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SUBMISSION:
REGULATOR OF MEDICINAL CANNABIS BILL 2014

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Executive Summary

Medicinal cannabis has become a key point for discussion at all levels of government and whilst there still exists a great deal of uncertainty in terms of the exact direction and form of a medicinal cannabis program, this submission argues that an essential part of any continued development in medicinal cannabis will be ensuring the security of the manufacture, distribution and transportation of medicinal cannabis. This submission notes that the proposed Bill does not specifically address security measures or requirements in regards to sites or areas which will produce, store or otherwise handle medicinal cannabis though it does however provide avenues through which such regulation and requirements may be implemented and enforced. Given the illicit value of cannaboid products and threats such as theft and the need to ensure that medicinal cannabis is not diverted for recreational use, proper and robust security measures will need to be a focal point in the current debate and discussion as well as any future developments relating to medicinal cannabis in Australia.

In highlighting the need for security to be a key focal point of any future regulation of medicinal cannabis, this submission also proposes a basic framework as a starting point for developing robust regulations and requirements regarding security measures for medicinal cannabis products. A survey of the security measures required by the states or countries which have existing medicinal cannabis programs will quickly reveal the high degree of variation between all of them. As reports in the US have indicated, the fact remains that there is no one universal model of regulation that can be applied.[1] To meet this, this submission has surveyed and drawn out best practice from a range of sources and identified four sources in particularly upon which a basic framework for the regulation of security measures for medicinal cannabis in Australia.

The first and second sources are existing federal and state level codes and policy documents – the '*Australian Code of Good Wholesaling Practice'* (ACGWP) and the '*Protecting People and Property'* (PPP) policy – both of which provide guidance as to current expectations and specifications of security measures required amongst manufacturers and wholesalers of listed substances and at health facilities generally. These can prove useful starting points in existing codes and policies which can be then specifically adapted to meet the specific security needs of a medicinal cannabis program.

The third source is the application of Situational Crime Prevention to structure security measures to disrupt and prevent the occurrence or success of specific threats relevant to medicinal cannabis facilities such as break-ins, theft and interception of goods during transportation. Situational Crime Prevention strategy can help build and refine the current regulations and requirements in the ACGWP and PPP documents and tailor them to the specific threats or risks that may be faced in a medicinal cannabis program.

The fourth source is best practice from overseas jurisdictions, particularly in the US where extensive security regulations and experience with managing security around medicinal and retail cannabis provides valuable insights for any future development in medicinal in NSW and Australia as a whole. What is taken from this experience in the US is a framework which this submission calls the 'three principles of secure and closed medicinal cannabis circuit'.

Alongside these four sources, this submission also argues that the regulation of security measures and requirements for medicinal cannabis should also employ new and innovative technologies such as the use of RFID tags to track the growth and distribution of medicinal cannabis plants.

This submission seeks to provide additional points for discussion and in particularly, contribute to the overall debate surrounding medicinal cannabis by highlighting the role that security can and indeed must play in any future development regarding medicinal cannabis in Australia. Drawing on the information it provides, this submission concludes by proposing 15 security considerations that should be required for a site which produces stores or otherwise handles medicinal cannabis.

[1] L Chingand J Brannon, 'Is the Grass Always Greener An updated look at other state medical marijuana programs' Report No. 1 Honolulu, HI: Legislative Reference Bureau, August 2014 at <http://lrbhawaii.info/reports/legrpts/lrb/2014/mj2.pdf>

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THE AUSTRALIAN CODE OF GOOD WHOLESALING PRACTICE FOR MEDICINES IN SCHEDULES 2, 3, 4 AND 8 (THE "ACGWP")

This submission notes that attached to the Poisons Standard (SUSMP) are a set of regulations and codes which govern the manufacture, storage and distribution of listed substances. In relation to the manufacture of substances in Schedule 2, 3, 4 and 8 of the SUSMP is the *Australian Code of Good Wholesaling Practice for Medicines in Schedules 2, 3, 4 and 8* (ACGWP). Though the ACGWP is a code of practice and not legislation, compliance with ACGWP is generally required by state governments and bodies. At the core of the security requirements outlined in Schedule 9 and 10 is the conduct of a security risk assessment and risk management plan and for this to subsequently inform the relevant security measures.

Seven basic security features for wholesalers and manufacturers from the ACGWP

1. Frequent reviews and audits of assessment and plans

"Wholesalers should review the Security Risk Management Plan for adequacy at least annually and, if they find the plan to be inadequate, implement improvements and update the plan."

"Wholesalers should undertake regular security audits of the premises against the Security Risk Management Plan and act promptly on any non-compliance encountered. The frequency of audits should be commensurate with risk but should be carried out not less frequently than once every twelve months."

2. Surveillance and detection measures

"Suitable surveillance and detection systems should be installed to monitor points of vulnerability identified in the Security Risk Assessment."

"The surveillance and detection systems used should be commensurate with the assessed risk and be linked to the overall facility security system with a reliable after-hours communication link to monitored controls."

3. Limiting access and access controls

"Access to storage facilities and other security-sensitive areas should be limited to those personnel who are required to have it."

"Adequate overall site security measures need to be in place to prevent unauthorised persons gaining access to the site and areas where medicines are stored."

4. Personnel security

"A senior manager should be appointed to have overall responsibility for the security of the premises, including the Security Risk Management Plan and audits to ensure compliance with it."

"Procedures and conditions of work for employees and other persons having access to medicines should be designed and administered to minimise the possibility of pilferage, diversion or theft."

5. Standardising operating procedures

"Standard operating procedures for security, handling methods and reporting of theft or misuse of medicines should be developed and enforced. The procedures should be maintained in a manner that is consistent with the Security Risk Management Plan and, subject to security restrictions, should be readily accessible to staff."

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6. Reporting and validation systems

"Systems should be in place to prevent theft of medicines. Theft, loss, suspected tampering or suspicious unresolved discrepancies in records other than minor handling losses must be reported to the police and licensing authorities, in accordance with all State, Territory and Commonwealth requirements, or in the absence of any legislative requirements, within seven days of discovering such unexplained circumstances."

"Wholesalers must have in place an adequate validation protocol that ensures that persons supplied with medicines are authorised appropriately under State or Territory legislation to be supplied with those medicines. Procedures should be in place to validate opening of new accounts and amendments to account details."

"In the case of "Calling orders" (where the person purported to have ordered the stock or another person acting on his or her behalf attends the wholesaler's premises to collect the stock), a protocol should be in place to ensure the bona fides of the person calling for the products."

7. Waste Management

"Medicines for destruction should be enclosed in secure, opaque and sealed packaging or container. The packaging or container must not identify the contents of the packaging from the outside. The packaging or container must identify the content as waste. For example, labelling on the external packaging that is visible should be removed, expunged or painted over. Alternatively, destruction of waste medicines may be carried out under the personal supervision of personnel authorised by the wholesaler."

"Collection and destruction of waste medicines must be carried out by a waste collector or other person who is licensed or permitted to do so under relevant State or Territory legislation."

ACGWP requirements in Schedule 10

Schedule 10 of the ACGWP categorises wholesalers and manufacturers into respective levels of high, moderate and low risk with corresponding recommendations:

Additional requirements for manufacturers of controlled drugs in Schedule 10 of the SUSMP primarily involve meeting a higher standard of risk assessment and planning including AS/NZS ISO 31000:2009 standards for risk management and the recommendation that a licensed security consultant be used to conduct and prepare a security risk management plan. Additional security measures to be put in place include the storage of controlled drugs in safes or vaults and heightened measures for the handing and destruction of waste.

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PROTECTING PEOPLE AND PROPERTY: NSW HEALTH POLICY AND STANDARDS FOR SECURITY RISK MANAGEMENT IN NSW HEALTH AGENCIES (THE "PPP")

This submission notes that at the state level, NSW Health does prescribe specific security measures under the *Protecting People and Property - NSW Health Policy and Standards for Security Risk Management in NSW Health Agencies* (the "PPP"). The PPP is NSW Health policy and contains standards which must be complied and implemented by all NSW health agencies which includes any statutory health corporation, any affiliated health organisation and all other bodies under the control and direction of the Minister for Health or the Director-General of Health. The policy itself is not specifically designed to be implemented by commercial manufacturers or wholesalers as with the ACGWP. However, the extensiveness of the policy document and its standards can be adapted to a framework for security measures for the manufacture, distribution and transportation processes that may be involved in a medicinal cannabis program.

Seven basic security features for NSW Health Agencies from the PPP

1. **Facility design** based on principles of Crime Prevention Through Environmental Design

2. **Access and Egress controls** including securing of doors, windows, identity/access systems, signs and name badges

3. **Key control and management** and use of electronic locks and swipe cards

4. **Alarm system specifications** including minimum requirements and compliance with Australian standards (AS/NZS) and International Electro-Technical Commission (IEC) standards for intruder alarm systems and monitoring.

5. **Lighting requirements** such as housing all lighting in vandal resistant containers, of brightness that would allow for easy facial recognition and support CCTV and meeting applicable AS/NZS (1680, 1158, 2890 ect.)

6. **CCTV surveillance** including a combination of overt and covert surveillance

7. **Standards for security staff** including licensing, levels of security staffing and guidelines and standards of conduct for security staff.

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SITUATIONAL PREVENTION STRATEGY AND TECHNIQUES

The ACGWP and PPP provide a useful starting point for any future development of a robust regulation of security measures for a medicinal cannabis program. Beyond these two documents however, this submission proposes that "Situational Crime Prevention" provides a useful overarching framework to further develop an understanding of what security measures should be put in place in relation to medicinal cannabis. Situational Crime Prevention assists in developing specific security measures for a wide variety of situations tailored around an understanding of the processes required to successfully carry out a threat (such as theft) and then develops a set of strategies to disrupt this process: to increase the effort to carry out a successful attack, to increase the risks of being detected or apprehended, to the reduce the rewards and benefits of an attack, to reduce provocations which can drive an attack and to remove excuses which creates complacency.[2] Following a comprehensive security risk assessment, applying Situation Crime Prevention can allow for innovative and effective security measures and solutions to be developed to meet potential threats to a medicinal cannabis sites.

Crime Prevention through Environmental Design

Crime Prevention through Environmental Design is situational prevention strategy which focuses on the design, planning, structure and use of a built environment. It is a well known strategy that has been employed by public and private facilities and areas throughout the world ranging from banks to public parks to supermarkets, and also features prominently in the PPP.[3] However, as acknowledged in the PPP, Crime Prevention through Environment Design tends to focus on creating perimeters and barriers and as such, only one part of a wider situational crime prevention strategy.

Territorial reinforcement draws on the territoriality principle and assumes that people can be encouraged to express feelings of ownership over work areas. It includes maintaining the space so that is has a clean and well cared for appearance, using actual and symbolic territorial markers such as signage and site maps and the placement of activities to avoid conflict.

Eg if 'staff only' areas are provided, staff are more likely to pay more attention to the area and note an intruder. Additionally, if these areas are clearly separated from other areas (eg by signposting or locking) it reduces the likelihood of others entering the area and does not give intruders an excuse to be there (eg that they were not aware it was a restricted area). This principle also applies to the facility precinct being clearly delineated from the rest of the community by fences, garden borders, signs etc

Surveillance draws on the natural surveillance principle (as distinct from surveillance using CCTV). For where people feel safe in public areas where they can be seen and interact with others. This principle refers to the way in which working areas of buildings have been designed so that priority areas are overseen and watched by other staff going about their normal business. For example, pathways to car parks can be designed in full view of passers-by and overlooked by offices, wards and walkways.

Space management is linked to territorial reinforcement and also draws on the image principle and refers to the impact produced by a building that appears to be well cared for. The belief is that a rundown structure with graffiti may attract criminal activity and offenders.

Access control draws in the use of physical and symbolic barriers to attract, channel or restrict pedestrian access and vehicle movement. It works on the premise that making it clear, by creating either physical or symbolic barriers, where people can and can't go makes it more difficult for offenders to reach potential victims and target.

(From *Protecting People and Property: NSW Health Policy and Standards for Security Risk Management in NSW Health Agencies*)

[2] See generally the work of Ronald V Clarke including R Clarke 'Situational Crime Prevention' (1995) *Crime and Justice* Vol 19, pp. 91-150; R Clarke *Situational Crime Prevention* (1997) Harrow and Heston, Albany NY.
[3] See RA Gardner 'Crime Prevention through Environmental Design' (1981) *Security Management* Vol. 25, Iss. 4, pp 36-38, 40-42.

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25 Techniques of Situation Prevention

A comprehensive situational prevention strategy covers areas of building design as well as other aspects of security such as personnel security, security culture and community security. A useful demonstration of a comprehensive situational prevention strategy is provided in the 25 techniques of situational prevention.[4]

These 25 techniques provide a framework which can be adapted and developed to form a robust security strategy for medicinal cannabis facilities. As the 25 techniques not only cover issues of building and environmental design but in considering issues such as developing a robust security culture amongst staff, it embodies a more comprehensive and multilayered approach to security.

TWENTY FIVE TECHNIQUES OF SITUATIONAL PREVENTION

Increase the Effort	Increase the Risks	Reduce the Rewards	Reduce Provocations	Remove Excuses
1. **Target harden** ▪ Steering column locks and immobilisers ▪ Anti-robbery screens ▪ Tamper-proof packaging	6. Extend guardianship ▪ Take routine precautions: go out in group at night, leave signs of occupancy, carry phone ▪ "Cocoon" neighborhood watch	11. Conceal targets ▪ Off-street parking ▪ Gender-neutral phone directories ▪ Unmarked bullion trucks	16. Reduce frustrations and stress ▪ Efficient queues and polite service ▪ Expanded seating ▪ Soothing music/muted lights	21. Set rules ▪ Rental agreements ▪ Harassment codes ▪ Hotel registration
2. Control access to facilities ▪ Entry phones ▪ Electronic card access ▪ Baggage screening	7. Assist natural surveillance ▪ Improved street lighting ▪ Defensible space design ▪ Support whistleblowers	12. Remove targets ▪ Removable car radio ▪ Women's refuges ▪ Pre-paid cards for pay phones	17. Avoid disputes ▪ Separate enclosures for rival soccer fans ▪ Reduce crowding in pubs ▪ Fixed cab fares	22. Post instructions ▪ "No Parking" ▪ "Private Property" ▪ "Extinguish camp fires"
3. Screen exits ▪ Ticket needed for exit ▪ Export documents ▪ Electronic merchandise tags	8. Reduce anonymity ▪ Taxi driver IDs ▪ "How's my driving?" decals ▪ School uniforms	13. Identify property ▪ Property marking ▪ Vehicle licensing and parts marking ▪ Cattle branding	18. Reduce emotional arousal ▪ Controls on violent pornography ▪ Enforce good behavior on soccer field ▪ Prohibit racial slurs	23. Alert conscience ▪ Roadside speed display boards ▪ Signatures for customs declarations ▪ "Shoplifting is stealing"
4. Deflect offenders ▪ Street closures ▪ Separate bathrooms for women ▪ Disperse pubs	9. Utilize place managers ▪ CCTV for double-deck buses ▪ Two clerks for convenience stores ▪ Reward vigilance	14. Disrupt markets ▪ Monitor pawn shops ▪ Controls on classified ads. ▪ License street vendors	19. Neutralize peer pressure ▪ "Idiots drink and drive" ▪ "It's OK to say No" ▪ Disperse troublemakers at school	24. Assist compliance ▪ Easy library checkout ▪ Public lavatories ▪ Litter bins
5. Control tools/ weapons ▪ "Smart" guns ▪ Disabling stolen cell phones ▪ Restrict spray paint sales to juveniles	10. Strengthen formal surveillance ▪ Red light cameras ▪ Burglar alarms ▪ Security guards	15. Deny benefits ▪ Ink merchandise tags ▪ Graffiti cleaning ▪ Speed humps	20. Discourage imitation ▪ Rapid repair of vandalism ▪ V-chips in TVs ▪ Censor details of modus operandi	25. Control drugs and alcohol ▪ Breathalyzers in pubs ▪ Server intervention ▪ Alcohol-free events

(From the *Centre for Problem-Orientated Policing* at http://www.popcenter.org/25techniques/)

[4] See P Ekblom and A Hirschfield 'Developing an alternative formulation of SCP principles – the Ds (11 and counting)' (2014) *Crime Science* Vol. 3 Issue 2 pp. 1-12.

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THE THREE PRINCIPLES OF A SECURED AND CLOSED MEDICINAL CANNABIS CIRCUIT

Drawing on the experience of US medicinal cannabis facilities can provide valuable insights into the requirements of a robust security strategy for a medicinal cannabis facility. There are currently 24 states and/or federal districts in the US with legalised medicinal cannabis programs: Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia (Washington DC), Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington state. An additional 11 states with laws which provided for very limited access to only specific strains of cannabis or cannabis derived products with low concentrations of THC and high concentrations of CBD: Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah and Wisconsin.

Amongst both the first group of 24 states and/or districts as well as the second group of 11 states, the regulations around the manufacture, distribution and supply of medicinal cannabis varies widely. Of the 24 states/districts with legalised medicinal cannabis programs, 17 establish controls on channels of supply and distribution. The actual extent of security measures required to be employed varies greatly from state to state however, ranging from very prescriptive regimes in Colorado and Connecticut (alarm systems, physical security, video surveillance, internal control procedures, backup power and signage ect.) to very basic regimes (only specifying the need for alarm systems).

Despite the range of security measures between the states, the aim of security measures and controls in the US has essentially been create a secure and closed circuit where medicinal cannabis will only circulate between cultivation centres, dispensaries, patients and/or their caregivers.

This secure and closed circuit can be said to form three core principles around which security measures can be developed:

The three principles of a secured and closed medicinal cannabis circuit

1. Ensure that cultivation centres and dispensing centres are secured from outsiders, with limited access and appropriate security measures and controls in place

2. Ensure that a cultivation centre or dispensing centre can only obtain cannabis from another cultivation centre or dispensing centre, patient and/or their caregiver

3. Ensure that cannabis is only distributed to another cultivation centre, dispensing centre, patient and/or their caregiver

These three principles drawn out from the experience with medicinal and retail cannabis regulation in the US provide an additional framework to structure effect and robust security measures for medicinal cannabis facilities in NSW.

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INNOVATION AND TECHNOLOGY IN MEDICINAL CANNABIS SECURITY

Marijuana Inventory Tracking Solutions in Colorado

In Colorado, rules M305 to M309 in the *Permanent Rule Related to the Colorado Medical Marijuana Code* outlines the minimum security requirements for premises licensed to cultivate or dispense medicinal cannabis. The regime is arguably one of the most comprehensive and detailed amongst the 24 states/districts in the US with medicinal cannabis programs, with specific minimum requirements specified for alarm systems, locks, video surveillance and waste disposal. Whilst more prescriptive than in other states (specifying location of surveillance cameras, minimum requirements for locks ect) such requirements for alarm systems, locks and surveillance are relatively standard examples of how the three principles of secure and closed medicinal cannabis circuit can be implemented.

However, one area covered by the Colorado regulations which is particularly innovative and of interest is the requirement for electronic tracking of plants. Colorado's use of RFID tags and plant tracking technology is one example of how new and innovative technologies can be adapted to form new security measures which are consistent with the three principles of secure and closed medicinal cannabis circuit – by allowing for the precise tracking of plants, the Colorado government can monitor and ensure that all plants remain within the closed circuit. There is also potential for tracking systems to be integrated with other security measures including CCTV, alarm systems and mobile monitoring and access control via apps. The use of plant tracking technology also demonstrates much promise in terms of potentially overcoming some of the main reservations around wider adoption of medicinal cannabis. For example, the ability for the plant to be constantly monitored and tracked provides an added layer of protection against possible diversion.

At the same time however, it should also be noted that new technology also comes with additional costs and security considerations as well. Use of digital plant trackers provides added monitoring capability but also necessitates consideration of cyber-security and ensuring the integrity of the software used as well as the monitoring and data storage systems (which is relevant in any case given the need for surveillance and some US states already prescribe data security requirements for medicinal cannabis facilities).

Purpose of Rule M309

The purpose of this rule is to establish a system that will allow the State Licensing Authority and the industry to jointly track Medical Marijuana and Medical Marijuana-Infused Product from either seed or immature plant stage until the Medical Marijuana or Medical Marijuana-Infused Product is sold to the patient or destroyed.

MITS is a web-based tool coupled with RFID technology that allows both the MITS user and the State Licensing Authority the ability to identify and account for all Medical Marijuana or Medical Marijuana-Infused Product. Through the use of RFID technology, an Optional Premises Cultivation facility will tag either the seed or immature plant with an individualized number which will follow the Medical Marijuana through all phases of production and final sale to a patient. This will allow the State Licensing Authority and the MITS user the ability to monitor and track Medical Marijuana and Medical Marijuana-Infused Product. MITS will also provide a platform for the State Licensing Authority to exchange information and provide compliance notifications to the industry.

The State Licensing Authority finds it essential to regulate, monitor, and track all Medical Marijuana and Medical Marijuana-Infused Product to eliminate diversion, inside and outside of the state, and to ensure that all marijuana grown, processed, sold and disposed of in the Medical Marijuana market is transparently accounted for. An existing Medical Marijuana Business must have an active and functional MITS account on or before December 31, 2013 or it may not excise the privileges of its license.

The State Licensing Authority will engage the industry and provide training opportunities and continue to evaluate MITS to promote an effective means for this industry to account for and monitor its Medical Marijuana inventory.

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A BASIC SECURITY FRAMEWORK: 15 POINTS

Based on the information presented above, this submission proposes that as a minimum, any regulation of security measures for a site which produces or stores medicinal cannabis should address the following 15 security considerations or requirements:

1. **The conduct of risk assessments and planning**
2. **The approval, storage and securing of site designs and plans**
3. **Planning and installation of proper site lighting**
4. **Planning and installation of proper signage**
5. **The installation of secure perimeters and fences around the site**
6. **The installation of secure gates and locks at all points of entry**
7. **The installation of mobile and fixed panic/duress buttons**
8. **The installation of intruder and entry alarms**
9. **Use of access controls which controls and restricts movement within the site**
10. **Use of tracking and monitoring of all inventory and stock**
11. **Installation of secure storage of all inventory and stock**
12. **Installation of surveillance of the site including storage of surveillance data**
13. **Proper processes and procedures to ensure personnel security and proper staff checks and accountability**
14. **Proper processes and procedures relating to transportation security (movement and distribution security)**
15. **Procedures for the proper waste management including storage, transportation and disposal of all by-products and waste products**