

Outside the bubble: Decriminalisation of abortion and other health law news

Alastair Hercus, Hamish Kynaston, Peter Chemis, Natasha Wilson, Nicola Ridder, Alastair Sherriff, Catherine Miller, Amy de Joux, Holly Hedley, Rebecca Dudley-Cobb

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In the past six weeks or so our focus has understandably been on all things COVID-19. However, as we collectively come up for air, we take a look back and touch on a few key health law developments that happened while COVID-19 had centre-stage.

Decriminalisation of abortion

By far the most significant health law change in recent times and something that would no doubt have been front page news but for the lockdown, the Abortion Legislation Bill came into force on 24 March 2020. This momentous omnibus bill decriminalises abortion in New Zealand, removing provisions from the Crimes Act and substantially amending the legal framework for access to abortion in the Contraception, Sterilisation, and Abortion Act and related legislation.

Under the new framework, abortions are available for all women who are not more than 20 weeks pregnant without any statutory access criteria. Legal criteria do however remain for pregnancies that are more than 20 weeks as the providing health practitioner must "reasonably believe" that the abortion is "clinically appropriate in the circumstances". In determining whether that threshold is met, the practitioner must consult with another appropriately qualified colleague and must have regard to: the woman's mental and physical health and overall wellbeing; the gestational age of the fetus; and all relevant legal, professional and ethical standards.

The bill also made a number of other key changes to the law, including allowing for self-referral direct to abortion services, extending the range of health practitioners who can lawfully provide abortions and amending (but still substantially retaining) conscientious objection provisions. Under the new provisions, a person with a conscientious objection must inform the woman of that objection "at the earliest opportunity" and must tell them "how to access the contact details of another person who is the closest provider of the service requested". The conscientious objections provisions extend to any person asked to provide or to assist with providing contraception, sterilisation and abortion services, including information or advisory services about whether to continue or terminate a pregnancy. The safe zones around abortion clinics that were originally proposed in the bill were voted out in the second reading and do not form part of the new law.

The previous Abortion Supervisory Committee's 'Standards of Care for Women Requesting an Abortion in Aotearoa New Zealand' have been phased out and [interim standards are currently available](#) while the Ministry of Health develops new and updated standards.

Cannabis Legalisation and Control Bill

Right in the middle of the Level 4 lockdown, the final exposure draft of the Cannabis Legalisation and Control Bill was released. This bill sets out the framework for the proposed legalisation of cannabis and will be the subject of a non-binding referendum during the general election later this year. In the referendum, voters will be asked whether they support the proposed bill. In the event of a "yes" vote, the bill may be introduced in the next Parliament.

Under the bill's framework, licensed sellers would be able to sell cannabis as a recreational product to those over 20 years of age, however, there would be a complete ban on advertising of cannabis products. Individuals over the age of 20 could buy a total of 14 grams of dried cannabis (or equivalent) per day and carry this amount in public places. Individuals over the age of 20 could also grow up to two plants on their property, with a maximum of four plants per household. Penalties for breaching the Act include an infringement fee up to \$500, a court imposed fine up to \$150,000, or even imprisonment for a term not exceeding 3 months.

The bill is intended to reduce harm from cannabis use to individuals, families, whānau, and communities by various measures, including by raising public awareness of health risks associated with cannabis use and improving access to health and social services as well as other whānau support services for those who require assistance to address issues associated with cannabis use. Point-of-sale health information and regulated packaging are examples of measures proposed within the bill.

Under the bill, a new cannabis regulatory authority would be responsible for overseeing regulation of the use and supply of

cannabis in a way that promotes wellbeing and reduces the harms of cannabis use. Among other things, the authority would be responsible for conducting education campaigns to raise public awareness about the harms and to promote responsible use and help-seeking behaviours. This body would also promote and support research focused on understanding and reporting on cannabis use and informing evidence-based approaches to preventative and harm-reduction activities.

This bill focuses on recreational cannabis use and does not address the regulation of medical cannabis which is being administered by the newly formed Medicinal Cannabis Agency. See our separate [update on the Medicinal Cannabis Scheme](#) for more information.

Smokefree Environments and Regulated Products (Vaping) Amendment Bill

The Smokefree Environments and Regulated Products (Vaping) Amendment Bill was introduced to the House on 24 February 2020 and had its first reading on 11 March, not long before lockdown. The bill comes at a time where vaping is increasingly rapidly in New Zealand, a pattern also seen in other countries.

Driven by a concern about a gap in legislation and responding in part to the *Philip Morris (NZ) Ltd v Ministry of Health* decision, the bill proposes to amend the Smoke-free Environments Act to include vape devices and other similar products which may enter the market. A particularly important feature is a proposed broadening of the scope of the Act to ensure that the minimum age requirements for purchasing cigarettes also apply to vape devices and other regulated products.

The bill is intended to strike the right balance between making vaping available as a smoking cessation method, whilst ensuring vaping products are not sold to children or young people.

Auckland

**PwC Tower
188 Quay Street
Auckland 1010**

**PO Box 1433
Auckland 1140
New Zealand**

**P: +64 9 358 2555
F: +64 9 358 2055**

Wellington

**Aon Centre
1 Willis Street
Wellington 6011**

**PO Box 2694
Wellington 6140
New Zealand**

**P: +64 4 499 4242
F: +64 4 499 4141**

Christchurch

**83 Victoria Street
Christchurch 8013**

**PO Box 322
Christchurch 8140
New Zealand**

**P: +64 3 379 1747
F: +64 3 379 5659**