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IMPLICATIONS OF THE CANNABIS JUDGEMENT IN THE SAMI

KZN North Blue Marlin

20 November 2019

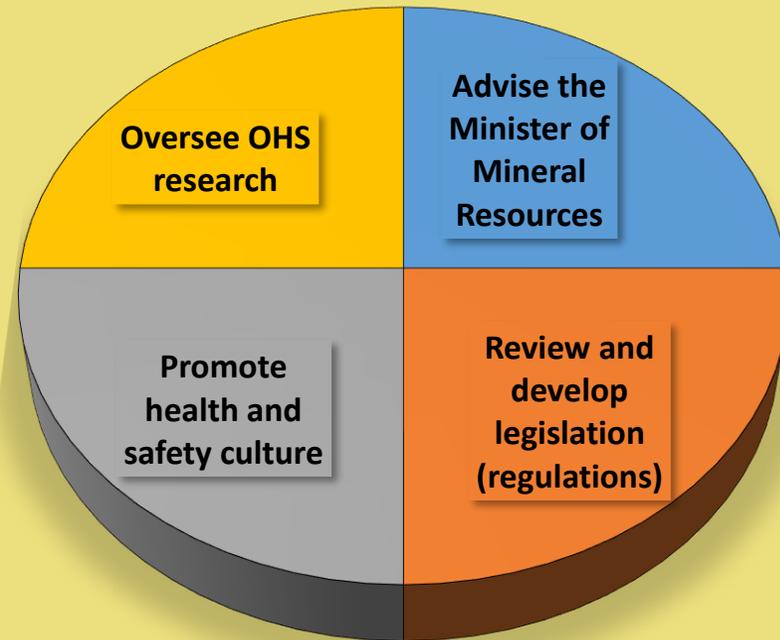
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MHSC mandate

MHSC is a national public entity established in terms of the MHSA, No 29 of 1996.

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What is Cannabis

- “ **Cannabis** is a psychoactive drug from the Cannabis plant used for medical ,spiritual or recreational purposes. The main psychoactive part of cannabis is tetrahydrocannabinol(THC)” [1].
- **Slang names include:**
 - [Dagga](#) (Afrikaans)
 - [Ganja](#) (Hindi)
 - Hemp (English)
 - Patje/Matekwana (Sotho)
 - Marijuana [2]



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What are the effects of using Cannabis

Short term effects of smoking it include:

- Feeling “high” or “stoned”
- General change in perception
- Heightened mood, increase in appetite.
- Redness of eyes, effects may be felt within 30 to 60 minutes and may last for 2 to 6 hours

[3]

Long term effects:

- Memory and cognition problems
- Addiction problems
- Schizophrenia in young people
- Abnormal patterns of development, learning and social interactions of a child when the mother used while pregnant

[4]



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MHSC's research on Cannabis

Title of Study:

- **SIM 020103** 'Alcohol and cannabis use among South African mine workers'
- Study started in 2002 and was completed in 2005
- Research Agency: School of Public Health University of the Witswatersrand.
- Authors: Dr. Ajani

Aim of study:

- To determine the prevalence of accidents in which alcohol and dagga tests were positive and factors which influence the use of these substances among mineworkers in South Africa.
- To delve more into knowledge, attitudes, and practices, regarding alcohol and cannabis use

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MHSC's research on Cannabis

Findings of the Study:

From workplace focus group discussions:

- Workers doing physically demanding jobs were most likely to use Dagga for Stamina
- Dagga associated with boldness
- Dagga use associated with paradoxical effect (made people prone to accidents with slow reaction time).
- Employees more tolerable to Dagga users than Alcohol drinkers as they are considered “hard working”
- Living far from spouses and family associated with psychological stress and hence the dependence on Dagga.



MHSC's research on Cannabis

Results From Literature and Records Review:

- Metabolites of cannabis (cannabinoids) are cleared slowly from the body and may be present in urine up to one month or longer after use.
- The presence of cannabinoids at the time of accidents does not always mean judgement was impaired due to presence of Cannabis.
- However, through further tests (lab tests) the high level of cannabinoids may suggest recent use and a factor in the accident.
- Record Review did not yield adequate results to make conclusions on accidents where employees tested positive for Cannabis and Alcohol.

[5]



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The Cannabis judgement

10. It is declared that, with effect from the date of the handing down of this judgment, the provisions of sections 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and the provisions of section 22A(9)(a)(i) of the Medicines and Related Substances Control Act 101 of 1965 read with Schedule 7 of GN R509 of 2003 published in terms of section 22A(2) of that Act are inconsistent with right to privacy entrenched in section 14 of the Constitution and, therefore, invalid to the extent that they make the use or possession of cannabis in private by an adult person for his or her own consumption in private a criminal offence.
11. It is declared that, with effect from the date of the handing down of this judgment, the provisions of section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 read with Part III of Schedule 2 of that Act and with the definition of the phrase “deal in” in section 1 of the Drugs and Drug Trafficking Act 140 of 1992 are inconsistent with the right to privacy entrenched in section 14 of the Constitution and, are, therefore,

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The Cannabis judgement

constitutionally invalid to the extent that they prohibit the cultivation of cannabis by an adult in a private place for his or her personal consumption in private.

12. The operation of the orders in 10 and 11 above is hereby suspended for a period of 24 months from the date of the handing down of this judgment to enable Parliament to rectify the constitutional defects.
13. During the period of the suspension of the operation of the order of invalidity:

(a) section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 shall be read as if it has sub-paragraph (vii) which reads as follows:

“(vii) , in the case of an adult, the substance is cannabis and he or she uses it or is in possession thereof in private for his or her personal consumption in private.”

(b) the definition of the phrase “deal in” in section 1 of the Drugs and Drug Trafficking Act 140 of 1992 shall be read as if the words “other than the cultivation of cannabis by an adult in a private place for his or her personal consumption in private” appear after the word “cultivation” but before the comma.

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Countries where Cannabis is decriminalised

	Country/Jurisdiction	Applicable Legislation	Year of decriminalisation or legalisation
1.	Austria	Narcotic Substances Act SMG - Suchtmittelgesetz of 1998	2016
2.	Australia (Capital territory)	Drugs of Dependence Act 1989	1992
3.	Australia (Northern territory)	Drugs of Dependence Act 1990	1996
4.	Australia (South Australia)	The Controlled Substances Act 1984. Expiation of Offences Act 1996 (SA) s 15(4).	1987
5.	Canada	Legalised with the Cannabis Bill (Bill C – 45)	2018
6.	Chile	LEY NUM. 20.000	2007
7.	Czech Republic	Government decree 467/2009	2010
8.	Estonia	The Act on Narcotic Drugs and Psychotropic Substances Act 1997 – Art 31 & Art 151 Penal Code – Ar184	2002
9.	Jamaica	The Dangerous Drugs (Amendment) Act 2015	2015
10.	Portugal	Law 30/2000 - Art 2	2000
11.	Spain	Law 1/1992, Art 25-28	2015
12.	Switzerland	The Federal Narcotics and Psychotropic Substances Act (BetmG; SR 812.121) of 1951	2013

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13.	Alaska (USA)	Case: <i>Ravin v. State</i> , 537 P.2d 494 (1975)	Legalised in 2015
14.	California (USA)	The Adult Use of Marijuana Act Proposition 64	Legalised in 2016
15.	Colorado (USA)	The Colorado Amendment 64	Legalised in 2012
16.	Connecticut (USA)	Senate Bill 1014	Legalised in 2014
17.	Delaware (USA)	HB 39	Legalised in 2015
18.	Illinois (USA)	Bill 2228	2016
19.	Maine (USA)	The Maine Marijuana legalisation Act	Legalised in 2016
20.	Massachusetts (USA)	Massachusetts Marijuana Legalisation, Question 4	Legalised in 2016
21.	Maryland (USA)	SB 364	2014
22.	Minnesota (USA)	The Minnesota statute Code 152.01, et seq.	1976
23.	Mississippi (USA)	Code 41-29-101, et seq.; 41-29-139	1978
24.	Missouri (USA)	HB 512	2017
25.	Nevada (USA)	Initiative to Regulate and Tax Marijuana	Legalised in 2017
26.	New York (USA)	New York Penal Law Article 221.	2014
27.	North Carolina (USA)	North Carolina Controlled Substances Act	1977
28.	Ohio (USA)	Ohio Rev. Code Ann. § 2925.11	2016

What does it mean?



[7]

On the 18th of September 2018

- South Africa's apex court has ruled on the criminalisation of the **use, possession and cultivation of cannabis** by adult persons in private.

[6]



Guidelines for the SAMI to deal with the Cannabis Judgement

- N.B No statutory guidelines for workplace drug testing
Ethical guidelines of prime importance (HPCSA)

However:

- **Law:** MHSAct (1996), Constitution of RSA
- **Company Policies:** ZERO TOLERANCE to Substance abuse

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Guidelines for the SAMI to deal with the Cannabis Judgement

- **Drug Testing Policies:** ETHICALLY SOUND ,LEGALLY CORRECT, SCIENTIFICALLY ACCURATE and be CONSISTENT
- **Drug tests:** To be explained, various ways of testing available: (Saliva and Urine tests), Positive tests to be followed up by Lab Tests, Corrective actions to be taken at discretion of Competent person.
- **Right to privacy to be maintained:** Employees' dignity and privacy to be maintained. Presence of Cannabis does not mean **INTOXICATION**
[7]
- **Employee Assistance Programmes** to be aimed at assisting employees, Rehabilitation and encouraging non-use at work.
[5]



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Thank you