

# Cannabis Law Reform Bill 2009

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Western Australia

LEGISLATIVE ASSEMBLY

## **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 *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1           **Part 2 — Cannabis Control legislation repealed**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3           The following are repealed —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 (1) In section 3(1) insert in alphabetical order:

6

7 *young person* has the meaning given in the *Young*  
8 *Offenders Act 1994* section 3.

9

10 (2) In section 3(1) in the definition of *veterinary surgeon* delete  
11 “*Act 1960.*” and insert:

12

13 *Act 1960*;

14

15 **6. Part IIIA inserted**

16 After section 8A insert:

17

18 **Part IIIA — Cannabis intervention**

19 **Division 1 — Preliminary**

20 **8B. Terms and abbreviations used in this Part**

21 (1) In this Part —

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

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

- 1                    ***cannabis intervention session*** means a cannabis  
2 intervention session —
- 3                    (a) provided by a treatment provider approved  
4 under section 8J(2)(b); and
- 5                    (b) the content of which is approved under  
6 section 8J(2)(a);
- 7                    ***CEO (Health)*** has the meaning given in  
8 section 38D(1);
- 9                    ***minor cannabis related offence*** means —
- 10                    (a) an offence under section 5(1)(d)(i) that involves  
11 cannabis; and
- 12                    (b) an offence under section 6(2) that involves  
13 cannabis —
- 14                                (i) if the amount is not more than 10 grams,  
15 or such other amount as is prescribed by  
16 the regulations; and
- 17                                (ii) if the offence does not involve a  
18 cannabis plant under cultivation,  
19 cannabis resin or any other cannabis  
20 derivative;
- 21                    ***police officer*** does not include a person appointed by  
22 the Commissioner as an authorised person under  
23 section 8D;
- 24                    ***responsible adult*** has the meaning given in the *Young*  
25 *Offenders Act 1994* section 3.
- 26                    (2) In this Part the following abbreviations are used —
- 27                                ***CIR*** for cannabis intervention requirement;  
28                                ***CIS*** for cannabis intervention session.
- 29                    **8C. Operation of *Young Offenders Act 1994* unaffected**
- 30                                Nothing in this Part prevents a young person from  
31 being dealt with under the *Young Offenders Act 1994*  
32 Part 5 in respect of a minor cannabis related offence.

1           **8D.      Appointment of authorised persons**

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

6                   **Division 2 — Cannabis intervention requirements**

7           **8E.      CIR may be given for minor cannabis related**  
8                   **offence**

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

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

19                   may give a single CIR in respect of all or some of the  
20                   offences.

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

24                   (4) A CIR cannot be given in respect of an alleged offence  
25                   (the *new offence*) if the alleged offender —

26                         (a) is an adult who, before the new offence was  
27                         allegedly committed, had been convicted of a  
28                         minor cannabis related offence or given a CIR;  
29                         and

30                         (b) was an adult when so convicted or given the  
31                         CIR.

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**8F. Cannabis intervention requirement**

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

**8G. Young persons — special requirements about CIRs**

- 24           **8G. Young persons — special requirements about CIRs**
- 25           (1) A CIR cannot be given in respect of an alleged offence
- 26           (the *new offence*) if the alleged offender —
- 27               (a) is a young person who, before the new offence
- 28               was allegedly committed, had been convicted
- 29               of, or given a CIR in respect of, 2 or more
- 30               minor cannabis related offences; and
- 31               (b) at least 2 of those offences arose out of separate
- 32               incidents, or are alleged to have done so.

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- 1 (2) A police officer who gives a young person a CIR is to  
2 ensure that a responsible adult is given a copy of the  
3 CIR as soon as is reasonably practicable after the CIR  
4 is given to the young person, unless —  
5 (a) after reasonable enquiry, neither the  
6 whereabouts nor the address of a responsible  
7 adult can be ascertained; or  
8 (b) in the circumstances it would be inappropriate  
9 to give a responsible adult a copy of the CIR.
- 10 (3) A young person who has been given 2 CIRs need only  
11 complete a single CIS in respect of the CIRs if both  
12 CIRs were given before the completion of the CIS.

13 **8H. Referral of young persons at risk to juvenile justice**  
14 **teams**

- 15 (1) A police officer is to refer a young person at risk to a  
16 juvenile justice team where appropriate under the  
17 *Young Offenders Act 1994* in preference to charging  
18 the young person under this Act.
- 19 (2) In subsection (1) —  
20 ***young person at risk*** means an alleged offender who is  
21 a young person —  
22 (a) to whom the police officer would have given a  
23 CIR, but for section 8G(1); or  
24 (b) who has been given a CIR and has not  
25 completed a CIS within 28 days or any further  
26 time allowed under section 8L, unless —  
27 (i) the CIR has been withdrawn under  
28 section 8I; or  
29 (ii) the young person has elected to be  
30 prosecuted for the alleged offence in a  
31 court.

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**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 2 — 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;

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- 1 (d) cancel or amend an approval given under  
2 paragraph (a) or (b).
- 3 (3) For the purposes of this section, this Act is to be taken  
4 to be a relevant Act as referred to in the *Health*  
5 *Legislation Administration Act 1984* section 9.
- 6 **8K. Benefit of completing CIS**
- 7 (1) If the alleged offender has completed a CIS in respect  
8 of a CIR within 28 days or such further time as is  
9 allowed under section 8L, the bringing of proceedings  
10 and the imposition of penalties are prevented to the  
11 same extent that they would be prevented if the alleged  
12 offender had been convicted by a court of, and  
13 punished for, the alleged offence.
- 14 (2) Completion of a CIS is not to be regarded as an  
15 admission for the purposes of any proceedings,  
16 whether civil or criminal.
- 17 **8L. Extension of time to complete CIS**
- 18 (1) An authorised person may, in a particular case, extend  
19 the period of 28 days within which the alleged offender  
20 may complete a CIS.
- 21 (2) The extension may be allowed whether or not the  
22 period of 28 days has elapsed.
- 23 **8M. Certificate of completion of CIS**
- 24 (1) A treatment provider approved to provide a CIS under  
25 section 8J(2)(b) is to —
- 26 (a) give to a person who has completed a CIS a  
27 certificate of completion; and
- 28 (b) send a copy of the certificate to the  
29 Commissioner.

- 1 (2) A certificate of completion is to be in a form prescribed  
2 by the regulations and is to set out —  
3 (a) the name and address of the person who has  
4 completed the CIS; and  
5 (b) the date of completion; and  
6 (c) the details of the CIR in respect of which the  
7 CIS was completed.  
8

9 **7. Section 19A inserted**

10 After section 18 insert:  
11

12 **19A. Selling cannabis smoking paraphernalia**

- 13 (1) In this section —  
14 *cannabis smoking paraphernalia* means —  
15 (a) anything made or modified to be used in  
16 smoking cannabis;  
17 (b) any other thing that is prescribed by the  
18 regulations to be cannabis smoking  
19 paraphernalia.  
20 (2) A person must not —  
21 (a) sell or offer to sell; or  
22 (b) display, or authorise or allow to be displayed,  
23 for sale in a shop or other retail outlet; or  
24 (c) with intent to sell, have in his or her possession,  
25 cannabis smoking paraphernalia.  
26 Penalty:  
27 (a) if the offence is committed in relation to a  
28 young person, a fine of \$10 000;  
29 (b) in any other case, a fine of \$5 000.  
30

1 **8. Part VII inserted**

2 After section 42 insert:  
3

4 **Part VII — Transitional provisions**

5 **Division 1 — Preliminary**

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

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

9 **44. Transitional regulations**

- 10 (1) Regulations may prescribe all matters that are required  
11 or necessary or convenient to be prescribed for dealing  
12 with any issue or matter of a savings or transitional  
13 nature —  
14 (a) that arises as a result of the amendment of this  
15 Act by another Act (*an amending Act*); and  
16 (b) for which there is no sufficient provision in  
17 this Act or the amending Act.
- 18 (2) Regulations made under this section may provide that  
19 specified provisions of this Act do not apply, or apply  
20 with modifications specified in the regulations, to or in  
21 relation to any matter.
- 22 (3) Regulations made under this section may provide that a  
23 state of affairs specified in the regulations is to be  
24 taken to have existed, or not to have existed, on and  
25 from a day that is earlier than the day on which the  
26 regulations come into operation but not earlier than the  
27 day on which the relevant amending Act, or the  
28 relevant provision or provisions of that Act, came into  
29 operation.

- 1           (4) If the regulations contain a provision referred to in  
2           subsubsection (3), the provision does not operate so as —  
3                 (a) to affect in a manner prejudicial to any person  
4                 (other than the State), the rights of that person  
5                 existing before the regulations commenced; or  
6                 (b) to impose liabilities on any person (other than  
7                 the State) in respect of anything done or  
8                 omitted to be done before the regulations  
9                 commenced.

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

11           **45. Terms used**

12           In this Division —

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

16           **commencement day** means the day on which the  
17           *Cannabis Law Reform Act 2009* Part 2 comes into  
18           operation.

19           **46. CINs continue in force**

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

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

- 27           (1) Subsection (2) applies in respect of a CIN if a licence  
28           suspension order was made under the *Fines, Penalties*  
29           *and Infringement Notices Enforcement Act 1994*  
30           section 19 in respect of the CIN.

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- 1           (2) If, immediately before —
- 2                 (a) the day that is 12 months after the day on which
- 3                         the licence suspension order is made in respect
- 4                         of the CIN; or
- 5                 (b) the commencement day,
- 6                 whichever is the later in time —
- 7                 (c) the modified penalty, and enforcement fees,
- 8                         payable under the *Fines, Penalties and*
- 9                         *Infringement Notices Enforcement Act 1994* in
- 10                         respect of the CIN have not been paid; and
- 11                 (d) an election has not been made under section 21
- 12                         of that Act,
- 13                 then, for the purposes of that Act, the amounts referred
- 14                 to in paragraph (c) are to be taken to be paid on that
- 15                 day.
- 16           (3) If, due to the operation of subsection (2), a licence
- 17                 suspension order is to be taken as having been
- 18                 cancelled under the *Fines, Penalties and Infringement*
- 19                 *Notices Enforcement Act 1994* section 20(1)(a), then
- 20                 subsections (3) and (4) of that section apply as if the
- 21                 licence suspension order was cancelled under
- 22                 subsection (2) of that section.
- 23

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 —

- 9 (a) a notice issued under a written law to a person  
10 alleging the commission of an offence and  
11 offering the person an opportunity, by paying  
12 an amount of money prescribed under the  
13 written law and specified in the notice, to have  
14 the matter dealt with out of court; or  
15 (b) a cannabis intervention requirement given  
16 under the *Misuse of Drugs Act 1981* Part IIIA.  
17

18 **13. Section 29 amended**

19 In section 29(2):

20 (a) after paragraph (a) insert:

21

22 (ba) has been given an infringement notice, as  
23 defined in section 25(3); or

24

25 (b) after paragraph (a) insert:

26

27 or

28

29

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