

Hon Andrew Little

Minister of Justice

Proactive release – Cannabis Referendum Order 2020 and End of Life Choice Referendum Order 2020

Date of issue: 23 April 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Approval to Submit: Cannabis and End of Life Choice Referendum Orders 2020 <i>Cabinet paper</i>	Some paragraphs have been withheld in accordance with section 9(2)(f)(iv) of the OIA (to maintain the constitutional conventions which the confidentiality of advice tendered by Ministers of the Crown and officials)
2	<ul style="list-style-type: none">• Cannabis Referendum Order 2020• End of Life Choice Referendum Order 2020 Attachments to Cabinet paper	Note that the copies of the Orders provided to Ministers with this paper have been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege. The legislative instruments are publicly available from www.legislation.govt.nz .
3.	LEG-20-MIN-0035 <i>Cabinet minute</i> Meeting date: 17 March 2020	Released in full.

In Confidence

Office of the Minister of Justice
Chair, Cabinet Legislation Committee

Approval to submit: Cannabis and End of Life Choice Referendum Orders 2020

Proposal

1. This paper seeks approval for submission of the Cannabis Referendum Order 2020 and the End of Life Choice Referendum Order 2020 to the Executive Council.

Policy

2. The Government has committed to holding a referendum on legalising the personal use of recreational cannabis at the 2020 General Election [CAB-18-Min-0614.02]. This referendum will ask the public if they support the proposals to legalise and regulate cannabis as set out in the draft Cannabis Legalisation and Control Bill; if the majority vote yes, then after the election, the incoming Government can decide whether to introduce a Bill to Parliament that would make recreational use of cannabis legal [SWC-19-MIN-0188].
3. The End of Life Choice Act was enacted on 16 November 2019. The commencement of this Act is subject to a majority vote in support, at a public referendum. This referendum will be conducted alongside the cannabis referendum at the 2020 General Election [CAB-19-MIN-0624].

The Orders in Council will formally trigger both of these referendums

4. To facilitate these referendums, Cabinet developed the generic Referendums Framework Act 2019, which contains a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election. This will ensure the same rules apply to both the general election and the referendums. [CAB-19-MIN-0129]
5. Section 8 of the Referendums Framework Act requires Orders in Council to be made to declare the cannabis and End of Life Choice referendums to be referendums for the purposes of the Act.

The referendum question must be set out in the Order

6. The Referendums Framework Act also requires that the Orders in Council specify the wording of the question and the two options for which voters may vote in the referendum.
7. The question and response options for the referendum on the commencement of the End of Life Choice Act is set out in section 2 of that Act as follows:

<p>Do you support the End of Life Choice Act 2019 coming into force? Yes, I support the End of Life Choice Act 2019 coming into force. No, I do not support the End of Life Choice Act 2019 coming into force.</p>
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8. Cabinet considered the cannabis referendum question and response options on 20 November 2019. Cabinet agreed to the public release of the question along with the first iteration of the exposure draft Cannabis Legalisation and Control Bill, which set out the proposed regulation of the parts of the cannabis system that the public will most interact with [SWC-19-MIN-0188]. s9(2)(f)(iv)

9. The cannabis referendum question is:

Do you support the proposed Cannabis Legalisation and Control Bill? Yes, I support the proposed Cannabis Legalisation and Control Bill No, I do not support the proposed Cannabis Legalisation and Control Bill

10. This referendum question conveys a base level of information about the content and purpose of the draft Bill. For example, the name of the draft Bill indicates that the personal use of recreational cannabis is moving from an illegal to a legal status, and that it will be tightly managed and controlled.
11. The process to develop this question was led by the Ministry of Justice, in consultation with the Electoral Commission, and with input from Statistics New Zealand. The Ministry also consulted with six external academics, research practitioners and plain language experts throughout the process. The intent of this process was to ensure that the referendum question is easily understood by voters and does not, nor can be perceived to, lead voters towards a particular response.
12. The reviewers assessed the options based on their own professional expertise. One company conducted question testing with 12 individuals representing a range of ages, occupations, ethnicities, and spoken languages (both English as a first and second language). This provided useful refinement of the question from the perspective of workability, understandability and impartiality.
13. The proposed question was also provided to the cannabis referendum Cross Party Working group in December 2019.

Timing and 28-day rule

14. It is a requirement of Cabinet that regulations must not come into force until at least 28 days after they have been notified in the Gazette. No waiver of the 28-day rule is sought. The Orders will come into effect on Thursday 23 April 2020

Compliance

15. The Orders are not inconsistent with:
- 15.1. the principles of the Treaty of Waitangi;
 - 15.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 15.3. the principles and guidelines set out in the Privacy Act 1993; and
 - 15.4. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

Empowering provision

16. The Regulations Review Committee did not raise any concerns with the Order in Council requirement or process at section 8 of the Referendums Framework Act when Draft this Bill was being considered by the Justice Select Committee.

Orders

17. Both Orders are disallowable instruments. During the passage of the Referendums Framework Act 2019 through Parliament, I noted that the Regulations Review Committee would have the opportunity to consider both Orders, and, in particular, the wording of the referendum question proposed for the cannabis referendum.
18. I provided a copy of the draft Orders to the Regulations Review Committee for its consideration, under Standing Order 318(2). The Committee recommended providing a link to where the End of Life Choice Act and draft Cannabis Legalisation and Control Bill can be found online. That change has been incorporated in the draft Orders.
19. In relation to the draft Cannabis Legalisation and Control Bill, the Committee recommended referring to that legislation as “the Government’s proposed Cannabis Legalisation and Control Bill” on the basis that the meaning of the phrase is uncertain because it is not defined in the notice or question. I do not see how the Committee’s suggestion remedies the issue the Committee believes exists. I consider adding the word has the potential to create a political skew, and for that reason do not support changing it.
20. Under Standing Order 318(1), the Committee will formally consider the Orders once they are promulgated. I do not consider there are any grounds for the Regulations Review Committee to draw the disallowable instrument to the attention of the House of Representatives.

Certification by Parliamentary Counsel

21. Parliamentary Counsel Office has certified the Orders in Council as being in order for submission to Cabinet.

Impact Analysis

22. The Treasury’s Regulatory Quality Team determined that the Referendum Frameworks Act will have only minor impacts on businesses, individuals or not-for-profit entities. No Regulatory Impact Assessment was prepared on this Bill. [CAB-19-MIN-0624].
23. Regulatory Impact Assessment will be prepared in relation to the proposals in the draft Cannabis Legalisation and Control Bill, which will be the subject of the cannabis referendum [SWC-19-MIN-0188].
24. No Regulatory Impact Assessment was prepared on the End of Life Choice Act, because it was a member’s Bill.

Publicity

25. I do not propose will issue a media release when the Orders are made. s9(2)(f)(iv)

Proactive release

26. I intend that this Cabinet paper will be proactively released, with any necessary redactions, following the promulgation of the Orders, in accordance with the Government's proactive release policy.

Consultation

27. The Electoral Commission, Crown Law, the Ministry of Health, the State Services Commission and the Treasury were consulted on the draft Orders. The Policy Advisory Group in the Department of the Prime Minister and Cabinet was informed.

Recommendations

28. I recommend that the Cabinet Legislative Committee:

1. note that Cabinet has agreed to hold a referendum on legalising the personal use of recreational cannabis, and a referendum on the commencement of the End of Life Choice Act at the 2020 General Election. [CAB-18-Min-0614.02 and CAB-19-MIN-0624 refer];
2. note that the Referendums Framework Act 2019, which contains a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election, requires an Order in Council to be made declaring any referendum to be a referendum for the purposes of the Act;
3. note that the Orders in Council must specify the wording of the referendum question;
4. note that the Cannabis Referendum Order 2020 and the End of Life Choice Referendum Order 2020 will give effect to the decision referred to in recommendation 1 above;
5. authorise the submission to the Executive Council of the Cannabis Referendum Order 2020 and the End of Life Choice Referendum Order 2020;
6. note that the Cannabis Referendum Order 2020 and the End of Life Choice Referendum Order 2020 come into force on Thursday 23 April 2020.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Cannabis Referendum Order 2020 and End of Life Choice Referendum Order 2020

Portfolio **Justice**

On 17 March 2020, the Cabinet Legislation Committee:

1 **noted** that:

1.1 in December 2018, Cabinet agreed to hold a binding referendum at the 2020 General Election to determine whether legislative provisions for the legalisation of cannabis should be adopted [CAB-18-MIN-0641.02];

1.2 in November 2019, Cabinet noted that the:

1.2.1 commencement of the End of Life Choice Act 2019 is contingent upon a majority vote at a public referendum;

1.2.2 Electoral Commission will conduct the cannabis referendum and the referendum on the End of Life Choice Act, alongside the 2020 General Election;

[CAB-19-MIN-0624]

2 **noted** that the Referendums Framework Act 2019:

2.1 provides for a single set of rules to govern the conduct of any referendums held alongside the 2020 General Election;

2.2 requires an Order in Council to be made declaring any referendum to be a referendum for the purposes of the Act;

3 **noted** that the Orders in Council must specify the wording of the referendum question;

4 **noted** that the Cannabis Referendum Order 2020 and the End of Life Choice Referendum Order 2020 give effect to the decisions referred to in paragraph 1;

5 **authorised** the submission to the Executive Council of the:

5.1 Cannabis Referendum Order 2020 [PCO 22634/3.0];

5.2 End of Life Choice Referendum Order 2020 [PCO 22635/3.0];

6 **noted** that the Orders come into force on 23 April 2020.

Gerrard Carter
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Kris Faafoi
Hon Ron Mark
Hon Julie Ann Genter
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

Hard-copy distribution:

Minister of Justice

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