Reform of Minor Cannabis Laws in Western Australia, the United Kingdom and New Zealand

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Reform of Minor Cannabis Laws in Western Australia, the United Kingdom and New Zealand

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2006

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This thesis is presented for the Masters of Laws by Research (LLM) of Murdoch University

Declaration

I declare that all of this thesis is by account of research conducted by myself except where acknowledged and that it has not previously been submitted for any degree at any university.

Signed (Greg Swensen)

The opinions, views and interpretations expressed in this thesis are those entirely of the author and do not represent the policies or views of any individuals consulted or of any organisation or department that the author is or has been employed or with which the author is or has been affiliated.
Abstract

The past three decades has been a period of intense and sustained debate in a number of major Western countries about the wisdom of police continuing to apply legislation which can severely punish offenders by fines and even imprisonment because of laws and policies that prohibit the use, possession and cultivation of cannabis.

The large and growing number of young adults who have been exposed to the drug, some of whom have been charged and received criminal convictions with attendant deleterious effects on their employment and wellbeing, has forced policy makers to re-evaluate the justification for continuing to criminalise cannabis.

This thesis examines in detail the law reforms that occurred in early 2004 with respect to cannabis offenders in Western Australia (WA) and the United Kingdom (UK) and what lessons these reforms may hold for other jurisdictions interested in decriminalisation of minor cannabis offences.

A study was undertaken to compare the shortcomings and advantages of the different approaches to reform followed in WA and the UK. Reference to the reform in the UK, will be confined to meaning England, Wales and Northern Ireland as the necessary administrative guidelines have not so far been issued for Scotland.

In WA the reforms required a substantial legislative effort to establish a complex framework that outlined in detail the circumstances when police may issue cannabis infringement notices (CINs), whereas in the UK the approach involved limited legislative activity by the reclassification of the legal status of cannabis and by providing police with administrative guidelines issued by the Association of Chief Police Commissioners as to how to exercise their discretion in issuing formal warnings for a minor cannabis offence.

A comparison is made with New Zealand (NZ), where in spite of there being a similar process of deliberation and consultation as in WA and the UK, the government refused to implement formal reform because of a perception it was unable to decriminalise minor cannabis offences because of the restrictions imposed of agreement between the Clarke Labour Government and a minor political party.

The example of the failure of government in NZ to achieve reform illustrates the importance that in some jurisdictions there will be a significant role for non parliamentary advisory bodies and lobby groups to argue for reform and to garner public support when reform has stalled or been frustrated.

The thesis also includes a preliminary exploratory study using a number of indicators, such as prevalence and conviction data, to determine if the reforms implemented by the CIN scheme have resulted in or are likely to create unanticipated harms and to explore some of the issues in being to determine whether changes in law enforcement practices and priorities have impacted on the cannabis market or are likely to change the way cannabis may be transacted in WA.
Table of Contents

Abstract ..........................................................................................................................i
Acknowledgements .......................................................................................................vii
Acronyms and Abbreviations .......................................................................................viii
List of Cases ..................................................................................................................xi
List of Legislation .........................................................................................................xii
List of Tables ................................................................................................................xiii
List of Figures ...............................................................................................................xv
1 Introduction ................................................................................................................1
  1.1 The debate over cannabis law reform ................................................................. 1
  1.2 What can be learnt from reform ......................................................................... 2
  1.3 The objects of the paper ....................................................................................... 7
2 Drug Law Enforcement and Drug Markets ...............................................................9
  2.1 Introduction .......................................................................................................... 9
  2.2 Studying drug markets ......................................................................................... 11
  2.3 Economic concepts applicable to drug markets .................................................. 13
  2.4 Combined approach to drug problems ................................................................. 16
  2.5 Impact of drug law enforcement interventions .................................................... 17
  2.6 Evaluation of drug law enforcement activities ..................................................... 20
  2.7 Measuring the size of drug markets .................................................................... 23
      2.7.1 Consumption approach .............................................................................. 24
          2.7.1.1 United States ...................................................................................... 24
          2.7.1.2 United Kingdom ............................................................................... 24
          2.7.1.3 New Zealand .................................................................................... 25
          2.7.1.4 Western Australia ............................................................................ 28
      2.7.2 Production approach ..................................................................................... 35
  2.8 Policy implications of understanding drug markets .............................................. 37
3 Models of Cannabis Law Reform ..........................................................................41
  3.1 Introduction ......................................................................................................... 41
  3.2 Options for reform ............................................................................................... 42
  3.3 Prohibition .......................................................................................................... 42
      3.3.1 Total prohibition ....................................................................................... 42
      3.3.2 Prohibition with civil penalties .................................................................... 44
          3.3.2.1 South Australia ............................................................................... 46
          3.3.2.2 Australian Capital Territory .............................................................. 49
          3.3.2.3 Northern Territory ............................................................................ 51
          3.3.2.4 Western Australia ........................................................................... 52
      3.3.3 Partial prohibition ....................................................................................... 52
      3.3.4 Legislative prohibition with expediency ...................................................... 53
5 Decriminalisation of Cannabis: What is Known? .......................... 115

5.1 Introduction .............................................................................. 115

5.2 Study of the CIN scheme .......................................................... 115
  5.2.1 Infringements: April 2004 – March 2005 ............................... 116
  5.2.2 Convictions: 2002 - 2005 ...................................................... 119
    5.2.2.1 Possession of smoking implement - section 5(1)(d)(i) ............. 120
    5.2.2.2 Possession of cannabis - section 6(2) ................................. 120
    5.2.2.3 Cultivation of cannabis - section 7(2) ................................. 120
  5.2.3 Cannabis seizures: 1998 - 2005 ............................................. 120
  5.2.4 Preliminary outcomes of CIN scheme .................................... 122
    5.2.4.1 All offences ................................................................. 123
    5.2.4.2 Possession of a smoking implement [s. 5(1)(d)(i)] .................. 124
    5.2.4.3 Possession of cannabis [s. 6(2)] ....................................... 124
    5.2.4.4 Cultivation of cannabis [s. 7(2)] ....................................... 124
    5.2.4.5 Multiple CINs and recidivism ......................................... 126

5.3 Themes of cannabis law reform ............................................... 127
  5.3.1 Approach to reform ............................................................ 129
  5.3.2 Consultation .................................................................... 129
  5.3.3 Decriminalisation and law reform ....................................... 130
  5.3.4 What do community surveys say? ....................................... 134
    5.3.4.1 Morgan Gallup polls: 1977 - 2001 .................................... 135
    5.3.4.2 National Drug Strategy Household Surveys: 1995 - 2004 ....... 135
  5.3.5 Principle of harm minimisation ......................................... 142

5.4 Impact and effectiveness of law enforcement activities .................. 144
  5.4.1 Introduction .................................................................... 144
  5.4.2 Model of drug markets ....................................................... 146
  5.4.3 The use of drug market data ............................................. 148
  5.4.4 The Netherlands drug market ........................................... 150
  5.4.5 The New Zealand drug market ........................................... 151
  5.4.6 Police impact on cannabis market .................................... 152
  5.4.7 Trends in cannabis potency ............................................ 154

6 Consequences of Cannabis Law Reform ...................................... 159

6.1 Introduction ............................................................................ 159

6.2 What do the reforms mean? .................................................. 159

6.3 Commonwealth and State relations ....................................... 163

6.4 Costs and benefits ............................................................... 167

6.5 Cannabis decriminalisation and the courts .............................. 169
  6.5.1 South Australia & the ACT ............................................... 170
  6.5.2 Western Australia ............................................................. 173
  6.5.3 New Zealand ................................................................. 175
  6.5.4 United Kingdom ............................................................. 177

6.6 Cannabis related mental health problems ............................... 178
7 Lessons From Cannabis Law Reform.....................................................187

7.1 The risks of decriminalisation .......................................................... 190
7.2 Cannabis policy and prevalence ...................................................... 192
7.3 Social and commercial cultivation and supply .................................... 198
7.4 Hydroponic cultivation .................................................................. 207
7.5 Net widening ................................................................................. 211
7.6 Enforcement of infringement notices .............................................. 215
7.7 Cannabis policy and drug law enforcement issues ......................... 217
7.8 Corruption and drug law enforcement activities .............................. 222
7.9 Summary ....................................................................................... 223

8 References .......................................................................................228

9 Appendices ......................................................................................273

9.1 Appendix 1: Data From NDS Household Surveys ............................ 274
  9.1.1 Western Australia ..................................................................... 274
    9.1.1.1 Trends 1995 - 2004 .............................................................. 274
    9.1.1.2 2004 NDS Household Survey ........................................... 276
    9.1.1.3 2001 NDS Household Survey ........................................... 278
  9.1.2 Australian national picture ....................................................... 281
    9.1.2.1 2004 NDS Household Survey ........................................... 281

9.2 Appendix 2: Law Enforcement Data .............................................. 284

9.3 Appendix 3: Department of Justice conviction codes .................... 293

9.4 Appendix 4: Extract from Misuse of Drugs Act 1981 ..................... 295

9.5 Appendix 5: Extract from Illicit Drug Diversion Initiative .............. 301

9.6 Appendix 6: Cannabis Survey Interview Items .............................. 304
  9.6.1 Extract from New Zealand 2001 National Drug Survey ........... 304
  9.6.2 Australian 2004 National Drug Strategy Household Survey .... 311

9.7 Appendix 7: Recommendations from Drug Law Reform Working Party .................. 313

9.8 Appendix 8: CIN Scheme Enforcement Flow Charts ........................ 316
  9.8.1 WA Police Flow Chart – Stage 1 ............................................. 316
  9.8.2 FER Enforcement Process Flow Chart – Stage 2 ...................... 317

9.9 Appendix 9: CIN Scheme Guidelines ............................................ 318

9.10 Appendix 10: CIN Scheme Public Education Materials .................. 324
  9.10.1 Take in the facts on the new Cannabis Education Session ........ 324
  9.10.2 There are new laws on cannabis in Western Australia .......... 328
  9.10.3 Cannabis the Health Effects .................................................. 331
  9.10.4 Drug Aware Website (www1.drugaware.com.au) .................... 332
    Cannabis: Forms and Use .............................................................. 332
    Cannabis: THC ............................................................................ 332
    Cannabis: General Effects ............................................................. 332
    Cannabis: Short-term Effects ......................................................... 332
    Cannabis: Long-term Effects ......................................................... 333
    Cannabis and Other Drugs ............................................................. 334
Cannabis and Pregnancy .......................................................... 334
Cannabis: The Law ................................................................. 335
Acknowledgements

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His comments on the text as it evolved and suggestions of areas for further consideration are acknowledged as this has produced a thesis that examined and considered a number of complex issues about the generalities of drug law reform whilst also focussing on the core issue of the implications and comparative advantages of the reforms of minor cannabis offences that occurred in early 2004 in Western Australian and the United Kingdom.

The helpful feedback from the two external markers who considered the draft of this thesis is gratefully acknowledged as this assisted in clarification of a number of specific issues and highlighted a number of areas that could be further developed.
## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
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<tbody>
<tr>
<td>ABCI</td>
<td>Australian Bureau of Criminal Intelligence</td>
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<tr>
<td>ACC</td>
<td>Australian Crime Commission</td>
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<tr>
<td>ACMD</td>
<td>Advisory Council on the Misuse of Drugs</td>
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<td>ACPO</td>
<td>Association of Chief Police Officers</td>
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<tr>
<td>ACT</td>
<td>Australian Capital Territory</td>
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<tr>
<td>ADA</td>
<td>Alcohol and Drug Authority</td>
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<td>ADAM</td>
<td>Arrestee Drug Abuse Monitoring</td>
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<td>ADCU</td>
<td>Alcohol and Drug Coordination Unit</td>
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<td>ADIA</td>
<td>Australian drug intelligence assessment report</td>
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<td>ADIS</td>
<td>Alcohol and Drug Information Service</td>
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<td>AFP</td>
<td>Australian Federal Police</td>
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<td>AIC</td>
<td>Australian Institute of Criminology</td>
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<td>AIDR</td>
<td>Australian Illicit Drugs Report</td>
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<td>AIHW</td>
<td>Australian Institute of Health and Welfare</td>
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<td>APHRU</td>
<td>Alcohol and Public Health Research Unit</td>
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<td>Australian Labor Party</td>
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<td>Australian National Council on Drugs</td>
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<td>APHRU</td>
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<td>ASSAD</td>
<td>Australian school students’ alcohol and drugs national survey</td>
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<td>BCS</td>
<td>British Crime Survey</td>
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<td>BMA</td>
<td>British Medical Association</td>
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<td>CATI</td>
<td>Computer assisted telephone interview</td>
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<td>CBD</td>
<td>Cannabidiol</td>
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<td>Cannabis cautioning and mandatory education system</td>
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<td>Acronym</td>
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<td>DPF</td>
<td>Drug Policy Forum</td>
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<td>DPP</td>
<td>Director of Public Prosecutions</td>
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<td>DUO</td>
<td>Drug Use Careers of Offenders</td>
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<td>DUF</td>
<td>Drug Use Forecasting</td>
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<td>DUMA</td>
<td>Drug Use Monitoring in Australia</td>
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<td>EMCDDA</td>
<td>European Monitoring Centre on Drugs and Drug Addiction</td>
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<td>EU</td>
<td>European Union</td>
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<td>FER</td>
<td>Fines Enforcement Registry</td>
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<td>FFDLR</td>
<td>Families and Friends for Drug Law Reform</td>
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<td>FPINEA</td>
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<tr>
<td>IDMU</td>
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<td>IDRS</td>
<td>Illicit Drug Reporting System</td>
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<td>IGCD</td>
<td>Intergovernmental Committee on Drugs</td>
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<td>Illicit Drug Diversion Initiative</td>
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<td>IDDR</td>
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<td>IDRS</td>
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<td>MTF</td>
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<td>NAFTA</td>
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<td>National Economic Research Associates</td>
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<td>NEW-ADAM</td>
<td>New English and Welsh Arrestee Drug Abuse Monitoring</td>
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<td>Abbreviation</td>
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<td>NHSDA</td>
<td>National Household Survey on Drug Abuse</td>
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<td>NIDS</td>
<td>National Illicit Drug Strategy</td>
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<td>National Institutes of Health</td>
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<td>National Organisation for the Reform of Marijuana Laws</td>
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<td>National Survey on Drug Use and Health</td>
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<td>NSW</td>
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<td>NZNDS</td>
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<td>Offence Information System</td>
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<td>Outlaw motorcycle gang</td>
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<td>Office for National Statistics</td>
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<td>RCMP</td>
<td>Royal Canadian Mounted Police</td>
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<td>South Australia</td>
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<td>SDEP</td>
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<td>standard operating procedures</td>
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<td>Task Force on Drug Abuse</td>
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<td>THC</td>
<td>Tetrahydrocannabinol</td>
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<td>United Kingdom</td>
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<td>United Nations Drug Control Program</td>
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<td>United States</td>
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<td>YLS</td>
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</tbody>
</table>
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Criminal Procedure Act 2004
Drugs of Dependence Act 1989
Fines, Penalties and Infringement Notices Enforcement Act 1994
Industrial Hemp Act 2004
Interpretation Act 1984
Liquor Licensing Act 1988
Misuse of Drugs Act 1981
Poisons Act 1964
Police Act 1892
Police Offences (Drugs) Act 1928 (repealed)
Sentencing Act 1995
Spent Conviction Act 1988
Tobacco Control Act 1990
Young Offenders Act 1994

Other Australian jurisdictions
Controlled Substances Act 1984
Crime (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990
Criminal Code (Serious Drug Offences) Amendment Act 2004
Drugs, Poisons and Controlled Substances Act 1981
Drugs Misuse Act 1986.
Misuse of Drugs Act 1990

United Kingdom
Anti Social Behaviour Act 2003
Children and Young Persons (Protection From Tobacco) Act 1991
Crime and Disorder Act 1998
Criminal Justice and Police Act 2001
Customs and Excise Management Act 1979
Dangerous Drugs Act 1920 (repealed)
Drug Trafficking Offences Act 1999
Drugs Act 2005
Intoxicating Substances (Supply) Act 1985
Licensing Act 1964
Medicines Act 1968
Misuse of Drugs Act 1971
Police and Criminal Evidence Act 1984
Road Traffic Act 1972

New Zealand
Children, Young Persons and their Families Act 1989
Dangerous Drugs Act 1927 (repealed)
Misuse of Drugs Act 1975
List of Tables

Table 1: Summary of estimated expenditure ($) on cannabis, WA, 1995 - 2004 .......................... 32
Table 2: Estimated number of regular cannabis users, WA, 2002 (DUMA) .............................. 34
Table 3: Estimated annual expenditure per regular cannabis user, WA, 2002 (DUMA) .......... 35
Table 4: European approaches to cannabis offences ............................................................... 77
Table 5: Offences and penalties – simple cannabis offences .................................................. 90
Table 6: Offences and penalties - serious cannabis offences ................................................. 90
Table 7: Cannabis offences - optional place of trial ............................................................... 91
Table 8: Cannabis offences - thresholds for serious offences (presumption of intention to sell or supply) ................................................................. 91
Table 9: Cannabis offences - thresholds for declaration as a drug trafficker ......................... 91
Table 10: CINs issued by status & sex, April 2004 – March 2005 ........................................ 117
Table 11: CINs issued by ethnic status & sex, April 2004 – March 2005 .............................. 117
Table 12: Quarterly CINs issued by expiation status & sex, 2004 – 2005 ............................. 118
Table 13: Quarterly formal consequences – minor cannabis offences, 2002 – 2005 ............ 125
Table 14: Support (%) for actions for possession of cannabis being a criminal offence by age group and sex, Australia, 2004 .................................................... 136
Table 15: Support (%) for actions for possession for personal use of cannabis by age group, Australia, 2004 ................................................................. 137
Table 16: Support (%) for legalisation of cannabis & other selected illicit drugs by age group & sex, Australia, 2004 ................................................................. 138
Table 17: Support (%) for increased penalties for sale or supply of cannabis & other selected illicit drugs by age group & sex, Australia, 2004 ......................... 139
Table 18: Support (%) for cannabis measures by Australian jurisdiction, 2004 ............... 140
Table A1-1: Estimated number of illicit drug users by persons aged 14 years & older, WA, 1995 - 2004 ................................................................. 274
Table A1-2: Estimated prevalence (%) and number of cannabis users by age group & recency of use, WA, 1995 - 2004 .................................................... 275
Table A1-3: Frequency (%) of cannabis used in last year by age group & sex, WA, 2001 - 2004 ................................................................. 278
Table A1-4: Method (%) of cannabis use in last year by age group & sex, WA, 2001 - 2004 ........................................................................ 278
Table A1-5: Frequency (%) of cannabis smoked as cones on usual smoking day by age group & sex, WA, 2001 .................................................... 280
Table A1-6: Frequency (%) of cannabis use by age group & sex, Australia, 2004 ............. 282
Table A1-7: Frequency (%) of drug use in the last year by Australian jurisdiction, 2004 ................................................................. 283
Table A1-8: Frequency (%) of cannabis use in the last year by age group & sex, Australia, 2004 .......................................................... 283
Table A2-1: Mean annual price ($) of cannabis, WA, 1997/1998 – 2004/2005 ........ 284
Table A2-3: Quarterly cannabis seizures, WA, 1998 - 2005 ........................................ 285
Table A2-4: Annual drug charges, WA, 1985 - 1989 ............................................................ 286
Table A2-5: Annual drug charges, WA, 1990 - 1994 ......................................................... 286
Table A2-9: Quarterly convictions by sex – possession of smoking implement [s. 5(1)(d)(i)], WA, 2002 – 2005 ................................................................. 289
Table A2-10: Quarterly convictions by sex – possession of cannabis [s. 6(2)], WA, 2002 – 2005 ................................................................. 290
Table A2-11: Quarterly convictions by sex – cultivation of cannabis [s. 7(2)], WA, 2002 – 2005 ........................................................................... 290
Table A2-12: Quarterly convictions by sex – sections 5(1)(d)(i), 6(2) & 7(2), WA, 2002 – 2005 ................................................................. 291
Table A2-13: Median price ($) per gram of last purchase of cannabis by jurisdiction, 2000 - 2005 ........................................................................... 291
Table A2-14: Median price ($) per ounce of last purchase of cannabis by jurisdiction, 2000 - 2005 ........................................................................... 292
Table A2-15: Number of cannabis seizures by type & THC (%) content, WA, 1996 ......... 292
Table A3-1: Cannabis related offences identified by DOJ court data system .......... 293
List of Figures

Figure 1: Quarterly CINs issued by type of offence & expiation rate, 2004 - 2005 .... 118
Figure 2: Quarterly cannabis seizures, 1998 - 2005 .................................................. 121
Figure 3: Frequency of CINs issued by weight of cannabis seized (gms) for s 6(2) offences, July 2004 – June 2005 .............................................................. 122
Figure 4: Quarterly formal consequences (CINs, cautions & convictions), 2002 - 2005 .............................................................. 124
Figure 5: Trends in public opinion towards legalising cannabis in Australia, 1977 - 2001 .............................................................. 135
Figure 6: Cannabis commodity chain .............................................................. 152
Figure A1-1: Lifetime prevalence (%) of cannabis use by sex & age group, WA, 2004 .............................................................. 276
Figure A1-2: Annual prevalence (%) of cannabis use by sex & age group, WA, 2004 .............................................................. 277
Figure A1-3: Monthly prevalence (%) of cannabis use by sex & age group, WA, 2004 .............................................................. 277
Figure A1-4: Proportion (%) of cannabis users who wanted/ tried to quit or reduce in the last 12 months but could not by sex & age group, WA, 2001 .............................................................. 281
Figure A2-1: Trends in cannabis offences, Australia, 1995/1996 - 2004/2005 ............ 288
Figure A2-2: Proportion (%) of cannabis offences of all offences, Australia vs WA, 1995/1996 - 2003/2004 .............................................................. 289