

Western Australia

LEGISLATIVE COUNCIL

(Hon. Dr Christine Sharp)

Misuse of Drugs Amendment (Cannabis Cautioning Notices) Bill 1999

A Bill for

An Act to amend the *Misuse of Drugs Act 1981*.

The Parliament of Western Australia enacts as follows:

1. Purpose

The main purposes of this Act are —

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- (a) to reduce the social impacts of a conviction for simple cannabis offences;
 - (b) to make the penalties which apply to the drug consistent with its capacity to produce harm;
 - (c) to reduce the costs to the criminal justice system, including the police and the courts, of prosecuting
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- (d) to make cannabis law more consistent with community values; and
- (e) to acknowledge cannabis as primarily a health issue.

2. Short title

5 This Act may be cited as the *Misuse of Drugs Amendment (Cannabis Cautioning Notices) Act 1999*.

3. Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day it receives the Royal Assent.
- 10 (2) Subject to subsection (3), sections 5 and 6 come into operation on a day to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 January 2001, it comes into operation on that day.

15 **4. Principal Act**

In this Act the *Misuse of Drugs Act 1981** is referred to as the principal Act.

[* *Act No. 66 of 1981*.

20 *For subsequent amendments see 1997 Index to Legislation of Western Australia, pp. 157-8.*]

5. **New Part IIA**

The principal Act is amended by inserting after section 8 the following Part —

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5 **Part IIA — Cautioning procedure for certain simple cannabis offences**

8A. **Interpretation**

In this Part, unless otherwise stated —

10 **“cannabis cautioning notice”** means a notice prescribed by regulation and served under this Part;

“simple cannabis offence” means a simple offence under section 6(2) or section 7(2) involving —

- 15 (a) the possession or use of not more than 100 grams of cannabis;
- (b) the cultivation of not more than two cannabis plants; or
- 20 (c) the possession or use of not more than 100 grams of cannabis and the cultivation of not more than two cannabis plants;

“cautioning notice” means cannabis cautioning notice; and

“drug offence” includes any offence against —

- 25 (a) this Act;
- (b) the *Poisons Act 1964*; or
- (c) any Act or law of the Commonwealth or another State or Territory which offence is prescribed for the purposes of this section.

8B. Police officer may serve cannabis cautioning notice

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- (1) Where a police officer believes on reasonable grounds that a person has committed a simple cannabis offence the police officer may, in accordance with this Part, serve the person (the “**alleged offender**”) with a cannabis cautioning notice.
- (2) A cautioning notice must not be served under this Part unless the alleged offender —
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- (a) is an adult;
 - (b) admits to the offence;
 - (c) consents to the cautioning notice;
 - (d) has no prior convictions for any drug offence in this State or any other State or Territory; and
 - (e) has not been served with more than one prior cautioning notice under this Part.
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- (3) A cautioning notice must include —
- (a) legal, medical and any other information prescribed by regulation relating to the possession, use or cultivation of cannabis; and
 - (b) the names of, and contact information for, relevant counselling agencies, if any, in this State.
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- (4) This Part does not apply where it is alleged that in addition to, and at the same time as, the commission of the simple cannabis offence, the alleged offender committed one or more other drug offences.
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- (5) Where a cautioning notice is served in accordance with this Part —
- (a) any liability of the alleged offender in respect of the alleged simple cannabis offence shall be deemed to be discharged;
 - (b) no further proceedings shall be taken in respect of the alleged simple cannabis offence; and
 - (c) the alleged offender shall not be regarded as having been convicted of the alleged simple cannabis offence.
- (6) Any substance seized under this Act, or any other Act or law, in connection with the alleged simple cannabis offence that would have been liable to forfeiture in the event of a conviction shall, on service of the cautioning notice in accordance with this Part, be forfeited to the Crown.
- (7) Subject to subsection (5), nothing in this Part shall be construed as affecting the institution or prosecution of proceedings for a simple cannabis offence.

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6. Consequential amendment

Section 41 of the principal Act is amended by inserting after paragraph (a) of subsection (1) the following new paragraph —

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- (ab) providing for —
 - (i) the form of cannabis cautioning notices under Part IIA; and
 - (ii) the procedure to be followed in and in relation to the serving of such notices;
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7. Repeal

Subsection (1) of section 5 of the principal Act is amended by repealing subparagraph (i) of paragraph (d).

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