

GIPAA request from John Kaye, MLC regarding recording of exercise of discretion under the Terminal Illness Cannabis Scheme

The following information can be provided in response to the applicant's request:

1. Documents detailing how incidents of the use of police discretion under the Terminal Illness Cannabis Scheme are being measured.

NSW Police Force has developed and distributed internal guidelines to provide police with guidance to assist in determining appropriate circumstances in which to exercise discretion not to take legal action against people who are registered with the Terminal Illness Cannabis Scheme (the Scheme). These guidelines also detail how police should record incidents in which they do, or do not, use their discretion in relation to the Scheme (Tab A).

Tab
B

New functionality was added to the Computerised Operational Policing System (COPS) to allow police to record cannabis detection incidents involving people who are registered with the Scheme and operating within its guidelines. This new COPS functionality can be readily analysed, and it is intended that data collected will contribute to the NSW Government's evaluation of the Scheme after its first 12 months of operation.

2. If incidents of the use of police discretion are being recorded, documents detailing the number of recorded incidents.

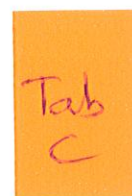
Analysis of COPS data undertaken on 1 April 2015 indicates that there have been no incidents recorded to date in which police in NSW have used their discretion not to take legal action and not to seize cannabis detected in the possession of a person who is registered with the Scheme.

GUIDELINES FOR NSW POLICE

NSW GOVERNMENT TERMINAL ILLNESS CANNABIS SCHEME

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PURPOSE AND CONTEXT

The NSW Government has developed the Terminal Illness Cannabis Scheme (the Scheme) to extend compassion to adults with a terminal illness. In establishing this Scheme the NSW Government aims to provide adults with a terminal illness and their carers with greater peace of mind.

These guidelines aim to provide members of the NSW Police Force with guidance to assist them in determining appropriate circumstances in which to exercise their discretion not to charge terminally ill adults who use cannabis to alleviate their symptoms, or their nominated carers.

SCOPE

NSW Police Force encourages the use of discretion.

A decision not to take legal action against a person for cannabis offences within the scope of the Scheme is at the discretion of the investigating officer.

Police must be satisfied that the Scheme eligibility criteria have been met prior to determining to exercise their discretion not to take legal action in accordance with the intent of the government introduced Scheme.

BACKGROUND

The Terminal Illness Cannabis Scheme (the Scheme) has been established by the NSW Government to extend compassion to adults with a terminal illness.

The following guidelines have been developed to facilitate the operational implementation of the Scheme by the NSW Police Force. They apply to the exercise of discretion not to take legal action against registered terminally ill adults and their nominated carers for certain offences under the *Drug Misuse and Trafficking Act* (DMTA) involving the possession and administration of small amounts of cannabis leaf, oil, or resin, the possession of equipment, and supply where it involves the provision of the drug by a nominated carer to the terminally ill person.

Police are encouraged to exercise their discretion not to take legal action against people when satisfied that they are either terminally ill people or their nominated carers who are registered with the Scheme and that all of the provisions of the Scheme have been complied with. It should be noted that the Scheme in no way affects or limits existing police discretion.

To exercise their discretion under the Scheme to take no legal action, a police officer must be satisfied that the actions giving rise to the offence are in relation to a specified registered terminally ill adult or nominated carer, and that the amount of drug involved is not more than half a “small quantity” (as defined for leaf, oil and resin in Schedule 1 of the DMTA).

OPERATION OF THE TERMINAL ILLNESS CANNABIS SCHEME

The Scheme involves two groups of people – terminally ill persons and nominated carers.

Eligibility criteria

1. Adults with a terminal illness

Only adults who have been certified by a medical practitioner as having a terminal illness will be eligible for the Scheme. A standardised form of certificate will be issued to the terminally ill person.

Terminal illness for the purposes of the Scheme is defined as:

“an illness which, in reasonable medical judgement will, in the normal course, without the application of extraordinary measures or of treatment unacceptable to the patient, result in the death of the patient.”

Once registered, the adult with a terminal illness may at any place be in possession of equipment and an eligible quantity of cannabis leaf, oil or resin and / or use cannabis at their usual place of residence or any private domestic residence.

2. Nominated carers

Registered terminally ill persons may nominate up to three adults as their nominated carer under the Scheme. A person may be a nominated carer for a maximum of three registered adults.

A nominated carer may be a person who assists the registered terminally ill person with the obtaining and/or consumption of cannabis (including leaf, resin or oil) and may not necessarily be the person who ordinarily attends to that person’s day-to-day physical care.

A nominated carer may supply cannabis (including leaf, resin or oil) and equipment for the administration of cannabis to a terminally ill person registered within the Scheme. The supply of the cannabis may take place at the registered person’s usual place of residence or at any private domestic residence. For this purpose it follows the nominated carer may be in possession of a half small quantity of cannabis and/or equipment to administer cannabis at any place.

Police are encouraged to use their discretion not to take legal action against registered terminally ill people and/or their nominated carers where they are in compliance with the Scheme.

Police retain the discretion to determine whether or not to take legal action even in situations where the Scheme conditions have not been complied with.

3. Certification and registration

A certification and registration process is in place to identify people who are eligible for and genuinely involved with the Scheme.

To be registered, a terminally ill person is required to seek certification from a medical practitioner involved in their ongoing care that he or she has a terminal illness as defined by the Scheme. The certificate will be valid for a period of one year from the date on which it is made, and will note potential criminal and professional consequences for a medical practitioner falsely certifying that a person has a terminal illness.

The certificate identifies the patient and records the medical practitioner's identity, contact and registration details.

To complete the registration, the terminally ill person sends the completed original certificate to the Department of Justice (DoJ), along with a Scheme registration form. DoJ will then issue the person with a registration certificate and additional registration certificates for each of their nominated carers. This document lists the terminally ill person's full name, date of birth, and usual place of residence and equivalent details of up to three nominated carers. Each individual registration certificate is acknowledged by DoJ.

The details of registered terminally ill people and their nominated carers are recorded in a register maintained by the DoJ. DoJ will ensure that a carer can only be nominated for up to three registered adults at a time. DoJ retains originals of certificates and registration forms to facilitate police investigations where required.

An example of a certificate of registration can be found at Appendix A.

4. Verification by NSW Police Force as required

For a registered terminally ill adult or their nominated carer to invoke the discretion of police under the Scheme, they must produce their DoJ-issued registration certificate to a police officer bearing their Scheme registration number, full name, date of birth, usual place of residence, and date of registration. Police may verify information with the DoJ, who will make information available to police officers during ordinary business hours.

5. Quantity and type of cannabis within the Scheme

The quantities and forms of cannabis considered to be within the Scheme's guidelines are as follows:

Cannabis form	'Small quantity' as defined in the DMTA	Maximum quantity under the Scheme (half small quantity)
Cannabis leaf	30 grams	15 grams
Cannabis oil	2 grams	1 gram
Cannabis resin	5 grams	2.5 grams

PROCEDURES

If you detect a person committing an offence that falls within the Scheme, and the person indicates they are a registered terminally person or a nominated carer, you will need to verify the following:

- 1. The weight of the drug is not more than the maximum quantity of leaf OR oil OR resin listed in these guidelines.**
- 2. The person is registered with the Scheme.**
 - The name, date of birth and address on the person's registration certificate can be checked against other forms of identification the person may be carrying.
 - If you have concerns about the veracity of the certificate, you may wish to call DoJ during ordinary business hours to check the certificate against their records. To call DoJ, dial 02 8688 7586 then press 4 when prompted. Identify yourself and ask for the Director or Manager of the Terminal Illness Cannabis Scheme Register. Quote the registration number on the certificate when speaking with DoJ.
- 3. The nature of the offence is consistent with intent of the Scheme.**

If you are satisfied that the criteria have been met you may use your discretion not to take legal action and not to seize the cannabis.

Recording

In situations where you exercise your discretion not to take legal action, it should be recorded in COPS.

- You should make a COPS event for the substantive offence (Possess, Supply, Possess Implements etc).

- In completing the event, the involvement status for the POI should be updated as 'No further action'. 'Terminally Ill Cannabis Scheme' should be selected as the 'Reason for no further action'.
- The registration number of the POI should be recorded in the narrative.
- Property (the cannabis and/or any equipment) should be updated as 'Not seized'.

If the person is registered with the Scheme but you decide to take legal action, the narrative for the COPS event should clearly indicate the reasons for your decision.

If you are not satisfied the person is a registered participant in the Scheme and you use your discretion to take legal action, proceed as you would for any other prohibited drug seizure.

If the person or incident does not fall within the guidelines of the Scheme, your options to respond are not affected, and may include a caution under the Cannabis Cautioning Scheme, taking legal action or taking no action if it is not in the public interest.

Note – If you are uncertain about the legitimacy of a person's claim, remember that incidents relating to the Scheme will involve small amounts of cannabis. Therefore take your time and investigate thoroughly before deciding if and how to exercise your discretion.

FREQUENTLY ASKED QUESTIONS

- Q. Does the Scheme change the law in NSW relating to drug offences?
- A. No. There is no legislative recognition of the Scheme, and there are no amendments to the DMTA. The intention of the Scheme is that police will use their discretion not to take legal action when Scheme eligibility criteria are met.
- Q. Does the Scheme affect existing police discretion?
- A. No. Your general discretion to take no formal action and your discretion under the Cannabis Cautioning Scheme (CCS) are unaffected by the Scheme.
- Q. Does the Scheme apply to synthetic cannabis products?
- A. No. The Scheme only applies to cannabis leaf, cannabis resin, and cannabis oil.
- Q. What should police do if they are not sure whether the person is eligible under the Scheme?
- A. If you are in doubt, talk to your supervisor before deciding how to proceed. Remember, the Scheme relates only to 'half small' quantities. If you are unsure of the veracity of a registration or some other matter, you might consider taking sufficient particulars to enable you to follow the matter up at a later stage.

Q. Which offences will the Scheme discretion apply to?

A. The Scheme does not contain an exhaustive list of offences. It is suggested that the following offences under the DMTA are relevant to the exercise of discretion not to commence legal action (in relation to cannabis leaf, oil, or resin only):

Offence	Role within the Scheme
Possession of prohibited drugs (s.10)	Both terminally ill person and their nominated carer/s.
Possession of equipment for administration of prohibited drugs (s.11)	Both terminally ill person and their nominated carer/s.
Self-administration of prohibited drugs (s.12)	Terminally ill person
Administration of prohibited drugs to others (s.13)	Nominated carer
Permitting another to administer prohibited drugs (s.14)	Terminally ill person
Aiding, abetting etc commission of offence in New South Wales (s.19)	Both terminally ill person and their nominated carer/s.
Supply of prohibited drugs (s.25)	Nominated carer
Offence of supplying prohibited drugs on an ongoing basis (s.25A)	Nominated carer

FURTHER INFORMATION

Further details about the Terminal Illness Cannabis Scheme and answers to frequently asked questions for members of the public can be found at www.nsw.gov.au/tics

Any further enquiries regarding the Scheme can be directed to Commander, SCC Drug Squad or the Commander, Drug and Alcohol Coordination.

APPENDIX A

Example certificate of registration:

Terminal Illness Cannabis Scheme



Office use only

(to be completed by register holder and sufficient copies to be returned to participant)

Part C: Record of Registration

Registered participant name		Registration number	
Date of birth	___/___/___		
Usual residential address	Street address	Suburb	Postcode

Nominated carer name		Registration number	
		1/	
Date of birth	___/___/___		
Residential address	Street address	Suburb	Postcode

Nominated carer name		Registration number	
		2/	
Date of birth	___/___/___		
Residential address	Street address	Suburb	Postcode

Nominated carer name		Registration number	
		3/	
Date of birth	___/___/___		
Residential address	Street address	Suburb	Postcode

Certifying Doctor		Certifying Doctor's provider OR AHPRA number	
Name			
Phone number			
Date of registration		Expiry date	___/___/___

Terminal Illness Cannabis Scheme Tips & Tricks

On 16 December, 2014 the NSW Government announced the commencement of the Terminal Illness Cannabis Scheme, which is designed to extend compassion to adults in NSW who have a terminal illness.

[Guidelines for Police: NSW Government Terminal Illness Cannabis Scheme](#) have been developed to provide police with guidance to assist in determining appropriate circumstances in which to exercise discretion not to take legal action against terminally ill adults who use cannabis to alleviate their symptoms, or their nominated carers. The Tips & Tricks document should be read in conjunction with the [Guidelines](#).

COPS and WebCOPS have been amended to allow the recording of incidents in relation to the Scheme.

A new 'Reason for no further action' has been created: 'Terminally Ill Cannabis Scheme'.

In situations where you exercise your discretion not to take legal action against a person who is registered with the scheme, it should be recorded in COPS as follows:

1. Create a COPS event for the appropriate Incident Category (Drug Detection) and Further Classification (for example Possess Drug/Plant).

The screenshot displays the NSW Police Force COPS system interface. The title bar reads 'NSW Police Force - GUI COPS'. The main window has a dark blue header with 'COPS Version: 1410.1601.1307' and 'NSW POLICE TRN'. The central area is titled 'Create Incident E 337653'. On the right, it shows 'NSW Police Force', the date '12/11/2014', time '16:15', and user 'MRP6WIA1:OQBAA'. Below the header, there are icons for settings, home, mail, and help. The 'Incident Date and Time' section contains fields for 'Incident Start Date' (12/11/2014), 'Incident End Date' (12/11/2014), 'Time' (10:00), and a calendar dropdown. The 'Incident Type' section contains dropdowns for 'Incident Category' (DRUG DETECTION), 'Further Class' (POSSESS DRUG/PLANT), and 'Offence Type' (ACTUAL). At the bottom, there is a 'Fastpath' field, a 'List' button, and navigation buttons: '<< Prev (F7)', 'Exit (F3)', 'Confirm', 'Next (F8) >>', and a 'Log off' button. The user ID 'EVQ222M3' is also visible.

2. Complete the normal fields for this incident type and add a Person of Interest.

3. When creating the Status of the Person of Interest, select 'No further action'.

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW POLICE TRN

NSWP: [redacted]

NSW Police Force

12/11/2014 16:17

MRP6WTA1:OOBAA

Create Person Of Interest

CNI Number : 600023601

Name : JONES, FRED

Identification Method

Status

Status Date

Ref No : E 337653

DETAILS SUPPLIED AT SCENE

?

Browse Involvement Status

Did this person consume alcohol

Further Details

Attributes ☒ In

> Contact Details ☐ Mo

Places Frequented ☐ Ba

Alias/Nickname ☐ Le

> Physical Desc ☐ Al

Physical Feature ☐ Se

Clothing/Access ☐

> Occupation/Skills ☐

Legal Process

NO FORMAL ACTION

NOT KNOWN AT THIS STAGE

SUSPECT

ELIMINATED FROM INVESTIGATION

***** End of List *****

Select

Fastpath: [redacted] List << Prev (F7) Exit (F3) Confirm Next (F8) >> CIX051M4 Log off

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW POLICE TRN

NSWP: [redacted]

NSW Police Force

12/11/2014 16:18

MRP6WTA1:OOBAA

Create Person Of Interest

CNI Number : 600023601

Name : JONES, FRED

Identification Method

Status

Status Date

Ref No : E 337653

DETAILS SUPPLIED AT SCENE

NO FORMAL ACTION

12 / 11 / 2014

Did this person consume alcohol prior to the incident? NO

Further Details

Attributes ☒ Injuries ☐ External Ref. ☐

> Contact Details ☐ Motives ☐ Warnings ☐

Places Frequented ☐ > Background ☒ Forensic Proc Dt1 ☐

Alias/Nickname ☐ Legal Process ☐

> Physical Desc ☐ Alcohol Details ☐

Physical Feature ☐ Search Details ☐

Clothing/Access ☐

> Occupation/Skills ☐

Fastpath: [redacted] List << Prev (F7) Exit (F3) Confirm Next (F8) >> CIX051M4 Log off

4. When the prompt appears on the screen, 'Terminally Ill Cannabis Scheme' should be selected as the 'Reason for no further action'.

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW Police TRN

NSWP: [redacted]

Create Person Of Interest

NSW Police Force

12/11/2014 16:18

MRPGWTA1:OOBAA

CNI Number : 600023601 Ref No : E 337653

Name : JONES FRFD

Identification

Status

Status Date

Did this person

Further Details

Attributes

> Contact

Places Frequent

Alias/Nickname

> Physical Desc

Physical Feature

Clothing/Access

> Occupation/Skills

Fastpath: [redacted] List << Prev (F7) Exit (F3) Confirm Next (F8) >> CIX051M4 Log off

Status Change Detail

Your selection has caused the Person of Interest Status in the event to be marked as 'NO FORMAL ACTION'. Please enter the appropriate reason.

Status Reason: [redacted]

<< Prev (F7) Exit (F3) Confirm Next (F8) >>

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW Police TRN

NSWP: [redacted]

Create Person Of Interest

NSW Police Force

12/11/2014 16:18

MRPGWTA1:OOBAA

CNI Number : 600023601 Ref No : E 337653

Name : JONES FRFD

Identification

Status

Status Date

Did this person

Further Details

Attributes

> Contact

Places Frequent

Alias/Nickname

> Physical Desc

Physical Feature

Clothing/Access

> Occupation/Skills

Fastpath: [redacted] List << Prev (F7) Exit (F3) Confirm Next (F8) >> CIX051M4 Log off

Reasons for No Formal Action

SEL	Description	Description
A	INSUFFICIENT EVIDENCE (PROOF)	INSUFF
B	NOT IN PUBLIC INTEREST	NIP
C	INFORMAL CAUTION GIVEN	INFORMAL
D	DECEASED	
E	STATUTE BARRED	STAT BAR
F	COMPLAINT WITHDRAWN	WITHDRAWN
G	VICTIM/FAMILY/CARER UNWILLING	UNWILLING
H	UNKNOWN	
I	YOUR CHOICE PROGRAM	YOURCHOICE
J	TERMINALLY ILL CANNABIS SCHEME	

Select

<< Prev (F7) Exit (F3) Confirm Next (F8) >>

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW POLICE TRN

NSWP: 1410.1601.1307

NSW Police Force

12/11/2014 16:30

MRP6WTA1:00BAA

Create Person Of Interest

0115: Select at least one category to UPDATE or PF3 to continue

CNI Number : 600023601 Ref No : E 337653

Name : JONES, FRED

Identification Method DETAILS SUPPLIED AT SCENE

Status NO FORMAL ACTION

Status Date 12 / 11 / 2014

Status Change Reason TERMINALLY ILL CANNABIS SCHEME

Did this person consume alcohol prior to the incident? NO

Further Details

- > Attributes
- > Contact Details
- Places Frequented
- Alias/Nickname
- > Physical Desc
- Physical Feature
- Clothing/Access
- > Occupation/Skills
- Injuries
- Motives
- > Background
- Legal Process
- Alcohol Details
- Search Details
- External Ref.
- Warnings
- Forensic Proc Dtl

Fastpath: List << Prev (F7) Exit (F3) Confirm Next (F8) >> CIX051M4 Log off

5. Create the Illegal Drug in the incident details (the cannabis and/or any equipment).
The status of the Illegal drug should be recorded as 'Not seized'.

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW POLICE TRN

NSWP: 1410.1601.1307

NSW Police Force

20/11/2014 16:06

MRP6WTA1:00BAA

Update Incident for E 337653

0115: Select at least one category to update or PF3 to continue

Incident Type: DRUG DETECTION - POSSESS DRUG/PLANT

Location

Modus Operandi

Illegal Drug

Person of Interest

Witness

Vehicle/Vessel Of In

Licensed Prem of Int

Organisation of Inte

Veh/Ves Occupants Re

Publication

Associated Factors

Illegal Drug Impleme

Total Drug Value

Exhibit

Veh/Ves Where Occur

Licensed Prem in Vie

Vehicle/Vessel Suspe

Fastpath: List << Prev (F7) Exit (F3) Confirm Next (F8) >> EVQ051M1 Log off

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW Police Force

20/11/2014 18:08

MRPGWTA1:OOBAB

Create Property E 337653

Object Type : DRUG

Drug Type CANNABIS

Drug status

Brand

Drug Form

Quantity of Drugs

Number of Pieces

Further Description

Detector Dog Used ?

Check other Involvements for this

Browse Object Status - Property

Start from

Search

Sel	Description
A	NOT SEIZED
B	SEIZED

*** End of List ***

A Select

Fastpath:

List << Prev (F7) Exit (F3) Confirm Next (F8) >>

EVQ316M1 Log off

NSW Police Force - GUI COPS

Systems Forms Fixed Penalty Handbooks Procedures & Legislation Support Contacts Warrants Subpoenas

COPS Version: 1410.1601.1307

NSW Police Force

20/11/2014 18:09

MRPGWTA1:OOBAB

Create Property E 337653

Object Type : DRUG

Drug Type CANNABIS

Drug status NOT SEIZED

Brand

Drug Form LEAF

Quantity of Drugs 2 GRAM or Unknown

Number of Pieces or Unknown

Further Description

Detector Dog Used ? N Y/N More

Check other Involvements for this Event N Y/N

Fastpath:

List << Prev (F7) Exit (F3) Confirm Next (F8) >>

EVQ316M1 Log off

6. The POI's Terminal Illness Cannabis Scheme registration number should be recorded in the narrative.

As outlined in the [Guidelines](#), it is necessary to view the POI's certificate of registration to verify that they are in fact registered with the Scheme. There is a separate registration number for each person listed on the registration certificate.

If you have any queries about the Terminal Illness Cannabis Scheme *at any time*, please contact the Commander, Drug Squad or the Commander, Drug and Alcohol Coordination.