

Cannabis Law Reform Bill 2009

EXPLANATORY MEMORANDUM

Part 1 - Preliminary

Clause 1. Short Title

Cites the short title of the Act as the Cannabis Law Reform Act 2009.

Clause 2. Commencement

Clauses 1 and 2 come into operation on Assent. The remaining provisions in the Bill come into operation on a day or days fixed by proclamation. Proclamation is necessary as Regulations need to be drafted to give effect to some of the provisions and also staff training and IT enhancements are also required.

Part 2 – Cannabis Control legislation repealed

Clause 3. Repeals

It is proposed to repeal the *Cannabis Control Act 2003* and its supporting Regulations, the *Cannabis Control Regulations 2004*. This is necessary as the existing Cannabis Infringement Notice scheme, established under that legislation is to be curtailed. A new scheme to provide for the establishment of a Cannabis Intervention Requirement scheme, is to be established under a proposed new Part IIIA of the *Misuse of Drugs Act 1981* [see clause 6 of this Bill].

Part 3 – Misuse of Drugs Act 1981 amended

Clause 4. Act amended

The amendments contained in Part 3 of the Bill [clauses 5, 6, 7 and 8] are amendments to the *Misuse of Drugs Act 1981*.

Clause 5. Section 3 amended

Section 3(1) of the *Misuse of Drugs Act 1981* contains a range of definitions used in the Act. Section 3 is to be amended to insert a definition of “young person”. This definition is needed in relation to amendments to the Act contained in clauses 5 and 6 of the Bill. The definition of “young person” is the same as provided for under the *Young Offenders Act 1994* and means a person aged under 18.

The ‘full stop’ at the end of the definition of “veterinary surgeon” is to be removed as the definition of “veterinary surgeon” is no longer the final definition in section 3(1) of the Act in light of the inclusion of the new definition of “young person”.

Clause 6. Part IIIA inserted

Clause 6 of the Bill proposes to insert a new Part IIIA into the *Misuse of Drugs Act 1981* which contains all of the provisions dealing with the new Cannabis Intervention Requirement. More specific details are as follows.

Proposed new section 8B – inserts definitions of “cannabis intervention requirement”, “cannabis intervention session”, “CEO (Health)”, “minor cannabis related offence” and “responsible adult”; and inserts abbreviations of “CIR” and “CIS”. These definitions and abbreviations are used throughout the proposed new Part IIIA.

A ‘cannabis intervention requirement’ or “CIR” is a requirement that a person who has committed a “minor cannabis related offence” can be directed to attend and complete a “cannabis intervention session” or “CIS” in relation to the alleged offence(s). A “minor cannabis related offence” is either an offence under section 5(1)(d)(i) of the *Misuse of Drugs Act* [possession of smoking implement containing traces of a prohibited drug] namely cannabis; or an offence under section 6(2) of the *Misuse of Drugs Act* [use or possession of a prohibited drug] namely cannabis, if the amount is not more than 10g and does not include cultivated cannabis plants, cannabis resin or any other cannabis derivative.

Proposed new section 8C – clarifies that nothing in Part IIIA prevents a young person from being dealt with under the *Young Offenders Act 1994* for a “minor cannabis related offence”.

Proposed new section 8D – enables the Commissioner of Police to appoint authorised person to exercise powers under proposed sections 8I or 8L. These sections deal with the withdrawal of a CIR or the granting of an extension of time in which to complete a CIS. The notion of an authorised person is relevant in terms of which police officers can issue a CIR. If a police officer has also been appointed as an authorised person, they cannot issue a CIR as they would then be able to withdraw or grant an extension in respect of the CIR they had issued. This is not appropriate. Proposed section 8D, coupled with the definition of “police officer” in proposed section 8B, overcomes this situation. This is consistent with the provisions previously contained in section 16 of the *Cannabis Control Act 2003*.

Proposed new section 8E – enables a police officer [who is not also an authorised officer] to issue a CIR to a person in certain cases in respect of a “minor cannabis related offence”. Under subsection 8E(1) a CIR cannot be given to an adult if they have previously been given a CIR or if they have previously be convicted of a “minor cannabis related offence” [see proposed 8E(4)]. Also a CIR cannot be given to a young person if they have twice previously been given a CIR or convicted of a “minor cannabis related offence” [see proposed 8G(1)]. One CIR can be given in respect of more than one “minor cannabis related offence” if they arise out of the same incident [i.e. a person has a smoking implement containing traces of cannabis and also has possession of not more than 10g of cannabis at the same time]. A CIR has to be issued within 60 days of the alleged offence.

Proposed new section 8F – outlines that a CIR has to inform the offender that they can elect to have the matter dealt with in court [and how to go about doing so] and has to advise them that if they don’t want to elect to go to court then they must complete a “cannabis intervention session” (CIS) within 28 days [and how to go about doing so]. A person needs only complete one CIS even though the CIR may relate to more than one offence.

Proposed new section 8G – contains special provisions in respect of the issuing of a CIR to a young person. A CIR cannot be given to a young person if they have twice previously been given a CIR or convicted of a “minor cannabis related offence”. A police officer who issues a young person with a CIR has to give a copy of the CIR to a responsible adult as soon as practicable, unless the whereabouts of a responsible adult cannot be ascertained or it would be inappropriate to give a responsible adult a copy of the CIR. A young person can complete one CIS in respect of two CIRs.

Proposed new section 8H – deals with young persons who would otherwise be eligible to be given a CIR but cannot because of their previous convictions and CIRs [see s.8G(1)]; or young persons who have not attended the required CIS. For both of these categories of young person it is desirable to have them considered by a juvenile justice team under the *Young Offenders Act* [where appropriate] rather than having them charged first off and appearing in court. Proposed 8G seeks to achieve this.

Proposed new section 8I – enables an authorised person to withdraw a CIR, but withdrawal cannot occur if the offender has already completed the required CIS. If a CIR is withdrawn then it is as if it was never issued, for the purposes of determining whether a person can be issued with a CIR in the future [see proposed 8E(4) and 8G(1)].

Proposed new section 8J – outlines the purposes of a “cannabis intervention session” (CIS) as being to inform the offender about the adverse health and social consequences of cannabis use; the laws relating to the use, possession and cultivation of cannabis; and effective strategies to address cannabis using behaviour. Proposed section 8J allows the CEO (Health) to approve the actual content of a CIS and to approve the treatment providers who will be delivering the CIS. This is because the Drug and Alcohol Office will be responsible for the service delivery aspect of CIS. The *Misuse of Drugs Act* is deemed to be a ‘relevant Act’ for the purposes of section 9 of the *Health Legislation Administration Act 1984* so that the CEO (Health) can then delegate his functions under proposed section 8J.

Proposed new section 8K – provides that if an offender completes the CIS within the allotted 28 days [or within the extended period allowed for under proposed section 8L] then the bringing of proceedings in a court and the imposition of penalties, are not allowed in the same way as if the offender had already been convicted of the relevant offences. Furthermore, completion of a CIS is not regarded as an admission in respect of any civil or criminal proceedings. This is consistent with the provisions previously contained in section 13 of the *Cannabis Control Act 2003*.

Proposed new section 8L – enables an authorised person to extend the period of 28 days allowed for completion of a CIS. This acknowledges that it may not always be possible for an offender to complete the CIS within 28 days of being issued with the CIR. This is consistent with the provisions previously contained in section 11 of the *Cannabis Control Act 2003*.

Proposed new section 8M – requires an approved treatment provider to provide the offender, and the Commissioner of Police, with a completion certificate at the end of the CIS. Proposed section 8M specifies the details that have to be contained in the completion certificate. This is consistent with the provisions previously contained in section 18 of the *Cannabis Control Act 2003*.

Clause 7. Section 19A inserted

Proposed new section 19A is to be inserted into the *Misuse of Drugs Act* and will create offences of selling, or displaying for sale, etc “cannabis smoking paraphernalia”. This new offence is modelled on the offences contained in s.24 of the *Cannabis Control Act 2003* but sale is now prohibited across the board, not just in relation to young people. The proposed penalty for sale to a young person is \$10,000 which is double what the penalty was under the *Cannabis Control Act 2003*. The definition of “cannabis smoking paraphernalia” is the same as previously provided for under the *Cannabis Control Act 2003*.

Clause 8. Part VII inserted

A proposed new Part VII is to be inserted into the *Misuse of Drugs Act* and will deal with a range of transitional provisions arising out of amendments contained in the Bill and the repeal of the *Cannabis Control Act 2003*. More specific details are as follows.

Proposed new section 43 – provides that the transitional provisions contained in proposed Part VII of the *Misuse of Drugs Act* do not limit the general provisions concerning the repeal of written laws as contained in Part V of the *Interpretation Act 1984*.

Proposed new section 44 – enables Regulations to be made for dealing with any issue or matters of savings or transitional nature arising out of amendments made to the *Misuse of Drugs Act* for which there is not sufficient provisions in the actual Act or amendment Act. This is a safeguard inclusion that is increasingly being inserted into amending legislation to allow for Regulations to be made to overcome any unforeseen consequences arising from amending legislation. The Regulations can provide, if necessary that certain provisions of the *Misuse of Drugs Act* do not apply in certain cases, or apply with any relevant modifications contained in the Regulations. These Regulations can be made to apply retrospectively but if they do they cannot do so to prejudice the rights of any person that existed before the Regulations came into effect; or impose any liabilities on any person in respect of anything done or omitted before the Regulations came into effect.

Proposed new section 45 – defines a cannabis infringement notice (“CIN”) and “commencement day” for the purposes of proposed sections 46 and 47 of the *Misuse of Drugs Act*.

Proposed new section 46 – provides that notwithstanding that the *Cannabis Control Act* is being repealed [see clause 3 of the Bill] that Act; and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; still apply in relation to the enforcement of a cannabis infringement notice (CIN) issued under the *Cannabis Control Act*, subject to the provisions of proposed section 47 of the *Misuse of Drugs Act* [see below].

Proposed new section 47 – provides that if a CIN, issued under the *Cannabis Control Act*, has had a licence suspension order issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, then the modified penalty under the CIN is deemed paid on the commencement of the *Cannabis Law Reform Act 2009*, or 12 months after the license suspension order was made [whichever is the later]. This is so that WA Police can dispose of the cannabis that had been seized when the CIN was issued. At present WA Police are holding hundreds of seized cannabis materials waiting on the payment of the CIN to be completed. Until this occurs the person can still elect to have the matters dealt with in court [which could be years after the alleged offence was committed]. WA Police don’t propose to prosecute in these cases but until the modified penalty is paid, WA Police cannot dispose of the seized cannabis. The provision in proposed section 47 will effectively deem the modified penalty to be paid after 12 months so as to enable WA Police to dispose of the seized cannabis.

Part 4 – Spent Convictions Act 1988 amended

Clause 9. Act amended

The amendments contained in Part 4 of the Bill [clause 10] are amendments to the *Spent Convictions Act 1988*.

Clause 10. Section 11 amended

Section 11 of the *Spent Convictions Act* provides that the period of time a person must wait before a conviction can be spent, or before they can apply to have a conviction spent, is 10 years. It is proposed to amend section 11 of the *Spent Convictions Act* to provide that if the offence was an offence under section 5(1)(d)(i) of the *Misuse of Drugs Act* [possession of smoking implement containing traces of a prohibited drug] namely cannabis; or an offence under section 6(2) of the *Misuse of Drugs Act* [use or possession of a prohibited drug] namely cannabis, but does not involve cultivated cannabis plants, cannabis resin or any other cannabis derivative – then the time period is 3 years instead of 10 years. This change in qualifying period is not retrospective and will only apply to convictions imposed after the Cannabis Law Reform Act 2009 comes into effect.

Part 5 – Young Offenders Act 1994 amended

Clause 11. Act amended

The amendments contained in Part 5 of the Bill [clauses 12 and 13] are amendments to the *Young Offenders Act 1994*.

Clause 12. Section 25 amended

Section 25 of the *Young Offenders Act 1994* deals with the referral of matters to a juvenile justice team. Section 25(3) of that Act currently provides that if it is appropriate to give an infringement notice for an offence, then it should be given in preference to referring the matter to a juvenile justice team. The definition of ‘infringement notice’ in section 25(3) of the *Young Offenders Act 1994* is expanded so as to also refer to a CIR given under the *Misuse of Drugs Act* so that preference is given to issuing a CIR to a young person rather than referring them to a juvenile justice team in the first instance.

Clause 13. Section 29 amended

Section 29 of the *Young Offenders Act 1994* provides that the discretion to refer a young person to a juvenile justice team is to be exercised in favour of first offenders. Section 29(2) of that Act further provides that if a young person has been cautioned etc under the *Young Offenders Act* they are still deemed to be a first offender for the purposes of referral to a juvenile justice team. Section 29(2) of the *Young Offenders Act* is to be amended so that if a young person has been previously given a CIR under the *Misuse of Drugs Act* [or other infringement notices under other laws] they are still deemed to be a first offender for the purposes of section 29 of the *Young Offenders Act*.