

MISUSE OF DRUGS AMENDMENT (PSYCHOACTIVE SUBSTANCES) BILL 2015

I move –

That the Bill now be read a second time.

I am pleased to introduce the Misuse of Drugs Amendment (Psychoactive Substances) Bill 2015. This Bill is required to prohibit the sale, supply, manufacture, advertising and promotion of any psychoactive substance, or a substance purported to have a psychoactive effect, unless it is approved through existing legislation or regulation.

The Bill will close a regulatory gap that has enabled new and emerging psychoactive substances to be sold because they have not been captured by or regulated via existing legislation.

Western Australia has been at the forefront nationally in dealing with the issue of new and emerging psychoactive substances under our existing legislation, and in 2011 was the first state to ban synthetic cannabinoids sold using brand names, such as “Kronic”, using Schedule 9 of the *Poisons Act 1964*. Seven synthetic cannabinoids became prohibited substances on 17 June 2011.

In order to rapidly respond to the harms occurring, Western Australia acted unilaterally ahead of national scheduling.

On 8 July 2011, the Australian Government listed eight synthetic cannabinoids (the seven WA had already prohibited plus an additional one) in Schedule 9 of the Standard for the Uniform Scheduling of Medicines and Poisons (the SUSMP). The Western Australian *Poisons Act 1964* adopts the schedules of the SUSMP by reference, making it illegal to possess, sell or supply any products containing these substances.

On 5 August 2011 WA banned a further 14 substances, meaning that by August 2011, twenty-two new psychoactive drugs, all synthetic cannabinoids, had been banned in Western Australia, making it illegal to possess, sell or supply any products containing these substances.

In May 2012, eight groups of synthetic cannabinoids were listed in Schedule 9 of the SUSMP, making it illegal to supply, sell, manufacture and possess these substances. An extra group entry called ‘synthetic cannabinomimetics’ was also included to capture all synthetic substances which mimic cannabis-like effects. This means that all synthetic cannabinoids, along with a number of other synthetic psychoactive substances, are already prohibited in Western Australia and there are stiff penalties for possession and supply of synthetic drugs under the *Misuse of Drugs Act 1981*.

The WA Government added 33 more substances to this list of banned psychoactive substances on 27 June 2014.

Since 2010-11, the new psychoactive substances becoming available in Western Australia and on the Australian market have broadened considerably from the initial large focus on synthetic cannabinoids to other synthetic substance classifications including amphetamine-type substances, hallucinogens, opioids and other substances having a dissociative effect on users.

A primary source of these substances is through retail outlets such as sex shops, herbal highs outlets and some tobacconists. The packaging marks many of these products as not-for-human consumption despite being clearly sold for their psychoactive effects when consumed. Others are marketed and sold as being legal alternatives to banned drugs. While there has been much discussion in the media regarding the use of 'darknet' sites to purchase new psychoactive substances (for example, the Silk Road), research has shown that it is still predominantly existing illicit substances being advertised and purchased on these sites.

Producers have continued to introduce new chemical derivatives of substances that have been banned, resulting in governments around the world having to "catch up" using existing legislation.

This Bill will address this problem by explicitly banning the sale, supply, manufacture, advertising and promotion of any psychoactive substance that is not already captured by existing legislation.

This Bill will control these potentially harmful new and emerging psychoactive substances that have no legitimate use and are otherwise unregulated and it will help to remove them from circulation in Western Australia in a timely and effective manner.

Other psychoactive substances that have legitimate uses, such as alcohol and food, will continue to be controlled by existing legislation, such as the Commonwealth *Therapeutic Goods Act 1989*. The control of medicines and illicit drugs will continue under the *Poisons Act 1964* and the *Misuse of Drugs Act 1981*.

Offences relating to the promotion, manufacture, sale or supply of psychoactive substances are contained in the proposed sections in 8Q and 8R of the Bill.

The powers of police officers to enter premises, inspect, seize and dispose of substances are contained in the proposed sections 8S and 8T.

The existing legislation requires a psychoactive substance to be identified, then evidence of sufficient harm to accrue and a case prepared to satisfy the regulatory decision-making process to determine whether the individual substance should be scheduled, effectively banning the substance under the *Poisons Act 1964* and the *Misuse of Drugs Act 1981*.

Under existing provisions, if WA Police seize a psychoactive substance that is subsequently found after testing not to be specifically scheduled, they are required to return it to the owner, despite its potential for harm.

The Bill provides WA Police with the power to seize and destroy a psychoactive substance that has, or is purported to have a psychoactive effect, unless it is scheduled under an existing legislation or is specifically exempted.

The intent of these amendments is to remove new and potentially harmful substances that are otherwise unregulated from the community. This Bill will help to reduce the cost impact on WA Police for the onerous analysis of substances that are sold, supplied, manufactured, advertised or promoted as having a psychoactive effect.

The different approach for such substances, compared to the approach that operates for other substances under the *Misuse of Drugs Act 1981*, is that these have not undergone the required harms assessments and regulatory approval processes and are therefore not yet subject to the *Poisons Act 1964* or other regulatory regimes governing products for human consumption.

The proposed sections 8T and 8U will assist Police in the situations where it is difficult to establish an offence, for example, “knowledge” that the substance was psychoactive or promoted as such, and no charges are laid. This may occur where it becomes clear that a supplier has genuinely and clearly been unaware that the product has a psychoactive effect.

It will also apply when a prosecution for the sale, supply, manufacture, advertising and promotion of psychoactive substances was unsuccessful. This may occur where the Police are unable to legally establish the supplier knew the substance was psychoactive but there is no dispute about it having a psychoactive effect.

In these situations, unless the owner requests the return of the seized substance, WA Police can approve the destruction and disposal of the substance without the requirement for a confirmatory analysis that demonstrates the substance is psychoactive.

If the person claiming ownership of the seized substance has not been charged or the prosecution was unsuccessful, the draft Bill allows for the person to request the return of the seized substance following testing to prove that the substance is not psychoactive. It also provides the ability for WA Police to require an upfront payment from the person to cover the costs of the analysis.

This Bill, along with other initiatives to continue drug education and monitor new psychoactive substances, will add strength to Western Australia’s response and help protect the community from these new psychoactive substances.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House and table the explanatory memorandum.