



NHAA submission
to
Criminal Law and Enforcement Branch
Discussion Paper
on
Implementation of Model Drug Schedule
for
Commonwealth Serious Drug Offences

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Preamble

The NHAA is a peak professional Association representing appropriately qualified western herbalists and naturopaths using herbal medicines as their primary treatment modality. It is the oldest professional association of complementary therapists, founded in 1920. The NHAA represents approximately one third of practising herbalists and naturopaths in Australia. The NHAA is the only national professional association specifically concerned with the practice and education of western herbal medicine (WHM). Details of the Constitution and the Code of Ethics (including standards of practice) of the Association are detailed in Appendix 1.

The primary aims of the NHAA are to:

- Promote, protect and encourage the study, practice and knowledge of medical herbalism.
- Disseminate such knowledge by talks, seminars and publications.
- Encourage the highest ideals of professional and ethical standards.
- Promote herbal medicine within the community as a safe and effective treatment option.

The vision held by the NHAA for the professional practice of herbal medicine is summarised in the following statements.

- Practitioners and the practice of herbal and naturopathic medicine are fully integrated into the primary healthcare system in Australia:
- The NHAA is recognised as the peak body for herbal and naturopathic medicine,
- Herbal and naturopathic medicine is accessible to all,
- Maintain the integrity of the profession,
- Continue to promote the standards and quality of education, of the profession.
- Create career opportunities and research pathways for herbalists and naturopaths, and
- Continue the integration of traditional medicine and evolving science

The Full Membership of the Association elects the Board of Directors of the NHAA, with each board member serving a two-year voluntary (unpaid) term after which they may stand for re-election.



Full members of the NHAA have completed training in Western Herbal and nutritional medicine sufficient to meet the educational standards as determined by the Examiners of the Board. These standards are set in consultation with tertiary educational institutions (standards in line with but exceeding the requirements of the NSW Health Training Package), and must adhere to a comprehensive Code of Ethics and Continuing Professional Education (CPE) program,

Since its inception, the NHAA and its members have been at the forefront of herbal medicine and have been influential in areas ranging from education and practice standards, to government regulation and industry standards. The NHAA has a strong commitment to achieving high educational standards in herbal medicine practice and supports regulation of the profession.

Membership is mainly practitioners of western herbal medicine including naturopaths who choose to use herbal medicine as their major modality of practice.



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Overview

The National Herbalists Association of Australia (NHAA) appreciates the opportunity to comment on your Discussion paper.

The NHAA does not condone nor encourage the use of any prohibited substance or drug of addiction and recognises the efforts being made to limit the damage done by the sale and use of illegal substances by the draft proposal.

The NHAA has concerns that enactment of the draft legislation would put many of our members outside the law simply because they practice herbal and nutritional medicine.

This concern arises from a review of the list of precursor substances and chemicals outlined in your document. Attachment 1 includes a list of some of the plants used in herbal medicine and the chemicals they contain. Many of these herbal medicines have legitimate therapeutic applications. Their use is supported by centuries of tradition and is increasingly supported by scientific evidence as research progresses.

Herbal medicines are processed using the whole plant. As each herb consists of chemical complexity – including a number of the chemicals listed, this proposed action from the discussion paper may render a breach by herbalists simply by practicing as qualified practitioners in their normal capacity.

The same is true for manufacturers of herbal products who regularly purchase bulk quantities of herbal materials to process them into tablets, liquid herbal preparations and creams.

Herbal medicines have been used as medicine for centuries and have a strong tradition of use across a broad spectrum of Australian society. Practitioners have used these herbs legally and without causing harm in line with the traditional use of these medicines.

In the hands of a well trained and qualified professional herbalist these phytochemicals contained in herbal medicines present no issue as drug precursors. It is the NHAA's assertion that our practitioners should be exempt under Section IV of the proposed legislation – Legitimate Use Defence.



In regard to mineral substrates; the listing includes minerals such as magnesium, calcium and potassium to name but a few. Without exception, all of these minerals are used as therapeutic substances within our profession. Practitioners regularly prescribe the use of these substances as a “salt” or “derivative”.

Many members of the Australian public also have these substances in their possession included in their daily vitamin and mineral supplements. As an example, a member of the public having two bottles of a readily available, commercial, over the counter multivitamin and mineral complex could breach the regulation by having in excess of the 25gm of magnesium listed as a trafficable amount in the chart.

Response to question -K

(i) How should legitimate uses, for example medical, industrial or scientific uses, involving consumption be protected?

In the case of herbal medicine, legitimate use of the chemicals as constituents of herbal medicines can be protected by including practitioners who fall into the category of practitioners under schedule 1 of the tax act (exempted for GST on consultations) into the group of professions with legitimate defence for the use of these chemicals.

(ii) Which substances, in addition to GBL, have legitimate medical, industry, scientific and research applications which may require defences to be made available?

Attachment 1 is a list, albeit incomplete, of some of the plants used in herbal medicine. This list gives an indication of how many chemicals these plants contain which may include chemicals and precursors that fall outside the model schedules. To complete a comprehensive list, NHAA would require sufficiently more time and resources than are currently available.

(iii) How should a legitimate use provision be constructed?

The NHAA believes a regulation under the act, similar to the regulations used as part of occupational health and safety to define and regulate application of the act is the most appropriate way to deal with legitimate use categories. In this way legitimate uses and specific users could be listed clearly. The regulation can be amended if and when further legitimate uses are identified. We believe this to be the most flexible option.

Response to question –L

Does the model schedule of controlled plants create any problems of inadvertent criminalisation, particularly in relation to the offence of selling a controlled plant within Australia?

Attachment 1 lists some of the plants used in herbal medicine. Suffice to say that the quantities of chemicals in a herbal formulation may be minor but manufacturer of herbal products may exceed chemical limits purely by the sheer bulk of the plants needed to be processed.

Manufacturer import herb products into the country in amounts of hundreds of kilos whilst single practitioners may obtain plant products weighing in the kilos to produce medicines.

Each of these categories may unknowingly exceed limits set within the draft without being aware of the potential to engage in criminal activity as they buy, sell or process plant material.

Response to question –M

(i) Does the expanded list create any problems of inadvertent criminalisation, particularly in relation to controlled precursor offences?

The expanded list does create problems of inadvertent criminalisation particularly in relation to plant materials.

Attachment 1 gives a partial list of plants and the chemicals they contain. As can be seen from this incomplete list, many plants contain substances which meet the criteria of controlled precursor offences. Herbalists and naturopaths, who deal in herbal medicines handle, prescribe and dispense these medicines on a daily basis thus putting them at risk of prosecution.

(ii) Are legitimate users of controlled precursors sufficiently protected by the requirement for the prosecution to prove intention or belief that a controlled precursor is to be used for the manufacture of a controlled drug?

Professional herbalists and naturopaths are likely to not be protected under this provision. As they are not yet officially recognised as health care providers, there is a cause to suggest their activities involving plants containing any precursor chemicals could be deemed illegal.



(iii) How should a further exception be framed for those legitimate users of controlled precursors involved in the legitimate manufacture of controlled drugs?

Our recommendation is for plants used by herbalists and naturopaths containing precursor chemicals and substances is to list these plants in the unused schedule 1 of *The Standard for the Uniform Scheduling of Medicines and Poisons* (SUSMP) and allow only suitably qualified professionals to access these plants for medicinal use. These practitioners could be identified as practitioners who meet the requirements of schedule 1 of the tax act and have GST free status for consultations.

(iv) Would an exemption be a more appropriate mechanism to protect legitimate users of controlled precursors than a defence?

An exemption, as mentioned in the answer to question K (iii) is a more appropriate way of protecting legitimate users of these plants and substances; i.e. a regulation that lists the exempted user and that can be amended when other legitimate uses or users are identified.

Summary

The NHAA would like to congratulate the Criminal Justice Division in its efforts to protect the citizens of Australia from illicit drugs and drug offenders.

The NHAA feels however, that in its present form, the model schedule of controlled plants and schedule for Commonwealth serious drug offences casts a very wide net and has the potential to cause legitimate users of plants and some minerals to inadvertently become criminals in the conduct of their daily lives.

Without a regulation, identifying legitimate uses and users this law could become an unwieldy and cumbersome burden on law enforcement officials. Gardeners, cooks, herbal manufacturers and herbal medicine practitioners could all become unwitting criminals just by going about their daily business.

Thank you for the opportunity to comment on these proposed changes to the law.

Attachment 1 – List of Chemicals Found in Some Plants Used in Herbal Medicines

Controlled Plants

Ephedra Species

Used as an allowed substance in Herbal medicine- known as Ma Huang in chinese traditional use.

Controlled Precursors

Chemical

Constituent of

Herb

Common Name

Acetaldehyde

Astragalos japonica

Allylbenzene

Illicium anisatum

Benzaldehyde

Paulownia tomentosa
 Hibiscus sabdariffa
 Prunus armeniaca
 Prunus persica
 Eriobotrya japonica
 Prunus mume
 Rosa rugosa
 Chrysanthemum morifolium
 Liquidamber orientalis

Dark plum

Chrysanthemum

Asian use as a health Tea
 Chinese use for coughs
 Chinese use for coughs
 Chinese use in Lung and Stomach complaints
 Chinese use as an antibiotic effect, and in dysentary
 Ancient English remedy in the treatment of Diabetes
 Chinese use as an antibiotic effect as well as hypertension

Calcium

Used as salt or a chelate in Thousands of Vitamin and Mineral supplements

Ephedrine	Ephedra sinica		Chinese use in Lung and Odema problems
	Ephedra equisetia		"
	Ephedra vulgaris		"
	Ephedra intermedia		"
	Sida cordifolia		Asian use as a nerve tonic
	Pinellia ternata		Chinese use in vomiting and Phlegm conditions.
Ergometrine	Ergot		
Ergotamine	Claviceps purpurea		European use in migraine And Uterus contraction
Eugenol	Eugenia caryophyllata		
	Pueraria thunbergia		Chinese use in measles and Diahorrea
	Piper betle		Asian use for throat inflammation and stomach ailments.
	Myrista fragrans	Nutmeg	used as a culinary agent since AD500
	Magnolia kobus		
	Wistaria floribunda		
	Eupatorium japonica		
	Oenanthe sananic		
	Artemesia capillaris		Chinese use in Liver and Gall Bladder conditions
	Pogostemon cablin		Eastern Asian use in Aromatherapy and Cosmetics
	Illicum anisatum		
	Ocimum sanctum	Basil	Ancient cooking herb, used in Pesto.
	Commiphora molmol	Myrrh	North African use as antiseptic and antiinflammatory
	Cinnamomum camphora		Asian use as circulatory and respiratory stimulant.
	Acorus calamus		European and Nth American use as bitter tonic
Hydrogen sulphide	Manihot utilisissima		
Iodine		Kelp	Used as a food supplement for thyroid conditions and as a component of Iodised Salt

Magnesium			Used as a Salt or chelate in Thousands of Vitamin and Mineral supplements
3,4-Methylenedioxyphenylpropan-2-one (PMK)	Myrista fragrans	Nutmeg	Chinese use in Diarrhoea and stomach pain
Norpseudoephedrine	refer Ephedra		
Phenylacetic acid	Witsaria floribunda		
Phenylalanine	Rehmannia glutinosa Oenanthe javanica		East Asian use against Blood Pressure and as a liver protectorant
Phosphorous acid Potassium	Rehmannia glutinosa		Chinese use in Hepatitis and Liver conditions Used as a Salt or Chelate in Thousands of Vitamin and Mineral supplements
Pseudoephedrine	refer Ephedra		
Safrole	Sassafras officinale Cinnamomum camphora Asarum nipponicum Asarum sieboldii Asarum blumei Illicium anisatum Myrista fragrans Asiasarum heterotropoides Boronia spp	Sassafras Nutmeg Boronia	used as a culinary thickening agent Asian use as circulatory and respiratory stimulant. Nth American and Asian use respiratory and Menstrual disorders " " " used as a culinary agent since AD500 Australian Bush plant used for it's scent

Sassafras oil

Sassafras officinale

North American use in Gout and Rheumatism

Sodium

Used as a Salt or chelate in Thousands of Vitamin and Mineral supplements