

Cannabis Control Bill 2003

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Cannabis Control Bill 2003

A Bill for

An Act —

- **to allow infringement notices to be issued for certain minor offences relating to cannabis;**
- **to regulate the sale of cannabis smoking paraphernalia; and**
- **to amend the *Misuse of Drugs Act 1981*,**
and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Cannabis Control Act 2003*.

2. Commencement

5 This Act comes into operation on a day fixed by proclamation.

3. Act to be read with the *Misuse of Drugs Act 1981*

(1) This Act is to be read as one with the *Misuse of Drugs Act 1981*.

(2) Without limiting subsection (1), unless the contrary intention appears, a word or an expression defined in section 3(1) of the
10 *Misuse of Drugs Act 1981* and used in this Act has the same meaning as it has in that Act.

Part 2 — Cannabis infringement notices

4. Interpretation

In this Part —

5 “authorised person” in section 8(4)(b)(i), 11(1) or 12(1) means
a person appointed under section 16 by the Commissioner
to be an authorised person for the purposes of the section in
which the term is used;

“CES” means a cannabis education session —

- 10 (a) with a content approved under section 17(2)(a); and
(b) provided by a person approved under
section 17(2)(b);

“CIN” means a cannabis infringement notice given under
section 5(1), 6(1) or 7(1).

5. CIN for offence under *Misuse of Drugs Act 1981* s. 5(1)(d)(i)

15 (1) A police officer, other than a police officer who is an authorised
person for the purposes of section 8(4)(b)(i), 11(1) or 12(1), who
has reason to believe that a person who has reached 18 years of age
has committed an offence under section 5(1)(d)(i) of the *Misuse of*
20 *Drugs Act 1981* may, subject to subsection (2), within 21 days
after the alleged offence is believed to have been committed, give a
cannabis infringement notice to the alleged offender.

(2) A CIN may be issued under subsection (1) if, and only if, the
alleged offence involves cannabis.

6. CIN for offence under *Misuse of Drugs Act 1981* s. 6(2)

25 (1) A police officer, other than a police officer who is an authorised
person for the purposes of section 8(4)(b)(i), 11(1) or 12(1), who
has reason to believe that a person who has reached 18 years of age
has committed an offence under section 6(2) of the *Misuse of*
30 *Drugs Act 1981* may, subject to subsection (2), within 21 days
after the alleged offence is believed to have been committed, give a
cannabis infringement notice to the alleged offender.

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- (2) A CIN may be issued under subsection (1) if, and only if, the alleged offence —
- (a) involves an amount of cannabis that is not more than —
 - (i) 30 grams; or
 - 5 (ii) if an amount less than 30 grams is prescribed by the regulations — that amount;
 - and
 - (b) does not involve —
 - 10 (i) cannabis resin or any other cannabis derivative; or
 - (ii) a cannabis plant under cultivation.

7. CIN for offence under *Misuse of Drugs Act 1981* s. 7(2)

- (1) A police officer, other than a police officer who is an authorised person for the purposes of section 8(4)(b)(i), 11(1) or 12(1),
15 who has reason to believe that a person who has reached 18 years of age has committed an offence under section 7(2) of the *Misuse of Drugs Act 1981* may, subject to subsection (2), within 21 days after the alleged offence is believed to have been committed, give a cannabis infringement notice to the alleged
20 offender.
- (2) A CIN may be issued under subsection (1) if, and only if —
- (a) the alleged offence involves cannabis plants under cultivation, other than cannabis plants under hydroponic cultivation;
 - 25 (b) the cannabis plants are all located on the same premises and those premises are the alleged offender's principal place of residence;
 - (c) there are no other cannabis plants being cultivated on the premises by any other person; and

- (d) the plants number no more than —
 - (i) 2; or
 - (ii) if the number one is prescribed by the regulations — one.

5 **8. Content of CIN**

- (1) A CIN is to be in a form prescribed by the regulations.
- (2) A CIN is to contain a description of the alleged offence.
- (3) A CIN is to advise that the alleged offender may, in writing,
10 elect to have a complaint of the alleged offence heard and
determined by a court, and inform the alleged offender how to
make that election.
- (4) Unless section 9 applies, a CIN is to —
 - (a) advise that if the alleged offender does not wish to have
15 a complaint of the alleged offence heard and determined
by a court —
 - (i) the amount of money specified in the CIN as
being the modified penalty for the offence may
be paid to an authorised person within a period
of 28 days after the giving of the CIN; or
 - (ii) the alleged offender may, within a period of
20 28 days after the giving of the CIN, complete a
CES;
 - and
 - (b) inform the alleged offender as to —
 - (i) who are authorised persons for the purposes of
25 receiving payment of modified penalties; and
 - (ii) how the alleged offender may arrange to
complete a CES.

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9. Option to pay a modified penalty not available in certain circumstances

- 5 (1) This section applies to a CIN issued for an alleged offence (the “**new offence**”) if, within 3 years before the new offence was allegedly committed, the alleged offender has been given a CIN for each of 2 or more offences, at least 2 of which are alleged to have been committed on separate days previous to the day on which the new offence is alleged to have been committed.
- 10 (2) For the purposes of subsection (1), a CIN is taken to have not been given in relation to an alleged offence if the CIN has been withdrawn.
- (3) A CIN to which this section applies is to —
- 15 (a) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the alleged offender may, within a period of 28 days after the giving of the CIN, complete a CES; and
- (b) inform the alleged offender as to how the alleged offender may arrange to complete a CES.
- 20 (4) Despite section 19, Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* does not apply to a CIN to which this section applies.

10. Modified penalties

- 25 (1) In a CIN the amount specified as being the modified penalty for the offence referred to in the CIN is to be the amount that was prescribed by the regulations to be the modified penalty at the time the alleged offence is believed to have been committed.
- (2) The modified penalty that may be prescribed by the regulations for an offence under section 5(1)(d)(i), 6(2) or 7(2) of the *Misuse of Drugs Act 1981* is not to exceed \$400.
- 30

- (3) In relation to an offence under section 6(2) of the *Misuse of Drugs Act 1981*, the regulations may prescribe different modified penalties for different amounts of cannabis.

11. Extension of time

- 5 (1) An authorised person may, in a particular case, extend the period of 28 days within which —
- (a) the modified penalty may be paid; or
- (b) the alleged offender may complete a CES.
- (2) The extension may be allowed whether or not the period of
10 28 days has elapsed.

12. Withdrawal of CIN

- (1) An authorised person may withdraw a CIN by sending to the alleged offender a notice in a form prescribed by the regulations stating that the CIN has been withdrawn.
- 15 (2) A CIN may be withdrawn whether or not the modified penalty has been paid.
- (3) If a CIN is withdrawn after the modified penalty has been paid, the amount paid is to be refunded.
- (4) A CIN cannot be withdrawn if the alleged offender has
20 completed a CES in relation to the CIN.

13. Benefit of paying modified penalty or completing CES

- (1) Subsection (2) applies if —
- 25 (a) the modified penalty specified in a CIN has been paid within 28 days or such further time as is allowed and the CIN has not been withdrawn; or
- (b) the alleged offender has completed a CES in respect of the CIN within 28 days or such further time as is allowed.
- (2) If this subsection applies, the bringing of proceedings and the imposition of penalties are prevented to the same extent that

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they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

- 5 (3) Payment of a modified penalty or completion of a CES is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

14. Completing one CES for multiple CINs

10 For the purposes of section 13(1)(b), if an alleged offender is believed to have committed more than one offence referred to in section 5, 6 or 7 on one day and is given a CIN in respect of each of those offences, the alleged offender is to be taken to have completed a CES in respect of each of those CINs if he or she completes one CES in respect of all of them.

15. Application of penalties collected

15 An amount paid as a modified penalty is, subject to section 12(3), to be dealt with as if it were a penalty imposed by a court as a penalty for an offence under section 5(1)(d)(i), 6(2) or 7(2) of the *Misuse of Drugs Act 1981*, as the case may be.

16. Appointment of authorised persons

20 The Commissioner may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of section 8(4)(b)(i), 11(1) or 12(1) or for the purposes of 2 or more of those sections.

17. Cannabis education sessions

- 25 (1) The purpose of a cannabis education session is to educate those who complete it about —
- (a) the adverse health and social consequences of cannabis use;
 - (b) the treatment of cannabis related harm; and
 - (c) the laws relating to the use, possession and cultivation of
- 30 cannabis.

- (2) The chief executive officer of the department principally assisting the Minister administering the *Health Legislation Administration Act 1984* in the administration of that Act —
- 5 (a) having regard to subsection (1), may approve the content of a cannabis education session;
- (b) may approve persons to provide those cannabis education sessions;
- (c) may give an approval under paragraph (b) subject to conditions to be obeyed by the person approved; and
- 10 (d) may cancel or amend an approval given under paragraph (a) or (b).
- (3) An act done under subsection (2) must be in writing.

18. Certificate of completion of a CES

- (1) An approved provider of a CES is to —
- 15 (a) give to a person who has completed a CES a certificate of completion; and
- (b) send a copy of the certificate to the Commissioner.
- (2) A certificate of completion is to be in a prescribed form and is to set out —
- 20 (a) the name and address of the person who has completed the CES;
- (b) the date of completion; and
- (c) the details of the CIN in respect of which the CES was completed.

19. Enforcement of CIN under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*

- (1) This section applies subject to section 9.
- (2) For the purposes of Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* this Act is a
- 30 prescribed enactment.

s. 20

- (3) A police officer may issue a final demand under section 14 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* if —
- (a) a CIN has been issued;
 - 5 (b) the CIN has not been withdrawn under section 12;
 - (c) the modified penalty has not been paid as required by the CIN;
 - (d) the alleged offender has not completed a CES as required by the CIN;
 - 10 (e) the alleged offender has not elected to have a complaint of the alleged offence heard and determined by a court; and
 - (f) the time for paying the modified penalty or attending a CES has elapsed.
- 15 (4) Subsection (3) applies instead of section 14(1) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

20. Operation of *Young Offenders Act 1994* unaffected

Nothing in this Part prevents a young person within the meaning of the *Young Offenders Act 1994* from being dealt with under
20 Part 5 of that Act in respect of an offence under section 5(1)(d)(i), 6(2) or 7(2) of the *Misuse of Drugs Act 1981*.

Part 3 — Cannabis smoking paraphernalia

21. Interpretation

In this Part —

“cannabis smoking paraphernalia” means —

- 5 (a) anything made or modified to be used in smoking cannabis;
- (b) any other thing that is prescribed by regulations to be cannabis smoking paraphernalia.

22. Warning notice

10 A person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold must ensure that a warning notice prescribed by the regulations relating to the adverse consequences of cannabis use is clearly visible to any person entering or exiting the shop or retail outlet.

15 Penalty:

- (a) in the case of a natural person — \$1 000;
- (b) in the case of a body corporate — \$5 000.

23. Cannabis education materials

20 A person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold must make available to any purchaser of cannabis smoking paraphernalia cannabis education materials prescribed by the regulations relating to the adverse consequences of cannabis use.

Penalty:

- 25 (a) in the case of a natural person — \$1 000;
- (b) in the case of a body corporate — \$5 000.

24. Selling cannabis smoking paraphernalia to minors

- (1) A person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold must not sell cannabis smoking paraphernalia to a person who is under 18 years of age.

5 Penalty:

- (a) in the case of a natural person — \$5 000;
- (b) in the case of a body corporate — \$25 000.

- (2) It is a defence to a charge of an offence under subsection (1) for a person charged to prove that the person —

- 10 (a) honestly and reasonably believed that the person to whom the cannabis smoking paraphernalia concerned was sold had reached 18 years of age; or
- (b) had taken all precautions that were reasonably required to ensure that the cannabis smoking paraphernalia concerned was not sold to a person who was under
15 18 years of age.

Part 4 — Miscellaneous

25. Regulations

5 The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

26. Review of Act

- 10 (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years from its commencement, and in the course of that review the Minister is to consider and have regard to —
- (a) whether there is a need for the Act to continue; and
 - (b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- 15 (2) The Minister is to prepare a report based on the review carried out under subsection (1) and as soon as is practicable after the preparation of the report (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

20

Part 5 — Misuse of Drugs Act 1981 amended

27. The Act amended by this Part

The amendments in this Part are to the *Misuse of Drugs Act 1981**.

[* Reprinted as at 11 January 2002.]

5 **28. Section 5 amended**

Section 5(1)(e) is amended by inserting after “prohibited drug or prohibited plant” —

“ other than cannabis ”.

29. Section 7A inserted

10 After section 7 the following section is inserted —

“

7A. Selling or supplying a thing knowing it will be used in the hydroponic cultivation of a prohibited plant

15 (1) A person who sells or supplies, or offers to sell or supply, to another, any thing that the person knows will be used to cultivate a prohibited plant contrary to section 7(1)(a) or (2) by hydroponic means commits an indictable offence.

20 (2) A court convicting a person of the offence under subsection (1) may, on the application of the Director of Public Prosecutions or a police prosecutor, in addition order that the person be prohibited for a period set by the court (but not exceeding 2 years) from selling or supplying, or offering for sale or supply, to another, any thing that may be used to cultivate plants by hydroponic means.

25 (3) A person who contravenes an order under subsection (2) is guilty of a simple offence.

”.

30. Section 9 amended

(1) If this Act comes into operation before the *Criminal Code Amendment Act 2003* comes into operation, section 9(2) is amended as follows:

- 5 (a) by deleting “or” after paragraph (a);
(b) by deleting the comma after paragraph (b) and inserting instead —
“ ; or ”;
(c) by inserting after paragraph (b) the following paragraph —
10 “
(ba) section 7A(1),
”.

(2) If this Act comes into operation after the *Criminal Code Amendment Act 2003* comes into operation, section 9(1) is amended as follows:

- 15 (a) by deleting “or” after paragraph (a);
(b) by deleting the comma after paragraph (b) and inserting instead —
“ ; or ”;
20 (c) by inserting after paragraph (b) the following paragraph —
“
(c) an offence under section 7A(1),
”.

31. Section 34 amended

25 Section 34(1) is amended as follows:

- (a) by deleting paragraph (c) and inserting instead —
“
(c) an offence under section 7A(1) is liable —
30 (i) if convicted on indictment, to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 5 years or both;

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(ii) if convicted by a summary court, to a fine not exceeding \$2 000 or to imprisonment for a term not exceeding 2 years or both;

5

”;

(b) in paragraph (e) by inserting after “7(2)” —
“ , 7A(3) ”.

32. Schedule VI amended

10

Schedule VI item 3 is amended in the column headed “Number” by deleting “25” and inserting instead —

“ 10 ”.

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