

IN CONFIDENCE

CBC-19-MIN-0005



Cabinet Business Committee

Minute of Decision

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Misuse of Drugs Amendment Bill: Approval for Introduction

Portfolio Health

On 25 February 2019, the Cabinet Business Committee:

- 1 **noted** that the Misuse of Drugs Amendment Bill has a category 2 priority (must be passed in 2019) on the 2019 Legislation Programme;
- 2 **noted** that the Misuse of Drugs Amendment Bill:
 - 2.1 classifies AMB-FUBINACA and 5F-ADB as Class A drugs;
 - 2.2 specifies that when considering whether a prosecution for possession and use (for all drugs) is required in the public interest, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial;
 - 2.3 enables temporary drug class orders to be issued for emerging and potentially harmful substances;
- 3 **approved** the Misuse of Drugs Amendment Bill for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 4 **agreed** that the Misuse of Drugs Amendment Bill will be introduced on 7 March 2019;
- 5 **agreed** that the government propose that the Bill be:
 - 5.1 referred to the Health Committee for consideration;
 - 5.2 enacted in July 2019.

Vivien Meek
Committee Secretary

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Present:

Rt Hon Jacinda Ardern (Chair)
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni
Hon Dr David Clark
Hon David Parker
Hon Nanaia Mahuta
Hon Tracey Martin
Hon James Shaw

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet

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Minister of Health

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CAB-19-MIN-0056



Cabinet


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Report of the Cabinet Business Committee: Period Ended 1 March 2019

On 4 March 2019, Cabinet made the following decisions on the work of the Cabinet Business Committee for the period ended 1 March 2019:

Out of scope



CBC-19-MIN-0005	Misuse of Drugs Amendment Bill: Approval for Introduction	CONFIRMED
	Portfolio: Health	

Michael Webster
Secretary of the Cabinet

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Cabinet Business Committee

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Office of the Minister of Health
Chair, Cabinet Business Committee

Misuse of Drugs Amendment Bill: Approval for Introduction

Proposal

1. This paper proposes that the Misuse of Drugs Amendment Bill be approved for introduction to the House of Representatives.

Policy

2. The use of synthetic drugs is a major public health problem. Since June 2017, there has been a total of 50-55 deaths provisionally linked to the use of two dangerous synthetic drugs 5F-ADB, and AMB-FUBINACA. This requires:
 - 2.1 an appropriate public health response that focuses on prevention, harm reduction and early intervention
 - 2.2 enforcement powers and penalties that are focused on those who import, manufacture and supply dangerous synthetic drugs, and not the people who use the drugs themselves.
3. On 10 December 2018, Cabinet [CAB-18-MIN-0620 refers] agreed to amend the Misuse of Drugs Act 1975 (the Misuse of Drugs Act) to:
 - 3.1 classify AMB-FUBINACA and 5F-ADB as Class A drugs
 - 3.2 specify that Police should not prosecute for possession and use (for all drugs) where a therapeutic approach would be more beneficial or there is no public interest in proceeding with a prosecution
 - 3.3 enable temporary drug class orders to be issued for emerging and potentially harmful substances.

Classification of 5F-ADB and AMB-FUBINACA

4. The Bill classifies 5F-ADB and AMB-FUBINACA as Class A drugs under the Misuse of Drugs Act.
5. 5F-ADB and AMB-FUBINACA are not currently regulated under the Misuse of Drugs Act 1975, but they are controlled under the Psychoactive Substances Act 2013 when they are used for the primary purpose of inducing a psychoactive effect.
6. Scheduling 5F-ADB and AMB-FUBINACA under the Misuse of Drugs Act gives Police and Customs greater search and seizure powers thus increasing their ability to disrupt supply and reducing the availability of the drugs to people who use them. Offences and penalties for possessing and using these drugs are also greater for drugs under the Misuse of Drugs Act.

Police discretion

7. The Bill reaffirms the existing Police discretion and specifies that when considering whether a prosecution is required in the public interest for drug possession and use, consideration should be given to whether a therapeutic approach would be more beneficial. This discretion exists for all drug offences.
8. This amendment is consistent with the current policy and legislative approaches to high harm substances. It aligns with the Government's intent to treat drug use as a health issue and offers a straightforward operational framework for frontline Police.

Temporary class orders

9. The Bill enables temporary drug class orders to be made by the Minister of Health. A temporary drug class order will provide for the immediate classification of substances to be treated as Class C1 controlled drugs under the Act. This will allow for a quick response to a rapidly adapting synthetic drug market and ensure the continued disruption of the supply of new synthetic drugs.

Compliance

10. The Bill is consistent with:
 - 10.1 the principles of the Treaty of Waitangi
 - 10.2 the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 10.3 the principles and guidelines set out in the Privacy Act 1993
 - 10.4 relevant international standards and obligations, and
 - 10.5 the Legislation Guidelines, which are maintained by the Legislation Design and Advisory Committee (2018 edition).

Consultation

11. The following departments and agencies have been consulted on the policy proposals for the Misuse of Drugs Amendment Bill prior to the 5 December 2018 Cabinet Social Wellbeing Committee meeting: DPMC (Policy Advisory Group), PCO, NZ Police, Ministry of Justice, Customs, Treasury.
12. NZ First and the Green Party were consulted on the policy proposals for the Misuse of Drugs Amendment Bill prior to the 5 December 2018 Cabinet Social Wellbeing Committee meeting.
13. The Ministry of Justice, Customs, NZ Police and Crown Law have been consulted on the Misuse of Drugs Amendment Bill.

Binding on the Crown

14. The principal Act binds the Crown.

Creating new agencies or amending law relating to existing agencies

15. No new agencies are created by the Bill.

Allocation of decision-making powers

16. The Bill does not allocate any new decision-making powers.

Associated regulations

17. The Bill does not have any associated regulations.

Other instruments

18. The Bill includes a provision empowering the making of temporary drug class orders.

Definition of Minister/department

19. The Bill does not contain a definition of the Minister or department.

Commencement of legislation

20. The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

21. The Bill will be introduced on 4 March 2019.
22. The Bill should be referred to the Health Committee for consideration.

Proactive release

23. I intend to proactively release this paper in whole within 30 business days of the final decisions being taken by Cabinet.

Recommendations

24. The Minister of Health recommends that the Committee:
1. **note** that the Misuse of Drugs Amendment Bill is on the 2019 Legislation Programme.
 2. **note** that the Misuse of Drugs Amendment Bill:
 - 2.1 classifies AMB-FUBINACA and 5F-ADB as Class A drugs
 - 2.2 specifies that when considering whether a prosecution for possession and use (for all drugs) is required in the public interest, consideration should be given to whether a health-centred or therapeutic approach would be more beneficial

- 2.3 enables temporary drug class orders to be issued for emerging and potentially harmful substances.
3. **approve** the Misuse of Drugs Amendment Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives.
4. **agree** that the Misuse of Drugs Amendment Bill will be introduced on 4 March 2019.
5. **agree** that the Government propose that the Bill be:
 - 5.1 referred to the Health Committee for consideration, and
 - 5.2 enacted in July 2019.

Authorised for lodgement

Hon Dr David Clark

Minister of Health