

WESTERN AUSTRALIAN GOVERNMENT RESPONSE TO LEGISLATIVE COUNCIL SELECT COMMITTEE INTO CANNABIS AND HEMP REPORT ON *MEDICINAL CANNABIS AND INDUSTRIAL HEMP IN WESTERN AUSTRALIA*

On 30 March 2023 the Legislative Council Select Committee into Cannabis and Hemp (the Committee) tabled its report on *Medicinal cannabis and industrial hemp in Western Australia* (the Report).

The Report provides an overview of the potential to amend current legislation and regulations which apply to cannabis and hemp in Western Australia, with particular reference to barriers to pharmaceutical and nutraceutical use of cannabinoid products; prescription, availability and affordability of medicinal cannabis; and the potential benefits and risks of permitting industrial hemp for human consumption.

The Committee made 16 recommendations and 19 findings. The WA Government has considered in detail the recommendations of the Report and the response is outlined below. **Eleven recommendations are supported in full or in principle, one recommendation is partially supported, two recommendations are noted and two recommendations are not supported.**

Recommendation 1 The Western Australian Government amend the Medicines and Poisons Regulations 2016, in conjunction with the commencement of real time prescription monitoring, to remove the requirement for healthcare professionals to be authorised to prescribe or supply cannabis-based Schedule 8 products for adult non-dependant patients.

This recommendation is supported.

Recommendations 1 and 2 relate to the changes in the Medicines and Poisons Regulations 2016 to remove the requirement for health professionals to be authorised to prescribe medicinal cannabis products, and to allow prescriptions written interstate to be dispensed within Western Australia (WA).

In March 2023, the WA Government implemented the ScriptCheckWA Real Time Prescription Monitoring (RTPM) system. This technology provides medical practitioners and pharmacists in WA with secure access to up-to-date, complete, and correct information about all Schedule 8 medicines, including medicinal cannabis products. RTPM gives practitioners the essential medicines history they need to make well informed decisions about prescribing or dispensing medicines for their patients.

Implementation of RTPM has provided an opportunity to reassess the existing approach to regulation of Schedule 8 medicines, and to consider the most effective way of continuing to ensure the protection of public health in this space. On this basis, the Department of Health (DoH) recently undertook significant regulatory consultation and work has already commenced towards enabling these proposed regulation changes.

The requirement for authorisation for drug dependent patients and children under 18 years is a standard regulatory restriction for all Schedule 8 medicines and would continue to apply to Cannabis Based Products.

Recommendation 2 Following the implementation of recommendation 1, the Department of Health amend the Schedule 8 Medicines Prescribing Code to allow the dispensing of prescriptions for Schedule 8 medicinal-cannabis products written by interstate prescribers in Western Australia, provided the:

- prescription meets all legal requirements that apply to prescriptions written in Western Australia; and
- prescriber is eligible to initiate treatment in Western Australia.

This recommendation is supported.

Noting the response to Recommendation 1, the removal of the requirement for prescribers to be authorised would enable prescriptions meeting the Western Australian regulations to be dispensed by pharmacies in WA.

Interstate prescribers are permitted to register and view information for the purposes of prescribing Schedule 8 medicinal cannabis products within the ScriptCheck WA RTPM system.

Interstate prescribers would still be required to prescribe in accordance with the Schedule 8 prescribing code.

Recommendation 3 The Department of Health immediately revise its daily tetrahydrocannabinol prescribing limit from 40mg to at least 100mg, on the basis that the current limit poses an unnecessary restraint to access of medicinal cannabis.

This recommendation is supported in principle.

Recommendations 3 and 4 relate to the maximum dose permitted for tetrahydrocannabinol (THC) in WA, and a recommendation to review and publish the results of the review of the maximum dose.

Authorised Prescribers in WA are currently able to prescribe medicinal cannabis in line with their own Human Research and Ethics Committee approvals and treatment protocols without any maximum dose. For other prescribers of medicinal cannabis, there is no limit on dose, but there is a threshold, where additional justification, including specialist support, is requested as part of the process of seeking approval.

Recommendation 4 Within 24 months, the Department of Health:

- review the necessity of a daily tetrahydrocannabinol prescribing limit;
- publish the results of the review; and
- remove or increase the daily tetrahydrocannabinol prescribing limit as appropriate.

This recommendation is supported.

The Schedule 8 Medicines Prescribing Code was most recently reviewed in 2022, via open consultation, and included specific questions on Cannabis Based Products and dose limits. The report of the review was published in June 2023 and is available via <https://consultation.health.wa.gov.au/>.

Regulatory changes are being progressed and further targeted consultation will be undertaken during development of a new prescribing code to replace the current Schedule 8 Medicines Prescribing Code.

Recommendation 5 The Department of Health in conjunction with peak medical bodies:

- investigate the feasibility of a medicinal cannabis advisory service; and
- if feasible, establish a medicinal cannabis advisory service.

This recommendation is supported in principle.

The WA Government supports conducting a review in conjunction with peak medical bodies, noting that this will need to examine a wide range of feasibility considerations, including, but not limited to, defining service scope, projected demand, operating costs, liability and indemnity for clinical advice, access to qualified staff and the exact nature of health expertise required for this advice.

Implementation of any service will be dependent on the outcome of the feasibility studies conducted, and subject to a decision of government.

Recommendation 6 The Department of Health and peak medical associations develop printed and/or online information resources specifically aimed at informing patients' families, friends and employers about the legality and therapeutic benefits of medicinal cannabis.

This recommendation is partially supported.

The WA Government supports the development of written and online information on the legality of medicinal cannabis and supports updating and improving the current resources, as necessary.

The WA Government does not support developing specific public information on the therapeutic benefits of medicinal cannabis. Provision of this type of material is inconsistent with the role of the DOH and the approach taken towards endorsement of any specific individual medical product or therapy.

Recommendation 7 The West Australian Government:

- conduct a cost-benefit analysis of implementing a compassionate access scheme for medicinal cannabis products; and
- if the results of the analysis are favourable, implement a compassionate access scheme

This recommendation is not supported.

A well-established mechanism exists within Health Service Providers in WA Health to provide financial support for the supply of critical medicines, for exceptional circumstances, through public outpatient services.

Medicinal cannabis products are not excluded from these programs.

This case-by-case compassionate supply process is a long standing and robust mechanism, subject to internal hospital governance mechanisms, and overseen by clinicians. The WA Government considers this mechanism to remain fit-for-purpose for compassionate supply of medicines and does not support establishing alternative structures.

Recommendation 8 The Western Australian government amend the Road Traffic Act 1974 and Road Traffic (Drug Driving) Regulations 2007 to introduce a defence for patients using medicinal cannabis as prescribed who are not:

- driving whilst impaired; or
- under the influence of alcohol.

This recommendation is noted.

The Report found that the inclusion of THC as a prescribed illicit drug in the Road Traffic (Drug Driving) Regulations 2007 predates the legalisation of medicinal cannabis, and that current roadside drug testing for THC does not adequately assess the actual or likely risk a driver may pose to themselves or others on the road.

Provision for a medical defence for unimpaired drivers who are detected with prescribed medicinal cannabis in their system is available in Tasmania and before Parliament in Victoria, providing a point of reference for comparable legislative changes in WA.

The WA Government will establish a Medicinal Cannabis and Safe Driving Working Group to consider reasonable amendments to the Road Traffic Act 1974 and Road Traffic (Drug Driving) Regulations 2007 which would allow a defence for patients using medicinal cannabis as prescribed who are not driving whilst impaired, while ensuring the safety of all Western Australian road users.

The working group should include representatives from WA Police, Department of Transport, the Road Safety Commission, Department of Health, and medical practitioners.

Recommendation 9 The Department of Mines, Industry Regulation and Safety review its publication 'Alcohol and Other Drugs in the Workplace Guidance Note' with a view to developing and publishing more comprehensive and contemporary guidance.

This recommendation is supported.

The *Alcohol and Other Drugs in the Workplace Guidance Note* was published by the predecessor to the Work Health and Safety Commission (WHS Commission) in 2008.

The Department of Mines, Industry Regulation and Safety (WorkSafe Group) will work with the WHS Commission in updating the Commission's publication 'Alcohol and Other Drugs in the Workplace Guidance Note'.

A review of the guidance note will be undertaken as part of the WHS Commission review process for guidance material, which includes consultation with peak bodies.

Recommendation 10 The Department of Mines, Industry Regulation and Safety, and peak industry bodies develop printed and online resources for employers, aimed at:

- explaining the difference between medicinal cannabis and recreational marijuana;
- providing information about how tetrahydrocannabinol does and does not affect impairment; and
- recommending that medicinal cannabis be treated in the same manner as other potentially impairing prescription drugs.

This recommendation is supported in principle.

The Department of Mines, Industry Regulation and Safety (WorkSafe Group), in collaboration with peak bodies and the Work Health and Safety Commission, will develop and publish via multimedia channels, material for employers in relation to medical cannabis in the workplace.

Recommendation 11 The Western Australian Government amend the Rail Safety National Law Act 2015 to differentiate between the legal and illicit use of cannabis.

This recommendation is noted and requires further consultation.

Western Australia is a signatory to the intergovernmental agreement establishing the Rail Safety National Law (National Law) across all Australian jurisdictions.

Clause 128 of the Schedule to the RSNL implements the National Law in Western Australia and creates offences relating to prescribed concentration of alcohol or prescribed drug.

Any amendments to the National Law to implement this recommendation will require consultation with the Infrastructure and Transport Ministers Meeting (ITMM) and consultation with key stakeholders, including the national regulator, the Office of the National Rail Safety Regulator, rail operators and unions representing rail workers.

Recommendation 12 The Western Australian Government consider implementing an ongoing anonymous survey of general practitioners to capture data to inform future clinical studies on medicinal cannabis.

This recommendation is not supported.

The WA Government is aware of published studies capturing the perspectives of General Practitioners. It is not clear how these have been used to inform or shape additional research and what additional value repeated surveys may offer in this space.

The WA Government is supportive of any private researchers or peak health bodies to conduct such surveys to guide studies as deemed necessary.

Recommendation 13 The Western Australian government encourage and support research into medicinal cannabis in our higher education, health and industry sectors to drive advances, improve the evidence base and facilitate patient access.

This recommendation is supported in principle.

The WA Government notes the significant volume of published and ongoing research over recent years, and supports the conduct of medicinal cannabis research, where it is of a quality that is sufficient to contribute towards the ultimate goal of product registration and Pharmaceutical Benefits Scheme listing.

The WA Government already encourages and supports research into areas of emerging health and medical technology, and a number of funding programs and avenues for researchers exist on this basis, including the Future Health Research and Innovation Fund. Access to this funding is a competitive process, based on the individual merits of the proposed research. Priorities for funding are established and set by an independent expert council. There is no existing barrier for researchers into medicinal cannabis, to apply for, and receive, funding through these established channels. Many of the conditions for which medicinal cannabis is commonly prescribed, such as palliative care, would be aligned with the broader existing priorities and strategies for medical research in WA.

Recommendation 14 The Department of Primary Industry and Regional Development conduct a review of the Industrial Hemp Act 2004 to ensure the legislation is fit for purpose and does not impose unjustified restrictions on the industry, taking into account the limited opportunity for industrial hemp to be misused or redirected.

This recommendation is supported in principle.

In response to industry demand and encouraging research findings, the WA Government chose to give the agricultural and industrial sectors the opportunity to grow industrial hemp in a controlled fashion by creating the Industrial Hemp Act 2004 (the Act) and the Industrial Hemp Regulations 2004 (regulations).

The Act and regulations were created with the intent to enable farmers to grow industrial hemp for industrial use with protection from the constraints of the regulatory framework the Act sits within, which is designed to combat drug abuse.

In addition to providing the regulatory means for a person to cultivate, harvest or process industrial hemp, the Act enables licensees to import cannabis seed under the Customs Act 1901 and the Customs (Prohibited Imports) Regulations 1956, and provides a range of defences in proceedings under the Misuse of Drug Act 1981 that a prohibited drug or prohibited plant is industrial hemp or industrial hemp seed.

To date the Act and regulations, along with the supporting licensing scheme administered by the Department of Primary Industries and Regional Development, have fulfilled the intended purpose of providing the regulatory means for a person to cultivate, harvest or process industrial hemp within the constraints of the regulatory framework surrounding it.

On this basis, the Act is fit for purpose. It is recognised, however, that industry and consumer requirements have progressed since 2004 and a review the Act and regulations will be considered, taking into account other government legislative priorities.

The Report identifies several “barriers” to the expansion of the industrial hemp sector. The WA Government acknowledges these barriers and respective government responsibility in managing these barriers and will work to address those within its remit.

The Department of Primary Industry and Regional Development has already initiated action in respect to issues that can be dealt with through improved licencing processes, engagement, and consultation with industry. The Department of Primary Industry and Regional Development is reviewing its industry hemp policy and licensing arrangements to clarify and streamline the process, including a review of testing regime and costs and use of plant parts. The findings and recommendations of the report will be key considerations in this work moving forward.

Recommendation 15 The Department of Primary Industry and Regional Development should advocate for the Commonwealth Government to amend the Narcotic Drugs Act 1967 and any other relevant legislation which will remove obstacles to the cultivation and commercial sale of industrial hemp under the Industrial Hemp Act 2004.

This recommendation is supported.

This recommendation appears be driven largely by perceived opportunities for the extraction of CBD from the leaves and flowers of industrial hemp.

It is understood that the Commonwealth Government is already investigating ways to exempt the cultivation of hemp for CBD in conjunction with the current Commonwealth review of the NDA. Such an exemption would allow states and territories to licence this activity under industrial hemp legislation.

An exemption for the cultivation of hemp for CBD by the Commonwealth Government would require an amendment to WA legislation to enable implementation and could provide a platform to initiate a review of the Act.

The Department of Primary Industry and Regional Development will keep abreast of any developments and/or opportunities to provide input into a proposal of an exemption and/or the review of the NDA to ensure the industry and WA Government interests are represented.

Recommendation 16 The Department of Primary Industry and Regional Development, and the Western Australian Government, continue to encourage and provide financial support for research of the industrial hemp industry.

This recommendation is supported in principle.

The Department of Primary Industry and Regional Development will continue to collaborate and co-invest in high priority impactful research that aligns with the strategic needs of industry and government. A key focus is to support the growth of profitable and sustainable industries to produce high quality consumer and end-user valued products. A greater understanding of the supply chains and where value is added will assist industry in balancing demand and supply.