



VICTORIA POLICE

Victorian Law Reform Commission Review into Medicinal Cannabis Victoria Police Submission

1. Introduction

Victoria Police welcomes the opportunity to participate in this Review into Medicinal Cannabis.

Victoria Police understands the important public value in identifying, researching and developing therapeutic treatments for medical conditions and symptoms. We also acknowledge the increasing community interest in the potential for cannabis and cannabis-derived products to be used for therapeutic purposes.

Throughout recent considerations of cannabis as a therapeutic product, Victoria Police has been a key stakeholder, not only as a law enforcement agency but also through participation in the VLRC's Regulatory Reference Group and involvement in state and national level committees. This includes the Intergovernmental Committee on Drugs which considers health and law enforcement issues for alcohol and other drugs.

The public value of identifying and providing substances to the public for therapeutic use must be balanced against harms that may be directly and indirectly caused by such substances. These harms may affect the individual, for example through unwanted side effects or dependence. The harms may also affect society more generally through diversion of the product to illicit markets, and the advantage gained by organised crime groups and criminals that infiltrate these markets. Without robust regulatory oversight, there are risks that opportunists may exploit the scheme and be able to evade prosecution. This potentially diminishes the ability to enforce the illegal use of substances.

Victoria Police's submission to the Review into Medicinal Cannabis is provided from the perspective of upholding a safe and lawful society. As a law enforcement agency, we are not in the position to recommend any model for decriminalisation and acknowledge that this is a decision for the legislature. Rather, this submission aims to provide certain parameters that must be considered should there be an interest in legalising medicinal cannabis. These parameters are necessary to limit any potential risks to public safety.

2. Scope of the submission

Part A of this submission will explore the context of cannabis in Victoria. It will focus on the current legislative scheme and the experience of law enforcement in dealing with this issue.

Part B of this submission will describe the parameters of a medicinal cannabis scheme that are preferred by this organisation from the perspective of upholding a safe and orderly society.

PART A – CONTEXT OF CANNABIS IN VICTORIA

3. Current legislative framework

Under the current legislative scheme, possession, use and cultivation of cannabis is prohibited. The prohibitions on the use of medicinal cannabis are governed by the *Drugs, Poisons and Controlled Substances Act 1981* (Vic) ('**DPCSA**') and the *Therapeutic Goods (Victoria) Act 2010* (Vic). This Victorian legislation interacts with the Commonwealth *Criminal Code Act 1995* (Cth) and the *Therapeutic Goods Act 1989* (Cth) ('**TGA**').

Under the DPCSA, all cannabis related offences are criminal offences. Cannabis is listed under schedule 11 as a 'drug of dependence' in the DPCSA. It is also a poison under schedule 9 of the *Standard for the Uniform Scheduling of Medicines and Poisons No 6* (Cth) which also comes under the DPCSA.¹ The DPCSA provides that it is a criminal offence to possess more than a 'small quantity' of cannabis, defined under schedule 11 as greater than 1.0 grams.² However, the Illicit Drug Diversion Program gives police officers the discretion to issue cautions and provide offenders with an opportunity to attend a cannabis education program if they possessed no more than 50 grams of cannabis.

In addition to cannabis itself, tetrahydrocannabinol (**THC**) containing substances are also subject to a similar legislative framework. THC is the active drug within cannabis that is subject to abuse or use within the illicit drug environment. Medicinal cannabis products may contain THC. Therefore under the current DPCSA, medicinal cannabis products that contain more than 1 gram of THC are prohibited and products containing more than 25 grams of THC could attract trafficking charges.

It is also an offence under the DPCSA to use, traffic or cultivate cannabis.³ Furthermore, it is an offence to introduce a drug of dependence to the body of another person.⁴ This would be particularly applicable for cases involving chronically ill minors and the terminally ill.

The provisions in the DPCSA are augmented by the TGA, which requires the Therapeutic Goods Administration to assess and approve all medications used for therapeutic purposes. Currently, cannabis remains a prohibited substance and has not been approved for medicinal or therapeutic purposes. Without approval, the TGA also prohibits the manufacture of any medicinal cannabis product.⁵ Only the synthetic cannabinoid Sativex has been

¹ *Drugs, Poisons and Controlled Substances Act 1981* (Vic) s 4.

² *Ibid* ss 73 (use); 72, 72A, 72B (cultivate).

³ *Ibid* s 75.

⁴ *Ibid* s 74.

⁵ *Therapeutic Goods Act 1989* (Cth) s 19B.

approved for therapeutic use. The Therapeutic Goods Administration would need to re-classify medicinal cannabis from a Schedule 9 to a Schedule 8 drug in order to legalise its therapeutic use.

In light of the current legislative framework, the use, possession and introduction of medicinal cannabis to a child or a terminally ill person could expose a person to criminal sanctions.

4. Current structure of supply of cannabis

4.1. Scale of the cannabis crop house industry in Victoria

The emergence of the cannabis crop house industry in Victoria has been a significant problem for Victoria Police. Recent investigations conducted by Victoria Police have identified residential properties in the metropolitan region that were producing commercial quantities of hydroponic cannabis. Rural regions face similar problems, where highly sophisticated 'factories' have been set up to produce higher crop yields.

The rise in cannabis crop houses is reflected in the substantial increase in offences relating to the commercial cultivation of cannabis (25kg or 100 plants) in Victoria over the past ten years. In 2002-03, Victoria Police recorded 32 offences of commercial cultivation. This figure jumped to 161 offences in 2012-13 and 98 offences in the 2014 calendar year⁶. Furthermore, data from the Crime Statistics Agency shows that five offences for cultivating large commercial quantities of cannabis (more than 250kg or 1000 plants) were recorded during the 2014 calendar year.

Considerably more cannabis has been seized in Victoria by weight over the last 10 years than has been seized in other states and territories. In 2012-13, 5.3 tonnes of cannabis was seized in Victoria, compared to 1.8 tonnes in NSW and 0.8 tonnes in Queensland⁷.

This data illustrates the size of the illicit cannabis industry in Victoria and the scale of the problem faced by Victorian law enforcement.

4.2. Role of organised crime in cannabis and relationship between cannabis and other illegal drugs

Organised crime groups play a significant role in establishing and financing cannabis crop houses. These groups often comprise of ethnically-based 'syndicates', with many of the profits being sent offshore. These groups prey on vulnerable people such as students and those on tourist visas to be utilised as 'crop sitters'. Their opportunistic focus means organised groups will also engage in poly-drug / commodity trafficking where possible. Additionally, where legitimate business can be exploited, it will be, with organised crime groups using private enterprise as a 'smoke screen' to hide illegal activity.

⁶ Statistics provided by the Crime Statistics Agency with data extracted from LEAP on 18 January 2015. This includes offences recorded by offence code and investigation status from the period of January to December 2014. If you wish to obtain a quote or comment in relation to these statistics, please contact the CSA or Chief Statistician at 03 8684 1808 or email info@crimestatistics.vic.gov.au.

⁷ Australian Crime Commission, *Illicit Drug Data Report 2012-13* (April 2014), 62 <<https://www.crimecommission.gov.au/publications/intelligence-products/illicit-drug-data-report/illicit-drug-data-report-2012-13>> at 15 April 2015.

4.3. *Extent of use and estimated value of illegal cannabis industry in Victoria.*

Cannabis is by far the most common illicit drug used by Australians. In the most recent National Drug Strategy Household Survey, 10.2% of people aged over 14 years reported use in the past 12 months, and 34.8% of people reported use at least once in their lifetime.⁸

It is difficult to quantify the value of the illegal cannabis industry in Victoria. Victoria Police can indicate however, that since 1 July 2014, the Drug Task Force has implemented a disruption strategy that has resulted in cannabis seizures worth in excess of \$25 million.

5. Cannabis-related law enforcement in Victoria

Figures released by the Crime Statistics Agency indicate that during the period of January 2014 to December 2014, a total of 9,862 cannabis-related offences were recorded. This figure includes possession, use, trafficking (both commercial and large commercial quantities) and cultivation offences (both commercial and large commercial quantities). These statistics also include inchoate offences of attempted possession, trafficking (both large commercial quantities and commercial quantities) and cultivation (both commercial and large commercial quantities).

The bulk of these offences related to the possession of cannabis, with 7,577 offences recorded. This is followed by 884 offences relating to the cultivation of cannabis (non-commercial quantities).

Again, this data indicates the extent of illicit cannabis cultivation and use in Victoria and the ongoing and extensive efforts made by Victoria Police to reduce the cultivation, supply and distribution of the drug.

5.1 Cannabis use and road trauma

In 2014, 55,817 roadside tests were conducted by Victoria Police to detect the presence of cannabis and other drugs in drivers. Of this number, 1,368 drivers tested positive for the presence of cannabis, either alone or in conjunction with another illicit substance. This indicates that cannabis accounts for 2.45% of the roadside tests⁹.

⁸ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey Results* (July 2014), <<http://aihw.gov.au/alcohol-and-other-drugs/ndshs/2013/data-and-references>> at 14 April 2015.

⁹ Statistics provided by Road Police Command, Victoria Police with data extracted on 13 April 2015. Please note this figure is subject to variation depending on date of extraction.

PART B – PARAMETERS OF A MEDICINAL CANNABIS SCHEME

6. Preferred parameters of a medicinal cannabis scheme

To limit any potential risks to public safety, Victoria Police recommends the following parameters for any proposed medicinal cannabis scheme in Victoria:

6.1. Any proposed scheme must be time limited

If the government introduces a medicinal cannabis scheme in some form, Victoria Police recommends that this be conducted in the first instance in a trial format, with robust monitoring and review. A trial allows flexibility for amendments and changes to scope, should data and evidence support it. If a scheme is implemented without a trial phase, from a law enforcement perspective, it is recommended that appropriate monitoring and data collection across agencies be used to determine the scheme's efficacy, with close scrutiny on any evidence of increases in illegal activity or community harm.

6.2. Crude cannabis must be excluded

From a policing and regulatory perspective, it is preferable that crude cannabis is excluded from any potential medicinal cannabis scheme.

Crude cannabis refers to raw cannabis plant material, including material that has been harvested, diced, dried, shredded or chopped. Illicit cannabis in Victoria predominantly takes the form of crude cannabis. It would not be forensically possible to differentiate crude cannabis grown illicitly from crude cannabis grown for medicinal purposes. Organised crime groups and criminals may exploit the medicinal cannabis scheme by becoming involved in, or influencing, the cultivation and distribution of medicinal cannabis or by using the licit industry as a cover for illicit cannabis cultivation. The illegal cannabis industry in Victoria remains a significant problem for law enforcement and the exemption of crude cannabis from a medicinal cannabis scheme would considerably reduce the risk of organised and serious crime groups from benefitting from the scheme.

6.3. Personal cultivation must be prohibited

It is Victoria Police's position that personal cultivation of cannabis is not an option for a medicinal cannabis scheme in Victoria. Personal crops would be a likely target for theft. Theft has the potential to escalate into crimes against the person, for example through owners protecting their crops, or through retaliatory actions. It would be extremely difficult for police to protect potentially large numbers of personal crops and their owners from targeted criminal activity. Also, the risk of personally-grown cannabis being diverted to the illicit market is unacceptably high.

The commercial cultivation of cannabis by a government agency or licenced growers is another option. Victoria Police recommends that if commercial cultivation is to be included in the scheme, then strong consideration must be given to the security of the product. Whilst some lessons can be learned from the security measures implemented around the cultivation of poppies in Tasmania and Victoria, there is a significant difference between the two crops in terms of the ease by which they can be converted into the desired psychoactive product. Licit poppies are processed in a specific manner to prevent them from being readily

converted into opium¹⁰. Conversely, the cannabis plant is easily and readily turned into its psychoactive form, and therefore cannabis cultivations would be a far more attractive target for theft.

As the scale of illicit cannabis use in Victoria is far greater than heroin, there is a larger market for stolen product and an increased incentive for theft. If commercial cultivation is to take place in Victoria, Victoria Police recommends that strong consideration be given to implementing mandatory, stringent security requirements around cannabis cultivations to prevent theft and diversion. Such security requirements should be developed by subject matter experts, and these requirements will need to be heightened in comparison to poppy cultivations.

6.4. Supply and distribution of medicinal cannabis must be regulated

Victoria Police recommends that if a commercial cannabis industry is to be introduced to Victoria, the industry must be strictly regulated and consideration given to the security of the product. The regulations surrounding the poppy industry provide an instructive example. Victoria Police recommends that subject matter experts are consulted in developing a strong regulatory framework.

6.5. There must be strict eligibility criteria for prescriptions

Victoria Police recognises that medical practitioners, researchers and experts are best qualified to determine the clinical conditions and/or symptoms that may benefit from medicinal cannabis. It is our position that consideration be given to limiting the eligibility criteria to conditions and symptoms where adequate scientific evidence is available for the efficacy of cannabis. It would not be in the public interest for cannabis to be prescribed for a wide range of conditions for which there is little or no evidence that it is a safe, effective treatment. Victoria Police also recommends that any prescriptions that contain the psychoactive ingredient THC must be accompanied by advice regarding the effect of THC on driving ability and the illegality of driving under the influence of THC. See also section 6.9.

6.6. Registered medical professionals must be the prescribing authority

The authority to prescribe cannabis must rest solely with registered medical practitioners that operate under an existing, well-established framework for the prescribing of scheduled medicines. Given the nature of the medical conditions being considered for a cannabis scheme, Victoria Police recommends that the prescribing authority sit only with these professionals and does not extend to other practitioners, such as alternative therapists.

Victoria Police considers that it would be inappropriate for practitioners, such as alternative therapists who are not authorised to prescribe scheduled medicines, to be authorised to prescribe medicinal cannabis. Cannabis is susceptible to misuse and dependence and there is a significant risk that medicinal cannabis will be diverted to illicit markets. Therefore the

¹⁰ Parliament of Victoria, *Drugs, Poisons and Controlled Substances (Poppy Cultivation and Processing) Amendment Bill 2013 Research Paper*, <http://www.parliament.vic.gov.au/publications/research-papers/8902-drugs-poisons-and-controlled-substances-poppy-cultivation-and-processing-amendment-bill-2013#_ftn17> at 14 April 2015.

prescription of cannabis requires the strict framework that already exists for prescription of scheduled medicines, including that the authority to prescribe rests solely with registered medical practitioners.

6.7. Any scheme must provide a register of prescribers and patients

In the interests of conducting a fully informed trial of medicinal cannabis, Victoria Police recommends that consideration be given to maintaining a register of prescribers and patients in relation to medicinal cannabis. The purpose of the register would be to track and record the number and types of prescriptions made, and the conditions/symptoms for which cannabis is prescribed.

6.8. Legislative considerations

One option for managing possession may be to provide an exemption from prosecution for persons who can provide appropriate documentation and proof that identifies that they are a part of the medicinal cannabis scheme. However, this exemption must not be included in road safety legislation nor alter the existing laws regarding drugs and driving.

Alternatively, a 'reasonable excuse' provision may be included as a defence to protect those who are legitimate participants in a medicinal cannabis scheme. This would place the onus on the participants to provide proof that they are legitimate participants. Ultimately, the legislature is best placed to determine which options are appropriate. Victoria Police recommends that regardless of the approach taken, any eligibility criteria needs to be carefully worded to ensure the scheme is not used more broadly than its intended purpose. It is recommended that the legislative framework for the medicinal cannabis scheme does not place further administrative burdens on police and the courts in verifying eligibility.

Victoria Police also recommends that consideration be given to conditions on the possession of cannabis or cannabinoids for patients and their carers. These conditions should limit the amount of product, where it is consumed and if it is supplied to other non-registered users.

6.9. Effects on road safety must be a paramount consideration

Victoria Police recommends that any medicinal cannabis scheme strongly considers the effect on road safety. The psychoactive ingredient in cannabis, THC, impairs driver ability. It would be necessary for patients who are prescribed a product containing THC to be suitably warned about the effect of THC on driving ability and the illegality of driving whilst under the influence of the substance.

7. Conclusion

Victoria Police would like to thank the VLRC for the opportunity to comment on the Review into Medicinal Cannabis. While there is a need for a compassionate approach towards those who are chronically or terminally ill, any legislative reform needs to be balanced against the potential risks to public safety.

As this submission has outlined, the illegal cannabis industry remains a prevalent problem from a law enforcement perspective. Consequently, if a medicinal cannabis scheme were to

be introduced to Victoria, it must be designed to minimise the risk of diversion to criminal groups and the risk to public safety. Accordingly, we recommend that any medicinal cannabis scheme must include consideration of the following parameters:

1. Any proposed scheme must be time limited
2. Crude cannabis must be excluded
3. Personal cultivation must be prohibited
4. Supply and distribution of medicinal cannabis must be strictly regulated
5. There must be strict eligibility requirements for prescriptions
6. Registered medical professionals must be the prescribing authority
7. Any scheme must provide for a register of prescribers and patients
8. Legislative considerations
9. Effects on road safety must be a paramount consideration

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