Minutes

35th Expert Advisory Committee on Drugs meeting

Date:	15 October 2019
Time:	9 am – 4 pm
Location:	Miramar Links Golf Club
Chair:	John Ashton
Attendees:	Committee - Paul Fitzmaurice, Carina Walters, Patrick O'Connor, Lynette Knox, Richard Jaine, Jamie Bamford, Greg Williams s 9(2)(g)(ii) Secretariat – Andrea Eng, Lucy Stiles, Cherish Low, Valerie Mills, Kayla Cook, Jared Solloway, Nadine Neale
Apologies:	Brendan Gage, Jaki Horn,

Item	Notes
1.	**Welcome, introductions and apologies** The Chair welcomed everyone to the meeting and introductions were given for all attendees. s 9(2)(g)(ii) Acting National Manager, attended on behalf of the National Drug Intelligence Bureau (NDIB) at the request of the Committee as discussed at the last meeting. Apologies were received for Brendan Gage. s 9(2)(g)(ii) Principal Analyst, Ministry of Justice attended on behalf of Brendan Gage.
2.	**Conflicts of interest** There were no conflicts of interest to declare.
3.	**Previous minutes and action points** The minutes from the previous meeting held on 16 October 2018 were confirmed out of session. Action points: Secretariat advised that all of the action points from the previous meeting had been completed.
4.	**Secretariat update** <u>Update on Misuse of Drugs Amendment Act 2019</u>

The Misuse of Drugs Amendment Act 2019 (the Amendment Act) came into effect in August 2019. The Amendment Act:

- scheduled AMB-FUBINACA and 5F-ADB as Class A controlled drugs. The presumption for supply amount recommended by the Committee was not accepted and therefore the default amount of 56g will apply.
- reintroduced Temporary Class Drug Orders (TCDO). TCDOs allow a substance to be controlled for up to two years. Once the order is in place the substance must then be considered by the Committee.
- affirmed the ability for the Police to use discretion when considering whether a health-centred or therapeutic approach would be more beneficial than prosecution for offences relating to possession and use of controlled drugs.

The Secretariat advised that setting a presumption for supply amount contravenes the New Zealand Bill of Rights Act 1990, which states that the accused is innocent until proven guilty. The Secretariat recommended that the Committee should still consider and provide recommendations on the level at and over which controlled drugs are presumed to be for supply, as this is a requirement under the Misuse of Drugs Act 1975 (MoDA). However, it was noted by the Secretariat that recommendations for the presumption for supply may not be agreed to by the Minister of Health (the Minister) or Cabinet.

The Committee reiterated their concern that the presumption for supply amount of 56 grams for AMB-FUBINCA and 5F-ADB in powdered form is too high.

The Secretariat advised that they worked with NDIB to develop the TCDO process that is now in place. No requests for TCDOs had been received by the Ministry of Health (the Ministry).

The Ministry is working alongside the Institute of Environmental Science and Research (ESR) to identify any controlled drug analogues of AMB-FUBINACA and 5F-ADB. Due to the large number of synthetic cannabinoids this work may take some time.

<u>Substances previously considered by the EACD</u>

The scheduling of substances was put on hold awaiting the passage of the Amendment Act.

The Secretariat produced a Health Report for the Minister that includes details of an abbreviated scheduling process, the Committee's recommendation to enable the scheduling of groups of substances, and the letter to the Minister from the Committee discussed at the 34th meeting. There was a discussion regarding the letter given the time that has passed since it was initially written.

The Committee raised concerns that almost no substances have been scheduled in the last five years, even though recommendations are being made. There is concern that not scheduling substances, such as the methamphetamine precursors, is causing issues for enforcement agencies. The Committee stressed the importance of having the appropriate controls over substances to ensure that enforcement agencies have appropriate powers.

The Secretariat advised that the outstanding substances were expected to be put forward to Cabinet by November 2019.

	s 9(2)(g)(ii) arrived at 9.40 am The Committee decided to include the letter to support the suggested abbreviated scheduling process. They indicated that the letter should say that the bureaucratic side of the process should be as expedient as possible. The Committee suggested the letter to the Minister contain details of prioritised substances including fentanyl analogues and precursors of methamphetamine. **Action:** Secretariat to work with the Chair to update the letter to the Minister.
5.	**Synthetic Cannabinoids** Five synthetic cannabinoids were considered for scheduling: CUMYL-4CN-BINACA, ADB-FUBINACA, ADB-CHMINICA, 5F-MDMB-PICA and NM-2201. The Committee commented that they are regularly reviewing synthetic cannabinoids which all appear to have a risk of harm. The Committee were advised that they could put forward a proposal to schedule a group of substances as well as making individual recommendations for CUMYL-4CN-BINACA, ADB-FUBINACA, ADB-CHMINICA, 5F-MDMB-PICA and NM-2201. The Secretariat advised that a description of the group of substances would need to be specific and may include reference to structure and pharmacological activates. Due to the broad varieties of structures of synthetic cannabinoids, the Committee suggested that pharmacological activity was a better way to group these substances, than by using structures. This is similar to what is used in the group classification of “cannabimimetics” in the Australian Poison Standard. Any group description included in MoDA would need careful consideration to ensure that substances are not unintentionally captured. The Committee were advised that these substances are currently either captured as Class C controlled drug analogues of either 5F-ADB or AMB-FUBINACA or under the Psychoactive Substances Act 2013. The Committee did not think that the controls under the analogue provision of MoDA or the Psychoactive Substances Act were sufficient, given the associated risk of harm. There were concerns raised that if a group entry was included it could limit the ability of future substances that may have therapeutic benefits. However, they decided this was only an issue for Class A substances as Class B and C substances can still be prescribed. **Outcome:** The Committee considered the five synthetic cannabinoids as posing a high risk of harm and are comparable with other synthetic cannabinoids previously considered. The Committee stressed the importance of being consistent with scheduling recommendations for similar substances. The Committee also proposed to include a recommendation for the scheduling of synthetic cannabinoids in a group, similar to that used in the Australian Poison Standard. **Motion:** It was moved by s 9(2)(g)(ii) that the five specified synthetic cannabinoids be scheduled as Class B1 controlled drugs under MoDA and a group classification for other cannabimimetics be scheduled as Class B1. The motion was seconded by s 9(2)(g)(ii). The Committee were all in favour.

Action: Secretariat to develop wording for a group classification of synthetic cannabinoids based on the Committees recommendation.

Presumption for supply.
The Committee also considered two options for setting a presumption for supply amount based on advice from the Ministry.

Option one: Status quo. No presumption for supply is set, meaning the default amount of 56 grams is applied.

Option two:
The substances listed in the first column are presumed to be for supply at and over the amount, level, or quantity listed in the second column.

CUMYL-4CN-BINACA, ADB-FUBINACA, ADB-CHMINICA, 5F-MDMB-PICA, NM-2201 (except when contained on plant material)	*250 milligrams, whether or not contained in a substance, preparation, or mixture*
Plant material containing CUMYL-4CN-BINACA, ADB- FUBINACA, ADB-CHMINICA, 5F-MDMB-PICA, NM-2201	*28 grams*

Outcome: The Committee considered the default amount of 56 grams to be too high for powdered forms of synthetic cannabinoids.

Motion: It was moved by s 9(2)(g)(ii) that option two be accepted for the presumption for supply. The motion was seconded by s 9(2)(g)(ii) The Committee were all in favour.

6. **Fentanyl analogues**

Three fentanyl analogues, recently considered by the ECDD, were considered for scheduling: p-Methoxy-butyrylfentanyl, p-Fluoro-butyrylfentanyl and orthofluorofentanyl. Subsequently, orthofluorofentanyl and p-Fluoro-butyrylfentanyl were scheduled under the UN Convention of Narcotic Substances 1961. These substances have not yet been seen in New Zealand. The Committee acknowledged that New Zealand has lower illicit opioid use than other countries. The Secretariat advised that orthofluorofentanyl is currently captured under MoDA as a Class B3 isomer of fentanyl. p-Methoxy-butyrylfentanyl, p-Fluoro-butyrylfentanyl are captured as Class C7 analogues of fentanyl.

The Committee discussed that these substances are similar to the fentanyl analogues they have previously recommended to be classified as Class A due to their risk of harm. Although the current substances have not been seen in New Zealand, they would likely cause significant harm to the public if they were to become available. Therefore, the Committee considered that the current classification of Class C7 is too low given the very high risk of harm posed by these substances. To be consistent with previous recommendations and the risk of harm Class A may be more appropriate.

There have not been any reports of these substances being present in New Zealand and therefore no evidence of harm locally.

The Committee discussed the differences between scheduling substances that have a therapeutic benefit versus those that do not. An objection was raised to the

	option of scheduling fentanyl analogues in a group classification as it may be a hindrance to access for medical use of new fentanyl analogues in the future. The Secretariat advised that the wording of any group classification would require the ability to remove substances from that classification if necessary. This is something that would be considered before group scheduling is done. Group scheduling would not occur without an ability to remove a substance from the classification. Due to the possibility of therapeutic uses of fentanyl analogues, the Committee decided that these substances should not be captured by a group entry at this stage, but that this may be considered in the future. **Outcome:** The Committee concluded that the three fentanyl analogues posed a very high risk of harm. This risk was considered to be comparable with other fentanyl analogues previously considered. The Committee decided not to recommend group scheduling of fentanyl analogues at this stage but to maybe look at it in the future. **Motion:** It was moved by s 9(2)(g)(ii) that p-Methoxy-butyrylfentanyl, p-Fluoro-butyrylfentanyl and orthofluorofentanyl be scheduled as Class A controlled drugs. The motion was seconded by s 9(2)(g)(ii). The Committee were all in favour. *<u>Group scheduling discussion</u>* The Committee discussed the scheduling of groups of substances in other jurisdictions including Canada and Australia. There are three ways these analogues of fentanyl could be scheduled under MoDA, resulting in them either being captured as Class C, Class C7 or Class B3. The Committee noted that it would be better if all fentanyl analogues were scheduled at the same level of control, like the controls used by Canada. The Committee requested that the Secretariat consider how group scheduling is worded in the legislation of other jurisdictions. **Action:** Secretariat to investigate group scheduling approaches by other jurisdictions **Presumption for supply.** The Committee also considered two options for a presumption for supply amount presented in the paper based on advice from the Ministry. *Option one: Status Quo* *No presumption for supply amount is set for the specified fentanyl analogues. The default amount of 56 grams will apply.* *Option two: Half a gram* *Set a presumption for supply amount at half a gram or 25 flakes, tablets, capsules, or other drug forms, each containing some quantity of the drug.*
7.	**Break**
8.	**Presumption for supply for fentanyl analogues continued**

	The rationale for the proposed presumption for supply amount for fentanyl analogues was included in the technical documents. The Committee were satisfied with rationale behind the proposals. **Outcome:** The Committee agreed that option 2 was appropriate for p-Methoxy-butyrylfentanyl, p-Fluoro-butyrylfentanyl and orthofluorofentanyl based on the associated risk of harm posed by these substances. **Motion:** It was moved by s 9(2)(g)(ii) that option two be recommended as the presumption for supply p-Methoxy-butyrylfentanyl, p-Fluoro-butyrylfentanyl and orthofluorofentanyl. The motion was seconded by s 9(2)(g)(ii). The Committee were all in favour.
9.	**Pregabalin** Pregabalin was considered because at the previous Committee meeting (16 October 2018) a member suggested that the Committee monitor pregabalin as it has recently become available/funded in New Zealand. International evidence suggests there is a risk of harm as it has been associated with misuse and a number of deaths. The Secretariat advised that since the papers for this substance were provided, the Medical Classification Committee has indicated their support for pregabalin to be considered by the Committee for possible scheduling. The Committee discussed the risk of diversion of pregabalin from its intended therapeutic purpose. Committee members commented that there is evidence of misuse in prisons but it has not been seen in treatment services in New Zealand. There is however, concern internationally and it has been scheduled in a number of countries. Since pregabilin has become funded by PHARMAC there has been a significant increase in the number of prescriptions. The committee discussed the difference between gabapentin and pregabalin and considered the therapeutic purpose of pregabalin The Committee considered the risk of harm compared to other medicines controlled under MoDA. They identified that the risk does not appear to be as great as other substances and that the current controls under the Medicines Act are appropriate. The Committee discussed if scheduling the substance would provide a warning to prescribers of the risks related to pregabalin. However, it was decided that scheduling may be too severe to control prescribing and increased prescriber education is likely to be more beneficial at this stage. **Outcome:** The Committee considered that the risk of harm was not significant enough to warrant scheduling under MoDA and that its current classification under the Medicines Act is sufficient at this stage. Pregabalin will be reconsidered in future if there is new evidence. **Motion:** It was moved by s 9(2)(g)(ii) that the status of pregabalin remain as a prescription only medicine under the Medicines Act and that information be provided to prescribers. The motion was seconded by s 9(2)(g)(ii). The Committee were all in favour.

	Action: Provide information to prescribers indicating the risk of harm for pregabalin.
10.	**Desmetramadol** Desmetramadol was considered as it has been implicated in a number of deaths internationally resulting in it being scheduled in a number of countries. The committee discussed the potency of desmetramadol compared to other opioids. While it is more potent than tramadol it is less potent that morphine. Suggesting that the risk is lower than morphine. The committee drew attention to a current scientific research paper investigating the therapeutic potential of desmetramadol. If this line of research is successful, in the future desmetramadol may be classified as a medicine. The Committee did not want to place restrictions on the substance at this stage if this may limit the ability of this substance to be used as a medicine. The Secretariat advised that in New Zealand desmetramadol is likely to be captured by the Psychoactive Substances Act. If tramadol is scheduled under MoDA then desmetramadol would likely be captured as a controlled drug analogue. The committee agreed that the current controls under the Psychoactive Substances Act are likely to be adequate based on the evidence available and further scheduling under MoDA is unnecessary at this stage. The Committee also considered if desmetramadol should be scheduled to be consistent with tramadol as it is more potent. The Committee decided that while desmetramdol was maybe more harmful than tramadol the risk was lower as it is not yet present in New Zealand. The Committee requested clarification on if a substance can have a TCDO placed on it if the substance has been considered by the Committee, but not recommended for scheduling. The Secretariat indicated that they would need to get a legal opinion on this. **Action:** Secretariat to seek legal advice on whether a substance that is considered by the Committee, but not recommended for scheduling, can have a TCDO placed on it. **Outcome:** The Committee did not consider the evidence of the risk of the harm to be significant enough to warrant scheduling under MoDA at this stage. **Motion:** It was moved by s 9(2)(g)(ii) that the scheduling of desmetramadol remain at the status quo under the Psychoactive Substances Act. The motion was seconded by s 9(2)(g)(ii) The Committee were all in favour.
11.	**Any other business** The Secretariat continued the update from earlier in the meeting <u>International Narcotics Control Board (INCB) visit</u> The INCB visited the Ministry at the start of September as part of a scheduled trip to New Zealand. It was the first visit since 1996. Of interest to INCB were the

	medicinal cannabis scheme and the upcoming referendum for the legalisation of cannabis. The delegation asked specifically about the classification of norephedrine. It was considered by the Committee in 2009 and recommended that it be scheduled in both Schedule 2 (Class B) and Schedule 4 of MoDA. However, at the same time, the Law Commission released a review that indicated that scheduling in two classes is not appropriate and therefore the scheduling was not progressed. This substance will be put forward to the Committee again at a future meeting <u>Fentanyl action group.</u> The main focus of the group is to protect front-line responders following reports in the USA. This involved improving access to Naloxone to first responders. The group has not meet recently. The committee discussed that reports from the USA say that Naloxone appears to be less effective for treating overdoses of fentanyl analogues due to the extreme potency. In New Zealand, naloxone was reclassified as general sale as long it is in approved packaging. Currently no products are available for general sale as no one has applied for approval. <u>Substances scheduled under UN conventions</u> The Committee asked how many substances have been scheduled under the UN Conventions that have not been considered by the Committee. The Secretariat advised that besides a few precursors, all other substances have been considered. The Committee was also advised that if substances haven't been scheduled under MoDA, they may be appropriately controlled in New Zealand under other legislation, such as the Medicines Act. The Secretariat is undertaking work to analyse NZ legislation against UN requirements to see how it complies. The Committee asked, in relation to how precursors are controlled in New Zealand legislation, what the Committee's role in the regulation of precursors. The Secretariat advised that as they are covered by schedule 4 of MoDA it is the Committee's role to make recommendations just like substances that are classified in the other schedules of MoDA. These substances are then scheduled under the same process as other substances. The Committee again stressed the importance of restricting the supply of precursors on limiting the supply of substances to the public.
	Future meetings The next meeting will be held in April 2019. **Action:** Committee to advise the Secretariat of availability for the end of April 2019 for the next meeting.

The meeting closed at 12.30 pm

Item	Action	Who	Completed
1.	Secretariat to work with Chair to draft updated letter to the Minister.	Secretariat and Chair	
2.	Secretariat to develop wording for a group classification of synthetic cannabinoids based on the Committees recommendation.	Secretariat	

3.	Secretariat to investigate group scheduling approaches by other jurisdictions	Secretariat	
4.	Provide information to prescribers indicating the risk of harm for pregabalin.	Secretariat	
5.	Secretariat to seek legal advice on whether a substance that is considered by the Committee, but not recommended for scheduling, can have a TCDO placed on it.	Secretariat	
6.	Committee to advise the Secretariat of availability for the end of April 2019 for the next meeting.	Committee	