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4 February 2022

Hon Dr Brian Walker
Chair
Select Committee into Cannabis and Hemp
Parliament House
GPO Box A11
Perth WA 6837

By email

Dear Dr Walker

Inquiry into Cannabis and Hemp

The Chamber of Commerce and Industry WA (CCIWA) is pleased to make this submission to the Committee's Inquiry into Cannabis and Hemp.

Global evidence indicates that medicinal cannabis can play an important role in relieving the symptoms of some debilitating medical conditions.

At the same time however, THC has strong psychoactive effects and clearly leads to performance impairment. It inhibits concentration and repose to stimuli, impairing reaction times and attention to tasks.¹ This creates an obvious risk for safety-critical industries such as construction, mining, manufacturing, agriculture, health and community services, along with many parts of the public sector. The risks for WA's mining sector are particularly significant, given its high focus on workplace safety and the contribution the sector makes to Western Australia's economy.

Employers have a duty of care under the *Occupational Safety and Health Act 1984 (WA)* to, so far as reasonably possible, provide and maintain a working environment in which workers are not exposed to hazards.²

The use of alcohol and other drugs poses a significant safety risk if a worker's ability to exercise judgment, coordination, motor control, concentration and alertness at the workplace is impaired. This creates a risk not only to the individual, but their colleagues as well. As a result, organisations across a range of industries, both within the public and private sector, have implemented stringent drug and alcohol policies covering both prescription, non-prescription and illicit drugs.

It is important to recognise that these policies are not driven by employers seeking to take a moral stance on drug use, but the need to take reasonable steps to create a safe workplace.

¹ https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRC_Medicinal_Cannabis_Report_web.pdf

² See s 19. A similar obligation is prescribed by the *Work Health and Safety Act 2020 (WA)* which is anticipated to commence operation in March 2022.

Fundamental to the implementation of these policies is the need to have a drug and alcohol testing regime to ensure that employees comply with these policies. The current tests for cannabis can identify the presence of tetrahydrocannabinol (THC) in the body but are unable to determine how long ago the cannabis was consumed, the likely level of impairment, or whether it was for medicinal or recreational purposes. In this context, it can take thirty days or more for traces of THC to leave the body. Consequently, most employers need to adopt a zero-tolerance approach to drugs such as cannabis.

Whilst the proper use of some pharmaceutical cannabinoid products may not have the same impact upon impairment as illicit usage, the current limitations in testing arrangements mean it is not possible to determine whether pharmaceutical cannabinoid products are:

- being used in the prescribed manner; or
- being used to mask the illicit use of cannabis.

Where cannabinoid products become readily available there is a real and substantial risk of individuals seeking certificates from medical or health practitioners for the use of such products to legitimise the presence of THC in their system, despite engaging in improper usage of cannabis.

Such behaviour can reasonably be anticipated given the current lengths undertaken by some individuals to avoid detection of illicit drug use, including:

- substituting their urine with synthetic urine or drug-free urine;
- consuming products to flush out drugs; or
- adding an adulterant to the urine specimen after collection.³

Increasing the scope for the use of cannabinoid products for medical conditions may also reduce the ability for high-risk workplaces to adopt a zero-tolerance approach to marijuana usage given the interaction with relevant equal opportunity and discrimination legislation.

The *Equal Opportunity Act 1984 (WA)* and *Disability Discrimination Act 1992 (Cth)* generally prohibit discrimination on the basis of impairment, which casts doubt on the ability for employers to enforce drug and alcohol policies where a cannabinoid product has been prescribed or recommended for a medical condition. This is an issue currently being tested through the Federal Court in which an employee of Queensland Rail is claiming adverse action under the *Fair Work Act 2009 (Cth)* arising from use of cannabinoid product.

In considering any potential amendment to the current legislation regulating the lawful use of cannabis in Western Australia, we encourage this committee to recognise that:

- the illicit use of cannabis poses significant work health and safety risk across a range of industry sectors;
- approved cannabinoid products may also reduce the ability of individuals to perform work safely and product information should clearly identify any risks;

³ Dasgupta, A (2015) *How people try to beat drug testing*. Clinical Laboratory News.

- testing methods cannot distinguish between legitimate and illegitimate use of cannabis and cannabinoid products;
- the Royal Australian College of General Practitioners has identified the need for further research into the safety and effectiveness of medicinal cannabis products;⁴ and
- greater availability of cannabinoid products, particularly with respect to persons suffering conditions that do not preclude them from working in high risk industries, increases the risks to workplace health and safety arising from misuse of cannabis.

It is fundamentally important for WA businesses and workers that any reforms to the availability of cannabis and hemp products does not reduce workplace safety.

Yours sincerely



Chris Rodwell
Chief Executive Officer

⁴ RACGP (2019) [*Use of medicinal cannabis products*](#)