

Western Australia

Cannabis Law Reform Act 2010

As at 28 Oct 2010

No. 45 of 2010

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Cannabis Law Reform Act 2010

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Cannabis Law Reform Act 2010

No. 45 of 2010

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.**

[Assented to 28 October 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Cannabis Law Reform Act 2010*.

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.

Part 2 — Cannabis Control legislation repealed

3. Repeals

The following are repealed —

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

Part 3 — Misuse of Drugs Act 1981 amended

4. Act amended

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

5. Section 3 amended

In section 3(1) insert in alphabetical order:

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

6. Part IIIA inserted

After section 8A insert:

Part IIIA — Cannabis intervention

Division 1 — Preliminary

8B. Terms and abbreviations used in this Part

(1) In this Part —

adult means a person who is not a young person;

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

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

cannabis intervention session means a cannabis intervention session —

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

- (b) the content of which is approved under section 8J(2)(a);

CEO (Health) has the meaning given in section 38D(1);

minor cannabis related offence means —

- (a) an offence under section 5(1)(d)(i) that involves cannabis; and
- (b) an offence under section 6(2) that involves cannabis —
 - (i) if the amount is not more than 10 grams, or such other amount as is prescribed by the regulations; and
 - (ii) if the offence does not involve a cannabis plant under cultivation, cannabis resin or any other cannabis derivative;

police officer does not include a person appointed by the Commissioner as an authorised person under section 8D;

responsible adult has the meaning given in the *Young Offenders Act 1994* section 3;

young person means a person who —

- (a) is under 18 years of age; or
- (b) in relation to the commission, or alleged commission, of a minor cannabis related offence, was under 18 years of age when the offence was committed, or allegedly committed.

- (2) In this Part the following abbreviations are used —
 - CIR** for cannabis intervention requirement;
 - CIS** for cannabis intervention session.

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

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

8D. Appointment of authorised persons

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

Division 2 — Cannabis intervention requirements

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

- (1) A police officer who has reason to believe that a person has committed a minor cannabis related offence may give a cannabis intervention requirement to the alleged offender, unless subsection (4) or section 8G(1) applies.
- (2) A police officer who believes —
 - (a) that an alleged offender has committed more than one minor cannabis related offence; and
 - (b) that the alleged offences have arisen out of the same incident,may give a single CIR in respect of all or some of the offences.
- (3) A CIR is to be given as soon as practicable, and in any event within 60 days, after an alleged offence is believed to have been committed.

- (4) A CIR cannot be given in respect of an alleged offence (the *new offence*) if the alleged offender —
 - (a) is an adult who, before the new offence was allegedly committed, had been convicted of a minor cannabis related offence or given a CIR; and
 - (b) was an adult when so convicted or given the CIR.

8F. Cannabis intervention requirement

- (1) A CIR is a notice in a form prescribed by the regulations —
 - (a) containing a description of the alleged offence, or offences; and
 - (b) informing the alleged offender that —
 - (i) he or she may, in writing, elect to be prosecuted for the alleged offence, or offences, in a court, and informing the alleged offender how to make that election; and
 - (ii) if he or she does not wish to be prosecuted for the alleged offence, or offences, in a court, the alleged offender may, within a period of 28 days after the giving of the CIR, complete a CIS;
 - and
 - (c) informing the alleged offender as to how the alleged offender may arrange to complete a CIS.
- (2) A person need only complete a single CIS for each CIR given to the person, even if the CIR is given in respect of more than one alleged offence.

8G. Young persons — special requirements about CIRs

- (1) A CIR cannot be given in respect of an alleged offence (the *new offence*) if the alleged offender —
 - (a) is a young person who, before the new offence was allegedly committed, had been convicted of, or given a CIR in respect of, 2 or more minor cannabis related offences; and
 - (b) at least 2 of those offences arose out of separate incidents, or are alleged to have done so.
- (2) A police officer who gives a young person a CIR is to ensure that a responsible adult is given a copy of the CIR as soon as is reasonably practicable after the CIR is given to the young person, unless —
 - (a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or
 - (b) in the circumstances it would be inappropriate to give a responsible adult a copy of the CIR.
- (3) A young person who has been given 2 CIRs need only complete a single CIS in respect of the CIRs if both CIRs were given before the completion of the CIS.

8H. Referral of young persons at risk to juvenile justice teams

- (1) A police officer is to refer a young person at risk to a juvenile justice team where appropriate under the *Young Offenders Act 1994* in preference to charging the young person under this Act.
- (2) In subsection (1) —

young person at risk means an alleged offender who is a young person —

 - (a) to whom the police officer would have given a CIR, but for section 8G(1); or

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

8I. Withdrawal of CIR

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

Division 3 — Cannabis intervention sessions

8J. Cannabis intervention session

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

- (2) The CEO (Health) may, in writing, do any of the following —
 - (a) having regard to subsection (1), approve the content of a cannabis intervention session;
 - (b) approve treatment providers to provide cannabis intervention sessions;
 - (c) give an approval under paragraph (b) subject to conditions to be obeyed by the treatment provider approved;
 - (d) cancel or amend an approval given under paragraph (a) or (b).
- (3) For the purposes of this section, this Act is to be taken to be a relevant Act as referred to in the *Health Legislation Administration Act 1984* section 9.

8K. Benefit of completing CIS

- (1) If the alleged offender has completed a CIS in respect of a CIR within 28 days or such further time as is allowed under section 8L, 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.
- (2) Completion of a CIS is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

8L. Extension of time to complete CIS

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

8M. Certificate of completion of CIS

- (1) A treatment provider approved to provide a CIS under section 8J(2)(b) is to —
 - (a) give to a person who has completed a CIS 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 form prescribed by the regulations and is to set out —
 - (a) the name and address of the person who has completed the CIS; and
 - (b) the date of completion; and
 - (c) the details of the CIR in respect of which the CIS was completed.

7. Section 19A inserted

After section 18 insert:

19A. Selling cannabis smoking paraphernalia

- (1) In this section —

cannabis smoking paraphernalia means —

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

but does not include anything prescribed, or belonging to a class prescribed, as excluded from this definition.

- (2) A person who sells, or offers to sell, cannabis smoking paraphernalia to a child commits a simple offence.

Penalty: a fine of \$24 000 or imprisonment for 2 years or both.

- (3) A person —

- (a) who sells, or offers to sell, cannabis smoking paraphernalia to an adult; or
(b) who displays cannabis smoking paraphernalia, or authorises or allows cannabis smoking paraphernalia to be displayed, for sale in a shop or other retail outlet,

commits a simple offence.

Penalty: a fine of \$10 000.

8. Part VII inserted

After section 42 insert:

Part VII — Transitional provisions

Division 1 — Preliminary

43. *Interpretation Act 1984 not limited*

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

44. **Transitional regulations**

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

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

Division 2 — Provisions for *Cannabis Law Reform Act 2010*

45. Terms used

In this Division —

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

commencement day means the day on which the *Cannabis Law Reform Act 2010* Part 2 comes into operation.

46. CINs continue in force

Despite the repeal of the *Cannabis Control Act 2003*, that Act and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, continue to apply in respect of a CIN, except in so far as the contrary intention is provided under this Division.

47. Amounts outstanding in 12 months time under a CIN are to be taken to be paid

- (1) Subsection (2) applies in respect of a CIN if a licence suspension order was made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 in respect of the CIN.
- (2) If, immediately before —
 - (a) the day that is 12 months after the day on which the licence suspension order is made in respect of the CIN; or
 - (b) the commencement day,whichever is the later in time —
 - (c) the modified penalty, and enforcement fees, payable under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the CIN have not been paid; and
 - (d) an election has not been made under section 21 of that Act,

then, for the purposes of that Act, the amounts referred to in paragraph (c) are to be taken to be paid on that day.

- (3) If, due to the operation of subsection (2), a licence suspension order is to be taken as having been cancelled under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 20(1)(a), then

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

Part 4 — *Spent Convictions Act 1988* amended

9. Act amended

This Part amends the *Spent Convictions Act 1988*.

10. Section 11 amended

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

, or 3 years if subsection (6) applies,

(2) After section 11(5) insert:

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

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

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

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

and

(b) was not incurred before the commencement of the *Cannabis Law Reform Act 2010* Part 4.

Part 5 — *Young Offenders Act 1994* amended

11. Act amended

This Part amends the *Young Offenders Act 1994*.

12. Section 25 amended

Delete section 25(3) and insert:

(3) In subsection (2) —

infringement notice means —

- (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.

13. Section 29 amended

In section 29(2):

(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

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

14. Act amended

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

15. Schedule 2 amended

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

Misuse of Drugs Act 1981

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

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