

CANNABIS CONTROL BILL 2003 – EXPLANATORY MEMORANDUM

INTRODUCTION

The core reform proposed by the *Cannabis Control Bill 2003* is to allow police officers to issue a Cannabis Infringement Notice (CIN) to persons who are found cultivating or in possession of cannabis within defined limits.

This proposal arose from the Community Drug Summit, and was the subject of a report to Government by the Drug Law Reform Working Group,¹ which made recommendations for legislation to implement a Cannabis Infringement Notice scheme and related matters.

The Bill also proposes:

- (a) To allow police to issue a CIN to persons found in possession of smoking implements on which there are believed to be detectable traces of cannabis.
- (b) To apply certain controls to retailers of cannabis smoking paraphernalia.
- (c) To amend the *Misuse of Drugs Act 1981* such that:
 - (i) It will no longer be an offence under s.5(1)(e) of the Act for a person to be found in a place that is being used for the purposes of smoking a prohibited drug or prohibited plant if the prohibited drug or prohibited plant in question is cannabis.
 - (ii) A new offence of selling or supplying things knowing that the things will be used in the hydroponic cultivation of a prohibited plant is created.

¹ *Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters*. Report of the Working Party on Drug Law Reform to the Minister for Health. March 2002.

CANNABIS CONTROL BILL 2003 – NOTES ON CLAUSES

CLAUSE	EXPLANATORY NOTES
<p><u>PART 1 – PRELIMINARY</u></p> <p>Clause 1 – Short title</p> <p>This Act may be cited as the <i>Cannabis Control Act 2003</i></p>	<p>This clause is self-explanatory.</p>
<p>Clause 2 – Commencement</p> <p>This Act comes into operation on a day fixed by proclamation.</p>	<p>Commencement by proclamation is proposed to enable the preparation of regulations and administrative procedures to be completed before the Bill is brought into operation.</p>
<p>Clause 3 – Act to be read with the <i>Misuse of Drugs Act 1981</i></p> <p>(1) This Act is to be read as one with the <i>Misuse of Drugs Act 1981</i>.</p> <p>(2) Without limiting subsection (1), unless the contrary intention appears, a word or expression defined in section 3(1) of the <i>Misuse of Drugs Act 1981</i> and used in this Act has the same meaning as it has in that Act.</p>	<p>The Bill has been prepared as a separate enactment to clearly identify its subject matter.</p> <p>Clause 3 provides that the Bill is to be read as one with the <i>Misuse of Drugs Act 1981</i> recognising the interrelationship between the two enactments. This will enable relevant defined terms in the <i>Misuse of Drugs Act 1981</i> (eg cannabis, Commissioner, cultivate, possess, supply) to apply to the Bill.</p>

CLAUSE	EXPLANATORY NOTE
<p><u>PART 2 – CANNABIS INFRINGEMENT NOTICES</u></p> <p>Clause 4 – Interpretation</p> <p>In this Part –</p> <p>“authorised person” in section 8(4)(b)(i), 10(1) or 11(1) means a person appointed under section 15 by the Commissioner to be an authorised person for the purposes of the section in which the term is issued;</p> <p>“CES” means a cannabis education session –</p> <p>(a) with a content approved under section 16(2)(a); and</p> <p>(b) provided by a person approved under section 16(2)(b);</p> <p>“CIN” means a cannabis infringement notice given under section 5(1), 6(1) or 7(1).</p>	<p>This clause defines certain terms used in Part 2 of the Bill.</p>
<p>Clause 5 – CIN for offence under <i>Misuse of Drugs Act 1981</i> s.5(1)(d)(i)</p> <p>(1) A police officer, other than a police officer who is an authorised person for the purposes of section 8(4)(b)(i), 10(1) or 11(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 <i>Misuse of Drugs Act 1981</i> 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.</p> <p>(2) A CIN may be issued under subsection (1) if, and only if, the alleged offence involves cannabis.</p>	<p>This clause proposes to allow a police officer to issue a cannabis infringement notice to a person aged 18 years and over who is reasonably believed to have committed an offence under s.5(1)(d)(i) of the <i>Misuse of Drugs Act 1981</i> where the alleged offence involves cannabis.</p> <p>S.5(1)(d)(i) of the <i>Misuse of Drugs Act 1981</i> is the simple offence of possessing pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 6 – CIN for offence under <i>Misuse of Drugs Act 1981</i> s.6(2)</p> <p>(1) A police officer, other than a police officer who is an authorised person for the purposes of section 8(4)(b)(i), 10(1) or 11(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 <i>Misuse of Drugs Act 1981</i> 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.</p> <p>(2) A CIN may be issued under subsection (1) if, and only if, the alleged offence –</p> <p>(a) involves an amount of cannabis that is not more than –</p> <p>(i) 30 grams; or</p> <p>(ii) if an amount less than 30 grams is prescribed by the regulations – that amount;</p> <p>and</p> <p>(b) does not involve –</p> <p>(i) cannabis resin or any other cannabis derivative; or</p> <p>(ii) a cannabis plant under cultivation.</p>	<p>This clause proposes to allow a police officer to issue a cannabis infringement notice to a person aged 18 years and over who is reasonably believed to have committed the offence at s.6(2) of the <i>Misuse of Drugs Act 1981</i> where the alleged offence involves cannabis.</p> <p>S.6(2) of the <i>Misuse of Drugs Act 1981</i> is the simple offence of possession or use of a prohibited drug.</p> <p>Cannabis is identified in s.4 and Schedule I of the <i>Misuse of Drugs Act 1981</i> as a prohibited drug.</p> <p>Subclause 6(2) defines the circumstances in which a CIN may be issued under this clause. Its effect is to allow a police officer to issue a CIN if the amount of cannabis involved in the alleged offence is not more than 30 grams. The Bill enables this amount to be reduced, but not increased, by regulation.</p> <p>Subclause 6(2) also prevents a CIN being issued in relation to the possession or use of cannabis resin and other cannabis derivatives (eg cannabis oil). Cannabis in these forms is excluded because of their greater potency.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 7 – CIN for offence under <i>Misuse of Drugs Act 1981</i> s.7(2)</p> <p>(1) A police officer, other than a police officer who is an authorised person for the purposes of section 8(4)(b)(i), 10(1) or 11(1), 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 <i>Misuse of Drugs Act 1981</i> 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.</p> <p>(2) A CIN may be issued under subsection (1) if, and only if –</p> <p>(a) the alleged offence involves cannabis plants under cultivation, other than cannabis plants under hydroponic cultivation;</p> <p>(b) the cannabis plants are all located on the same premises; and</p> <p>(c) the plants number no more than –</p> <p>(i) 2; or</p> <p>(ii) if the number one is prescribed by the regulations – one.</p>	<p>This clause proposes to allow a police officer to issue a cannabis infringement notice to a person aged 18 years and over who is reasonably believed to have committed the offence at s.7(2) of the <i>Misuse of Drugs Act 1981</i> where the alleged offence involves cannabis plants under cultivation.</p> <p>S.7(2) of the <i>Misuse of Drugs Act 1981</i> is the simple offence of possession or cultivation of a prohibited plant.</p> <p>Cannabis is identified in s.4 and Schedule II of the <i>Misuse of Drugs Act 1981</i> as a prohibited plant.</p> <p>Subclause 7(2) defines the circumstances in which a CIN may be issued under this clause. Its effect is to allow a police officer to issue a CIN if an alleged offence involves not more than 2 cannabis plants all of which are located on the same premises. This plant limit may be reduced to one plant by regulation, but cannot be increased above 2 plants except by amendment of the Bill.</p> <p>Subclause 7(2) also prevents a CIN being issued in respect of cannabis plants under hydroponic cultivation. Hydroponically grown cannabis is excluded because of its higher yields.</p> <p>The term “hydroponic cultivation” is intended to have its ordinary meaning, that is cultivation by placing the roots of a plant in a liquid nutrient solution rather than in soil.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 8 – Content of CIN</p> <p>(1) A CIN is to be in a form prescribed by the regulations.</p> <p>(2) A CIN is to contain a description of the alleged offence.</p> <p>(3) A CIN is to advise that the alleged offender may, in writing, 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.</p> <p>(4) A CIN is to –</p> <p>(a) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court –</p> <p>(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</p> <p>(ii) the alleged offender may, within a period of 28 days after the giving of the CIN, complete a CES;</p> <p>and</p> <p>(b) inform the alleged offender as to –</p> <p>(i) who are authorised persons for the purposes of receiving payment of modified penalties; and</p> <p>(ii) how the alleged offender may arrange to complete a CES.</p>	<p>A CIN will be in a form prescribed by regulations. It will be required to advise alleged offenders about the choices they may make on receiving a CIN, these being:</p> <p>(a) Having a complaint of the alleged offence heard and determined by a court.</p> <p>(b) Payment of a modified penalty within 28 days.</p> <p>(c) Completion of a cannabis education session within 28 days.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 9 – Modified penalties</p> <p>(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.</p> <p>(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 <i>Misuse of Drugs Act 1981</i> is not to exceed \$400.</p> <p>(3) In relation to an offence under section 6(2) of the <i>Misuse of Drugs Act 1981</i>, the regulations may prescribe different modified penalties for different amounts of cannabis.</p>	<p>Clause 9 enables modified penalties to be prescribed by regulation, subject to a maximum of \$400.</p> <p>The modified penalties that are proposed to apply on commencement of the CIN scheme are:</p> <p>(a) \$100 for possessing an implement used in the smoking of cannabis.</p> <p>(b) \$100 for possessing not more than 15 grams of cannabis.</p> <p>(c) \$150 for possessing between 15 grams and not more than 30 grams of cannabis.</p> <p>(d) \$200 for possessing up to 2 cannabis plants.</p> <p>The modified penalties at (b) to (d) were recommended by the Drug Law Reform Working Party having regard to penalty levels in comparable infringement schemes in other States and Territories.</p>
<p>Clause 10 – Extension of time</p> <p>(1) An authorised person may, in a particular case, extend the period of 28 days in which –</p> <p>(a) the modified penalty may be paid; or</p> <p>(b) the alleged offender may complete a CES.</p> <p>(2) The extension may be allowed whether or not the period of 28 days has elapsed.</p>	<p>Clause 10 enables a person authorised for this purpose by the Commissioner of Police to extend the 28 day period within which a modified penalty must be paid or a cannabis education session completed.</p> <p>Flexibility to extend time limits will be necessary for practical reasons, eg to enable people living in remote areas to attend scheduled cannabis education sessions.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 11 – Withdrawal of CIN</p> <p>(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.</p> <p>(2) A CIN may be withdrawn whether or not the modified penalty has been paid.</p> <p>(3) If a CIN is withdrawn after the modified penalty has been paid, the amount is to be refunded.</p> <p>(4) A CIN cannot be withdrawn if the alleged offender has completed a CES in relation to the CIN.</p>	<p>Clause 11 enables a person authorised for this purpose by the Commissioner of Police to withdraw a CIN by sending a prescribed withdrawal notice to an alleged offender.</p> <p>It requires repayment of a modified penalty if a CIN is withdrawn after a modified penalty has been paid, but provides that a CIN cannot be withdrawn if an alleged offender has completed a cannabis education session in relation to the CIN.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 12 – Benefit of paying modified penalty or completing CES</p> <p>(1) Subsection (2) applies if –</p> <p>(a) the modified penalty specified in the a CIN has been paid within 28 days or such further time as is allowed and the CIN has not been withdrawn; or</p> <p>(b) the alleged offender has completed a CES in respect of the CIN within 28 days or such further time as is allowed.</p> <p>(2) If this subsection applies, the bringing of proceedings and the imposition of penalties are prevented to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.</p> <p>(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.</p>	<p>Clause 12 provides that payment of a modified penalty or completion of a cannabis education session within the time allowed is to have the effect of preventing the commencement of court proceedings and the imposition of penalties in respect of the alleged offence which caused the CIN to be issued.</p> <p>Clause 12 also prevents the payment of a modified penalty or completion of a cannabis education session from being regarded as an admission for the purposes of any subsequent civil or criminal proceedings.</p>
<p>Clause 13 – Completing one CES for multiple CINs</p> <p>For the purposes of section 12(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.</p>	<p>Clause 13 contemplates more than one CIN being issued to an alleged offender on a single day. This may occur, for example, where police find a person in possession of cannabis within the limits for the scheme and growing up to 2 plants.</p> <p>Where this situation arises, clause 13 enables the person to expiate all alleged offences by completing one cannabis education session.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 14 – Application of penalties collected</p> <p>An amount paid as a modified penalty is, subject to section 11(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 <i>Misuse of Drugs Act 1981</i>, as the case may be.</p>	<p>Clause 14 provides that modified penalties paid under the Bill will be credited to the Consolidated Fund.</p>
<p>Clause 15 – Appointment of authorised persons</p> <p>The Commissioner may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of section 8(4)(b)(i), 10(1) or 11(1) or for the purposes of 2 or more of those sections.</p>	<p>Clause 15 enables the Commissioner of Police to appoint authorised persons for the following purposes:</p> <ul style="list-style-type: none"> (a) To receive modified penalties under subclause 8(4). (b) To allow an extension of time to pay a modified penalty or complete a cannabis education session under clause 10. (c) To decide whether a CIN may be withdrawn under clause 11.

CLAUSE	EXPLANATORY NOTE
<p>Clause 16 – Cannabis education sessions</p> <p>(1) The purpose of a cannabis education session is to educate those who complete it about —</p> <ul style="list-style-type: none"> (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 cannabis. <p>(2) The chief executive officer of the department principally assisting the Minister administering the <i>Health Legislation Administration Act 1984</i> in the administration of that Act —</p> <ul style="list-style-type: none"> (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 (d) may cancel or amend an approval given under paragraph (a) or (b). <p>(3) An act done under subsection (2) must be in writing.</p>	<p>Subclause 16(1) identifies the purpose of cannabis education sessions as being to advise alleged offenders about the health and social consequences of cannabis use, the treatment of cannabis related harm, and relevant laws.</p> <p>Subclause 16(2) confers power on the Director General of the Department of Health to approve the content of cannabis education sessions (subject to the intent specified in subclause 16(1)) and to approve persons to provide cannabis education sessions.</p> <p>This aspect of the Bill builds on the mandatory education provided as part of the WA cannabis cautioning scheme. This education is provided through the Drug and Alcohol Office’s Statewide network of community drug teams which will continue to perform this role.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 17 – Certificate of completion of a CES</p> <p>(1) An approved provider of a CES is to —</p> <ul style="list-style-type: none"> (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. <p>(2) A certificate of completion is to be in a prescribed form and is to set out —</p> <ul style="list-style-type: none"> (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. 	<p>In order for clause 12 to have effect, it will be necessary for the police to be advised when a person to whom a CIN has been issued has completed a cannabis education session.</p> <p>Clause 17 places a duty on the provider of a cannabis education session to provide such notification to the police.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 18 – Enforcement of CIN under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i></p> <p>(1) For the purposes of Part 3 of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> this Act is a prescribed enactment.</p> <p>(2) A police officer may issue a final demand under section 14 of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> if —</p> <p>(a) a CIN has been issued;</p> <p>(b) the CIN has not been withdrawn under section 11;</p> <p>(c) the modified penalty has not been paid as required by the CIN;</p> <p>(d) the alleged offender has not completed a CES as required by the CIN;</p> <p>(e) the alleged offender has not elected to have a complaint of the alleged offence heard and determined by a court; and</p> <p>(f) the time for paying the modified penalty or attending a CES has elapsed.</p> <p>(3) Subsection (2) applies instead of section 14(1) of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>.</p>	<p>Failure on the part of an alleged offender to respond to a CIN by electing for court proceedings, paying a modified penalty, or completing a cannabis education session within the time allowed will be dealt with under Part 3 of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>.</p> <p>The conditions that must be satisfied before a final demand may be issued to the recipient of a CIN under s.14 of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> are set out in clause 18(2) of the Bill.</p> <p>These conditions are in place of the conditions set out in s.14(1) of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> because of the need to accommodate completion of a cannabis education session as an additional option under the CIN scheme.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 19 – Operation of the <i>Young Offenders Act 1994</i> unaffected</p> <p>Nothing in this Part prevents a young person within the meaning of the <i>Young Offenders Act 1994</i> from being dealt with under Part 5 of that Act in respect of an offence under section 5(1)(d)(i), 6(2) or 7(2) of the <i>Misuse of Drugs Act 1981</i>.</p>	<p>The police will not be able to issue a CIN to a person who has not reached the age of 18 years at the time of an alleged offence.</p> <p>Young people are excluded from the CIN scheme because of the existence of other methods of dealing with juveniles who commit an offence under s.5(1)(d)(i), s.6(2), or s.7(2) of the <i>Misuse of Drugs Act 1981</i>.</p> <p>Clause 19 makes it clear that the Bill does not prevent persons who have not reached the age of 18 years from being dealt with under Part 5² of the <i>Young Offenders Act 1994</i> in respect of an offence under s.5(1)(d)(i), s.6(2), or s.7(2) of the <i>Misuse of Drugs Act 1981</i>.</p>

² Part 5 of the *Young Offenders Act 1994* provides for cautioning by the police and referral to a Juvenile Justice Team as alternatives to court proceedings. These alternatives are available in relation to a young person who commits an offence under s.5(1)(d)(i), s.6(2), or s.7(2) of the *Misuse of Drugs Act 1981*.

CLAUSE	EXPLANATORY NOTE
<p><u>PART 3 – CANNABIS SMOKING PARAPHERNALIA</u></p> <p>Clause 20 – Interpretation</p> <p>In this Part —</p> <p>“cannabis smoking paraphernalia” means —</p> <p>(a) anything made or modified to be used in smoking cannabis;</p> <p>(b) any other thing that is prescribed by regulations to be cannabis smoking paraphernalia.</p>	<p>This clause defines cannabis smoking paraphernalia for the purposes of Part 3 of the Bill.</p>
<p>Clause 21 – Warning Notice</p> <p>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.</p> <p>Penalty:</p> <p>(a) in the case of a natural person — \$1 000;</p> <p>(b) in the case of a body corporate — \$5 000.</p>	<p>Clause 21 proposes to make it an offence for a person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold to fail to ensure that a prescribed warning notice is clearly visible to persons entering or exiting the premises.</p> <p>Warning notices will advise of the adverse consequences of cannabis use.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 22 – Cannabis education materials</p> <p>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.</p> <p>Penalty:</p> <p>(a) in the case of a natural person — \$1 000;</p> <p>(b) in the case of a body corporate — \$5 000.</p>	<p>Clause 22 proposes to make it an offence for a person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold to fail to make prescribed cannabis education materials available to purchasers of such paraphernalia.</p> <p>Cannabis education materials will advise of the adverse consequences of cannabis use.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 23 – Selling cannabis smoking paraphernalia to minors</p> <p>(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.</p> <p>Penalty:</p> <p>(a) in the case of a natural person — \$5 000;</p> <p>(b) in the case of a body corporate — \$25 000.</p> <p>(2) It is a defence to a charge of an offence under subsection (1) for a person charged to prove that the person —</p> <p>(a) honestly and reasonably believed that the person to whom the cannabis smoking paraphernalia concerned was sold had reached 18 years of age; or</p> <p>(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 18 years of age.</p>	<p>Clause 23 proposes to make it an offence for a person who operates a shop or other retail outlet where cannabis smoking paraphernalia is sold to sell such paraphernalia to a person who has not yet reached the age of 18 years.</p>

CLAUSE	EXPLANATORY NOTE
<p><u>PART 4 – MISCELLANEOUS</u></p> <p>Clause 24 – Regulations</p> <p>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.</p>	<p>This clause is self-explanatory.</p>
<p>Clause 25 – Review of Act</p> <p>(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 —</p> <p>(a) whether there is a need for the Act to continue; and</p> <p>(b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.</p> <p>(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.</p>	<p>Clause 25 requires the Minister to carry out a review of the operation and effectiveness of the <i>Cannabis Control Act 2003</i>. This requirement will arise at a point 3 years from the Act's commencement.</p> <p>The Minister will be required to report the outcome of the review to Parliament before the 4th anniversary of the Act's commencement.</p>

CLAUSE	EXPLANATORY NOTE
<p><u>PART 5 – MISUSE OF DRUGS ACT 1981 AMENDED</u></p> <p>Clause 26 – The Act amended by this Part</p> <p>The amendments in this Part are to the <i>Misuse of Drugs Act 1981</i>*.</p> <p>[* Reprinted as at 11 January 2002.]</p>	<p>This clause is self-explanatory.</p>
<p>Clause 27 – Section 5 amended</p> <p>Section 5(1)(e) is amended by inserting after “prohibited drug or prohibited plant” —</p> <p>“ other than cannabis ”.</p>	<p>The amendment proposed by clause 27 of the Bill to s.5(1)(e) of the <i>Misuse of Drugs Act 1981</i> is shown at Annexure A.</p> <p>S.5(1)(e) of the Act currently makes it an offence for a person to be found in any place which is being used for the purpose of smoking a prohibited drug or prohibited plant.</p> <p>This subsection is amended by clause 27 such that it would no longer be an offence for a person to be found in a place where the prohibited drug or prohibited plant being smoked is cannabis.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 28 – Section 7A inserted</p> <p>After section 7 the following section is inserted —</p> <p>“</p> <p>7A. Selling or supplying a thing knowing it will be used in the hydroponic cultivation of a prohibited plant</p> <p>(1) A person who sells or supplies, or offers to sell or supply, to another, any thing that the person knows, or reasonably ought to know, will be used to cultivate a prohibited plant contrary to section 7(1)(a) or (2) by hydroponic means commits an indictable offence.</p> <p>(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.</p> <p>(3) A person who contravenes an order under subsection (2) is guilty of a simple offence.</p> <p>”.</p>	<p>Clause 28 proposes to insert a new section 7A into the <i>Misuse of Drugs Act 1981</i>.</p> <p>The new section proposes to make it an offence for a person to sell or supply anything that the person knows, or reasonably ought to know, will be used to cultivate a prohibited plant by hydroponic means.</p> <p>New section 7A(2) proposes to enable a court to prohibit a person who is convicted of the new offence from selling or supplying things that may be used in hydroponic plant cultivation for a period of up to 2 years.</p> <p>This prohibition would be in addition to any sentence imposed by the court in respect of a conviction for the offence, and may be considered by the court on an application made by the Director of Public Prosecutions or a police prosecutor.</p> <p>A person who contravenes this court-imposed prohibition would commit a simple offence.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 29 – Section 9 amended</p> <p>(1) If this Act comes into operation before the <i>Criminal Code Amendment Act 2003</i> comes into operation, section 9(2) is amended as follows:</p> <p>(a) by deleting “or” after paragraph (a);</p> <p>(b) by deleting the comma after paragraph (b) and inserting instead — “ ; or ”;</p> <p>(c) by inserting after paragraph (b) the following paragraph — “ (ba) section 7A(1), ”.</p> <p>(2) If this Act comes into operation after the <i>Criminal Code Amendment Act 2003</i> comes into operation, section 9(1) is amended as follows:</p> <p>(a) by deleting “or” after paragraph (a);</p> <p>(b) by deleting the comma after paragraph (b) and inserting instead — “ ; or ”;</p> <p>(c) by inserting after paragraph (b) the following paragraph — “ (c) an offence under section 7A(1), ”.</p>	<p>The clause accommodates the possibility that s.9 of the <i>Misuse of Drugs Act 1981</i> may be amended by the <i>Criminal Code Amendment Act 2003</i> before commencement of the <i>Cannabis Control Act 2003</i>.</p> <p>S.9 of the <i>Misuse of Drugs Act 1981</i> determines courts of trial for persons charged with having committed certain indictable offences under that Act.</p> <p>The proposed amendment identifies the new offence to be inserted as s.7A(1) of the <i>Misuse of Drugs Act 1981</i> as an indictable offence that is to be tried summarily by a Court of Petty Sessions unless that court decides in any particular case that a person charged with the offence should be prosecuted on indictment or, having been convicted of the offence by the Court of Petty Sessions, should be referred to a superior court for sentencing.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 30 – Section 34 amended</p> <p>Section 34(1) is amended as follows:</p> <p>(a) by deleting paragraph (c) and inserting instead —</p> <p>“</p> <p style="padding-left: 40px;">(c) an offence under section 7A(1) is liable —</p> <p style="padding-left: 80px;">(i) if convicted on indictment, to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 5 years or both;</p> <p style="padding-left: 80px;">(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;</p> <p style="text-align: right; padding-right: 20px;">”;</p> <p>(b) in paragraph (e) by inserting after “7(2)” —</p> <p style="padding-left: 40px;">“ ,7A(3) ”.</p>	<p>The amendments proposed by clause 30 of the Bill to s.34(1) of the <i>Misuse of Drugs Act 1981</i> are shown in Annexure B.</p> <p>The amendments identify the penalties that are to be available where a person is convicted of the offences in new section 7A of the <i>Misuse of Drugs Act 1981</i>:</p> <p>(a) A person who is convicted on indictment of the new offence of selling or supplying anything knowing it will be used in the hydroponic cultivation of a prohibited plant will be liable to 5 years imprisonment and/or fine of \$20,000.</p> <p>(b) A person who receives a summary conviction for the same offence will be liable to 2 years imprisonment and/or fine of \$2,000.</p> <p>(c) A person who is found guilty of breaching a court-imposed prohibition on selling or supplying things used in hydroponic cultivation will be liable to 2 years imprisonment and/or fine of \$2,000.</p>

CLAUSE	EXPLANATORY NOTE
<p>Clause 31 – Schedule VI amended</p> <p>Schedule VI item 3 is amended in the column headed “Number” by deleting “25” and inserting instead —</p> <p>“ 10 ”.</p>	<p>The <i>Misuse of Drugs Act 1981</i> currently provides that a person found cultivating 25 or more cannabis plants is presumed for the purposes of a prosecution to have had an intention to sell or supply cannabis.</p> <p>One consequence is that the onus is placed on the alleged offender to disprove the presumption in proceedings for the indictable offence of possessing or cultivating a prohibited plant with intent to sell or supply at s.7(1) of the <i>Misuse of Drugs Act 1981</i>.</p> <p>Clause 31 reduces this threshold from 25 to 10 cannabis plants.</p>

CANNABIS CONTROL BILL 2003 – CLAUSE 27

Amendment proposed to s.5(1)(e) of the *Misuse of Drugs Act 1981* is underlined

5. Offences concerned with prohibited drugs and prohibited plants in relation to premises and utensils

- (1) A person who —
- (a) being the occupier of any premises, knowingly permits those premises to be used for the purpose of —
 - (i) the manufacture or preparation of a prohibited drug or prohibited plant for use; or
 - (ii) the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant;
 - (b) being the owner or lessee of any premises, knowingly permits those premises to be used for the purpose of using a prohibited drug or prohibited plant;
 - (c) is knowingly concerned in the management of any premises used for any of the purposes referred to in paragraphs (a) and (b);
 - (d) has in his possession —
 - (i) any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant; or
 - (ii) any utensils used in connection with the manufacture or preparation of a prohibited drug or prohibited plant,

in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant; or
 - (e) is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant other than cannabis,

except when he is authorised by or under this Act or by or under the *Poisons Act 1964* to do so, commits a simple offence.

CANNABIS CONTROL BILL 2003 – CLAUSE 30

Amendments proposed to s.34(1) of the *Misuse of Drugs Act 1981* – deletion of subsection 34(1)(c)³ and insertion of new subsection (c) underlined

34. Penalties

- (1) Subject to subsection (2), a person who is convicted of —
- (a) an indictable offence under section 6(1) or 7(1) is liable to a fine not exceeding \$100 000 or to imprisonment for a term not exceeding 25 years or both;
 - (b) conspiring with another to commit an indictable offence under section 6(1) or 7(1) is liable to a fine not exceeding \$75 000 or to imprisonment for a term not exceeding 20 years or both;
 - ~~(c) an indictable offence under section 18(2) is liable to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 5 years or both;~~
 - (c) an offence under section 7A(1) is liable –
 - (i) if convicted on indictment, to a fine not exceeding \$20 000 or to imprisonment for a term not exceeding 5 years or both;
 - (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;
 - (d) a simple offence under section 5(1) (other than a simple offence under section 5(1)(e)), 8, 15(2), 20, 25(2) or 29 is liable to a fine not exceeding \$3 000 or to imprisonment for a term not exceeding 3 years or both; or
 - (e) a simple offence under section 5(1)(e), 6(2), 7(2), 7A(3) or 31(4) is liable to a fine not exceeding \$2 000 or to imprisonment for a term not exceeding 2 years or both.

³ Section 34(1)(c) of the *Misuse of Drugs Act 1981* in its present form specifies an offence in relation to s.18(2) of the Act. This section was repealed by s.5 of the *Criminal Property Confiscation (Consequential Provisions) Act 2000*.