

## **INQUIRY INTO LAW REFORM ISSUES REGARDING SYNTHETIC DRUGS**

**Organisation:** Western Australian Drug and Alcohol Office  
**Name:** Mr Neil Guard  
**Position:** Executive Director  
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Inquiry into law reform issues regarding synthetic drugs**

**Submission from the Western Australian Drug and Alcohol Office**

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The Drug and Alcohol Office (DAO) is a statutory authority - the Western Australian Alcohol and Drug Authority (WAADA) – established under the *Alcohol and Drug Authority Act 1974* (WA) and accountable to the Minister for Mental Health.

DAO aims to prevent and reduce the adverse impacts of alcohol and other drugs in the Western Australian community.

DAO provides or contracts a statewide network of services to:

- deliver public health education campaigns aimed at creating a safer drinking culture in Western Australia and reducing harm from illegal drug use;
- provide counselling and treatment services;
- support local drug action groups and school drug education;
- provide education and training activities for workers and volunteers in the drug and alcohol sector;
- deliver prevention and early intervention programs including programs for Aboriginal people;
- develop and coordinate whole-of-government policies and strategies; and
- undertake research and publish reports that relate to alcohol and other drug use.

DAO coordinates whole-of-government policies and strategies in conjunction with state and Commonwealth agencies. DAO works closely with other government agencies, the non-government sector and community to ensure the ongoing implementation of appropriate programs and services.

In Western Australia the regulation and control of substances fall under the *Misuse of Drugs Act 1981* (WA) which is the responsibility of the Minister for Police, and the *Poisons Act 1964*, which is the responsibility of the Minister for Health.

In 2011, Western Australia experienced a surge in the use of the synthetic cannabinoids such as “Kronic”. The promotion and sale of Kronic through media (including social media), escalated its popularity and use, particularly among employees seeking alternative substances to avoid detection under employers’ drug and alcohol testing regimens, which is of specific concern for Western Australia given the size of the mining sector workforce and the safety risks associated with use of these emerging psychoactive substances.

As a result, the Emerging Psychoactive Substances Review Group was formed in Western Australia in April 2011 to coordinate action and provide advice to the Western Australian Government about these and other emerging psychoactive substances.

The functions and responsibilities of the Emerging Psychoactive Substances Review Group are to:

- work across government to comprehensively address issues regarding emerging psychoactive substances in Western Australia;
- enable high-level, across government advice and guidance for issues relating to emerging psychoactive substances;

- develop, coordinate and monitor agency activities relating to emerging psychoactive substances;
- collate information relating to emerging psychoactive substances; and
- highlight areas for future focus of activity.

Membership includes senior representatives from the key government departments listed:

- Drug and Alcohol Office (Chair);
- Western Australia Police;
- Department of Health – Pharmaceutical Services Branch;
- Western Australian ChemCentre;
- Department of Commerce – Consumer Protection; and
- Western Australian representative from the Australian Customs and Border Protection Service.

Members of the Group are expected to:

- attend meetings;
- communicate decisions made at meetings to staff in their own organisations;
- support other agencies as appropriate; and
- encourage commitment within their own agency to the alcohol and other drug agenda, focusing on issues relating to emerging psychoactive substances.

Western Australia responded to the rapidly emerging availability and use of synthetic cannabinoids by scheduling 21 synthetic cannabinoids as Schedule 9 substances under the Western Australia *Poisons Act 1964* from June to August 2011. This included an initial group of seven synthetic cannabinoids that were listed as Schedule 9 substances on 17 June 2011 and a second group of 14 substances were scheduled on 5 August 2011. This action effectively banned the possession, sale or supply of these substances in the state. Western Australia also banned the synthetic stimulant MDPV (methylenedioxypropylvalerone) in February 2012. The Therapeutic Goods Administration (TGA) ban on MDPV followed on 1 May 2012.

The TGA considered broader restrictions of synthetic cannabinoids and commenced a public submission and review process in August 2011. Following the consultation process, the TGA delegate confirmed that eight groups of synthetic cannabinoids and a group entry for all synthetic cannabinomimetics will be added to Schedule 9 of the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) on 1 May 2012. As the Western Australian response to the availability and use of synthetic cannabinoids was actioned between July and August 2011, the 21 synthetic cannabinoids were banned in Western Australia for a minimum of eight months prior to the national response. This has resulted in a significant decrease in the use of these substances in Western Australia.

The Emerging Psychoactive Substances Review Group has identified and established a risk-based regime to:

- identify emerging psychoactive substances;
- establish potential harm associated with use ;
- monitor prevalence and harm associated with use;
- agree action thresholds for escalation of identified substances;
- identify regulatory and administrative mechanisms for controlling availability where indicated; and
- advise Government about recommended action where indicated.

The primary control mechanism currently used within Western Australia is the Western Australian *Poisons Act 1964*. This legislation enables the Minister for Health to consider listing emerging psychoactive substances as a Schedule 9 - Prohibited Substance. Schedule 9 substances are substances which may be abused or misused, the manufacture, possession, sale or use of which should be prohibited by law except when required for medical or scientific research, or for analytical, teaching or training purposes with approval of the CEO. Listing of a substance in Schedule 9 has consequent inclusion in the *Misuse of Drugs Act* and enables Police enforcement action and possible prosecution.

This use of the *Poisons Act* has enabled timely action to be taken to prohibit the possession, sale and supply of emerging psychoactive substances within Western Australia. It is retrospective in nature requiring a substance to be identified and harm resulting from use to be established.

The Emerging Psychoactive Substances Review Group identified that many of the products being sold and supplied were not subject to existing regimes that might have established whether they were fit for human consumption.

Some products are deliberately labelled as unfit for human consumption in an attempt to bypass scrutiny as to their fitness for human consumption. This is despite online marketing clearly appealing to their intoxicating effects achieved by consumption. There are understandably inherent difficulties that law enforcement experience with controlling emerging drugs and the online environment.

Looking forward, the Emerging Psychoactive Substances Review Group supports consideration of a precautionary approach towards new substances with the potential to cause harm, and supports action to protect public health while investigations are undertaken to determine the harm caused by emerging psychoactive substances. Synthetic cannabinoids and other psychoactive substances do not appear to have any legitimate therapeutic use and the potential psychological and physiological harms of consuming these substances are unknown.

In this respect, the Group is continuing to monitor the emergence of new synthetic substances and to investigate existing or new regulatory and administrative controls that may be used to deal with new synthetic substances in a timely manner.

The legislative amendments of other countries are of interest. Under the temporary class drug order which came into effect in the United Kingdom on 15 November 2011, the UK Home Secretary has the power under the *Misuse of Drugs Act 1971* to invoke a temporary class drug order for a new psychoactive substance that is raising sufficient concern for government to act quickly to protect the public.

Temporary class drug orders enable the government to act faster, on consideration of initial advice from the Advisory Council on the Misuse of Drugs (ACMD), to protect the public against emerging harmful new psychoactive substances while full expert advice is being prepared. Methoxetamine was the first drug subject to a temporary class drug order and came into effect from 28 March 2012.

Another of the longer-term initiatives being explored by the Emerging Psychoactive Substances Review Group is to require these emerging psychoactive substance products be subject to a regulatory regime, such as food or drug regulatory regime, requiring they be proved to be fit for human consumption before introduction to the market place. This approach deliberately imposes a precautionary approach to public health.

Most of the emerging psychoactive substances are sourced from outside Western Australian borders. It is apparent that national action to prevent importation and inter-jurisdiction trade and require these products to establish their fitness for human consumption is preferred.

Banning synthetic cannabinoids in Western Australia only provides part of the solution and a national and broader response is required. For example, the TGA introduced broader restrictions on eight groups of synthetic cannabinoids and a group entry of synthetic cannabinomimetics on 1 May 2012.