

Cannabis Law Reform Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Cannabis Law Reform Bill 2009

A Bill for

An Act to —

- **amend the *Misuse of Drugs Act 1981*; and**
 - **amend the *Spent Convictions Act 1988*; and**
 - **amend the *Working With Children (Criminal Record Checking) Act 2004*; and**
 - **amend the *Young Offenders Act 1994*; and**
 - **repeal the *Cannabis Control Act 2003*,**
- and to provide for related and consequential matters.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Cannabis Law Reform Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Cannabis Control legislation repealed**

2 **3. Repeals**

3 The following are repealed —

- 4 (a) the *Cannabis Control Act 2003*;
- 5 (b) the *Cannabis Control Regulations 2004*.

1 **Part 3 — Misuse of Drugs Act 1981 amended**

2 **4. Act amended**

3 This Part amends the *Misuse of Drugs Act 1981*.

4 **5. Section 3 amended**

5 In section 3(1) insert in alphabetical order:

6

7 *child* means a person who is under 18 years of age;

8

9 **6. Part IIIA inserted**

10 After section 8A insert:

11

12 **Part IIIA — Cannabis intervention**

13 **Division 1 — Preliminary**

14 **8B. Terms and abbreviations used in this Part**

15 (1) In this Part —

16 *adult* means a person who is not a young person;

17 *authorised person*, in section 8I or 8J, means a person
18 appointed under section 8D to be an authorised person
19 for the purposes of the section in which the term is
20 used;

21 *cannabis intervention requirement* means a notice
22 referred to in section 8F;

23 *cannabis intervention session* means a cannabis
24 intervention session —

25 (a) provided by a treatment provider approved
26 under section 8J(2)(b); and

- 1 (b) the content of which is approved under
2 section 8J(2)(a);
- 3 **CEO (Health)** has the meaning given in
4 section 38D(1);
- 5 **minor cannabis related offence** means —
- 6 (a) an offence under section 5(1)(d)(i) that involves
7 cannabis; and
- 8 (b) an offence under section 6(2) that involves
9 cannabis —
- 10 (i) if the amount is not more than 10 grams,
11 or such other amount as is prescribed by
12 the regulations; and
- 13 (ii) if the offence does not involve a
14 cannabis plant under cultivation,
15 cannabis resin or any other cannabis
16 derivative;
- 17 **police officer** does not include a person appointed by
18 the Commissioner as an authorised person under
19 section 8D;
- 20 **responsible adult** has the meaning given in the *Young*
21 *Offenders Act 1994* section 3;
- 22 **young person** means a person who —
- 23 (a) is under 18 years of age; or
- 24 (b) in relation to the commission, or alleged
25 commission, of a minor cannabis related
26 offence, was under 18 years of age when the
27 offence was committed, or allegedly
28 committed.
- 29 (2) In this Part the following abbreviations are used —
- 30 **CIR** for cannabis intervention requirement;
- 31 **CIS** for cannabis intervention session.

1 **8C. Operation of *Young Offenders Act 1994* unaffected**

2 Nothing in this Part prevents a young person from
3 being dealt with under the *Young Offenders Act 1994*
4 Part 5 in respect of a minor cannabis related offence.

5 **8D. Appointment of authorised persons**

6 The Commissioner may, in writing, appoint persons or
7 classes of persons to be authorised persons for the
8 purposes of section 8I or 8L, or for the purposes of
9 both of those sections.

10 **Division 2 — Cannabis intervention requirements**

11 **8E. CIR may be given for minor cannabis related**
12 **offence**

13 (1) A police officer who has reason to believe that a person
14 has committed a minor cannabis related offence may
15 give a cannabis intervention requirement to the alleged
16 offender, unless subsection (4) or section 8G(1)
17 applies.

18 (2) A police officer who believes —
19 (a) that an alleged offender has committed more
20 than one minor cannabis related offence; and
21 (b) that the alleged offences have arisen out of the
22 same incident,

23 may give a single CIR in respect of all or some of the
24 offences.

25 (3) A CIR is to be given as soon as practicable, and in any
26 event within 60 days, after an alleged offence is
27 believed to have been committed.

-
- 1 (4) A CIR cannot be given in respect of an alleged offence
2 (the *new offence*) if the alleged offender —
- 3 (a) is an adult who, before the new offence was
4 allegedly committed, had been convicted of a
5 minor cannabis related offence or given a CIR;
6 and
- 7 (b) was an adult when so convicted or given the
8 CIR.
- 9 **8F. Cannabis intervention requirement**
- 10 (1) A CIR is a notice in a form prescribed by the
11 regulations —
- 12 (a) containing a description of the alleged offence,
13 or offences; and
- 14 (b) informing the alleged offender that —
- 15 (i) he or she may, in writing, elect to be
16 prosecuted for the alleged offence, or
17 offences, in a court, and informing the
18 alleged offender how to make that
19 election; and
- 20 (ii) if he or she does not wish to be
21 prosecuted for the alleged offence, or
22 offences, in a court, the alleged offender
23 may, within a period of 28 days after the
24 giving of the CIR, complete a CIS;
- 25 and
- 26 (c) informing the alleged offender as to how the
27 alleged offender may arrange to complete a
28 CIS.
- 29 (2) A person need only complete a single CIS for each CIR
30 given to the person, even if the CIR is given in respect
31 of more than one alleged offence.

- 1 **8G. Young persons — special requirements about CIRs**
- 2 (1) A CIR cannot be given in respect of an alleged offence
- 3 (the *new offence*) if the alleged offender —
- 4 (a) is a young person who, before the new offence
- 5 was allegedly committed, had been convicted
- 6 of, or given a CIR in respect of, 2 or more
- 7 minor cannabis related offences; and
- 8 (b) at least 2 of those offences arose out of separate
- 9 incidents, or are alleged to have done so.
- 10 (2) A police officer who gives a young person a CIR is to
- 11 ensure that a responsible adult is given a copy of the
- 12 CIR as soon as is reasonably practicable after the CIR
- 13 is given to the young person, unless —
- 14 (a) after reasonable enquiry, neither the
- 15 whereabouts nor the address of a responsible
- 16 adult can be ascertained; or
- 17 (b) in the circumstances it would be inappropriate
- 18 to give a responsible adult a copy of the CIR.
- 19 (3) A young person who has been given 2 CIRs need only
- 20 complete a single CIS in respect of the CIRs if both
- 21 CIRs were given before the completion of the CIS.
- 22 **8H. Referral of young persons at risk to juvenile justice**
- 23 **teams**
- 24 (1) A police officer is to refer a young person at risk to a
- 25 juvenile justice team where appropriate under the
- 26 *Young Offenders Act 1994* in preference to charging
- 27 the young person under this Act.
- 28 (2) In subsection (1) —
- 29 *young person at risk* means an alleged offender who is
- 30 a young person —
- 31 (a) to whom the police officer would have given a
- 32 CIR, but for section 8G(1); or

- 1 (b) who has been given a CIR and has not
2 completed a CIS within 28 days or any further
3 time allowed under section 8L, unless —
4 (i) the CIR has been withdrawn under
5 section 8I; or
6 (ii) the young person has elected to be
7 prosecuted for the alleged offence in a
8 court.

9 **8I. Withdrawal of CIR**

- 10 (1) An authorised person may withdraw a CIR by sending
11 to the alleged offender a notice in a form prescribed by
12 the regulations stating that the CIR has been
13 withdrawn.
14 (2) A CIR cannot be withdrawn if the alleged offender has
15 completed a CIS in relation to the CIR.
16 (3) A CIR that is withdrawn is taken not to have been
17 given to an alleged offender for the purposes of
18 sections 8E(4) and 8G(1).

19 **Division 3 — Cannabis intervention sessions**

20 **8J. Cannabis intervention session**

- 21 (1) The purpose of a cannabis intervention session is to
22 inform those who complete it about —
23 (a) the adverse health and social consequences of
24 cannabis use; and
25 (b) the laws relating to the use, possession and
26 cultivation of cannabis; and
27 (c) effective strategies to address cannabis using
28 behaviour.

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- 1 (2) The CEO (Health) may, in writing, do any of the
2 following —
3 (a) having regard to subsection (1), approve the
4 content of a cannabis intervention session;
5 (b) approve treatment providers to provide
6 cannabis intervention sessions;
7 (c) give an approval under paragraph (b) subject to
8 conditions to be obeyed by the treatment
9 provider approved;
10 (d) cancel or amend an approval given under
11 paragraph (a) or (b).

- 12 (3) For the purposes of this section, this Act is to be taken
13 to be a relevant Act as referred to in the *Health*
14 *Legislation Administration Act 1984* section 9.

15 **8K. Benefit of completing CIS**

- 16 (1) If the alleged offender has completed a CIS in respect
17 of a CIR within 28 days or such further time as is
18 allowed under section 8L, the bringing of proceedings
19 and the imposition of penalties are prevented to the
20 same extent that they would be prevented if the alleged
21 offender had been convicted by a court of, and
22 punished for, the alleged offence.
23 (2) Completion of a CIS is not to be regarded as an
24 admission for the purposes of any proceedings,
25 whether civil or criminal.

26 **8L. Extension of time to complete CIS**

- 27 (1) An authorised person may, in a particular case, extend
28 the period of 28 days within which the alleged offender
29 may complete a CIS.
30 (2) The extension may be allowed whether or not the
31 period of 28 days has elapsed.

- 1 **8M. Certificate of completion of CIS**
- 2 (1) A treatment provider approved to provide a CIS under
- 3 section 8J(2)(b) is to —
- 4 (a) give to a person who has completed a CIS a
- 5 certificate of completion; and
- 6 (b) send a copy of the certificate to the
- 7 Commissioner.
- 8 (2) A certificate of completion is to be in a form prescribed
- 9 by the regulations and is to set out —
- 10 (a) the name and address of the person who has
- 11 completed the CIS; and
- 12 (b) the date of completion; and
- 13 (c) the details of the CIR in respect of which the
- 14 CIS was completed.
- 15

16 **7. Section 19A inserted**

17 After section 18 insert:

18

19 **19A. Selling cannabis smoking paraphernalia**

- 20 (1) In this section —
- 21 *cannabis smoking paraphernalia* means —
- 22 (a) anything made or modified to be used in
- 23 smoking cannabis;
- 24 (b) any other thing that is prescribed to be cannabis
- 25 smoking paraphernalia,
- 26 but does not include anything prescribed, or belonging
- 27 to a class prescribed, as excluded from this definition.

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- 1 (2) A person who sells, or offers to sell, cannabis smoking
2 paraphernalia to a child commits a simple offence.
3 Penalty: a fine of \$24 000 or imprisonment for 2 years
4 or both.
- 5 (3) A person —
6 (a) who sells, or offers to sell, cannabis smoking
7 paraphernalia to an adult; or
8 (b) who displays cannabis smoking paraphernalia,
9 or authorises or allows cannabis smoking
10 paraphernalia to be displayed, for sale in a shop
11 or other retail outlet,
12 commits a simple offence.
13 Penalty: a fine of \$10 000.
14

15 **8. Part VII inserted**

16 After section 42 insert:
17

18 **Part VII — Transitional provisions**

19 **Division 1 — Preliminary**

20 **43. Interpretation Act 1984 not limited**

21 This Part does not limit the operation of the
22 *Interpretation Act 1984* Part V.

23 **44. Transitional regulations**

- 24 (1) Regulations may prescribe all matters that are required
25 or necessary or convenient to be prescribed for dealing
26 with any issue or matter of a savings or transitional
27 nature —
28 (a) that arises as a result of the amendment of this
29 Act by another Act (*an amending Act*); and

- 1 (b) for which there is no sufficient provision in
2 this Act or the amending Act.
- 3 (2) Regulations made under this section may provide that
4 specified provisions of this Act do not apply, or apply
5 with modifications specified in the regulations, to or in
6 relation to any matter.
- 7 (3) Regulations made under this section may provide that a
8 state of affairs specified in the regulations is to be
9 taken to have existed, or not to have existed, on and
10 from a day that is earlier than the day on which the
11 regulations come into operation but not earlier than the
12 day on which the relevant amending Act, or the
13 relevant provision or provisions of that Act, came into
14 operation.
- 15 (4) If the regulations contain a provision referred to in
16 subsection (3), the provision does not operate so as —
- 17 (a) to affect in a manner prejudicial to any person
18 (other than the State), the rights of that person
19 existing before the regulations commenced; or
- 20 (b) to impose liabilities on any person (other than
21 the State) in respect of anything done or
22 omitted to be done before the regulations
23 commenced.

24 **Division 2 — Provisions for *Cannabis Law Reform Act 2009***

25 **45. Terms used**

26 In this Division —

27 ***CIN*** means a cannabis infringement notice given under
28 the *Cannabis Control Act 2003* and in force
29 immediately before the repeal of that Act;

30 ***commencement day*** means the day on which the
31 *Cannabis Law Reform Act 2009* Part 2 comes into
32 operation.

- 1 **46. CINs continue in force**
- 2 Despite the repeal of the *Cannabis Control Act 2003*,
- 3 that Act and the *Fines, Penalties and Infringement*
- 4 *Notices Enforcement Act 1994*, continue to apply in
- 5 respect of a CIN, except in so far as the contrary
- 6 intention is provided under this Division.
- 7 **47. Amounts outstanding in 12 months time under a**
- 8 **CIN are to be taken to be paid**
- 9 (1) Subsection (2) applies in respect of a CIN if a licence
- 10 suspension order was made under the *Fines, Penalties*
- 11 *and Infringement Notices Enforcement Act 1994*
- 12 section 19 in respect of the CIN.
- 13 (2) If, immediately before —
- 14 (a) the day that is 12 months after the day on which
- 15 the licence suspension order is made in respect
- 16 of the CIN; or
- 17 (b) the commencement day,
- 18 whichever is the later in time —
- 19 (c) the modified penalty, and enforcement fees,
- 20 payable under the *Fines, Penalties and*
- 21 *Infringement Notices Enforcement Act 1994* in
- 22 respect of the CIN have not been paid; and
- 23 (d) an election has not been made under section 21
- 24 of that Act,
- 25 then, for the purposes of that Act, the amounts referred
- 26 to in paragraph (c) are to be taken to be paid on that
- 27 day.
- 28 (3) If, due to the operation of subsection (2), a licence
- 29 suspension order is to be taken as having been
- 30 cancelled under the *Fines, Penalties and Infringement*
- 31 *Notices Enforcement Act 1994* section 20(1)(a), then

1 subsections (3) and (4) of that section apply as if the
2 licence suspension order was cancelled under
3 subsection (2) of that section.
4

1 **Part 4 — *Spent Convictions Act 1988* amended**

2 **9. Act amended**

3 This Part amends the *Spent Convictions Act 1988*.

4 **10. Section 11 amended**

5 (1) In section 11(1)(a) after “10 years” insert:

6

7 , or 3 years if subsection (6) applies,

8

9 (2) After section 11(5) insert:

10

11 (6) The prescribed period for a conviction is 3 years if the
12 conviction —

13 (a) is for an offence that involves cannabis under
14 the *Misuse of Drugs Act 1981* —

15 (i) section 5(1)(d)(i); or

16 (ii) section 6(2), but does not involve a
17 cannabis plant under cultivation,
18 cannabis resin or any other cannabis
19 derivative;

20 and

21 (b) was not incurred before the commencement of
22 the *Cannabis Law Reform Act 2009* Part 4.

23

1 **Part 5 — *Young Offenders Act 1994* amended**

2 **11. Act amended**

3 This Part amends the *Young Offenders Act 1994*.

4 **12. Section 25 amended**

5 Delete section 25(3) and insert:

6

7 (3) In subsection (2) —

8

infringement notice means —

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- (a) a notice issued under a written law to a person alleging the commission of an offence and offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have the matter dealt with out of court; or

- (b) a cannabis intervention requirement given under the *Misuse of Drugs Act 1981* Part IIIA.

18 **13. Section 29 amended**

19 In section 29(2):

20

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22

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- (a) after paragraph (a) insert:
 - (ba) has been given an infringement notice, as defined in section 25(3); or
- (b) after paragraph (a) insert:
 - or

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1 **Part 6 — *Working with Children (Criminal Record***
2 ***Checking) Act 2004* amended**

3 **14. Act amended**

4 This Part amends the *Working with Children (Criminal Record*
5 *Checking) Act 2004*.

6 **15. Schedule 2 amended**

7 In Schedule 2 after the item relating to the *Children and*
8 *Community Services Act 2004* section 192 insert:

9

Misuse of Drugs Act 1981

s. 19A(2) Selling, or offering to sell, cannabis smoking
paraphernalia to a child

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