a conviction for supply, resulting in long periods of imprisonment.
75. In addition, the burden of proof currently lies with the person to prove they were not supplying drugs to others – an unusual situation in our legal system. The Law Commission in its 2011 report proposed to remove the automatic

'presumption of supply' thresholds and replace them instead with a category of 'aggravated possession'.

76. Aggravated possession would carry higher penalties than simple possession, but these would not be as high as the penalties for dealing. If a person could show they were a heavy user and the drugs were for their own use, this would reduce the sentence. This would be a much fairer system.

Ensure that approaches intended to reduce drug harm can be legally undertaken

77. An example would be drug consumption spaces such as those available in Australia and Canada, which help to reduce overdose and death.

Review the penalty regime for drug offences to reflect that many of those who deal, do so to support their own use

78. Excessively long sentences - up to life in prison for supply of methamphetamine - do nothing to deter offending, and are not proportional to sentences handed down for other crimes. Therapeutic pathways for those who need them should be included in any penalty regime.

Remove criminal penalties for use or possession of a drug utensil

79. As noted above, the Ministry of Health was poised to do this several years ago, with broad political support, but was delayed.

Create consistency between the Psychoactive Substances Act and the Misuse of Drugs Act

80. We currently have two parallel regimes, neither of which achieve what they set out to do. One single Act could regulate low-harm substances for sale while continuing to provide sanctions for trafficking more harmful drugs.

If a rewrite of MoDA is not an option currently, we propose prioritising three key changes

81. While a full overhaul of MoDA would be our preference, three key changes could make a significant difference in the interim. These are:

    a) Removing the use and possession of drug utensils as a crime. This should have broad political support as it was initially proposed by a National government.

b) Introducing a new Class D to MoDA for substances that are lower harm and would be regulated under the Psychoactive Substances Act if that Act were working at it should - and reclassify all substances according to scientific evidence.

c) Improving the existing discretion clause – for example by further clarifying when a prosecution might or might not be in the public interest.

We recommend:

a) Replace the Misuse of Drugs Act with a new law that treats drug use and possession as a health issue. This will ensure that:

- Discretion is no longer exercised to Māori disadvantage, because no one ever receives a criminal conviction for use of drugs.
- Those who need treatment are able to access it.
- Programmes to reduce drug harm can be legally undertaken.
- Drugs are classified consistently according to their risk to the user, with penalties that are proportional to other offences.

b) If this is not feasible, at least ensure that:

- drug utensil offences are removed from the Act
- the classification system is reviewed and a new Class D added
- the existing discretion clause is improved to ensure better clarity for Police as to when they are required to prosecute possession offences, and when not.

A change to cannabis law would have overwhelming public support

82. Alongside wider law reform, we believe the Government has a strong mandate to reform cannabis law to benefit young people, Māori and medicinal cannabis patients.

83. In a UMR survey released by The Helen Clark Foundation on 8 March, 69% of voters wanted cannabis to be decriminalised (20%) or legalised (49%). Only 30% of respondents thought our cannabis laws should stay the same or get tougher.

84. The survey shows that while slightly fewer than 50% of New Zealanders voted for the very specific regulatory model proposed at the referendum, a further 20% would like to see change to our laws of some kind.

85. This opens the door for the Government to propose a model that would remove criminal penalties for using or growing small quantities of cannabis, while not allowing cannabis to be sold in shops.

A potential model of decriminalisation specifically for cannabis

86. We propose drafting a Bill that is similar to cannabis law in ACT, Australia, but with key changes. In ACT, criminal penalties have been removed for adults who use or grow small quantities of cannabis.

87. In our proposed model, use or possession of small quantities of cannabis would no longer carry any possibility of criminal penalty, and individuals would be allowed to grow 2 plants at home, or more with a medical certificate.

88. Because cannabis use would no longer carry criminal penalties, we could avoid leaving the decision about whether to convict to the discretion of the Police. The exercise of discretion unfortunately continues to lead to unfair outcomes for young people and Māori, and uneven treatment in different areas of the country.

We recommend:

a) Consider introducing a Government Bill to legalise / decriminalise the use and cultivation of small quantities of cannabis - alongside wider law reform to cover all drugs.

PART FIVE - Medicinal cannabis

89. Thank you for extending the end date of the transitional period during which medicinal cannabis products must be assessed as meeting quality standards. This extension was gratefully received by the sector - particularly by patients who had been extremely worried that they would no longer be able to access their medicines.

90. The extension gives us time to make some tweaks to the existing model to improve access. While we are keen to see what the new model can do once it is up and running, there are some issues that could be addressed immediately.

Access to legal cannabis remains extremely difficult

91. In 2017, the Government introduced legislation to develop a medicinal cannabis industry in New Zealand and make products more accessible. Regulations to support the Act came into force on 1 April 2020.

92. However, products remain inaccessible by the vast majority of New Zealanders who need them. The cost is excessive because products are not subsidised. Despite this, people trying to pay for products with the help of ACC or WINZ are in most cases turned away.

93. Although cannabis-based medicines can now be prescribed by a doctor, many won't prescribe due to a lack of training and understanding of prescribing protocols.

94. Therefore, patients suffering severe and debilitating conditions continue to use illegally-sourced products and live in fear of the law. Illegally grown plants continue to be destroyed, and medicine confiscated.

95. It should become easier to produce medicines here, and to import them - but so far no new products have been approved. Those that remain available are expensive and inaccessible for most people. We expect this to improve over time but it is still not clear the extent to which prices will fall, and how many products will become available.

Some patients are unwilling to use legal products

96. In addition, a core of patients are unwilling to use pharmaceutically produced cannabis products, even if this were easier to do. They argue that they can produce a more effective product themselves, from tried and tested strains that they already know help their condition.

97. This does not fit neatly within a western pharmaceutical medical model, and the medical establishment has different views on the extent to which it is a good thing for patients to be in charge of their own treatment in this way.

98. Regardless of your view on this, it is clear that criminalising people who are consuming a low-harm substance to reduce pain, anxiety or other symptoms is neither effective nor compassionate. It is also not generally supported by the NZ public[9].

A few changes to the model would make a huge difference

99. One just solution would be to provide a statutory defence from prosecution for those who grow plants for their own or another's medicinal use, with a medical certificate. If thought necessary, this could come with a five-year sunset clause to tide patients over until more products are legally available.

100. Cannabidiol (CBD) products, which are prescription medicines, should be reclassified to match other jurisdictions where they are treated as pharmacy-only products, or even dietary supplements.

101. Other essential measures include removing pricing barriers, for example by subsidising products through a special fund, or changing the rules to allow Pharmac to subsidise them.

102. Finally, our quality standards are higher than they need to be to ensure safety. Some of our standards are higher than they are within the EU, making it hard to import products from potentially important partner countries.

We recommend:

a) Align our product standards more closely with our lead export and import destinations, to bring more products to market quickly. For example, consider deferring the shelf-life testing requirements for new products until after they have been brought to market.

b) Subsidise products to remove equity barriers created by high prices.

c) Provide a statutory defence from prosecution for those who grow plants for their or another's medicinal use.

d) Fund education and prescribing information for doctors.

e) Down-classify CBD products from prescription medicines, to reduce prices and make products more available.

[9] In a 2018 survey, 87% of the public said cannabis use should be legal or decriminalised for those using it for pain relief.

PART SIX – Improving our data for better health outcomes

103. New Zealand collects comprehensive data on drug crime, but our health statistics are much less robust. With some exceptions, we don't consistently track New Zealanders' regular or harmful drug use, or how their use impacts their lives.

104. While we measure yearly prevalence rates for most drugs, we don't regularly measure the extent of harmful use, other than for alcohol and tobacco. This means, for example, that we don't know how many people are struggling with methamphetamine use or who they are and where they live.

105. Good data can help us develop the best interventions as well as help us monitor the impact of changes in drug policy.

We recommend:

a) Establish a comprehensive package of drug indicators, with a dedicated survey for tobacco, alcohol, cannabis and other drugs.

b) Create specific resources for tracking drug use and harms for vulnerable groups, such as people who are homeless or communities that are struggling with methamphetamine use.

c) As an interim measure, fund a repeat of the 2007/08 Drug Use in New Zealand survey to get a better snapshot of what is happening.

FINAL RECOMMENDATIONS

Drug checking

a) Provide seed funding urgently to enable KnowYourStuffNZ to hire someone full-time to train new volunteers.

b) Fund a comprehensive roll-out to ensure the service is available across the country for anyone who needs it.

c) Ensure the new legislation locks in a requirement for service providers to ensure harm reduction conversations take place whenever drugs are checked.

Prevention and treatment

a) Increase funding for treatment services to respond to challenges brought by Covid-19.

b) Fund approaches that prevent and reduce harm across the whole spectrum of use, not just for people experiencing long-term harms from addiction.

c) Fund a behaviour change campaign to destigmatise accessing support for drug issues.

d) Reclassify Naloxone so that it does not require a prescription, and subsidise products. Provide funding for training and distribution to ensure frontline health professionals have it and know how to use it.

Changes to drug law

a) Replace the Misuse of Drugs Act with a new law that treats drug use and possession as a health issue. This will ensure that:

- Discretion is no longer exercised to Māori disadvantage, because no one ever receives a criminal conviction for use of drugs.
- Those who need treatment are able to access it.
- Programmes to reduce drug harm can be legally undertaken.
- Drugs are classified consistently according to their risk to the user, with penalties that are proportional to other offences.

b) If this is not feasible, at least ensure that:

- Drug utensil offences are removed from the Act.
- The classification system is reviewed and a new Class D added.
- The existing discretion clause is improved to ensure better clarity for Police as to when they are required to prosecute possession offences, and when not.

c) Introduce a Government Bill to legalise / decriminalise the use and cultivation of small quantities of cannabis, alongside wider law reform.

Medicinal cannabis

a) Align our product standards more closely with our lead export and import destinations, to bring more products to market quickly.

b) Subsidise products to remove equity barriers created by high prices.

c) Provide a statutory defence from prosecution for those who grow plants for their or another's medicinal use.

d) Fund education and prescribing information for doctors.

e) Down-classify CBD products from prescription medicines, to reduce prices and make products more available.

Improving our data

a) Establish a comprehensive package of drug indicators, with a dedicated survey for tobacco, alcohol, cannabis and other drugs.

b) Create specific resources for tracking drug use and harms for vulnerable groups, such as people who are homeless or communities that are struggling with methamphetamine use.

c) As an interim measure, fund a repeat of the 2007/08 Drug Use in New Zealand survey to get a better snapshot of what is happening.

Thank you for your time.