



New South Wales

Medicinal Cannabis (Compassionate Access) Bill 2018

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to establish a registration scheme for medicinal users of cannabis and their carers, and
- (b) to enable regulations to be made establishing a scheme of authorities for cultivating cannabis plants, manufacturing cannabis and supplying cannabis for the use of registered medicinal users, and
- (c) to protect registered medicinal users and carers and those acting under authorities under the regulations from criminal liability.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out definitions for the purposes of the proposed Act. The definitions align with those in the *Drug Misuse and Trafficking Act 1985*.

Clause 4 defines *terminal or serious medical condition*. This definition is central to the scheme since, to be eligible to be registered as a medicinal user of cannabis, a person must have a terminal or serious medical condition. The term is defined as:

- (a) an illness or condition that is likely to result in death within a reasonably foreseeable period, or
- (b) a serious illness or condition that is likely to result, or to continue to result, in a significant reduction in the person's quality of life (whether from the symptoms of the illness or condition or from treatment for the symptoms of the illness or condition).

The clause lists a number of illnesses or conditions that will be taken to be terminal or serious medical conditions and allows further illnesses or conditions to be added by the regulations.

Part 2 Registration of medicinal users and carers

Clause 5 sets out the registration scheme for medicinal users of cannabis and their carers. It is contemplated that the regulations will set out requirements for a medical certificate certifying as to the terminal or serious medical condition suffered by an applicant for registration as a medicinal user and that the regulations may specify other requirements for registration. The regulations will also determine the duration of registration and any requirements for renewal of registration. The Health Secretary is required to give each registered person a certificate of registration including a recent photograph of the person.

Clause 6 empowers the Health Secretary to cancel registration of a person on application or in certain specified circumstances.

Clause 7 requires a registered person to produce the person's certificate of registration at the request of a public health authorised officer. If registration is cancelled, the former holder of a certificate of registration is required to return it to the Health Secretary.

Part 3 Access to cannabis for registered medicinal user

Clause 8 provides regulation-making power for a scheme of licences, permits or other authorities to authorise activities necessary for enabling a registered medicinal user to lawfully obtain cannabis. The activities include cultivating and harvesting cannabis plants, manufacturing or producing cannabis, storing cannabis and supplying cannabis.

Part 4 Protection from criminal liability

Clause 9 protects registered medicinal users and carers and those acting under authorities under the regulations from criminal liability.

Part 5 Offences

Clause 10 makes it an offence for cannabis to be administered to a registered medicinal user in a public place.

Clause 11 limits the amount of cannabis that may be possessed by a registered medicinal user or registered carer at any one time.

Part 6 Enforcement

Clause 12 provides for the proposed Act to be enforced by authorised officers under the *Public Health Act 2010* using the powers that they have under that Act.

Clause 13 enables the Health Secretary to order the forfeiture, destruction or other disposal of cannabis in circumstances where registration under the proposed Act is cancelled or an authority held under the regulations is suspended or cancelled.

Part 7 Miscellaneous

Clause 14 provides general regulation-making power.

Clause 15 requires the proposed Act to be reviewed after 3 years.

**Schedule 1 Amendment of Drug Misuse and Trafficking Act
1985 No 226**

**Schedule 2 Amendment of Poisons and Therapeutic Goods
Act 1966 No 31**

The Schedules make consequential amendments to protect registered medicinal users and registered carers and those acting under authorities under the regulations from criminal liability.



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Medicinal Cannabis (Compassionate Access) Bill 2018

No. , 2018

A Bill for

An Act to provide for the medicinal use of cannabis; to amend the *Drug Misuse and Trafficking Act 1985* and the *Poisons and Therapeutic Goods Act 1966*; and for other purposes.

The Legislature of New South Wales enacts:	1
Part 1 Preliminary	2
1 Name of Act	3
This Act is the <i>Medicinal Cannabis (Compassionate Access) Act 2018</i> .	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Definitions	7
(1) In this Act:	8
administer has the same meaning as in the <i>Drug Misuse and Trafficking Act 1985</i> .	9
cannabis means:	10
(a) cannabis leaf, cannabis oil or cannabis resin, or	11
(b) a preparation, admixture, extract or other substance containing any proportion of cannabis leaf, cannabis oil or cannabis resin, or	12
(c) a substance derived from a plant of the genus <i>Cannabis</i> that is declared by the regulations to be cannabis.	14
cannabis leaf, cannabis oil, cannabis plant and cannabis resin have the same meanings as in the <i>Drug Misuse and Trafficking Act 1985</i> .	16
certificate of registration means a certificate issued under section 5.	18
child means a person who has not attained 18 years of age.	19
Health Secretary means the Secretary of the Ministry of Health.	20
public health authorised officer means an authorised officer within the meaning of the <i>Public Health Act 2010</i> .	21
public place means a place where members of the public are lawfully entitled, invited or permitted to be present in their capacity as members of the public, whether conditionally or unconditionally.	23
register means the register kept under section 5.	26
registered carer means a person registered under section 5 as a carer of a registered medicinal user.	27
registered medicinal user means a person registered under section 5 as a medicinal user of cannabis.	29
registered person means a registered medicinal user or registered carer.	31
terminal or serious medical condition —see section 4.	32
Note. The <i>Interpretation Act 1987</i> contains definitions and other provisions that affect the interpretation and application of this Act.	33
(2) Notes included in this Act do not form part of this Act.	35
4 Terminal or serious medical condition	36
(1) A person has a terminal or serious medical condition if the person suffers from:	37
(a) an illness or condition that is likely to result in death within a reasonably foreseeable period, or	38
(b) a serious illness or condition that is likely to result, or to continue to result, in a significant reduction in the person’s quality of life (whether from the symptoms of the illness or condition or from treatment for the symptoms of the illness or condition).	40
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|-----|---|----|
| (2) | Without limiting subsection (1), a person will be taken to suffer from a terminal or serious medical condition if the person suffers from any of the following: | 1 |
| | | 2 |
| (a) | severe intractable epilepsy, | 3 |
| (b) | Human Immunodeficiency Virus (HIV), | 4 |
| (c) | motor neurone disease, | 5 |
| (d) | multiple sclerosis, | 6 |
| (e) | the neurological disorder known as stiff person syndrome, | 7 |
| (f) | severe and treatment-resistant nausea and vomiting due to chemotherapy, | 8 |
| (g) | pain associated with cancer, | 9 |
| (h) | neuropathic pain, | 10 |
| (i) | an illness or condition declared by the regulations to be a terminal or serious medical condition. | 11 |
| | | 12 |

Part 2 Registration of medicinal users and carers

5 Registration of medicinal users and carers

- (1) The Health Secretary may, on application under this Part, register a person as a medicinal user of cannabis or carer of a registered medicinal user if satisfied that the person is eligible to be so registered.
- (2) A person is eligible to be registered as a medicinal user of cannabis if:
 - (a) the person has a terminal or serious medical condition, and
 - (b) the person's principal place of residence is in New South Wales, and
 - (c) the person meets any other requirements of the regulations, and
 - (d) the person is not disqualified from registration under the regulations.
- (3) A person is eligible to be registered as a carer of a registered medicinal user if:
 - (a) the person has the care of, or is assisting in the care of, the registered medicinal user, and
 - (b) the registered medicinal user consents to registration of the person as the user's carer, and
 - (c) the person's principal place of residence is in New South Wales, and
 - (d) the person meets any other requirements of the regulations, and
 - (e) the person is not disqualified from registration under the regulations.
- (4) An application for registration as a medicinal user of cannabis or carer of a registered medicinal user must:
 - (a) be in a form approved by the Health Secretary, and
 - (b) be accompanied by proof of identity to the satisfaction of the Health Secretary, and
 - (c) for an application for registration as a medicinal user—be accompanied by a medical certificate certifying as to the terminal or serious medical condition suffered by the person, given in accordance with requirements set out in the regulations, and
 - (d) comply with any other requirements of the regulations (which may include payment of a fee).
- (5) An application may be made on behalf of a child by the parents or guardians of the child.
- (6) An application for registration as a carer of a registered medicinal user may be made subject to registration of the medicinal user.
- (7) The Health Secretary may, by written notice to an applicant, require the applicant to provide further information or evidence reasonably required to determine the application.
- (8) If an applicant refuses or fails to comply with such a requirement, the Health Secretary may refuse to determine the application.
- (9) Registration as a medicinal user of cannabis or carer of a registered medicinal user:
 - (a) remains in force, subject to cancellation, for a period as set out in the regulations, and
 - (b) may be renewed as set out in the regulations.
- (10) The Health Secretary must keep a register of persons registered as medicinal users of cannabis and of persons registered as carers of registered medicinal users.

(11)	The register is not open for inspection by members of the public.	1
(12)	The Health Secretary may update the register as the Health Secretary considers appropriate.	2 3
(13)	The Health Secretary must ensure that each registered medicinal user and each registered carer is issued with a certificate of registration that incorporates a recent photograph of the person.	4 5 6
(14)	For that purpose, the Health Secretary may require a person to attend at a specified place to have the person's photograph taken or to supply the Health Secretary with 1 or more photographs of the person as specified by the Health Secretary.	7 8 9
6	Cancellation of registration	10
(1)	The Health Secretary must cancel a person's registration as a medicinal user of cannabis or carer of a registered medicinal user on the application of the person, or, if the person is a registered carer, on the application of the registered medicinal user, made in a form approved by the Health Secretary.	11 12 13 14
(2)	If a registered person is a child, the application may be made by the parents or guardians of the child.	15 16
(3)	The Health Secretary may cancel a person's registration as a medicinal user of cannabis or carer of a registered medicinal user if satisfied that:	17 18
(a)	the registration was obtained improperly, or	19
(b)	the person is not eligible to be registered as a medicinal user of cannabis or carer of a registered medicinal user (as the case requires), or	20 21
(c)	the person has committed more than one offence against this Act or the regulations, or	22 23
(d)	other grounds for cancellation set out in the regulations have been met.	24
(4)	Before the Health Secretary acts under subsection (3), the Health Secretary must:	25
(a)	notify the person (or, in the case of a registered person who is a child, the parents or guardians of the child) in writing of the proposed action, specifying the reasons for it, and	26 27 28
(b)	allow the person at least 14 days within which to make submissions to the Health Secretary in relation to the proposed action.	29 30
7	Inspection and return of certificate of registration	31
(1)	A registered medicinal user or registered carer must, at the request of a public health authorised officer, provide the person's certificate of registration to the officer for inspection. Maximum penalty: 5 penalty units.	32 33 34 35
(2)	A person who is, or was formerly, a registered medicinal user or registered carer must, at the written request of the Health Secretary, return the person's certificate of registration to the Health Secretary as required by the Health Secretary. Maximum penalty: 2 penalty units.	36 37 38 39
(3)	If a registered person is a child, obligations under this section fall on the parents or guardians of the child.	40 41

Part 3	Access to cannabis for registered medicinal user	1
8	Scheme to be established by regulations	2
(1)	The regulations may establish a scheme for authorising activities designed to enable cannabis to be obtained for use by registered medicinal users, including the following activities:	3
		4
		5
	(a) cultivating cannabis plants,	6
	(b) harvesting cannabis plants,	7
	(c) manufacturing or producing cannabis,	8
	(d) storing cannabis,	9
	(e) supplying cannabis.	10
(2)	Without limiting subsection (1), the regulations may provide a scheme for:	11
	(a) the granting of licences, permits or other authorities for the activities (including requirements for criminal record checks or other eligibility requirements), and	12
		13
		14
	(b) the imposition, variation or revocation of conditions of licences, permits or other authorities, and	15
		16
	(c) the suspension or cancellation of licences, permits or other authorities.	17

Part 4	Protection from criminal liability	1
9	Authorisations for registered medicinal users and registered carers	2
(1)	A registered medicinal user is authorised:	3
(a)	to administer cannabis to himself or herself to relieve the user’s terminal or serious medical condition, and	4 5
(b)	to possess cannabis, and equipment for use in the administration of cannabis, for the purpose set out in paragraph (a), and	6 7
(c)	to manufacture or produce cannabis by making a preparation or admixture for the purpose set out in paragraph (a) at the user’s principal place of residence.	8 9
(2)	A registered carer of a registered medicinal user is authorised:	10
(a)	to administer cannabis to the registered medicinal user, or assist the registered medicinal user to administer cannabis to himself or herself, to relieve the user’s terminal or serious medical condition, and	11 12 13
(b)	to possess cannabis, and equipment for use in the administration of cannabis, for the purpose set out in paragraph (a), and	14 15
(c)	to manufacture or produce cannabis by making a preparation or admixture for the purpose set out in paragraph (a) at the carer’s principal place of residence or at the registered medicinal user’s principal place of residence, and	16 17 18
(d)	to supply cannabis, and equipment for use in the administration of cannabis, to the registered medicinal user for the purpose set out in paragraph (a).	19 20
(3)	A person is authorised to undertake activities connected with cannabis or cannabis plants to the extent that the activity is authorised by a licence, permit or other authority in force under the regulations.	21 22 23
(4)	An activity authorised by this section is not rendered unlawful by the <i>Drug Misuse and Trafficking Act 1985</i> or the <i>Poisons and Therapeutic Goods Act 1966</i> .	24 25
(5)	Nothing in this section excuses a registered medicinal user for any driving or other offence committed while under the influence of cannabis.	26 27

Part 5	Offences	1
10	Cannabis not to be administered in public place	2
(1)	A registered medicinal user must not administer cannabis to himself or herself in a public place.	3
	Maximum penalty: 15 penalty units.	4
(2)	A registered carer must not administer cannabis to a registered medicinal user, or assist a registered medicinal user to administer cannabis to himself or herself, in a public place.	6
	Maximum penalty: 15 penalty units.	7
11	Limit on amount of cannabis that may be possessed	8
	A registered medicinal user or registered carer must not, unless the person is authorised under the regulations to do so, possess more than the following quantity of cannabis:	9
(a)	for cannabis leaf—15 grams or, if some other amount is prescribed by the regulations, that other amount,	10
(b)	for cannabis oil—1 gram or, if some other amount is prescribed by the regulations, that other amount,	11
(c)	for cannabis resin—2.5 grams or, if some other amount is prescribed by the regulations, that other amount.	12
	Maximum penalty: 15 penalty units.	13

Part 6	Enforcement	1
12	Public health authorised officers	2
(1)	Public health authorised officers may exercise their powers under the <i>Public Health Act 2010</i> for the purposes of the administration and enforcement of this Act.	3 4
(2)	This Act is to be read as if Part 8 of the <i>Public Health Act 2010</i> were incorporated in this Act (subject to any modifications prescribed by the regulations) together with any definitions contained in that Act of terms used in that Part.	5 6 7
13	Order of Health Secretary for forfeiture, destruction or disposal of cannabis	8
(1)	If the Health Secretary cancels the registration of a registered medicinal user or registered carer, or a licence, permit or other authority is suspended or cancelled under the regulations, the Health Secretary may, by written order given to the person whose registration or authority is suspended or cancelled, require the person to forfeit, destroy or dispose of any cannabis in the possession of the person as specified in the order.	9 10 11 12 13 14
(2)	A person to whom an order is issued under subsection (1) commits an offence if the order is contravened. Maximum penalty: 20 penalty units.	15 16 17

Part 7	Miscellaneous	1
14	Regulations	2
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	3 4 5 6
(2)	The regulations may create offences punishable by a penalty not exceeding 20 penalty units.	7 8
15	Review of Act	9
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	10 11 12
(2)	The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Act.	13 14
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.	15 16

Schedule 1	Amendment of Drug Misuse and Trafficking Act 1985 No 226	1 2
Section 8C		3
Insert after section 8B:		4
8C Relationship with Medicinal Cannabis (Compassionate Access) Act 2018		5
	Nothing in this Act affects any provision of or made under the <i>Medicinal Cannabis (Compassionate Access) Act 2018</i> or renders unlawful anything done in accordance with any such provision.	6 7 8

Schedule 2	Amendment of Poisons and Therapeutic Goods Act 1966 No 31	1
		2
Section 5B		3
Insert after section 5A:		4
5B Relationship with Medicinal Cannabis (Compassionate Access) Act 2018		5
	Nothing in this Act affects any provision of or made under the <i>Medicinal Cannabis (Compassionate Access) Act 2018</i> or renders unlawful anything	6
	done in accordance with any such provision.	7
		8