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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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.
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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

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<td>ABCI</td>
<td>Australian Bureau of Criminal Intelligence</td>
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<td>Advisory Council on the Misuse of Drugs</td>
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<td>Association of Chief Police Officers</td>
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<td>ACT</td>
<td>Australian Capital Territory</td>
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<td>Alcohol and Drug Coordination Unit</td>
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<td>Director of Public Prosecutions</td>
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<td>DU CO</td>
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<td>DUF</td>
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<td>European Monitoring Centre on Drugs and Drug Addiction</td>
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<td>European Union</td>
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<td>MTF</td>
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<td>standard operating procedures</td>
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- Criminal Investigation (Identifying People) Act 2002
- 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)
- Dangerous Drugs Act 1951 (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**
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Reform of Minor Cannabis Laws in Western Australia, the United Kingdom and New Zealand

“S’il existait un gouvernement qui eût intérêt à corrompre ses gouvernés, il n’aurait qu’à encourager l’usage du cannabis. (If there were a government that had interest in corrupting its citizens, it only had to encourage the use of cannabis).”

1 Introduction

1.1 The debate over cannabis law reform

There has been an intense and ongoing debate over the past three decades in Australia, New Zealand (NZ), the United Kingdom (UK), Canada, the United States (US), as well as in most Western European countries, about the legal status of cannabis. At the core of this debate is the proposition that law reform is required as the prevailing orthodoxy of prohibition is ineffective in achieving its purpose, results in the wasteful allocation of scarce resources and is therefore unworkable. A corollary of this proposition is that because cannabis use is so prevalent, drug laws are enforced selectively by law enforcement agencies, the general deterrent value of these laws has failed and that severe and disproportionate legal harms occur for those who are apprehended by the police and convicted by the courts.

“Proponents of cannabis law reform argue that significant numbers of people who are convicted for minor cannabis offences have no prior criminal conviction and are otherwise basically law-abiding. Additionally they maintain that these individuals and society as a whole, pay a substantial social cost for becoming caught up in the criminal justice system in this manner.”

In the language of harm minimisation, which since the early 1990s has been adopted in Australia and a number of Western European countries as a template for policy and drug law enforcement (DLE) practice concerning illicit drugs, the emphasis should be to mitigate the consequences of drug use rather than to focus on stopping or reducing drug use per se. With reference to cannabis prohibition, advocates of harm minimisation

“view the prohibition of cannabis as outdated, ineffective and counter productive. Among other arguments, they point out that health risks of cannabis use are relatively low, that cannabis is used anyway despite attempts to outlaw it, and that the prohibition might have the effect of criminalising and marginalising otherwise law abiding cannabis users.”

The extensive use of cannabis means that for many young adults in particular its use is now an ‘unexceptional facet of everyday life’ and that contact with the police is fraught and may result in distrust of law enforcement agencies.

“Possession is one of the offences which is most likely to bring people into ‘adversarial’ contact with the police. The scope for the erosion of police legitimacy is obvious. If the laws

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that the police most frequently enforce are regarded by the policed as unreasonable and unnecessary, it is unlikely that police power will be regarded as legitimate."

There is also a belief by many that if reform does not occur cannabis use continue and become more prevalent and because of the large demand the cannabis market will thrive and provide substantial revenue to criminal organisations involved in not only cannabis and other drugs, but also other types of associated criminal activity. According to one critic - "It is prohibition that gifts the entire market to criminals and unregulated dealers."

In addition to the perceived failure of the current prohibition framework, other considerations which have given impetus to law reform include the widespread recreational use of the drug and evidence that some groups in the community are especially vulnerable to cannabis related health harms. There is also a degree of support from the medical profession and other health practitioners for the legal status of cannabis be changed so that it could become available as a pharmaceutical medicine because of evidence of therapeutic uses. It has been recognised the continued prohibition of cannabis means

"(t)he question of whether it justifies the enforcement resources expended upon it suggests that debates about decriminalisation or legalisation will continue, fuelled by pressures for recognition of the drug’s therapeutic value in alleviating some medical conditions."

However, in spite of there being a breadth of support in both Australia and overseas for change in the regulatory framework, the limited reforms that have occurred continue to adhere to the overarching prohibition framework. This means that even modest changes to cannabis laws and the way there are administered can be exceptional and deserving of close consideration as this can identify optimal processes that may be used to bring about reforms in other jurisdictions.

1.2 What can be learnt from reform

Where reform has occurred it has involved so called ‘minor cannabis offences,’ what has also been referred to as offences involving ‘personal use’ of cannabis. However, there has been a pattern that where minor cannabis offences have been decriminalised governments have at the same time increased penalties for offences involving activities which have elements of commercial gain or supply. This phenomenon, which means that reform involving minor cannabis offences is the ‘price’ of simultaneously increasing the penalties for serious offences,

"should not be defined purely in terms of liberalisation but should be characterised in terms of a ‘double taxonomy’ whereby a shift towards liberalisation is combined with an emphasis on increased control."

It has been suggested shifts in the mechanisms of social control since the late eighteenth century can be explained by evolutionary shifts in the concept of dangerousness or over the past four decades due to destructuring by the increasing use of community based models of criminal justice. The most recent phase has been characterised by a decline in state intervention and

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9 The terms such as ‘minor offence’, ‘personal use’, ‘summary offence’, ‘consumer offence’ may be used interchangeably throughout this report, as in some instances they have a legal meaning according to the relevant statute, whereas in other circumstances the term reflects a broader meaning reflecting use, possession or cultivation for the benefit of the person involved.
transference of the burden for risk management to the self. In relation to the popular stereotypes about illicit drugs,

“(t)he ‘addict’ for example, exemplifies the individual who has lost all capacity to maintain not just life equilibrium but even a healthy body – falling victim instead to obsessive consumption. ‘Pushers’ stand for those who, purely for self interest, lure others down this path to self destruction. ‘Mr Bigs’ represent remote, immensely powerful and manipulative outsiders who in the era of globalisation are burdening us all with unmanageable change, while remaining indifferent to its consequences.”  

These considerations mean a jurisdiction may simultaneously achieve two seemingly incompatible objectives – to reduce the severity of some laws concerning cannabis for some offenders through selective decriminalisation whilst also more severely punishing other offenders. It will be shown that although there were similarities in the character of the reforms in Western Australia (WA) and in the UK (ie England, Wales and Northern Ireland) in early 2004 concerning minor cannabis offences in how both jurisdictions appear to have ceded greater responsibility for risk management to the individual but whilst also imposing greater controls, divergent approaches were followed to achieve these reforms.

In WA a new piece of legislation was enacted in September 2003 which established the cannabis infringement notice (CIN) scheme. The new legislation, the *Cannabis Control Act 2003* (CCA), specified the criteria and processes to be used by WA police when they issued a CIN to an adult who had committed one or more of four expiable cannabis offences - the possession of a smoking implement with detectable traces of cannabis, the possession of up to 15 grams of cannabis leaf material, the possession of more than 15 grams and not more than 30 grams of cannabis leaf material and the non hydroponic cultivation of not more than two cannabis plants at an individual’s principal place of residence. These four expiable offences are linked to three predicate offences in the *Misuse of Drugs Act 1981* (MDA), the principal legislation that establishes the framework of drug prohibition.

The issuing of a CIN could be described as being akin to an irrevocable agreement that prosecution has been permanently waived if a person, who has committed any of these four expiable offences, agrees to assume an obligation to expiate the CIN in return for which prosecution is waived and they will avoid the attendant risk of conviction. The CIN scheme was designed to overcome a number of the perceived shortcomings of the South Australian cannabis expiation notice (CEN) scheme by excluding hydroponic cultivation of cannabis, by ensuring the number of plants a person could cultivate not be calculated on a per person basis but on a household basis, by providing more options to expiate infringement notices and by redefining the response to minor cannabis offences as being both a health and law enforcement issue.

In the UK the approach involved limited legislative activity, which featured the reclassification of cannabis within the primary drug legislation and the adoption of revised administrative guidelines to shape police discretion as to the circumstances when they could issue a warning if a person had committed the specific offence of possession of cannabis. Whilst the UK approach was narrower than the CIN scheme, in that a formal warning could only be issued for

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14 Which however could be waived by the person if they elect within 28 days of receiving a CIN that they wish to contest the matter in court.  
15 Although the term ‘caution’ may also be used to describe the process of dealing with a minor cannabis offence in the UK scheme, the process technically is a ‘formal on the spot warning’, which unlike a caution does not involve arrest. In contrast to a warning, a caution usually occurs after arrest, occurs after the individual has been taken to a police station and signifies that no further action will occur. However, a caution may at a later date be cited in other future court proceedings as part of an individual’s criminal record, whereas a formal warning is only recorded at a local level and cannot be cited in future court proceedings.
the possession of cannabis, it encompassed cannabis leaf material, cannabis resin, cannabinol and cannabinol derivatives. Also, unlike the WA scheme the UK approach does not specify an upper limit on the quantity of cannabis for which a warning could be given.

Over most of the period of community and parliamentary debate over changes to the law in WA and the UK a similar debate about reform of cannabis laws was also occurring in New Zealand (NZ) which had parallels to and many similarities with the approach followed in WA and the UK, including community input, the influence of lobby groups, the importance attached to research on key issues and the role of departmental and parliamentary inquiries in providing advice to government.

There are a number of similarities in the legal systems in WA, the UK and NZ, such as the structure of the courts and the principle of *stare decisis*, the supremacy of parliament, a shared common cultural and legal heritage and close economic and trade ties (especially between Australia and NZ). There is a particularly close correspondence between the three jurisdictions in how the criminal and public health legislation seeks to control drugs, of how these laws have evolved and the manner in which these laws are implemented. Therefore, it is of interest to determine why, in spite of these similarities between these three jurisdictions, legislative reform of minor cannabis offences failed to occur in NZ whereas reform occurred in both WA and the UK.

The thesis will be of relevance to law reform practitioners and policy makers in other jurisdictions where cannabis law reform is being actively considered as it will attempt to show there may be different pathways to achieving limited cannabis law reform. It will also be of relevance to those concerned about the widespread use of cannabis in other jurisdictions who are seeking to understand the advantages and limitations of cannabis law reform to regulate the use of cannabis and to manage the harms from its use beyond the narrow confines that are possible with prohibition.

The process of reform may also have wider ramifications due to the growing development of free trade associations in Europe and more recently through the NAFTA\(^\text{16}\) process, which have already tempered some of the severity of drug policies in countries which have a prohibitionary framework.

> “Once one member of a free trade association legalises drugs, it may only be a matter of time before all others adopt similar policies as cheap drugs flow across borders. As drugs become more prevalent in society, a nation’s ability to incarcerate users is strained and drugs become quasi-normalised – leading to decriminalisation and legalisation.”\(^\text{17}\)

While the recent approaches to cannabis law reform will be examined in some detail with reference to WA, the UK and NZ, this can be placed in a wider context of instances of a much longer history of efforts to reform cannabis laws in other jurisdictions. A key stumbling block that has confronted reformers attempting to changes drug laws is the potential impact of the United Nations (UN) system of international drug conventions and the overseeing role undertaken by the International Narcotics Control Board (INCB) to maintain a narrow vision of drug control.\(^\text{18}\) The UN framework was established by the 1961, 1972 and 1988 Conventions\(^\text{19}\) and will continue in the foreseeable future to regulate drugs such as heroin, cocaine, cannabis and the many other types of natural and synthetic drugs.

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\(^{19}\) The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
As will be outlined in Chapter 4, these conventions have been heavily influenced by American drug policies. However, it has been claimed there may be a different picture in relation to cannabis in the longer term.

“Global drug prohibition’s most glaring weakness and greatest vulnerability is cannabis. ... Just as it was impossible for prohibitionists to prevent alcohol from being produced and used in the US in the 1920s, so too it is now impossible to prevent cannabis from being produced and widely used, especially in democratic countries. As a result of this enormous and unstoppable production and use, global, cannabis prohibition faces a growing crisis of legitimacy.”

A particularly influential aspect of American drug policy over the past three decades has been the so-called ‘War on Drugs’ because it appears to have resonated with conservative groups by invoking the concept of defining, identifying and attacking an enemy. However, this approach has come under growing criticism for its harsh treatment of minorities and over reliance on both domestic and international law enforcement measures. There is a large body of literature which has critically examined the ‘War on Drugs’ and whilst outside the focus of this thesis, demonstrates that this particular policy with its rhetoric of ‘Just say no’ has had a limited success in either reducing the demand for drugs such as cannabis or impacting on the flow of drugs into the US. However, of relevance is the contention that the ‘War on Drugs’ is fundamentally flawed as

“it flies in the face of one of the most cherished values of contemporary capitalism – the ethic to consume. In a society that thrives on the cultivation of new needs and desires, and recognises no barriers to the quest for personal gratification, drugs that offer instant sensation and pleasure have an almost irresistible appeal.”

Given this proposition that drug use shares many of the core values of consumerism, it should be no surprise that the ‘War on Drugs’ emphasises the central role of mass instruction and education of the population about appropriate national moral and ethical values. It is the lack of these preferred values that is treated as an enemy, to be confronted through a ‘war’ and for which the populace needs to be mobilised. The necessity to restate these values is demonstrated by the enormous investment and commitment in many countries such as the UK and Australia, as well as by successive American national and state governments, which has produced a plethora of anti-drug messages and to underwrite large scale ongoing campaigns aimed at young people and their families.

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25 It is suggested drug education could be understood as form of vaccination, to immunise children and purportedly ‘protect’ them against becoming ‘infected’ from drug using peers. This public health model sets up the proposition that drug use is like a contagious type disease transmitted from user to non-user and which also posits the infectious drug user should ‘cured’ by the application of rigorous techniques, including imprisonment and detention to ensure that they do not infect others. Cf: Hughes PH & Crawford GA. ‘A contagious disease model for researching and intervening in heroin epidemics.’ (1972) 27 Archives of General Psychiatry 149-155. There is a body of research which indicates that drug education programs may be of limited efficacy in preventing drug abuse. Cf: Manski CF, Pepper JV & Petrie CV. (eds) Informing America’s policy on illegal drugs. What we don’t know keeps hurting us. Washington DC, National Academy Press, 2001; Ashton M. ‘Boomerang ads.’ (2005) 14 Drug and Alcohol Findings 22-24;
“(T)hese anti drug messages stress individual responsibility for health and economic success, respect for police, resistance to peer group pressure, the value of God or a higher power in recovering from drug abuse, parents’ knowledge of where their children are, sports and exercise as alternatives to drug use, drug testing of sports heroes, low grades as evidence of drug use, abstinence as the cause of good grades, and the need for parents to set good examples for their children.”

There are a number of parallels between the prohibition on cannabis and other illicit drugs in the ‘War on Drugs’ with an earlier phase in US history when narcotics were prohibited by the 1914 Harrison Act, followed soon afterwards by the prohibition of alcohol by the Eighteenth Amendment, which came into effect in 1920. The US Congress had passed a resolution in December 1917, which became law as the National Prohibition Act after it had been ratified by a sufficient number of States. The abject failure of the National Prohibition Act to stop alcohol use is well known and resulted in widespread levels of corruption and crime related to trafficking and manufacture of alcohol. The ‘War on Drugs’ and its prohibition of cannabis has been considered by some commentators as being a repeat of the folly that occurred in the early part of the twentieth century with the attempt to prohibit alcohol in the US and similarly has resulted in large numbers of Americans being convicted for minor offences.

A major review of the failure of the National Prohibition Act was conducted by the National Commission on Law Observance and Enforcement (the Wickersham Commission), which presented its report to the US Congress in January 1931. The following extract from the dissenting statement by Henry W Anderson is worth reproducing at some length. These remarks support arguments being made some 75 years later that the prohibition of cannabis will also fail to achieve its goals because the law is similarly disregarded by a significant proportion of the population and that so long as prohibition continues, demand will be met through the black market.

“On the other hand the effort to go further and to make the entire population of the United States total abstainers in disregard of the demand deeply rooted in the habits and customs of the people, run counter to fundamental social and economic principles the operations of which are beyond the control of government. As a result we are confronted by new evils of far-reaching and disturbing consequence. We are in grave danger of losing all that has been gained through the abolition of the legalized liquor traffic and the saloon. The fruitless efforts at enforcement are creating public disregard not only for this law but for all laws. Public corruption through the purchase of official protection for this illegal traffic is widespread and notorious. The courts are cluttered with prohibition cases to an extent which seriously affects the entire administration.


Whereas the prohibition against alcohol occurred in a time of moral intolerance of drug use, the ‘War on Drugs’ has occurred in time where the strong cultural norm of self restraint no longer operates. Alongside the prohibition of cannabis and other illicit drugs in contemporary American society there has been an extraordinary growth in the use of legal drugs, eg drugs to enhance sexual or athletic performance, drugs to make people feel happy etc. It has been observed that "the justification for the current war against drugs rests heavily on an epidemiological form of morality that turns on the risks of harm that flow from the use of a drug by a given population." Kennedy JE. "Drugs wars in black and white." (2003) 66 Law and Contemporary Problems 153-181.

The Commission was established by President Herbert Hoover in June 1929 and published 14 reports. One of the most notable was its last report in 1931, Report on Lawlessness in Law Enforcement, which was the first systematic investigation of police misconduct and became a catalyst for reforms involving new forms of accountability for the police.
Chapter 1: Introduction

of justice. The prisons, State and National, are overflowing, but the number of lawbreakers still increases. The people are being poisoned with bad and unregulated liquor to the permanent detriment of the public health and the ultimate increase of dependency and crime. The illicit producer, the bootlegger and the speakeasy are reaping a rich harvest of profits, and are becoming daily more securely entrenched. The enormous revenues (estimated at from two to three billion dollars per annum) placed in the hands of the lawless and criminal elements of society through this illegal traffic are not only enabling them to carry on this business in defiance of the government, but to organize and develop other lines of criminal activity to an extent which threatens social and economic security.”

A report in 1968 concerning cannabis from the UK by Advisory Committee on Drug Dependence had grappled with similar philosophical issues occurring at that time in relation to a number of other areas of law reform, such as consensual behaviours between consenting adults, including censorship, drug problems (the 1961 Brain Committee) and homosexuality (the Wolfenden Committee). Of relevance to cannabis policy the 1968 report contained the following observation about the implications of a disjunction between a law concerning a prohibition and observance of that law.

“Laws which seek to control the personal consumption of individuals are notoriously hard to enforce. We have to recognise that there comes a point at which public pressures become so powerful that it is idle to keep up attempts to resist them, the classic example in this context being the American prohibition of the consumption of alcohol. On the question whether this point has already been reached, or is likely to be reached in the near future, in relation to cannabis, differing opinions have been expressed to us. In any case, prohibition of the consumption of a substance which has become the normal accompaniment of social intercourse in all social classes must involve significantly more public disturbance than the discontinuance of a ban on the use of the drug which, in this country, is not, and never has been, in general use.”

It was concluded as there was not a disjunction between the law and its observance in the UK in the late 1960s, there was not a perceived need at that time by government for cannabis law reform. However, over the nearly four decades following the inquiry cannabis use has increased, as evidenced by escalating annual number of arrests involving minor cannabis offences. Also throughout the 1990s a number of opinion polls in the UK showed an increasingly tolerant attitude towards cannabis, which meant “(p)ressure for reform of some sort was mounting.” The growing tension between policy and community values meant that by 2004 sufficient support existed in the UK for reform as cannabis had become so widely used that the disjunction between the law and its observance became too apparent to ignore any longer.

1.3 The objects of the paper

The first object of the thesis is to examine the reforms in WA and the UK to attempt to understand the divergent approaches to reforming minor cannabis laws, even though both jurisdictions shared similar legal and legislative cultures. This examination will identify features of the respective schemes, potential shortcomings and what lessons may be learnt about these reforms.

33 The major revision to the law in WA followed the introduction of the Cannabis Control Act 2003, which came into operation in March 2004, whereas in the UK the reform concerning possession of cannabis which came into effect in January 2004 involved limited statutory reform and revision of police operational guidelines.
Chapter 1: Introduction

The second object is to examine the specific provisions of WA’s CIN scheme and determine the extent to which it has capitalised on perceived shortcomings of the established schemes in other Australian jurisdictions which permitted expiation of minor cannabis offences. Although the CIN scheme has operated for a relatively short period of time a preliminary study will be made by analysis of trends in conviction and other indicator data based on publicly available information concerning the first year of its operation.

The third object is to explore some of the issues of how to measure the impact and effectiveness of drug law enforcement (DLE) activities and determine the feasibility of methods to measure the size of the WA cannabis market. Because most of the literature on how drug markets are shaped and determined by DLE activities has been developed in relation to heroin and cocaine markets, it will be necessary to refer to some of this body of research to identify economic principles that might be applied to the operation of cannabis markets.

One of the primary purposes for introducing the CIN scheme was to reduce the amount of DLE time and resources of police involved in apprehending minor cannabis offenders so that they could instead focus on more serious types of crime such as cultivation, trafficking and supply offences. If there was a net redirection of police activities after decriminalisation towards identifying serious offences it is plausible that changes in DLE priorities would impact on the stability, structure and operation of the cannabis market. It is well understood from research primarily conducted in the US, to lesser extent in the UK and Australia, that DLE activities can determine the structure and operation of markets involving illicit drugs.

A number of examples illustrate how DLE activities can shape drug markets. The first example, which is discussed in detail below, is the shift to sophisticated indoor hydroponic cultivation of cannabis which has been regarded as an unintended consequence of enhanced police detection of open air large scale cannabis plantations. The second example is a shift over the past decade in Australia to the production of methamphetamine in clandestine laboratories which has been considered to be partly a response based on the need to find alternative sources of base materials due to legislative restrictions on the availability of the precursor chemicals which had been previously used to create an amphetamine market.\(^{34}\) The third example is the changes that were noted to high risk methods of selling heroin in Cabramatta in outer metropolitan Sydney in New South Wales (NSW) in response to police crackdowns on street level and open air heroin markets by sellers limiting the quantities of heroin they carried by storing heroin in small balloons hidden in body cavities.\(^{35}\)

The fourth object of the thesis will involve an attempt to identify some of consequences of and areas of concern about implementation of the decriminalisation of cannabis in WA and the UK in 2004 that may have already occurred or which are likely to occur, such as increased cannabis use prevalence, development of programs to engage and change the behaviour of those with harmful levels of cannabis use such as young people, redirection of DLE activities to preclude expansion and transformation of the cannabis market and the possibility of net widening arising from unintended outcomes from DLE practices and the manner in which reforms are implemented by police. This study will also draw upon a number of studies and papers from NZ concerning the operation of the cannabis market in that country largely operates as a closed market to provide a clearer understanding of the impact of DLE activities.


2 Drug Law Enforcement and Drug Markets

2.1 Introduction

It is argued that the process of law reform to solve drug problems does not proceed as a series of linear responses to escalating drug use and related crime, health and social problems, but more closely resembles a circular one, involving law enforcement and health measures and counter measures alongside of which there is parallel adaptation and re-adaptation by the drug market in response to new laws and shifts in policing priorities. The analogy of a circular and dynamic process means that drug law reforms, whilst initially appearing to deal successfully with a particular drug or issue, is better understood as creating a new set of problems because of the inherent adaptability of the drug market.

The implication of this argument is that DLE activities dynamically shape the structure of drug markets by granting by government of very broad powers to police for them to detect and prosecute those who possess and use or produce, market and distribute drugs. An example of this circular process of reform and market response and counter response can be found in how DLE activity has affected the cannabis market in Australia by causing a shift from outdoor plantations to intensive indoor hydroponic cultivation. A new set of problems have emerged such as the adoption of hydroponic and artificial methods of cultivation and the development of hybrid strains of higher potency cannabis, which will be examined in detail later in this thesis.

“The rational purpose behind the drug laws is to reduce drug abuse. If drug law enforcement is conceived primarily as furthering that purpose, then it seems to follow that drug law enforcement ought to aim primarily at reducing drug abuse, by increasing prices, decreasing availability and deterring drug acquisition. But the drug laws also create the illicit markets and the predatory crime that surrounds them. Thus another purpose of drug law enforcement ought to be to minimise the unwanted side effects of the laws: to maintain the benefits of prohibition with as few of its costs as possible.”

There are two broad policy approaches for dealing with illicit drugs, supply side approaches which are intended to address their availability and demand side approaches which are intended to reduce demand. Supply side approaches encompass activities of DLE agencies, the customs service and regulatory controls to prevent the production or importation of illegal drugs or their precursors, whereas demand side approaches refer to public health education, prevention campaigns and treatment and rehabilitation services.

“The object of supply-side law enforcement, it could be argued, is to drive up the price of heroin at street level. Conventional economic wisdom suggests this should reduce the demand for heroin even if it does not eliminate it. ... There is an obligation on those who would defend supply-side drug law enforcement to show that supply-side strategies drive up the price of heroin and that increases in the price of the drug reduce the demand for it. In fact a number of economists have questioned this last assumption, arguing that the demand for heroin is price inelastic. This argument is of central importance to drug law enforcement policy.”

While a large body of literature exists in relation to the operation of illicit drug markets, particularly in relation to the heroin and cocaine markets, there are some difficulties in determining if these principles may be applicable and relevant to the operation and structure of cannabis markets. For, as has been noted, “(m)ost of the research conducted into organised

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crime and its involvement with drug trafficking has come from the USA, although there is an increasing focus on such studies in Europe. None of the studies consulted focused specifically on cannabis.”

For example, it is plausible that DLE bodies may develop inappropriate and inadequate methods for intervening in cannabis markets by adopting models largely developed from experience gained in heroin and cocaine markets. Markets for these types of drugs are believed to be hierarchical and dominated by well organised crime groups, particularly at the upper levels, in order to provide sufficient monetary and human resources to finance, import and distribute these drugs. However, this model may be inappropriate if it is applied to cannabis markets.

As markets for heroin and cocaine typically involve a geographic separation between the region where opium and coca plants are cultivated and refined and where the majority of consumers are located, DLE agencies develop organisational structures and skills to identify supply routes, tracking the movement of money and addressing corruption of customs and law enforcement officials. This market structure favours the development of cooperative cross-national law enforcement arrangements, the use of sophisticated surveillance and maintenance of extensive databases to monitor movements across borders. It has been concluded

“not all drug markets are alike. In particular, marijuana markets differ substantially from the street markets for cocaine and heroin that have been the focus of so much interesting ethnographic research. Ethnographic data suggest that marijuana sellers are more likely to operate independently (than as part of an organised operation), sell indoors and involve acquaintance or referral networks.”

Therefore complex cross-jurisdictional and monitoring frameworks may not be the most effective or appropriate framework to be adopted by DLE organisations in relation to cannabis, as cannabis production and distribution is believed to involve a mix of a number of large scale operations and many small growers mostly located in the domestic market, at least in Australia.

Given the reservations of applying principles developed through DLE experience in cocaine and heroin markets, nevertheless this material can assist in understanding the importance of economic principles of how cannabis markets operate. The more difficult and problematic issue, which will be considered below, is the weight that DLE agencies might give to these principles to determine and develop strategies in response to and in anticipation of changes in the structure, adaptability and operation of markets in cannabis or emerging drug problems.

“It is uncontroroversial and uninteresting merely to assert that drug use and drug problems evolve over time. A stronger and more interesting argument is that they change more quickly and in more fundamental ways than do most other social phenomena.”

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41 It is known that refined and higher value versions of cannabis, such as compressed hashish and hash oil are not usually manufactured locally and therefore are imported. In some markets, for instance the UK and Ireland, refined forms of cannabis may constitute a significant proportion of cannabis consumption. Cf: Morgan M (ed). An overview of scientific and other information on cannabis. Dublin, National Advisory Committee on Drugs, 2004.


A point to be made before considering the problem of identifying the impact DLE activities on the operation of drug markets is that because the supply side approach is underpinned by the implicit assumption that drug use is a function of availability, governments have accordingly for some years devoted the largest proportion of the resources for dealing with drug problems based on supply side policies which, by making

“large allocations of resources to law enforcement expenditure (that) puts into practice a traditional precept which recommends a tougher drug law enforcement policy in order to diminish the market size.”

Indeed the supply side model is particularly attractive to policy makers as it places great importance on control and seeks to explain the relative success or failure of particular polices on the existence or lack of control as expressed through law enforcement policies. Therefore

“if drug use is low, it is because drug policy is successful. Conversely, if drug use is high, that is clear evidence of a failure of policy. ... much of the debate among policy makers implicitly if not explicitly adopts this view that policy is central. It encourages evaluating efforts with simple ‘before and after’ comparisons.”

2.2 Studying drug markets

This section considers some of the economic principles used by DLE agencies and policy makers to conceptualise consumer behaviour, to explain the structure and operation of drug markets and to set priorities and strategies. As the activities of DLE agencies directly impact on both buyers and sellers in a drug market it is instructive to understand how DLE activities might determine nominal (ie monetary) prices. It is also helpful to understand the unique role DLE agencies have in defining and shaping perceptions of the magnitude and nature of drug problems.

“To the extent that they are driven by the forces of commerce, illicit drug markets are economic markets. However, they are unlike legitimate economic markets in that they operate independent of legal authority and unconstrained by conventional social and cultural norms.”

An important concept is whether or not the behaviour of dependent drug users is responsive to changes in price, as it is considered that drug dependent individuals do not reduce their consumption when price increases, ie demand is largely price inelastic. The accepted belief is that as dependent drug users are ‘driven’ to commit crime as they become tolerant to a drug, to stave off withdrawal discomfort, they are assumed to require increasing quantities of a drug. However, because of limited resources and inelastic demand curves, these individuals resort to crime and other income producing activities to ‘pay’ for their increased drug consumption.

It is apparent, therefore, that the concept of inelasticity of demand is likely to be an important determinant of the preparedness of users to alter behaviour in a drug market, either through substitution by switching to alternative (ie less costly) drugs, increase their income producing activities or cease use altogether in response to increases in price.

“Most illicit drug use is recreational and involves sales in small amounts; purchases are often opportunistic; and if a specific drug is in short supply, there is a range of licit and illicit substances. There should therefore be considerable elasticity of demand in response to price changes. For drugs of dependency, there will be much greater inelasticity. The extent to which dependency locks people into a state of irresistible demand is open to question. The more it does so, however, the more that levels of demand will be insensitive to changes in price.”

The difficulty with this model is the extent to which it is applicable to the cannabis market as it has been largely developed from studies of heroin and cocaine users. However, there is some evidence from surveys of offenders which contradicts this principle of increasing tolerance to explain a drug-crime nexus. This research has involved heroin dependent individuals and suggests there is a relatively small number of such individuals who commit disproportionate amounts of property crime and who typically have well-established histories of serious offending preceding their involvement in heroin.

While there is a large body of economic literature examining the behaviour of drug users as consumers, there appears to have been less consideration of linkages between DLE activities and drug markets.

“The study of heroin markets has generated principles which may mean most drug markets operate in a similar fashion, ie a well defined vertical market structure with pronounced separations between the respective levels achieved by strict control over information. A reason for the existence of this type of structure can be attributed to the impact of DLE activity which necessitates tight information control to minimise penetration by DLE agencies and undercover police. There are also a number of intermediate levels in the distribution hierarchy from importer to the final consumer which are an outcome of the strategies by higher levels operators to reduce risk and conceal their direct involvement.

With respect to heroin markets at the lowest level of the distribution network monopolistic competition is believed to exist, as in practice even though users seek to maintain access to a number of suppliers to overcome supply irregularities, buying and selling is conducted on a personal basis to minimise police surveillance. The probability of detection is highest at this

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47 This generates the belief that heroin has crimonogenic properties and that users ‘inevitably’ commit crime.
level, as users must frequently purchase small amounts of heroin compared to distributors higher up who may handle large quantities infrequently.

The limitations of rigidly classifying drug markets as being hierarchical and operated by highly organised crime groups can be appreciated from a 2001 Home Office study of the *modus operandi* of those who occupied the area of activity between bulk importers and retail level dealers. This study identified the drug market as consisting of four levels - importers, wholesalers, middle market drug brokers and retail level dealers and concluded that the

> “notion of organised crime groups as tightly organised, complex and hierarchical entities whose tentacles reach around the globe is not supported by our evidence. They are more usually understood as networks or partnerships of independent traders or brokers.”

However, some reservations are warranted whether this hierarchical model, which has been developed and widely used by DLE agencies, is applicable to or provides a valid understanding of the operation of cannabis markets. If DLE agencies are organised and operate on the basis of the existence of a hierarchical model of drug markets, this may be ineffective where this type of market structure does not exist. For example, as it has been observed very little of the cannabis sold in Australia is sourced from overseas, is produced locally, a low priority should be placed on interdiction activities compared to strategies involving other drugs.

> “Most cannabis for domestic sale is produced within Australia, meaning global trends typically have little impact on the Australian domestic market. International shipments of cannabis products are also difficult to conceal and vulnerable to detection because of their bulk and odour.”

Another consequence of a dominance of domestic production is that State law enforcement agencies would have a more significant role in relation to cannabis compared to Federal agencies, the role of the latter involving border controls and detection of imports. To emphasise the limited role of Federal DLE agencies with respect to cannabis, the 2003/2004 Illicit drug data report includes a breakdown of Federal cannabis seizures, as there was a total of 642 detections which yielded a total of 15.3 kilograms of cannabis being seized, an average of less than 25 grams per detection.

### 2.3 Economic concepts applicable to drug markets

If the demand for a drug is relatively price inelastic this is not necessarily an optimal result as a monopolistic market will produces higher social costs for the community, to the extent users resort to crime. As a policy outcome, we may wish to endure this consequence as the price paid

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55 This analysis in the AIDR report corrects for a distortion that may occur in reporting seizures, as in the 2003/2004 year there were two unusual detections – 644 kilograms of cannabis leaf found hidden on a ship which was considered to have been abandoned in a transnational operation where Australia was not the final destination and 50 kilograms of cannabis seed mistakenly imported without criminal intent for use in Asian traditional medicines. Both of those were excluded in the analysis.

to ensure there are a few rather than many individuals and/or organisations conducting a morally reprehensible form of business.

“Illegal dealers wish to maximise a utility function which includes income and the probability of arrest as arguments. This utility function gives them clear preferences to certain kinds of customers ... (those who) yield higher incomes at lower risk.”

We may postulate that if the user’s budget line is fixed on a long-term basis, increases in the effective price of a drug will result in less of it being purchased, a socially desirable outcome. However, there is the possibility that this conventional economic model, which relies on the concept of a supply curve which slopes upwards and of a demand curve which slopes downwards, may need to be qualified, as drug markets may display oddities, such as enforcement swamping, which in some circumstance create a downward sloping supply curve.

A reduction in consumption of an illicit drug will occur to the extent a user is able to substitute another drug which provides the same utility, such that over the longer-term the user will have a new utility curve to represent the substitution of the targeted drug by another drug. This broad issue has resulted in a number of Australian studies of the complex relationships between demand and shifts in the price of alcohol, tobacco and cannabis, such as research conducted the University of WA’s Economics Research Centre under Professor Ken Clements.

There are also difficulties in monitoring demand reduction measures, as illustrated by the example of prescribing heroin or methadone, to undercut the heroin market, as it is postulated that if demand is reduced it will have a limited impact on the illicit market unless accompanied by a highly effective DLE strategy, because marketeers of illicit heroin will open new markets to replace those consumers who obtained greater utility from the licit source.

“The continued existence of the illegal heroin supply system is a serious threat to any effort to control addicts by controlling the legal supply. Any effort to raise the cost of legal heroin to addicts by requiring them to perform useful social functions, or live in undesirable conditions, or give up their freedom will lose some addicts to the illegal market. Similarly, any effort to guarantee that reformed addicts or potential addicts will not be able to obtain heroin except in legal markets will also be limited when the illegal system continues to operate.”

While the concept of price elasticity is a central issue in evaluating the impact of DLE activities, because there is limited evidence on this point, we need to resort to models which attempt to account for the short term and long term behaviour of drug users in relation to price. For instance, a 1994 study from the RAND Corporation’s Drug Policy Research Centre examined the market for cocaine and hypothesised that consumption by regular cocaine users was part of the flow of cocaine to recreational users. Their model posits that recreational cocaine users were price sensitive (ie price elastic) whereas demand by regular cocaine users was price inelastic. It was concluded

58 This has lead to the understanding that one goal of treatment is to not focus on difficult to attain goals of abstinence, but provides substitutes on prescription to increase the elasticity of demand. This model has worked particularly well with prescribing methadone as a substitute for heroin.
61 The term ‘price’ here is used in the economic sense whereas for consumers the effective price most accurately represents the ‘costs’ in acquiring a drug.
“that the size of the population of regular cocaine users (and therefore the demand for cocaine) will eventually be determined by the price of cocaine, even though current demand for cocaine among regular users is relatively unaffected by price. Applying the same argument to the market for heroin leads to the expectation that demand for heroin will show little short term but may show considerable long term price elasticity.”

It is helpful to examine the notion of price, usually understood to be the nominal price at which a drug can be purchased, as this is regarded an important indicator of the effectiveness of DLE activity. It is argued it is more useful to use the concept of ‘effective price’ to understand consumer behaviour and that this is a better indicator to measure outcomes of DLE strategies.

It is important to understand as the complexity of the notion of the ‘price’ of that a user is required to pay for a particular drug, the ‘price’ of an illicit drug represents a comprehensive index of all the costs, financial and non-financial, that a consumer faces in the market place. It is not merely the dollar value of an illicit drug that consumers face in the marketplace. It has been observed that

“unlike normal markets, illicit drug markets have very high transaction and possession costs. Transaction costs are those which result from being cheated or beaten by dealers and from being arrested and detained by the police. Possession costs are those associated with being cheated or robbed of one’s drug holdings and from being identified by the police as the owner of an illicit drug intended for consumption.”

It has been considered that the nominal cost of heroin and by implication other illicit drugs, may be the least important component of its price, given the major part transaction and uncertainty costs play in determining each user’s demand curve. A more appropriate term, which accounts for the sum of all these costs, is ‘effective price’, it being

“an index of all things that make heroin difficult, inconvenient, risky, or otherwise ‘costly’ for individuals to consume ... (it) includes at least the following components: dollar price, amount of pure heroin, toxicity of adulterants, the expected time necessary to find heroin, the threat of arrest, and the risk of victimisation by criminals.”

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64 Id, 3.
With respect to heroin users, there are important policy considerations that arise from the concept of effective price, as it means that experienced and novice users will not face the same price in the marketplace. Experienced users may be able to reduce their transaction and uncertainty costs, as they are likely to have well established connections through which they can obtain less diluted heroin by virtue of a shorter distribution chain to major suppliers. Experience is also likely to reduce the risk of selling to undercover agents by the use of techniques such as restricting purchases and sales to small groups of users.67

As it has been recognised the effective price of cannabis includes similar types of non monetary components such as transaction and uncertainty costs, this means that in addition to “the purchase price, the full cost of marijuana use includes the costs associated with breaking the law.”68 Therefore the concept that the effective price of a drug such as cannabis is more than its nominal cost should enable policy makers to develop an understanding that one of the objectives of DLE activities is to manipulate the effective price.

2.4 Combined approach to drug problems

There is a body of literature that shows the most effective drug policies are a combination of both supply and demand reduction strategies.69 The combination of policies, which are administered by law enforcement agencies and a diverse range of private, non government and health organisations, would optimally reduce the high social costs arising from crime by drug dependent individuals, while at the same time deterring recreational and experimental users from becoming regular or dependent users.70

A paper published in 1999 by the NSW Bureau of Crime Statistics and Research examined the difficulties for DLE agencies in intervening in heroin markets. Whilst it was observed that DLE activities and treatment tend to be seen as contradictory approaches to resolving heroin use, it was argued these two approaches should be regarded as complementing one another and that

“instead of debating whether to invest public money in drug law enforcement or treatment, policy makers should concentrate on determining the optimal mix of drug law enforcement and treatment and the most appropriate policies for minimising any public health risks created by drug law enforcement.”71

The concept of harm minimisation is considered as providing a bridge between the disparate organisational and philosophical issues that can impede the development of cooperative policies. In addition to the difficulty of achieving synergy between supply and demand side

73 Id, 507.
approaches, there are competing expectations of the role of police, including that they may need to provide symbolic functions such as to allay community concerns about crime.

“Drug policing has wider symbolic dimensions. In societies which regard illegal drug use as a challenge to moral and social order, drug policing delineates and defends ‘the edges of our society’. Doing so may be as significant as any instrumental effects of policing.”

A study over a two year period from 1995 to 1997 of an intensive DLE ‘crackdown’ on street level drug users in the Sydney suburb of Cabramatta illustrates the practical difficulty of sustaining policies to deter drug use whilst also at the same time meeting public health goals represented by harm minimisation.

“Harm minimisation requires cooperation with non-police agencies committed to demand reduction and public health. However, relationships with such agencies are strained by police insistence on the priority of their definition of ‘the problem’ and by these agencies lack of political influence and economic resources. ... It is symptomatic that one year after the NSW Police launched it latest series of crackdowns in Cabramatta, the new health and welfare services which were supposed to accompany them were yet to materialise. A purportedly problem solving interagency initiative is experienced on the street as a crackdown which offers punishment as its only ‘treatment option’.”

### 2.5 Impact of drug law enforcement interventions

Drug law enforcement agencies are responsible for supply side measures and arguably need to deploy a combination of actions which impact on both street level users and criminal groups attracted by the high profits from selling and trafficking in drugs. The difficulty for local and regional police is in how to determine the most effective approach in dealing with local drug problems.

“One view is that enforcement efforts should focus on paralysing the supply system. Another view is that reducing the demand for illicit drugs will make the supply network wither and constrict the market.”

However, as DLE agencies do not have infinite resources they must make decisions about whether they will target those at the lower end of a drug market, where there are high volumes of retail transactions or invest resources in targeting those operating at a higher level in a drug market such as commercially driven cultivators and dealers.

“The current approach of most agencies is based on a combination of estimated transaction volumes – ‘going after Mr Big’ – and tactical considerations such as the availability of cooperative informants.”

As DLE agencies rely on supply side approaches there needs to be a realisation that this type of intervention is likely to have only a limited short term impact as in the longer term drug markets are very resilient to law enforcement actions. Indeed, it has been suggested that DLE agencies should reconceptualise their approach to overcome this resilience.

“In the past the focus has been maintained on the removal of an individual from the market, however, as experience demonstrates, this simply results in another individual moving in to take up where they left off, leaving the market unchanged. Market analysis suggests that

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success in influencing a market is a function of changing market conditions, not market participants.”

Drug markets are highly adaptable because replacement readily occurs, such as when sellers have been jailed, with a constant supply of lower level drug sellers and users willing and able to take their place in drug distribution. As drug markets have a high degree of adaptability to DLE activity this means in the longer term most of the gains from DLE activities can be dissipated.

“Much discussion of drug law enforcement implicitly assumes that arresting and imprisoning a drug dealer had the same effect on the drug market that arresting and imprisoning a burglar has on the rate of housebreaking. But the two situations are quite unlike in terms of their economic logic. A dealer taken out of action by confinement creates a market niche for a new dealer in the form of ‘orphaned’ customers.”

As well organised crime groups may conceal their activities behind legitimate business interests and have interstate and international links, DLE agencies must be able to mount both traditional policing strategies such as undercover buying and selling in addition to much more sophisticated approaches involving intelligence gathering and the use of the skills of accountants, lawyers and those able to interpret and analyse financial and corporate data.

Another concern about the effectiveness of DLE agencies is their reliance upon strategies which involve untested assumptions about the operation of drug markets and of how the actors in a market will react and adapt to policing strategies. The first assumption is that DLE activity will increase the effective price of illicit drugs, thereby causing a fall in demand. It has been pointed out that DLE activity may have multiple goals, in addition to the economic one of increasing the effective price of drug prices.

“Drug market enforcement aims to achieve several goals, including: disrupting established markets and thereby reducing public disorder, as well as interrupting supply and thereby driving up drug prices and increasing the time drug users have to spend searching for drugs.”

The second assumption is that pressure by DLE agencies on drug users will ‘force’ them to seek assistance and enter treatment programs. However, a study in NSW of the impact of DLE pressure on the heroin market indicates these assumptions do not appear to operate as has been assumed.

“One conclusion which should be drawn from the current results is that attempts to increase the street price of heroin (and therewith reduce the demand for it) by creating a shortage of the drug are not likely to prove successful. Given the current standard of public debate in Australia about drug law enforcement policy this is not an inconsequential point to make. Regular news footage showing large amounts of seized heroin is the only tangible evidence

76 Strategy Unit Drugs Project. *Phase 1 report: Understanding the issues*. Westminster, Office of Prime Minister, Strategy Unit, June 2003, 65
79 Mazerolle L, Soole D & Rombouts S. *Drug law enforcement: the evidence*. Drug Policy Modelling Project Monograph 05. Fitzroy, Turning Point, 2005. (Especially Table 2.)
81 As noted this assumption depends on another untested proposition concerning the elasticity of demand for a drug.
of success in the ‘war against drugs’ often presented by authorities to the general public. Drug law enforcement agencies, by accident if not by design, have tended to encourage a view among policy makers and within the wider community that their success curtailing the activities of ‘drug barons’ can be measured in terms of the quantities of heroin seized.\(^{83}\)

The significance of how DLE agencies understand and conceptualise the structure of drug markets and develop strategies to disrupt them is illustrated by a study of a London heroin market, which concluded that as DLE agencies relied upon a simplistic model of the heroin market, they were unable to determine the effectiveness of their strategies against the market.

“The market was characterised as a hierarchical structure, in which each tier of dealers bought and sold smaller quantities of heroin at higher prices per gram than the tier above. ... this structure (was adopted) as a basis around which to organise police drug enforcement. In this scenario, it would be sufficient to monitor only the levels of the dealers arrested, since the effects on, and reactions of, different parts of the market could be predicted from this information.”\(^{84}\)

The emphasis placed by DLE agencies on removing and disrupting those who supply drugs to the market, which forces inefficient suppliers out of business for various lengths of time (e.g. imprisonment), means monopolistic market structures are created at the top, which are characterised by maximisation of profit and restricted output. Some of the suppliers in this position may accordingly become monopsonists because of their highly disciplined structure.\(^{85}\)

Another consequence of police interventions in drug markets is that those players who are prepared to take the higher risks involved with drug trafficking and dealing will come to increasingly dominate the market, with attendant likelihood of increased violence and criminality. An example of an unintended consequence of policing is described in an article published in the November/December 2005 issue of the DrugLink newsletter, which examined 30 years of drug policing in the UK,\(^{86}\) with specific reference to the longer term outcomes of Operation Julie, which culminated in a successful appeal to the House of Lords (\textit{R v Cuthbertson}).\(^{87}\)

The article contained interviews with a number of former police officers and other figures in Operation Julie, which involved 18 months of surveillance by police with very limited resources and culminating in the arrest in March 1977 of members of a highly organised group which had produced large quantities of LSD over a period of time. One of the people convicted commented on a consequence of the severe sentences handed down by the courts. “It was those


\(^{87}\) \textit{R v. Cuthbertson} \[1981\] AC 470 is especially notable for the furore that followed a successful appeal to the House of Lords as police had traced many millions of pounds that were the proceeds of years of trafficking in LSD, held as real estate and in bank accounts in a number of European countries. On conviction of the defendants an order pursuant to s.27 of the \textit{Misuse of Drugs Act 1971} was made to forfeit a monetary sum equal to the assets of the defendants. However, appeals were lodged against the forfeiture orders upon the ground that s.27 could only be used to forfeit assets actually used in the commission of the offences of which they were convicted. The section could not, it was asserted, be used as a wide ranging device to forfeit assets in which there was no nexus between the asset and the offence of which the defendant was convicted. Reluctantly the House of Lords agreed with this submission and set the forfeiture orders aside. The outcome was the appointment of the Hodgson Committee to investigate recovering profits of drug related crime. The Committee recommended the criminal courts be empowered to confiscate benefits derived by a person from an offence of which they had been convicted and resulted in the \textit{Drug Trafficking Offences Act 1986} being passed. This is an example of the inter-relationship between the legislative illicit drug framework in the WA and UK, as WA passed the \textit{Crimes (Confiscation of Profits) Act 1988}, which drew upon features of the UK legislation.
sentences that upped the ante. After that it was only the hardened criminals who would take the risk of dealing large amounts and that's when the violence came into it.”

2.6 Evaluation of drug law enforcement activities

It has been persuasively argued that the effectiveness of supply reduction strategies should be evaluated because of the scale of resources provided by government to DLE agencies. A useful examination of this issue is contained in a paper prepared by Dr Adam Sutton, formerly Director of the South Australian Office of Crime Statistics and Dr Stephen James, a research fellow in the Department of Criminology at the University of Melbourne. The study, which was conducted in 1993 and involved a survey of 100 law enforcement officers throughout Australia, found that while the stated aims of most DLE bodies were to target major figures involved in the importation, production, financing, and/or distribution of illicit drugs (the ‘Mr Bigs’), there was little evidence this occurred.

“There also seems to be systematic inconsistency between the most frequently declared aim of drug law enforcement – to target high level financiers, importers and traffickers – and what in fact is being achieved. Reviews by the research team of Australia wide data on drug related charges and arrests show clearly that the impacts of criminal justice continue to fall mainly on lower end distributors and users rather than high level operators.”

The priority that Australian DLE agencies place on detecting and acting against those operating at the highest levels of crime involved in drug trafficking is apparent in a statement from the 2000-2001 Annual Report of the National Crime Authority (since renamed the Australian Crime Commission).

“It has always been the NCA’s contention that efforts against drug dealers and other organised criminals must be relentless. The NCA also urges that this challenge is not one solely for law enforcement, for such an approach has grave limitations. The NCA’s firm view is that a whole of government approach will strengthen the fight against organised crime. Shortly stated, organised crime merits being treated on the same plane as threats to national security. One clear indicator of this is the well grounded link between major, lucrative organised crime and terrorism.”

The question of how DLE agencies successfully target serious drug offenders and their impact on drug markets was examined in a 2004 US study using computer assisted personal interviews with 4,041 federal and 14,285 state prisoners. Interviews were conducted with a sub sample of 4,992 persons who met the criteria of being drug offenders, to gather a range of information, including drug use, whether their offending involved membership of a drug organisation and their role in it. The researchers concluded that as relatively few offenders were either ‘kingpins’ or ‘unambiguously low level’ users this confirms the courts are not able to distinguish between offenders according to this simplistic dichotomy because there is not such a neat distinct, as many drug users engage in supply to some degree. Indeed, it would appear that the
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‘findings dampen hopes of dramatically reducing prison populations by getting out of prison those who are unambiguously low level drug offenders. They simply do not represent the majority of incarcerated drug offenders. In particular, most played some role in distribution, so eliminating prison terms for users (decriminalisation) would not have affected many now in prison. Indeed, if decriminalisation increased demand, it could plausibly increase prison populations by increasing the number of suppliers still subject to imprisonment.”

The 1993 Sutton and James research also highlighted that most street level DLE activity was conducted by generalist local detectives and uniformed police, rather than specialist DLE groups and accordingly were more driven by community pressures, complaints from local businesses and attempts to maintain public order instead of pursuing specific drug related goals and policies. Whilst more recent research is not available on this point, it is likely it would still describe how non specialist police manage their priorities.

A number of specific recommendations were made by the authors, including that local drug control plans be based on a premise that DLE should reshape rather than totally suppress illicit drug distribution and consumption. They also believed that the overarching objective should be to ensure that laws were enforced in ways that kept health, welfare and other harms, as well as drug related crime, to a minimum. They also recommended that local committees of law enforcement, health and drug user representatives be established to set up and maintain a set of relevant indicators of drug-related harm, to set priorities for local operations and inform strategic decisions when to apply discretion in enforcing drug laws.

A number of other pertinent studies have considered the peculiar difficulties facing DLE agencies. One such study is an American National Institute of Justice commissioned study, which reviewed supply side strategies concluded that each of them was effective in particular ways. It was observed there were also significant levels of complexity that DLE agencies face in undertaking supply reduction strategies, each of which in turn can involve a range of possibilities, with specific advantages and shortcomings.

When pursuing particular strategies and tactics, DLE agencies must also take account of issues such as government policy, agency resources, investigative powers, available intelligence information and potential conflicts with other initiatives. There are also marked differences of opinion as to the relative advantages of undertaking operations targeted at large scale and organised drug syndicates involved in drug importation, as opposed to strategies that focus on lower level drug dealers and drug users. A British Home Office study reminds us that data

criminal justice response to marijuana policy in the US. Washington DC, Justice Policy Institute, August 2005.


limitations make it difficult to evaluate the effectiveness of DLE activities. A review of the effectiveness of European DLE agencies in reducing drug trafficking suggested that marginal gains are probably only achievable in diminishing the influence of groups engaged in such activities.

"Regarding cocaine and heroin in Europe, however, interdiction which imposes relatively little cost upon trafficking, since low skill level traffickers are easily replaced and the replacement value of seized drugs is far less than their street value, seems unlikely to make progressive inroads into illicit trafficking."  

A number of Australian reports have indirectly considered the effectiveness of DLE strategies. One of the earliest was the 1989 report by the Parliamentary Joint Committee on the National Crime Authority, which includes an overview of the benefits of law enforcement strategies. However, the report also pointed out the costs of the current approach towards prohibition, such as conceding a monopoly on supply and distribution to criminal elements, thus forcing users into contact with the subculture, increasing the potential for corruption of law enforcement officials, reducing users’ access to health and other helping professions, increasing the likelihood of crime by regular users in need of funds for an expensive product and increasing the likelihood of injecting drug use to obtain maximum effect from a given quantity leading to risks of blood borne virus infections and other health risks associated with unregulated marketing of a consumer substance, for example, cutting drugs with contaminants.

A good starting point for reviewing effectiveness of DLE activities are two Australian reports published in 1996 arising from separate investigations by researchers with the National Police Research Unit which involved surveys and interviews with police services in all jurisdictions and an analysis of law enforcement activity, to determine the outcomes and impact of police activity in relation to illicit drugs.

The first of these, the Green and Purnell report, suggests that even though there was a lack of consistency in data and inadequate definition of major drug offences, it was clear that a relatively small proportion of activity by DLEs in Australia and overseas involved serious drug offences.

"Statistical analysis in this study has demonstrated that for Australia as a whole in 1992 and 1993 cannabis accounted for over 80% of detected drug offences and that possess/use/obtain offences continue to dominate (ie 72% of the total). These findings are not unique to Australia. In the United Kingdom in 1992, 85% of the total of all drug offenders detected had committed offences involving cannabis (alone or with other drugs). In the UK, unlawful possession similarly remains the predominant drug-related offence. almost 90% of UK drugs offenders in 1992 were found guilty or cautioned for this offence."

The second study, the Sutton and James report, is an important review of the structure of the DLE arrangements in each Australian jurisdiction and has a careful analysis of the

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104 Green P & Purnell I. *Measuring the success of law enforcement agencies in Australia in targeting major drug offenders relative to minor drug offenders.* Payneham, SA, National Police Research Unit, 1996.  
105 Id, 36.  
shortcomings of the approaches followed. The study notes that because of the magnitude of expenditure by law enforcement bodies in relation to illicit drugs, estimated to have been about $320 million in 1992, it is essential that policy makers make judgements about the impact of this expenditure.

“The fundamental problem is that this sector continues to be unable to take stock of impacts of its work and seems to lack the real motivation to do so. Problems are not confined to measuring the effects that particular arrests and seizures may have on street level suppliers and consumption patterns. There also seems to be systematic inconsistency between the most frequently declared aim of drug law enforcement – to target high level financiers, importers and traffickers – and what in fact is being achieved. Reviews by the research team of Australia wide data on drug related charges and arrests show clearly that the impacts of criminal justice continue to fall mainly on lower end distributors and users rather than high level operators.”

2.7 Measuring the size of drug markets

There are two broad approaches that can be used to measure the size and value of the cannabis market, by a sequential process of ‘building up’ the size of the market from indices of consumption or ‘working downwards’ from estimates of the volume of cannabis produced.

The first approach, sometimes referred to as the ‘bottom up’ (consumption based) approach, is concerned with building up the size of the market by determining the number of users, the frequency of their use and their consumption to produce an estimate of total consumption. Consumption based approaches are beginning to receive greater attention as methods are developed to produce credible estimates of drug consumption which in turn could be used to evaluate the impact on DLE activities on the cannabis market.

A recent example of this approach used to estimate the size of the cocaine market illustrates the importance of reliable data, as it built up a composite understanding of usage by conceptualising four separate groups of users – rare, occasional, frequent and problem users, for each of whom prevalence and consumption data was required to infer total consumption. A concern about the use of consumption and prevalence data is that it is derived from surveys of different populations (such as students, the general population, treatment populations and offenders), obtained by varying methods depending on the population (eg telephone interview, questionnaire and confirmation by urine scan) and undertaken by health agencies largely concerned with demand for treatment and other health goals rather than about DLE goals and outcomes.

The second approach, sometimes referred as the ‘top down’ (supply based) approach, is concerned with determining the amount of cannabis produced in drug producing countries or regions, including any domestic production, to estimate the proportion of production that is to be transferred to a particular market, after deduction for losses attributable to law enforcement, consumption in the source market and attrition in transit due to consumption and inefficiency.

This section will consider the consumption approach in some detail by briefly reviewing research from the US and UK, which will be followed by a consideration of research in NZ where this approach has been used and will conclude with using this approach to estimate the value of the cannabis market in WA.

107 Id, viii.
109 Further details about the supply based approach can be found in the annual reports and other publication produced under the auspices of the United Nations Drug Control Program. <http://www.unodc.org/unodc/index.html>
2.7.1 Consumption approach

In the US and the UK the consumption or ‘demand side’ approach has been used to estimate the value of the market for a number of illicit drugs by a combination of approaches. These methodologies rely upon distinguishing the drug consumption of regular/problematic users, who whilst they constitute a relatively small proportion of all users, are regarded as being responsible for the greatest proportion of drug consumption, from the consumption of recreational/occasional users.

2.7.1.1 United States

The approach followed in the US involves splitting the market into two populations of drug users, regular/problematic users and recreational/occasional users. For recreational/occasional users estimates of consumption were derived from the former US National Household Survey on Drug Abuse (NHSDA), which after major revision in 2002 was renamed the National Survey on Drug Use and Health (NSDUH). For regular/problematic users estimates of consumption are derived from random surveys of arrestees, previously referred to as the Drug Use Forecasting (DUF) program, now known as the Arrestee Drug Abuse Monitoring (ADAM) program.

The rationale for using ADAM data is that regular/problematic drug users account for the majority of consumption of illicit drugs such as heroin and cocaine and that as a proportion of these users are likely to come into contact with the criminal justice system, this data provides credible data on the expenditure patterns about all regular drug users. Examples of the consumption based approach exist in a report series which has periodically measured and monitored trends in indices in illegal drug consumption.110 More recently specific studies have been undertaken on the consumption of heroin and cocaine.111

2.7.1.2 United Kingdom

A preliminary study was undertaken in 1985 into the structure of the UK illicit drug market.112 This was followed by an updated and more comprehensive study in 1998 into the illicit drug market by the Office for National Statistics (ONS), using a methodology to estimate the magnitude of illegal economic activity in the British economy, one aspect of which was the market in illicit drugs.113

The 1998 ONS study followed similar research in the USA, which bifurcated drug markets into two populations - recreational/occasional users and regular/problematic drug users. In relation to the drug market component, the study analysed data from the British equivalent to the US household survey, the British Crime Survey (BCS) and data from individuals attending treatment services.

A 2001 study in the UK for the Home Office by National Economic Research Associates (NERA) is a potential template for similar research in Australia into the size of the illicit drug market.114 The study, which followed earlier research, estimated the size of the illicit drug market by building up estimates of consumption by both regular/problematic and recreational/occasional users, combined with estimates of individual consumption and expenditure.

expenditure, to produce an estimate of total consumption. This project also involved modelling which adjusted for drugs users who were in prison.

In the NERA study consumption of regular/problematic users of amphetamines, crack, cocaine and heroin was derived data from the NEW-ADAM (New English and Welsh Arrestee Drug Abuse Monitoring) program, such a user being defined as anyone who reported use in the last week. As the NEW-ADAM collected data on the number of days of use of particular drugs in the past 30 days, this was adjusted to measure use on at least four occasions in the last 30 days. The NERA research involved a four step process to determine the number of regular/problematic users:

1) total number of people arrested for all offences in a year;
2) the proportion of arrestees who are regular users of specific drugs;
3) the probability that a regular user is arrested in a year (NEW-ADAM asks respondents about their arrest history) to provide a multiplier to convert the estimated the number of arrestees that are users to the general population of regular users; and
4) the probability that an individual has been imprisoned in the year and average length of time spent in prison (to adjust for regular users in the general population who in prison in the year).

The use of the NEW-ADAM data assumes that regular/problematic drug use places an individual at a risk of arrest to the extent such a person will appear in samples from the NEW-ADAM surveys. The methodology assumes that arrestees are a representative cross section of this population of drug users. While the NEW-ADAM survey collects data on total expenditure for both the past 30 days and the past week, the NERA researchers used the expenditure for the last week and converted this by regression analysis to average expenditure per drug per day used. This measure of expenditure was used to calculate the average annual expenditure of regular/problematic users (ie the average number of days used in the last 30 days multiplied by 12 months).

However, the NERA researchers used household survey data instead of arrestee data to calculate the number of regular users of cannabis and ecstasy as the estimates for these two classes of drugs was reliable because of their higher prevalence rates. The NERA research relied on two sources of prevalence data, the BCS, a regular population survey involving 16 to 59 year olds and the Youth Lifestyles Survey (YLS), a survey of 12 to 30 year olds. The BCS determined the total number of users of cannabis and ecstasy and consumption was derived from data from the YLS to identify the average annual number of users per year. To calculate total expenditure for these two drugs, the NERA researchers multiplied the average number of users by the average expenditure per use, as measured by the NEW-ADAM survey.

The final analysis in the 2001 NERA study involved the conversion of the estimated monetary value of the market for each drug into estimated physical quantities of each drug represented by this expenditure. This was done by using estimates produced by the National Criminal Intelligence Service (NCIS) of the prices and purity of drugs seized in the UK.

A different approach to estimating the size of the illicit drug market in the UK has been undertaken by the Independent Drug Monitoring Unit (IDMU), which has administered anonymous self-completed questionnaires to drug users attending pop festivals and other outdoor events since the mid 1990s. There is concern about the reliability of this method given some of the large numbers it produces. For instance, the IDMU 2003 survey estimated there was a total of 3,350,801 regular cannabis users in the UK, the NERA method estimated there were 595,797 and the BCS estimated there was a total of 151,000 persons who had used in the past month.

2.7.1.3 New Zealand

A significant amount of information about drug use in NZ has been generated from work by researchers associated with the Alcohol and Public Health Research Unit (APHRU) at the University of Auckland, which has closely studied a number of facets of cannabis markets in that country. A 2002 APHRU study estimated the value of the cannabis market by using prevalence and consumption data from the 1998 New Zealand National Drug Survey (NZNDS).\textsuperscript{116} This study included a review of research in 2001 by Dawkins\textsuperscript{117} who had adopted a ‘supply side’ or production approach based on police seizures of cannabis plants, which estimated that the NZ cannabis market was worth between $636 million and $1.27 billion.\textsuperscript{118}

The 2001 research by Dawkins should, however, be treated with caution as it contains a number of flaws, including that it used an average yield of 8 ounces per outdoor plant per annum, whereas the accepted yield is between 2 to 4 ounces per outdoor grown plant, that it assumed police seized one third of cultivated cannabis plants, that it failed to discount for the consequence that male plants were unproductive, that it may have overstated the price ranges of cannabis and that it assumed all cultivated cannabis was sold on the black market.

A strength of the 2002 APHRU study is that it utilised data gathered through a national survey, the NZNDS, which routinely collects a wide range of information about cannabis, including consumption patterns and preferences, sources of supply and methods of acquisition. The NZNDS has a much better level of detail on consumption and other issues, such as concern about level of use and dependence, compared to the Australian National Drug Strategy Household Survey (NDSHS). (See Appendix 6 for extracts of the cannabis section of both the NZNDS and Australian NDSHS survey questionnaires.)

The 1998 NZNDS asked users questions about their consumption, expressed as the number of cannabis joints consumed on a typical occasion. If respondents reported they used a bong to consume cannabis they were asked to estimate this consumption as the number of joints or if they smoked a joint in a group situation, they were asked to estimate how many people they typically shared a joint with on that occasion. In addition to the estimation of the amount of consumption, respondents were also asked to estimate how much of the cannabis they used was received for free, grown for their own use or purchased from somebody else.

A series of steps were followed by the 2002 APHRU study to calculate the estimated total amount of cannabis consumed in the year 1998. The first step was to estimate the consumption of those aged 15 to 45 years who had used cannabis in the past year to calculate the mean annual cannabis consumption expressed as joint equivalents. The mean annual consumption of cannabis joint equivalents was the product of the number of joints consumed on a typical occasion for each individual multiplied by the number of times cannabis was used in the past year.

The second step was to estimate the amount of cannabis consumed, which was estimated to be equivalent to 21,222,824 joints. The consumption of 21,222,824 joints was multiplied by a factor of 0.5 grams (the mean amount of cannabis per joint) to provide a total consumption of 10,611.412 kilograms of cannabis in 1998. Adjustments were also made for differences in male and female average consumption on a typical occasion which according to the NZNDS was 0.81 of a joint for males and 0.61 of a joint for females.

The third step was to estimate a value of this consumption, based on data obtained by the NZNDS, by calculating the value on the retail end of the market, ie what consumers paid

according to the different forms in which cannabis was sold in New Zealand.\textsuperscript{119} The analysis also considered both the wholesale and retail prices that were paid and made an adjustment for underestimation of cannabis use in the NZNDS. The value of the NZ cannabis market in 1998 was estimated as being in the range of $81.3 – $104.6 million for the wholesale market and in the range of $131.4 – $168.9 million for the retail market. It was concluded that

“(t)he demand side estimates are much lower than the existing supply side estimates of the market. The retail figure is four times lower than the lowest national supply side estimate ($636 million) and seven times lower than the highest national supply side estimate ($1.27 billion). The media estimates of the cannabis market ($1 – 3 billion) are many times larger again. The demand side estimates suggest a much smaller cannabis economy to finance organised criminal groups in New Zealand than previous estimates imply.”\textsuperscript{120}

A revised study of the value of cannabis consumed in 2001 was undertaken by a number of researchers from the Centre for Social and Health Outcomes Research and Evaluation (SHORE) based at Massey University in Auckland, some of whom had conducted the earlier APHRU research.\textsuperscript{121} This study sought to control for some of the problems of research involving illicit drug markets. One being to accurately measure the total amount of cannabis purchased, as this type of information is not usually gathered in large scale community surveys. As this information is frequently unavailable researchers need to avoid assumptions about the quantities of drug consumed as populations of drug users tend to have skewed distributions of consumption.

Compared to the earlier study, this research was able to utilise more detailed information from the 2001 NZNDS concerning units of consumption, frequency of purchases in the year and average price paid for each type of unit of consumption. It was estimated that the value of the cannabis market in 2001 was $190 million, compared to spent $610 million on tobacco products and $1,255 million on alcohol products in the same year.

There were some important findings from this research with respect to expenditure by different groups of cannabis users. Thus the top 5% of cannabis purchasers accounted for 42% of total value of expenditure in the NZ cannabis market, with a median expenditure of $7,425 on cannabis in the past year. The bottom 50% of purchasers accounted for only 6% of the total value of expenditure, spending a median of $100 on cannabis in the past year.\textsuperscript{122}

An analysis of the cannabis market by quantity of cannabis purchased found that the top 5% of purchasers purchased 28% of the total quantity of cannabis purchased in the market and that the next 5% of purchasers purchased 24% of the total quantity of cannabis purchased in the market. The differences between the distribution of value of expenditure and quantity of cannabis purchased reflects advantages enjoyed by those who can purchase larger quantities of cannabis as the cost per unit decreases with increasing size of purchase due to ‘bulk purchasing’. It was concluded that the additional questions in the 2001 NZNDS had provided

“a more precise estimate of the dollar value of the cannabis black market as well as examine other economic aspects of cannabis use using the National Drug Survey data. Only about one third of cannabis users were found to purchase their cannabis, with the free sharing of the drug the most common means of supply. For the majority of cannabis buyers, the amounts spent on cannabis would not ordinarily be associated with economic decline or

\textsuperscript{119} Cannabis was sold as ‘bullets’ – small packets containing about 1.5 grams of cannabis, as ‘bags’ – in either $50 or $100 forms and as ‘ounces’.


\textsuperscript{122} Id, 231.
the need to resort to criminal activity to finance use except among those with very low incomes.”  

2.7.1.4 Western Australia

The limited nature of data gathered by the NDSHS concerning cannabis, such as frequency of use, cultivation, self supply, value of expenditure and quantity used, makes it difficult to develop a good understanding of Australian cannabis users. If more comprehensive data on cannabis consumption was sought from respondents this could be used for a number of purposes, including to develop an understanding of the market and to determine the impact of DLE and other factors on supply and demand.

The paucity of data gathered from the Australian NDSHS can be contrasted with the breadth and depth of data obtained through the NZNDS. It would appear that the NZNDS has been developed, at least in relation to the cannabis section, from a well conceptualised framework to gather a comprehensive set of data to satisfy a number of purposes, such as to understand the drug market, the impact of the individual’s use of cannabis on their health, social relationships and contact with and use of help and support services.

Another problem in estimating consumption is the actual dose of tetrahydrocannabinol (THC) that users may receive, given that “a typical joint contains between 0.5 and 1.0 grams of cannabis plant matter, which varies in THC content between 5 mg and 15 mg (typically between 1% and 15% THC)”. As this data is not gathered through the NDSHS, it needs to be obtained from other sources and extrapolated to the population of regular/problematic and recreational/occasional cannabis users.

A comparison will be made of the applicability of two methodologies to estimate the consumption and expenditure of regular/problematic users, one of which was contained in a WA report published in November 1997 which used prevalence data from the NDSHS to estimate the number of cannabis users in WA. The second methodology will attempt to replicate the NERA approach, which utilised offender self report data, to estimate the consumption and expenditure patterns of regular users by using data obtained by the Drug Use Monitoring in Australia (DUMA) project at the East Perth lock up.

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123 Id, 233.
124 The items in the interview schedule from the 2001 NDS questionnaire are contained in Section M. This section is reproduced in Appendix 6. Question M11, which asks “On a day you use marijuana/cannabis on average how many cones, bongs or joints do you normally have?” is the only frequency question. Question M8 asks “In the last 12 months, how often did you use marijuana/cannabis?” However, neither of these questions provide a measure of the amount and value of cannabis consumed over a period of time.
125 The limited amount of data collected about cannabis use can be contrasted with the breadth of data collected by the NDSHS concerning alcohol and tobacco use.
126 Both the Australian and New Zealand household surveys rely on the use of computer assisted telephone interview (CATI) approach of conducting interviews. The Australian surveys also supplement the CATI data with a drop and collect questionnaire.
127 The items in the interview schedule from the NZ 2001 NDS questionnaire are contained in Section 4, which is reproduced in Appendix 6.
129 A number of questions from the NZ 2001 NDS provide data on consumption: Question 53 asks “How many people would you usually share a joint with not including yourself?” Question 54 asks “How many joints would you (if smoking alone) smoke on a typical occasion?” (Followed by “If you know how many grams you smoked or the amount of cannabis you smoked I can also input that amount.”) Question 55 asks “How many joints would the group of [number in Q 53] smoke on a typical occasion?” See Appendix 6.
DUMA consists of quarterly surveys conducted under the auspices of the Australian Institute of Criminology (AIC) at a total of seven police lockups in a number of Australian states and involves data collection on offending and drug use through an interview plus urinalysis screening for the presence of heroin, methadone, cannabis, amphetamines, methamphetamine and benzodiazepines.\textsuperscript{132}

The AIC also conducted a three year research project, the Drug Use Careers of Offenders (DUCO), which obtained data on drug use and criminal offending.\textsuperscript{133} Whereas DUCO involved a survey of sentenced offenders to determine the relationship between offending and drug use, DUMA seeks to measure long term trends in drug use by quarterly surveys of a wide spectrum of offenders very close to their apprehension and whilst in police custody, before they have appeared in court or been released on bail.

The Queensland Criminal Justice Commission\textsuperscript{134} (CJC) Advisory Committee on Illicit Drugs surveyed a number of ‘frequent, regular users’, defined as persons who used cannabis once a week or more often.\textsuperscript{135} It was estimated that there were 83,600 such users in Queensland in 1993, each of whom consumed a mean of 17.3 ounces of cannabis per year, representing an aggregate expenditure of $362 million (1993 prices).\textsuperscript{136}

The Australian Bureau of Criminal Intelligence (ABCI) has been responsible for publication of an annual national assessment of DLE issues in Australia over a number of years. The first such report, the Major drugs report, was produced on a calendar year basis in 1988, 1989 and 1990. The report was expanded in 1991 and renamed the Australian drug intelligence assessment (ADIA) report which incorporated material that had been published separately since 1985 by the Australian Federal Police (AFP), in collaboration with a number of Commonwealth and state DLE organisations. The AFP report was known as the Illicit drugs in Australia situation report.

The ADIA report was published on a calendar year basis, being renamed in 1994 as the Australian illicit drug report (AIDR), until the year 1995/1996 (which means that the 1995/1996 report contains 18 months data, i.e from January 1995 to June 1996). The 1994 AIDR contained for the first time an annual breakdown of the number of arrests by type of drug and type of offence for each Australian jurisdiction. The 1995/1996 AIDR report was the first in what has remained a continuing series of annual reports presenting both annual and quarterly data for important indices of DLE activity such as arrests, type of offence, seizures, purity...
and mean prices which are broken down by different drug groups and for each separate jurisdiction.

**Prevalence data & regular users (non offender)**

Based on the 2004 NDSHS WA dataset, it was estimated in 2004 a total of 220,744 persons had used cannabis within the last 12 months (ie used recently), of whom 127,290 (57.7%) had used in the last four weeks (Table A1-2). If the definition of regular use (ie used once a week or more often) developed by the 1993 CJC inquiry is adopted, then 86,325 (39.1%) of the 220,744 persons in 2004 who had used cannabis regularly, ie in the last week or more often. (Table A1-3).

To estimate the dollar value of all cannabis consumed in WA this consumption was represented as the number of ‘joint equivalents’ regardless of type of cannabis or method of use. This approach is likely to result in the under estimation of consumption by occasional users if they were more likely to share than regular (ie heavy) users and if they share more than a single joint on a cannabis using occasion. The higher frequency of cannabis being smoked with bongs by younger persons compared to older persons may also underestimate the total value of cannabis consumption (see Table A1-4).

It is considered that a joint typically has about $5 worth of cannabis. The police data suggests that prices of cannabis vary according to quantity and type, with lower net prices per gram for purchases of larger quantities. West Australian average annual prices is based on data from controlled buying, from reports by informers and reports by offenders, which has been published on an annual basis since the 1995/1996 AIDR. See Table A2-1.

The AIDR was published by ABCI up to the 2001/2002 report and has since been published by the Australian Crime Commission (ACC), which was formed by the merger in January 2003 of the ABCI, the National Crime Authority and the Office of Strategic Crime Assessment. The report was renamed the Illicit drug data report (IDDR) for the 2002/2003 report and continues to be compiled and published by the ACC.

There is also another series of annual median price data in Australian drug trends, published by the National Drug and Alcohol Research Centre (NDARC). This data is partly based on user self report data of the price paid on the last purchase of cannabis per gram (Table A2-13) and per ounce (Table A2-14). This is report is produced as part of the Illicit Drug Reporting System (IDRS) and also consists of data from injecting drug users, key informants and analysis of indicator data.

It is submitted that the IDRS data may be of limited utility to estimate cannabis consumption and expenditure, as it involves a skewed population of drug users, of small non-representative samples of injecting drugs users. Many of those who are surveyed for the IDRS have significant problems associated with dependency on heroin and other injectable drugs and also report high rates of the use of cannabis and other substances. Another shortcoming is that IDRS data is a composite of self report data of the last purchase of cannabis by drug users and from

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138 There are a number of concerns about ACC (police) price data, including that it is not representative, there is a lack of uniformity in data collection between jurisdictions, prices are usually provided as a range and the number of data points are not specified. For a discussion of problems in using price data and generating annual prices Cf: Clements KW. *Three facts about marijuana prices*. Perth, Department of Economics, University of WA, 2002.

139 There was a national rate of 82% of cannabis use in the past six months and in WA a sample of 100 IDUs was surveyed.
data provided by key informants. Some of these key informants may rely on the recollections and impressions on clients and others exposed to the cannabis market.

Three scenarios were developed to represent different frequencies of use and amount of cannabis consumed in WA in 1995, 1998, 2001 and 2004. It was assumed that the value of a joint equivalent remained at $5 for each of the four time periods based on data from the 1995, 1998, 2001 and 2004 NDSHS whereas the value of an ounce of cannabis was adjusted from $240 in 1995 to $250 in 1998, 2001 and 2004 based on WA law enforcement data collated in the ABCI/ACC annual reports. Table 1 summarises the estimates of value of cannabis consumption for the four NDSHS periods broken down by frequency of use and for each scenario.

**Scenario 1**
Within the last –
- 7 days – consumed two joint equivalents 2 times per week;
- 4 weeks – consumed two joint equivalents 12 times per year;
- 12 months – consumed two joint equivalents 6 times per year.

**Scenario 2**
Within the last -
- 7 days – consumed two joint equivalents 5 times per week;
- 4 weeks – consumed two joint equivalents 12 times per year;
- 12 months – consumed two joint equivalents 6 times per year.

**Scenario 3**
Within the last -
- 7 days – consumed 17.3 ounces per year;
- 4 weeks – consumed two joint equivalents 12 times per year;
- 12 months – consumed two joint equivalents 6 times per year.

These three scenarios provide a range of estimated aggregate value of the consumption of cannabis by West Australians (in round figures) in the years 1995, 1998, 2001 and 2004 (Table 1). The more detailed analysis of expenditure broken down by age group is presented in Table A1-2, shows the greatest proportion of expenditure is attributable to regular users, ie those who use cannabis on a weekly basis. This analysis does not rely on assumptions that all cannabis was paid for as it is an attempt to place a range of values of the WA cannabis market.

There were some data discontinuity between the four NDSHS surveys, including that an estimate of cannabis use in the last 7 days was available for the 1995 and 1998 surveys, whereas in the 2001 and 2004 surveys cannabis use was separated into ‘every day’ and ‘once a week or more often’. The 2001 and 2004 estimate of use in the last seven days has been constructed therefore by aggregating these two frequencies of use.

Another difficulty in continuity between the first two surveys in 1995 and 1998 and the two most recent surveys in 2001 and 2004, is that the latter have an additional level of detail of use involving the 40 years and older age group, being broken down by three age groups - 40 to 49 years, 50 to 59 years and 60 years and older, whereas the 1995 and 1998 surveys only had a breakdown for the 40 years and older age group. This necessitated a recalculation for the 40 years and older age group to maintain consistency across the four time periods.

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140 I.e not adjusted for possible CPI (inflation) changes between 1995 and 2004.
Table 1: Summary of estimated expenditure ($) on cannabis, WA, 1995 - 2004

<table>
<thead>
<tr>
<th>Scenario 1</th>
<th>Last 12 months</th>
<th>Last 4 weeks</th>
<th>Last 7 days</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>$19,146,922</td>
<td>$17,349,440</td>
<td>$103,975,124</td>
<td>$140,471,487</td>
</tr>
<tr>
<td>2001</td>
<td>$15,919,552</td>
<td>$19,673,851</td>
<td>$118,132,981</td>
<td>$153,726,385</td>
</tr>
<tr>
<td>2004</td>
<td>$13,122,550</td>
<td>$15,211,680</td>
<td>$89,778,441</td>
<td>$118,112,671</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenario 2</th>
<th>Last 12 months</th>
<th>Last 4 weeks</th>
<th>Last 7 days</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>$13,722,421</td>
<td>$15,169,257</td>
<td>$272,546,758</td>
<td>$301,438,436</td>
</tr>
<tr>
<td>1998</td>
<td>$19,146,922</td>
<td>$17,349,440</td>
<td>$259,937,811</td>
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</tr>
<tr>
<td>2001</td>
<td>$15,919,552</td>
<td>$19,673,851</td>
<td>$295,332,453</td>
<td>$330,925,856</td>
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<tr>
<td>2004</td>
<td>$13,122,550</td>
<td>$15,211,680</td>
<td>$224,446,680</td>
<td>$252,780,333</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Scenario 3</th>
<th>Last 12 months</th>
<th>Last 4 weeks</th>
<th>Last 7 days</th>
<th>Total</th>
</tr>
</thead>
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<td>1998</td>
<td>$19,146,922</td>
<td>$17,349,440</td>
<td>$432,396,550</td>
<td>$468,892,913</td>
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<tr>
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<tr>
<td>2004</td>
<td>$13,122,550</td>
<td>$15,211,680</td>
<td>$373,357,459</td>
<td>$401,691,689</td>
</tr>
</tbody>
</table>


Note: Base - Those who have used cannabis in last year.

Although all cannabis consumed in each of the three scenarios is given a market value, a proportion of this cannabis consumption may not have necessarily involved cash outlays. For instance, some users may have only used cannabis cultivated by themselves and others may have exchanged services or goods for cannabis provided by others. Indeed, findings from a recent US study indicates with respect to those who had used cannabis in the past year, that more than half (57.8%) had obtained their cannabis at no cost when they last obtained cannabis, indicating that a proportion of cannabis consumption may never involve direct monetary outlays. It was concluded that

“there is a great deal of informal distribution in the marijuana market. Buyers do not typically use all of what they buy, and even those involved in selling frequently give away part of their own supplies.”

It can be seen that the shifts in aggregate expenditure are due to variations in the consumption by those who use cannabis within the last 7 days, ie regular/problematic users. This analysis would suggest that the major influence on demand and price in the cannabis market may be determined by the consumption patterns of this group of users, ie those who use within the past week, as they are responsible for between 74% and 92% of the total value of all cannabis consumption, depending on the scenario.

One implication of this finding, for instance, is that interventions which targeted regular/problematic users are more likely to have a major impact on the structure of the cannabis market compared to interventions which target those who use infrequently. Another implication is that consumption patterns may be a determinant of the willingness of cannabis users to cultivate, as cultivation enables regular users to have access to cannabis on a

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guaranteed basis, especially if they are cannabis dependent. Willingness to cultivate would also be determined by other factors, such as the required time and effort, investment in sufficient resources and capital (especially if hydroponic cultivation is undertaken), skill and perseverance and being prepared to manage the vagaries of seasonal price variations.142

There is support for the proposition that it is the activities of regular/problematic cannabis users who should be the primary object of policy initiatives, such as through public education campaigns linked to the CIN scheme, as they consume the greatest proportion of cannabis and thus are influential in the structure and operation of the cannabis market.

“Studies of regular users indicate they generally prefer to use the more potent forms of cannabis, such as, the heads of the plant, probably because they develop tolerance to the effects of less potent cannabis. Using the Queensland Advisory Committee on Illicit Drugs data, it can be estimated that daily and weekly cannabis users account for 80% of all the cannabis that is consumed.”143

Table 1 summarises the trends across the four time periods, with total expenditure increasing from the 1995 to 2001 surveys and then in 2004 declining, in line with the marked decrease in prevalence that occurred in 2001 and 2004, after the peak in the 1998 survey.

- In scenario 1 (which assumes that regular/problematic users consumed cannabis twice per week), it is estimated that those who used in the past week accounted for $118 million (77%) of a total expenditure of $154 million in 2001 and for $90 million (76%) of a total expenditure of $118 million in 2004.

- In scenario 2 (which assumes that regular/problematic users consumed cannabis five times per week), it is estimated that those who used in the past week accounted for $295 million (89%) of a total expenditure of $330 million in 2001 and for $224 million of a total expenditure of $253 million in 2004.

- In scenario 3 (which assumes that regular/problematic users consumed a total of 17.3 ounces of cannabis in a year), it is estimated those who used in the past week accounted for $491 million (93%) of a total expenditure of $527 million in 2001 and for $373 million (93%) of a total expenditure of $402 million in 2004.

In summary in the year 2001 the estimated annual value of cannabis consumption in this State ranged between $154 million and $527 million and in 2004 the estimated value of cannabis consumption ranged between $118 million and $402 million. It is suggested that the result from scenario 3 may be a reasonable estimate of the total annual market value of cannabis consumed by West Australians, as it combines the CJC’s estimate of consumption of regular/problematic users (ie those who used weekly or more often) and the estimate of consumption by less frequent users (ie ‘recreational’ users) who used about once per month, every few months and 1-2 times per year.

If the annual market value of cannabis consumption in WA in 2004 was $402 million (scenario 3) when broken down by frequency of use, this would have represented a total expenditure of $13 million by those who had used in the last 12 months, $15 million by those who had used in the last four weeks and $373 million by those who had used in the last seven days.

Prevalence data & regular users (offenders)

This section examines the feasibility of the NERA methodology developed by the Home Office to measure the size of the market in illicit drugs, by using self report data from arrestees as an index to estimate the drug use and expenditure of regular drug users.\(^{144}\)

The base for estimating the number of offenders is from crime statistics published by the Crime Research Centre published in the report *Crime and justice statistics for Western Australia 2002*. In the year 2002 there was a total of 322,521 offences in WA, however as this figure does not represent the number of distinct persons, it needs to be derived from other data. In the year 2002 there was, excluding minor traffic offences, a total of 85,438 arrests, which represented 33,505 distinct persons, i.e. an average of 2.5 apprehensions per person. Applying this factor to the total of 322,521, it is estimated there was a total of 129,008 distinct persons who were arrested in WA in 2002.

The probability of a regular cannabis user\(^ {145}\) being arrested in the last year was calculated as the proportion of cannabis users who were reported by DUMA as having been arrested at least once in the last year. This means cannabis users arrested for any type of offence. It was estimated there was a total of 156,530 regular users in the community in 2002 (Table 2), which is close to the total of 165,409 regular users (i.e. used in the last four weeks) from the NDSHS estimate in 2001 (Table A1-2).

DUMA also asks respondents how much they have spent in total in the past year on cannabis and each of the other drugs surveyed by DUMA. With respect to cannabis, this was an average annual expenditure of $10,535 per individual (Table 3). However, an average annual expenditure of $10,535 for each regular cannabis translates into an unbelievably high aggregate expenditure if applied to the 156,530 regular users. Therefore, it must be concluded that a methodology based on DUMA to estimate expenditure by regular users is not reliable at this time. Further consideration is required of the DUMA expenditure data and consumption data.

### Table 2: Estimated number of regular cannabis users, WA, 2002 (DUMA)

<table>
<thead>
<tr>
<th>Distinct persons arrested (all offences)</th>
<th>% DUMA sample regular cannabis users</th>
<th>Regular cannabis users arrested (all offences)</th>
<th>Probability cannabis user arrested in last year</th>
<th>Number regular cannabis users in community</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B 72.8%</td>
<td>C (A x B)</td>
<td>D 0.60</td>
<td>E (C/D) 156,530</td>
</tr>
<tr>
<td>129,008</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Base – WA DUMA dataset 2002.

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\(^{145}\) A regular user was defined as someone who had used a specific drug on average 3 or more days in the last month.
Table 3: Estimated annual expenditure per regular cannabis user, WA, 2002 (DUMA)

<table>
<thead>
<tr>
<th>Av days used in last month</th>
<th>Av days buy in last month</th>
<th>Av expenditure per day used</th>
<th>Av monthly expenditure</th>
<th>Av annual expenditure (adjusted)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>B</td>
<td>C</td>
<td>D (A x C)</td>
<td>E (D x 12)</td>
</tr>
<tr>
<td>18.6</td>
<td>10.1</td>
<td>$47.20</td>
<td>$877.90</td>
<td>$10,535</td>
</tr>
</tbody>
</table>

Note: Base – WA DUMA dataset 2002.

2.7.2 Production approach

An alternative methodology is to estimate the market value of the cannabis produced in WA each year, based on the total value of the cannabis crop from police seizure data. Assumptions are required about the effectiveness of DLE activity, as it is not known what proportion of all mature cannabis plants are seized by the State police, what proportion of these plants were mature plants or seedlings, or what proportion were male plants (male plants are considered to have little value because of their low THC levels).

Unfortunately, due to inconsistencies in the police data systems that records seizures, data is only available for the period 1984/1985 to 1993/1994 (Table A2-2). There was a total of 482,897 cannabis plants seized by the WA police over this 10 year period, a mean of 48,290 plants seized per year. Since 1993/1994 the police data system has not been able to accurately provide data in relation to the quantities of drugs or numbers of plants seized. As reliable police annual seizure data is not available after 1993/1994 the mean number of 48,290 plants seized per year has been projected to the year 2004. It is plausible to suggest that as cannabis use has increased over the intervening decade since the last breakdown for 1993/1994, the number of plants seized may have increased, assuming the ratio of cultivation arrests has remained constant.

It is assumed that half of the remaining plants not seized by the police were female plants and thus produced marketable (psychoactive) cannabis as leaf and 'heads'. This is most likely an underestimate of mature productive plants as hydroponic cultivators tend to adopt selective cropping techniques to eliminate male plants from the plants under intensive cultivation. Two approaches are proposed to estimate the annual number of mature producing cannabis plants.

In the first approach, if the mean of 48,290 plants seized by police per year (based on the data from 1984/1985 to 1993/1994) represents only 20% of all mature cannabis plants, an average of 193,160 undetected and viable producing plants would still remain. If it is assumed 50% of these plants were capable of producing marketable leaf or heads, there were an average of 96,580 mature producing plants per year in WA.

In the second approach, if the mean of 48,290 seized plants represented only 10% of all mature cannabis plants, 434,610 viable producing plants still remained. If it is assumed 50% of these plants were capable of producing marketable leaf or heads, there were an average of 217,305 mature producing plants in this State.

A survey of a sample of cannabis crop growers in northern New South Wales conducted between April and June 1995 concluded that a cannabis plant could be valued at $2,000. The estimated value of production from a cannabis plant of $2,000 per year will be used for the purposes of the following calculation without any adjustment for improvements in productivity.
or changes in monetary values due to inflation. It is submitted this is a conservative value, as in a 2001 case on appeal to the Supreme Court of WA\textsuperscript{148} expert evidence was given that the 47 hydroponic plants involved would have produced about $4,000 worth of dried cannabis per plant, which if sold as ounce weights would have been worth a total of $188,000 or if sold as pound weights would be worth a total of $124,000.

Therefore, if each remaining mature producing plant was assumed to have produced at least $2,000 worth of viable cannabis per year, it is estimated there were two possible values of the cannabis market:

- a total value of $193 million based on 96,580 viable plants or
- a total value of $435 million based on 217,305 viable plants.

This means that in 2004 there was a surplus of $33 million between the estimated total value of the cannabis crop of $435 million and the estimated aggregate value of cannabis consumption of $402 million (as estimated in scenario 3).

This analysis of the value of cannabis consumption in WA highlights the limited knowledge about the patterns, frequency and value of cannabis consumption. A conservative approach has been adopted to estimate the number of persons who used cannabis in the past year and the likely value of their consumption according to recency of use indicates that in the year 2004 it is estimated:

- there were a total of 217,000 mature producing cannabis plants in this State which produced cannabis with a market value of at least $435 million;
- a total of 220,744 persons used cannabis in the last 12 months; and
- the aggregate value of the WA cannabis consumed was $402 million.

Because of the data limitations the production approach should not be regarded at present as being a reliable method to estimate the size of the cannabis market. Also the shifts towards indoor hydroponic cultivation away from outdoor cultivation means that the market has probably now fragmented into a relatively large number of small scale operations which are difficult to detect and value. The productivity of hydroponic cultivation may mean annual production on a single plant basis will be underestimated. A recent assessment by the US Drug Enforcement Agency of the drug situation in Australia in the year 2003 includes some comments about trends in cultivation that are relevant to this issue viz.

“An estimated 5,000 hectares of cannabis are grown outdoors in Australia each year, ... (especially in) New South Wales and Queensland (which) are the primary growing areas for outdoor cultivation of cannabis because of the favourable climate. ... Hydroponic cultivation of cannabis is used in large scale operations. Hydroponic cultivation is perceived by the traffickers to have a number of advantages such as higher yields, reduced risk of detection and an increased sense of security by the growers.”\textsuperscript{149}

\textsuperscript{149} United States, Department of Justice, Drug Enforcement Administration. Drug Intelligence Brief. Australia: Country brief 2003. Washington DC, Intelligence Division, Drug Enforcement Administration, Department of Justice, 2004.
Chapter 2: Drug Law Enforcement & Drug Markets

2.8 Policy implications of understanding drug markets

It needs to be appreciated that knowledge about drug markets will be heavily reliant on estimates of the value of specific drugs from arrestees and informants when police make arrests. There is some concern about the accepted method of estimation of total value of seizures used by DLE agencies, which apply the final ‘street’ level values to the aggregate value of the seizure regardless of where it is in the distribution chain. Law enforcement agencies appear to routinely commit this type of error, such as when they provide information as to the purported value of a drug seizure. The value of the seizure is typically based on the value of the quantity of drug as if it was divided into separate transactions, each of which are assumed to involve cash payments, calculated at the rate paid by final consumers.

The problem of estimating value of a quantity of a seized drug can be illustrated by considering the process of heroin distribution, because a significant amount of the drug is not paid for in cash as money only enters the distribution chain once.

“Ultimately the dealers habit must be paid for by users at the end of the line who will finance their purchases from wages, savings, social security payments, prostitution and theft. ... The true economic loss ... would more appropriately be based upon the cost of the average daily habit of hustlers who bring into this illicit marketing system real dollars or goods obtained from illegal activities.”

The politicised nature of drug law enforcement is illustrated by the debate on the decline in heroin related deaths since 2001 in Australia, which it is asserted, “was due in large part to the role of law enforcement”. Australian Health Ministers’ Conference. Joint communiqué: Governments welcome reports on heroin shortage. Department of Health & Ageing, Media release, 12 November 2004. Cf: statement by Senator Chris Ellison, Minister for Justice and Customs on the release of a report into the heroin shortage in Australia. “The most important implication of the heroin shortage is that it is possible under some circumstances for law enforcement to accomplish a substantial reduction in the availability of imported drugs like heroin.” Minister for Justice & Customs. New report recognises key law enforcement role in heroin drought. Media release, 12 November 2004. However this rhetoric does not square with the Howard government’s action, soon after its election in 1996, of instituting substantial reduction of 6.95 in the allocation in the 1996-97 budget to the Australian Federal Police (AFP) and a further reduction of 4% in the 1998-99 budget to the AFP and the National Crime Authority. The growth in heroin overdoses that occurred over this period has, not surprisingly, not been correlated with the impact of funding reductions, whereas credit was claimed following restoration and expansion of funding some years later: Wodak A. “Is the Howard government tough on drugs?” Social Research Briefs, December 2004, No. 7. National Centre in HCV Social Research, University of New South Wales. The impetus for claiming policy success with respect to DLE activity concerning heroin also overlooks the critical importance of exogenous factors in reducing heroin deaths. “The heroin shortage that began in 2001 has been claimed as another victory for drug law enforcement, although this disregards the 80% reduction from 1996 of heroin production in Burma, source of most of the heroin reaching Australia”: Wodak A. “Is the Howard government tough on drugs?” Social Research Briefs, December 2004, No. 7. National Centre in HCV Social Research, University of New South Wales.


Id., 773-774.


Weatherburn D & Lind B. Drug law enforcement policy and its impact on the heroin market. Sydney,
It is helpful to understand how a drug may be sold before considering the issue of valuing of a drug market. For instance, as heroin can be readily broken into smaller retail units of different value, this will be an important determinant of market operation. Typically a unit of a drug such as heroin will be broken down into smaller and smaller units with declining purity as it passes along the distribution chain, until it finally becomes ‘street’ heroin.

A respected analysis of this process, through six levels of distribution, estimated that after the final dilution, one kilo of imported heroin was converted into an aggregate of 12.75 kilos of ‘street’ heroin, with proviso that overall a limited amount of one kilo was available for distribution at the ‘street’ level, as 47% of the original one kilo was consumed by intermediate level distributors, so called addict/dealers.\(^{153}\)

This means official information should be treated with caution, for as one critic has noted, it often driven by an imperative to produce large numbers.\(^{154}\)
“Behind the request for a number is the half-hidden desire that the number be large: big problems justify big programs and big budgets ... In fact, we could probably specify fairly closely for many social or health problems a range of numbers that would be considered politically acceptable.”

Another commentator has argued the tendency to produce numbers which are inaccurate and exaggerated is a function of a desire by governments to capitalise on public concern about law and order.

“There is a strong interest in keeping the number of addicts high and none in keeping it correct. In that respect the estimated number of addicts is one of a class of ‘mythical numbers’ that is becoming the routine product of government agencies.”

In addition to the propensity for ‘big’ numbers which are advantageous for both policy makers and law enforcement agencies to maximise their budgets, DLE agencies also rely on other types of popular misconceptions about the nature of drug problems, such as that organised crime groups are responsible for drug production and distribution. The lack of information on this issue in the public arena and the monopoly position police hold with respect to information, means that the police occupy a position where statements and perceptions can be shaped to maximise public attention.

For instance, it has been noted that as in NZ there has been an intense public concern about the role of outlaw motorcycle gangs (OMGs) in drug distribution, DLE agencies can gain significant amounts of public attention when they conduct operations against OMGs. However, this means that

“(t)he problem of separating agency hyperbole from reality is more difficult in the case of organised crime, as the police tend to have a near monopoly over information on these matters.”

In addition to the problem that the role of organised crime may be overstated, there are also other concerns about evaluating DLE activities because police do not appear to always systematically measure the size cannabis market and whether particular strategies were effective in reducing or changing the size of the market. There is also a problem of overgeneralisation from the outcomes of particular DLE operations to explain the operation of the whole market.

“Police naturally assume that the relatively small number of cases of large scale cannabis cultivation and cannabis cultivation by gang members that they do detect represent the tip of a much larger hidden phenomenon. ... Both large scale cannabis cultivations and gang based cultivation are likely to be relatively easier to detect compared with independent small scale cultivation. ... (which means) police experience of the detection of large scale cannabis cultivation and gang involvement in cannabis cultivation may lead to an exaggerated and false perception of the prevalence of these types of operations in the illicit cannabis market.”

There has been a substantial effort for a number of years in the US to produce reports purporting to measure and track changes and shifts in the prices of different type of drugs. This reporting process has been heavily criticised because of methodological flaws and that such reports are clearly designed to promote American national policy objectives, as “the numbers are in fact just decorations on the policy process, rhetorical conveniences for official statements without any serious consequences.”

There are unexpected outcomes from increased DLE activities which are probably not well understood and which demonstrate the complexity and unpredictable nature of interventions in drug markets. For example, if penalties for purchasing an illicit drug (or drugs) increase it will
have the effect of reducing the frequency of illegal drug transactions, which will in turn reduce
the risks borne by dealers, with the consequence that the costs associated with supplying the
drug will fall. “The result is a drop in the supply price of illegal drugs which encourages
greater consumption.”160

If penalties are increased for possession of an illicit drug (or drugs) then users will respond to
the increase in penalties by reducing the amount of drugs they may hold at any particular time.
In turn this will require them to purchase drugs more frequently. However, the need for more
frequent transactions exposes dealers to greater risks, who will in turn raise the supply price of
drugs they are selling to compensate for the fall in consumption.

“The result is a net increase in the street price of the illegal drug despite the overall fall in
illegal drug consumption. Thus if Lee’s market assumptions are accepted, far from reducing
drug expenditure, demand side drug law enforcement strategies may actually increase
them.”161

161 Ibid.
3 Models of Cannabis Law Reform

3.1 Introduction

The legislative reforms in early 2004 in WA (the CIN scheme) and the UK (the reclassification of cannabis) are the most recent manifestations of an intense debate over the past three decades in Western countries about the legal status of cannabis. The reforms in WA and the UK were shaped by a combination of historical and cultural factors regulating cannabis and other drugs in each jurisdiction and the influence of developments elsewhere due to the symmetry between domestic and international responses to prevent and ameliorate drug problems. This ongoing debate has forced an examination of the rationale for prohibiting cannabis use, the outcomes of the reforms in WA and the UK have important consequences beyond either jurisdiction, as they raise questions about the rigid and complex legal framework of United Nations (UN) conventions mandating that individual signatory nations prohibit cannabis and other drugs. (A more detailed examination of the UN drug conventions is contained in Chapter 4.)

Some might argue there is a common sense basis to prohibition and that any relaxation of the restrictions to stop or control drug use is unacceptable. A counter argument, which draws upon social and economic principles, is that if the costs of prohibition far outweigh its benefits and enforcement brings the law itself into disrepute, then the case for law reform is very persuasive.

“There is a simple and direct logic that, if something is troublesome, you’re better off without it. Presumably this has been at the root of the various bans on different drugs... A striking regularity, however, is that all such prohibitions have been circumvented at the time, and almost all were rescinded by administrators who eventually judged the costs to outweigh the benefits. This often occurs when violation of a prohibition become so commonplace that people recognise the discrepancy between law and practice and challenge the law. If the gap yawns too large, what is challenged may be not only the specific restrictive law of prohibition, but also the rule of law in general.”

It should also be appreciated that discussion about reform is not confined to legislative reform, as governments have considerable latitude in how reforms might be achieved.

“Drug law reforms can be de jure, involving changes to the legal statutes themselves, or de facto, where the laws remain unchanged but the way the law is enforced by police is altered by administrative instructions. Prohibition with civil penalties schemes are examples of de jure reforms, while prohibition with cautioning and/or diversion schemes are examples of de facto reforms.”

Therefore, the decriminalisation of minor cannabis offences in WA and the UK has some significance to a much wider international audience interested in the outcomes of reform beyond specific domestic policy considerations. As the UN framework is heavily influenced by the American approach of prohibition towards drug use, there is the distinct possibility of

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164 For instance, in WA, a cautioning scheme, the cannabis cautioning mandatory education scheme (CCMES), was introduced in March 2000 and operated up to March 2004. This scheme was implemented by administrative instructions issued by the Commissioner of Police, without any legislative amendment being required.


166 As will be discussed later in this thesis, the meaning of the term ‘decriminalisation’ has evolved since its use to describe the reforms in the US in the early 1970s. The meaning that is given to the term ‘decriminalisation’ in this thesis accords the definition in a 2003 paper, as being “any measures that retain possession or cultivation as offences, but avoid criminal prosecution and punishment”. Hough M, Warburton H, Few B, May T, Man LH, Witton J & Turnbull PJ. A growing market. The domestic cultivation of cannabis. London, Joseph Rowntree Foundation, 2003, 2.
friction with international regulatory bodies when reformist governments diverge from the accepted strictures of prohibition. As will be discussed below, in Australia at present there is divergence between the various States and Territories and the Federal government about directions and acceptable limits of law reform with respect to cannabis offences due to different political makeup of the Federal government (conservative) and the States which have liberal/progressive governments.

3.2 Options for reform

The starting point for reform of minor cannabis offences in Australia is the 1978 Sackville Royal Commission in South Australia (SA). The Sackville Royal Commission reviewed a number of earlier reports and inquiries from other jurisdictions and concluded there were five major policy options for regulating cannabis, ranging from total prohibition (intended to prohibit the use and distribution of cannabis) to free availability similar to how tobacco and alcohol are regulated.\footnote{168}

A major report produced in 2000 for the Victorian Parliament’s Drugs and Crime Prevention Committee\footnote{169} identified six options for reform. A submission by the APHRU to New Zealand House of Representatives Health Select Committee Inquiry in 2001 outlined seven options.\footnote{170} A 2002 review of the impact of Canada’s drug laws suggested there are eight options for legal controls over drugs\footnote{171} – free market legalisation, legalisation with product restrictions, market regulation, prescription, decriminalisation, de facto decriminalisation (ie ignore existing laws without changing them), depenalisation and criminalisation (the current prohibition approach).

A 2003 Australian report sets out the range of options for regulating cannabis, from complete prohibition (eg the United States and Swedish models), partial decriminalisation (eg the Australian expiation schemes, Germany, United States\footnote{172}) to full decriminalisation (eg Portugal).\footnote{173} The term ‘partial decriminalisation’ was described as being the approach followed in “legal systems in which it remains illegal to produce or supply cannabis but civil penalties are imposed for possession and/or use of specified quantities of cannabis.”\footnote{174} The following discussion will adapt the spectrum of the options outlined above by reviewing approaches for regulating cannabis within two broad frameworks - prohibition and regulation.

3.3 Prohibition

3.3.1 Total prohibition

In theory as this option already exists in every country in the world it has been referred to as a “worldwide system of state power,”\footnote{175} which has expanded from being a national approach developed in the US in the 1920s to a complex set of global prohibitions on drug use throughout the world today. The form of prohibition exemplified by the current US policy, the ‘War on Drugs,’ also referred to as ‘criminalised drug prohibition’, represents total prohibition.
This approach operates at a national level in the US and in most American states, in Canada, in Singapore and in a number of European countries such as Sweden, France and Poland.

This option characteristically provides a scale of penalties depending on the seriousness of the offence, with the most severe penalties for those involved in commercial activities, referred to as ‘provider’ offences, whilst lower penalties are provided for those who commit minor offences, referred to as ‘consumer’ offences. As will be outlined, in some jurisdictions reforms have ameliorated the severity of penalties through formal cautioning or diversion. In the form that it operates in the US, criminalised prohibition severely curtails judicial discretion, as most American drug laws

“explicitly remove sentencing discretion from judges and do not allow for probation or parole. The United States now has nearly half a million men and women in prison for violating its drug laws. Most of these people are poor from racial minorities. Most of them have been imprisoned just for possessing an illicit drug or ‘intending’ to sell small amounts of it.”

In its purest form this option means that if an offence is detected this results in arrest and subsequent prosecution with the attendant consequence of conviction and monetary or other types of penalties and a criminal record. Those who commit consumer offences, at least in most Western jurisdictions, are most likely to be fined or may in some circumstances, eg if a juvenile, be placed on a community based order, if they have no or few prior convictions.

However, there is always the possibility that in some jurisdictions repeat offenders may be jailed, compelled to enter a treatment facility or required to participate in a mandated education program. A criticism of this option is the laws needed to maintain the total prohibition of cannabis are inherently unfair and harsh as many of those who are convicted do not have prior convictions and would otherwise be regarded as law abiding members of society.

“A system which criminalises a significant number of those who use cannabis and results in some going to prison, even for the possession of a smoking implement, while large numbers

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176 There has been a recent debate in Canada about law reform of minor cannabis offences, which can be traced from two independent parliamentary inquiries. These were the September 2002 report by the Senate Special Committee on Illegal Drugs and the December 2002 report by the House of Commons Special Committee on Non Medical Use of Drugs. In May 2003 Bill C-38 was introduced, revised and then lapsed when Parliament was prorogued in November 2003. In February 2004 the Government introduced Bill C-10 which proposed to amend the Controlled Drugs and Substances Act in similar terms as the earlier Bill. However this Bill lapsed when Parliament was prorogued for a Federal election in May 2004. A new reform package, Bill C-17, was introduced in November 2004 with similar provisions as were contained in earlier proposals to reduce the fines for cultivation of small numbers of cannabis plants and establish a ‘ticketing’ system for possession of small amounts of cannabis: Canada, Department of Justice. Government of Canada introduces cannabis reform legislation. Media release, 1 November 2004; Canadian Foundation for Drug Policy. Cannabis law reform in Canada: 2002-06; However, Bill C-17 also lapsed as a Federal election was held in January 2006. The proposed reforms would have retained fines for possession of cannabis resin, but expiation notices would have been issued for possession of 15 grams or less of cannabis ($150 penalty) and for possession of more than 15 grams and up to 30 grams of cannabis ($300 penalty). The reforms also proposed that expiation notices could be given for up to three offences, but thereafter police had the discretion to charge a person: Canada, Department of Justice. Cannabis reform Bill: developing a balanced approach: November 2004.

177 However, in France those in possession of a small amount of cannabis are usually not prosecuted but given a warning by police.

178 However, it should be recognised that as prohibition underpins the legal framework that operates in all legal jurisdictions, this means that of the activities concerning cannabis are criminalised, such as the use, possession, cultivation or distribution of cannabis.


Chapter 3: Models of Cannabis Law Reform

of the community continue to use the drug despite its proscription, is a system which is not in the community’s best interest.”

A study of the disproportionate consequences that can arise for someone who has been convicted of a minor cannabis offence under the Misuse of Drugs Act 1981 has been amply demonstrated in the 1998 WA study of 68 individuals, which it has been suggested means that

“(e)ven if classical deterrence theory is correct, deterrence of cannabis use will occur only where certainty of apprehension is relatively high. It is hard to imagine that the actual or perceived certainty of being apprehended for using cannabis could be increased to a level where deterrence was likely without having mandatory population wide urine testing. ... this study has suggested that under the strict enforcement of cannabis prohibition, a significant minority of users who are unlucky or imprudent enough to attract the attention of the law can pay a substantial social cost.”

The consequence of prohibition as the over arching framework towards cannabis and other drugs means there will be high levels of social and economic expenditure on law enforcement as the option includes imprisonment of minor offenders. Another consequence of prohibition, which has implications for shaping the structure of drug markets, is that the harsh criminalisation

“has the effect of shifting consumption toward more concentrated forms of the prohibited product, because such products are more easily smuggled and more easily consumed covertly. During America’s experiment with alcohol prohibition, for example, consumption shifted toward hard liquor and away from less potent wine and beer.”

This means prohibition fosters the creation of drug markets involving highly refined and concentrated drugs like heroin and cocaine as the policy results in the exclusion of the less harmful forms of these drugs. It can be surmised that with respect to cannabis, DLE activities have shaped the market to favour the production of more potent cannabis products through the artificial indoor cultivation of cannabis by hydroponic methods in response to police targeting more easily detected outdoor cannabis plantations. “What has happened is that prohibition has created a skunk monoculture where growers produce the variety with the highest yield, potency and profit margin.”

3.3.2 Prohibition with civil penalties

Prohibition with civil penalties is a variant on total prohibition and with respect to cannabis offences, whilst it still retains the structure of criminal penalties, the law is selectively applied to those who commit serious offences, such that serious penalties exist for someone who is a “commercial dealer in cannabis, whereas the sanctions for minor offences, such as the possession of small quantities of cannabis, are reduced to small monetary penalties and infringements which are usually described as ‘civil violations’.”

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184 Filley D. ‘Forbidden fruit: When prohibition increases the harm it is supposed to reduce.’ (1999) 3 The Independent Review, 447.
185 Kushlick D. ‘Clarke clings to the grand illusion of prohibition.’ The Guardian 24 January 2006.
A research paper from the National Task Force on Cannabis established in 1992 by the Australian Federal government, identified five legislative options, including ‘prohibition with civil penalties’, which involved

“penalties for possession and cultivation of small amounts of cannabis for personal use (which) are dealt with by civil sanctions, such as monetary penalties, rather than criminal sanctions such as fines and imprisonment.”\footnote{187}

One of the arguments in support of this option is that it has the potential to produce greater DLE efficiencies because instead of arresting and prosecuting minor cannabis offenders, police ought to be able to reallocate resources to pursue crime involving more serious drug and non drug crime.\footnote{188} Proponents maintain that the method of expiation of minor offences that occurs with these types of schemes produce

“the potential cost savings and the reduction of negative social impacts upon convicted minor cannabis offenders. Implicit in this ... (is) that the potential harms of using cannabis were outweighed by the harms arising from criminal conviction.”\footnote{189}

This reform option addresses what has been described as

“in some ways a compromise between maintaining prohibition and full legalisation. It eliminates some of the least attractive features of the current regime, including the rather unpleasant irony that, while marijuana laws are primarily designed to protect drug users from themselves, arrest and criminal justice processing is for many users the most substantial risk.”\footnote{190}

An example of how the ‘prohibition with civil penalties’ option works is illustrated with the operation of the Californian law (Senate Bill 95) that came into effect on 1 January 1976.\footnote{191} Prior to the 1976 Californian amendment, possession of cannabis was a felony in California and carried a maximum penalty of ten years imprisonment, even for first offenders. The new law made the possession of one ounce or less of cannabis as a ‘citable misdemeanour’, the maximum penalty being a fine of $100. The law also permitted offenders to be issued with a citation, thereby obviating the need for an arrest or pre-trial custody. Possession of more than one ounce of cannabis, other than for the purpose of sale to another, was a misdemeanour and thus subject to a maximum fine of $500 and/or six months imprisonment.

The 2000 report prepared for the Victorian Parliament’s Drugs and Crime Prevention Committee examined the three Australian infringement notice schemes which operated at that time. These were the cannabis expiation notice (CEN) scheme in SA which commenced in April 1987, the simple cannabis offence notice (SCON) scheme in the Australian Capital Territory (ACT) which commenced in October 1992 and the drug infringement notice (DIN) scheme in the Northern Territory (NT) which commenced in July 1996.\footnote{192}

\begin{thebibliography}{99}
\bibitem{188} The possibility that exogenous factors shape police priorities should not be discounted. For instance, in the US it has been shown that permitting DLE agencies to retain a proportion of proceeds from the seizure of assets of drug offenders has provided incentives for shifts in police strategies and priorities to areas where the possibility of asset seizure becomes a primary goal: Mast BD, Benson BL & Rasmussen DW. ‘Entrepreneurial police and drug enforcement policy.’ (2000) 104 \textit{Public Choice} 285-308.
\bibitem{190}Kleiman MAR. \textit{Against excess: Drug policy for results}. NY, Basic Books, 1992, 268.
\bibitem{191}This example is provided in South Australian, Royal Commission Into the Non Medical use of Drugs. \textit{Cannabis: A discussion paper}. Adelaide, Royal Commission Into the Non Medical use of Drugs,1978, 10.
\bibitem{192}The Australian debate about the legal status of cannabis can be traced to the Sackville inquiry, which was set up in 1977 and reported to the South Australian government in 1979. Recommendation 37 was that \textit{The policy of total prohibition currently applied to the use of cannabis and cannabis resin in South Australia should be modified}. South Australia should introduce a partial prohibition model to control the
One of the key issues for expiation schemes is how to deal with those who fail to expiate, \(^{193}\) for, as outlined below, if failure to expiate results in the person being tried before a court for the original offence, this can result in significant numbers of non-expiaters being dealt with by the courts, an outcome expiation was intended to avoid. There is a divergence between SA, the ACT, the NT and WA in how each jurisdiction deals with those who fail to expiate infringement notices within the specified period of time. As discussed below, the legislative framework of the WA scheme sought to overcome one of the major perceived shortcomings of the CEN scheme if a person charged with the original offence fails to expiate.

### 3.3.2.1 South Australia

The CEN scheme came into effect on 30 April 1987, following amendment to the South Australian *Controlled Substances Act 1984* (CSA), eight years after the recommendation in 1979 by the Royal Commission Into the Non Medical Use of Drugs for such a scheme. The scheme provides for a CEN to be issued for a range of ‘simple cannabis offences’ - possession or use of cannabis, possession of cannabis resin, possession of smoking paraphernalia and cultivation of cannabis and requires police to issue a person who commits a simple cannabis offence with a CEN. \(^{194}\)

**Administrative reforms**

From April 1987 up to February 1997 if a person failed to expiate by paying the specified penalty within 60 days, the only option under the legislation was for defaulters to be prosecuted for the original offence. Following reforms in February 1997 an expanded range of options were introduced for payment of specified penalties, such as payment by instalment and payment by completion of a community service order.

Since February 1997 CENs have been electronically enforced in SA to address the earlier problem of a substantial number of unpaid CENs and a special expiation unit was established in the South Australian police. If a person fails to expiate by adopting one of the alternative methods of payment which are invoked by making an application to the Registrar of the Magistrates Court, they will be sent a reminder notice plus an incurred administrative fee. If payment is still not forthcoming after the reminder notice, an order is made by the Registrar for ‘enforcement’ of the outstanding expiation notice and an automatic conviction will be recorded for the original offence. \(^{195}\)

This administrative process for dealing with defaulters obviates the former process of dealing with non-expiaters by either arresting or summonsing them to have the matter dealt with in a Magistrates Court. The Registrar’s order means a fine is imposed which will be equivalent to the unpaid expiation fee plus additional administrative costs.

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\(^{193}\) Until a recent amendment, in South Australia failure to expiate a cannabis infringement notice resulted in the matter being remitted to court, in the ACT the police may elect to prosecute if an individual fails to expiate, whereas in both the NT and WA an unexpiated infringement notice is treated as being an administrative matter of recovery of an outstanding debt owed to the state.

\(^{194}\) Controlled Substances Act 1984 s 45A(2).

**Expiation**

A number of studies of the South Australian scheme have highlighted some of its difficulties, including a relatively low rate of expiation (ie payment) of CENs and that it had been detrimentally affected by policing practices. As noted in a 1995 review, "(o)nly about 45 per cent of CENs are paid. It is possible that inability to pay is one factor in the expiation rate not being higher." 196

In the early years of the CEN scheme, expiation rates above 50% were recorded, with rates of 53.5% and 54.5% in 1987/1988 and 1989/1990, respectively. However, there has been a steady decline in the rate of expiation since the early 1990s, with under four out of 10 (38.0%) of CENs expiated in the year 2000. It was noted in a 2001 study that

"despite the legislative changes introduced in 1997, only around one third of CENs were expiated in the last three years (33.9% in 1998, 34.9% in 1999 and 38.0% in 2000). A further one in ten CENs were forwarded to court for relief (13.0% in 1998, 10.4% in 1999 and 10.5% in 2000). Potentially these could be paid and if so, would increase the proportion expiated. Nevertheless, around half of all CENs issued between 1998 and 2000 were forwarded to court for enforcement (50.7% in 1998, 52.7% in 1999 and 46.4% in 2000)." 197

There was a marked growth in the annual number of CENs issued from the inception of the CEN scheme in 1987 up to the year 1996/1997, when a total of just over 18,000 CENs were issued. The expiation rate stabilised at around 45% until 1997 and more recently there has been a small increase in the expiation rate of CENs, attributed to the introduction in early 1997 of alternative payment options. 198

**Law enforcement practices**

There was early evidence, from a study of trends in cannabis offences over the first nine months of the CEN scheme, from May 1985 to January 1988, compared with the nine month period before the CEN scheme, that the number of cannabis charges had increased soon after the scheme started. Whilst it was considered to be too early to be certain if 'net widening' was occurring, nevertheless the researchers who reviewed this study observed that it was

"unlikely that trends in detected offences had any direct relationship with the introduction of the scheme: any change in figures is more likely to be indicative of the ease with which cannabis offences can be dealt with by police officers." 199

A study in 2001 of longer term trends in drug offences found they increased from 2,619 in 1988 to 4,708 in 1994, then remained relatively static up to the end of 2000, with about 4,500 drug offences per year. Whereas from 1988 to 1992 cannabis offences made up about 80% of all drug offences in SA, since 1992 there had been a steady decline in the proportion of offences involving cannabis, such that by the year 2000 cannabis offences made up 62.6% of all drug offences. 200

The 2001 study of the CEN scheme which had pinpointed shifts in the type of offences involving cannabis from 1998 to 2000, noted that

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“while cannabis was the drug involved in approximately 80% of possess and/or use drug offences in the early 1990s, by 1997 the proportion was 67% and by 2000 it had dropped to just over 50%. A similar trend was apparent for possess for sale/sell drugs, with cannabis increasingly comprising a smaller proportion of these offences. However, contrary to these findings, in each of the years 1988 to 2000 cannabis was involved in over 90% of all produce/manufacture drug offences.”

The 2001 study also examined trends in the cannabis related offences of possess/use, produce/manufacture and possess for sale/sell and found that possess/use offences increased from 774 in 1992 to a peak of over 1,300 offences in 1994 and then steadily declined to 864 possess/use offences in 2000, sell/supply offences increased from 1988 to 1997 (617 offences) and then decreased by just over 25% to 453 in 2000 and produce/manufacture offences increased from 1988 to 1993 (601 offences), dropped to 447 offences in 1997 and then increased by 65% to a total of 821 offences in 2000.

Cultivation

The original legislation in 1987 did not specify the actual number of plants considered to be cultivation for personal use, the number being simply described in the CSA as a “small number for non commercial purposes”. The legislation was changed in 1990 to define an expiable offence as being the cultivation of up to 10 plants, but until 2003 the method of cultivation was not specified.

In 1999 the number of plants was reduced by regulation to three, in response to evidence that the shift to hydroponic cultivation had increased plant yields and that commercial syndication had become involved. However, in July 2000 a resolution of the Legislative Council disallowed this regulation and the limit returned to 10 plants. Subsequently in August 2000 the limit was again reduced by regulation to a maximum of three plants. In 2001 an amendment to the regulations decreased the limit to one plant.

The first change concerning the method of cultivation occurred in December 2002 with an amendment of Section 45A of the CSA, which appears to extend beyond hydroponic cultivation to include any methods of enhanced artificial cultivation. This amendment came into operation in February 2003 and means that now in SA hydroponically cultivated cannabis is excluded from the CEN scheme as it is ‘artificially enhanced cultivation’.

Other issues

The experience in SA highlights that infringement schemes need to adopt measures to maximise the rate of expiation, as a high expiation rate avoids the higher financial costs that flow from processing those who fail to expiate, maintains the confidence of the police and reassures the community that the scheme, at least symbolically, punishes those who receive an infringement notice. Research into the CEN scheme found that costs increased by about three fold if a CEN was unpaid and the person was prosecuted, that costs increased by about eight

201 Id, 3.
205 Initially been introduced and passed by Legislative Assembly in October 2001, but lapsed due to an election.
206 Defined in Controlled Substances Act 1984 Section 45A as being the “cultivation in a solution comprised wholly or principally of water enriched with nutrients or cultivation involving the application of an artificial source of light or heat.”
fold if the person agreed to expiate the unpaid debt by undertaking a community service order and costs increased by about eighteen fold if the unpaid debt resulted in imprisonment.\textsuperscript{207}

It is possible that some of the community support for the CEN scheme has eroded in recent years, given the 2003 reform to exclude hydroponic cultivation and comments made in conjunction with the South Australian election in March 2006. For instance, as part of its Drug strategy platform for the 18 March 2006 election, the South Australian Liberal Party indicated it would abolish $50 penalties, remove cultivation and possession of cannabis from the CEN scheme and introduce a licensing scheme for hydroponic equipment retailers.\textsuperscript{208}

**Expiable offences and penalties\textsuperscript{209}**

**Possession of cannabis**
Where the amount is:
- less than 25 grams ($50 penalty)
- 25 grams or more but less than 100 grams ($150 penalty)

**Possession of cannabis resin**
Where the amount is:
- less than 5 grams ($50 penalty)
- 5 grams or more but less than 20 grams ($150)

**Use of cannabis**
Smoking or consumption of cannabis or cannabis resin\textsuperscript{210} ($50 penalty)

**Paraphernalia**
Possession of smoking paraphernalia ($50 penalty)\textsuperscript{211}

**Cultivation**
Cultivation of 1 non artificially cultivated cannabis plant ($150 penalty).

### 3.3.2.2 Australian Capital Territory

The simple cannabis offence notice (SCON) scheme has operated in the ACT since 1993 through an amendment to the *Drugs of Dependence Act 1989*.\textsuperscript{212} SCONs are issued to adults or juveniles and provide them with the option of paying the fine within a prescribed time or otherwise if payment is not made they will be summonsed to appear in court, with the possibility of a conviction.

**Evaluation of the scheme**

Data from 1994 (the first full year of operation of the ACT scheme) to 2001 shows that a total of 1,795 SCONs were issued over this eight year period, with an overall mean expiation rate of 51.6%. The data indicates the highest expiation rate occurred between 1994 and 1996 (reaching a rate of just over two thirds of all SCONs being expiated in 1995). The expiation rate dropped in 1998 and 1999, with just over four out of 10 SCONs being expiated. There has been an upward trend in the number of SCONs being expiated to just under half of SCONs expiated in 2001.

\textsuperscript{208} Liberal Party of South Australia. *Drug strategy, March 2006 election*.
\textsuperscript{209} *Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 2002*.
\textsuperscript{210} If the offence involves possession of smoking paraphernalia plus another simple cannabis offence relating to the possession, smoking or consumption of cannabis or cannabis resin then a penalty of $10.
\textsuperscript{211} *Drugs of Dependence Act 1989* s 162, s 171.
More recently the ACT has developed an early intervention and diversion program based on police discretion, which has been adapted to include the SCON scheme. Participants in this program must have committed an offence under the Drugs of Dependence Act 1989 (i.e. possession of an illicit drug or illicit possession of pharmaceutical drug). Diversion will not be available where a violent crime has been committed.

From December 2001 police have had the option in the ACT of issuing a SCON which can be expiated by either payment of a fine or diversion to an education program. The option to divert to education, in preference to payment of a fine, is part of a broader scheme for police to divert offenders in possession of small quantities of other types of drugs. Expiation of the drug diversion caution notice occurs after attendance at one assessment intervention and one education or treatment intervention.

**Other drug law reform**

A number of other law reform measures have been introduced in the ACT since September 2001, with the adoption of four chapters from the national Model Criminal Code (MCC), which together form the ACT Criminal Code. The most recent addition to the ACT Criminal Code was in June 2004 with the enactment of Chapter 6: Serious Drug Offences from the MCC. The Chief Minister’s comments in the second reading speech bear repeating in part, as they indicate there is some support for a national approach to deal with drug related crime.

“I believe that this Bill has the potential to dramatically improve the overall effectiveness of the war on drugs by promoting uniform drug laws across Australia. ... The need for a national drug strategy was recognised as far back as 1980 with the Williams Royal Commission report and in the view of the Model Criminal Code Officers' Committee ... the arguments for a uniform approach to deal with the illicit drug trade remain ‘clear and compelling’.

But regrettably in the years since the Williams Royal Commission report there has been very little progress towards uniform legislation. A comparison of the various legislative regimes across the country reveals extreme variation among the Australian jurisdictions. In the meantime the trade in illicit drugs has increased dramatically and grows ever larger, reaching deep into the Australian population with incalculable costs in human suffering and scarce resources.”

In June 2004 the ACT Government undertook a major reform of the Territory’s laws concerning serious drug offences with the introduction of the Criminal Code (Serious Drug Offences) Amendment Act 2004. This Act also contained an amendment to the Drugs of Dependence Act 1989 to reduce the number of cultivated cannabis plants for which a person could be issued a SCON. These reforms came into effect on 6 March 2005 and were criticised as being an over reaction to the issue of hydroponic cultivation of cannabis, which had been eliminated by the police under existing powers.

“Although aimed at drug traffickers and serious drug offenders, the new ACT cannabis laws ... in fact widens the net and can impose draconian penalties on young people experimenting in or addicted to the drug. Parents who want their kids to survive their experimenting years without the burden of a criminal record, should be concerned about the implications of these changes.”

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214 Hansard, ACT Legislative Assembly, 24 June 2004, p 2738.

215 The amendment came into effect on 4 March 2005: *Drugs of Dependence Regulation 2005.*

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The reforms of June 2004 through the *Criminal Code (Serious Drug Offences) Amendment Act 2004* were designed to expand the scope of the framework for dealing with illicit drugs and was part of an ongoing commitment by the ACT government to implement recommendations from the work of the Standing Committee of Attorneys-General, which had initially agreed in 1990 for there to be a national MCC.\(^{217}\) The object of the MCC was for all jurisdictions and the Commonwealth to adopt it so that serious criminal offences could deal with uniformly throughout Australia.\(^{218}\)

**Cultivation**

The SCON scheme originally permitted up to five cultivated plants to be expiated, regardless of method of cultivation. However the June 2004 amendment to s. 162 reduced the number of plants to two and also excluded from the SCON scheme any plants that were either hydroponically or artificially cultivated.

The exclusion of hydroponically or artificially cultivated plants from the scheme was not a subject that had apparently been considered by the ACT Legislative Assembly’s Standing Committee on Health and Community Care in its report *Cannabis use in the ACT* nor which was addressed in any of the report’s twelve recommendations, published in December 2000.\(^{219}\)

One commentator has noted that

“(e)liminating artificially grown plants from expiation schemes would presumably affect the supply of cannabis available ... changing the number of plants an individual may cultivate artificially neither advances nor hinders harm minimisation policies because alternative cultivation methods are available to users.”\(^{220}\)

A summary of the 2004 law reforms on the AFP website provides an explanation for the amendment of section 162 of the *Drugs of Dependence Act 1989*.

“The decision was made to exclude hydroponically grown cannabis plants from the SCON scheme as the trend towards hydroponic methods of cannabis cultivation indicates that the quantities of cannabis now able to be produced and potentially the potency of that cannabis, are no longer in the line with the original intentions of the scheme.”\(^{221}\)

**Expiable offences and penalties**

**Possession of cannabis**

Where the amount is not more than 25 grams ($100 penalty).

**Cultivation**

Cultivation of up to two non hydroponically or non artificially cultivated plants ($100 penalty).

**Use**

It is an expiable offence to use (ie self administer) cannabis ($100 penalty).

3.3.2.3 **Northern Territory**

The drug infringement notice (DIN) scheme has operated in the NT since 1 July 1996 and permits adult offenders to be issued with an ‘on the spot fine’, a DIN, if they commit any of the

\(^{217}\) A total of nine draft chapters have been published. Cf: Model Criminal Code <http://www.aic.gov.au/links/mcc.html>.


\(^{220}\) Feerick C. ‘Controlling cannabis use effectively – an ideological or attainable goal?’ (2005) 29 *Criminal Law Journal* 118.

offences covered by the scheme. The *Misuse of Drugs Act 1990* prescribes that a penalty of $200 applies to any DIN.\(^{222}\)

If the fine of $200 for any of these offences is not paid within a specified time and after a reminder has been issued, then an offender is taken into custody or the amount can be recovered by a warrant of distress. Offenders have the option of contesting their DIN in court, with the consequent possibility of a criminal conviction.

**Expiable offences and penalties**

**Possession of cannabis**
Possession of up to 50 grams of cannabis plant material ($200 penalty).

**Possession of cannabis resin**
Possession of up to 10 grams of cannabis resin ($200 penalty).

**Cultivation**
Cultivation of up to two plants ($200 penalty).

### 3.3.2.4 Western Australia

The cannabis infringement notice (CIN) scheme was established by the *Cannabis Control Act 2003* (CCA), which was passed by the West Australian parliament in September 2003. The CIN scheme commenced on 22 March 2004 and enables a CIN to be issued by a police officer for any of four expiable offences. A more detailed description of the specific features and operation of the CIN scheme are contained in Chapter 4. A preliminary review of the CIN scheme over the first 12 months of its operation is presented in Chapter 5.

**Expiable offences and penalties\(^{223}\)**

**Possession of smoking implement**
Possession of a smoking implement with detectable traces of cannabis ($100 penalty)

**Possession or use of cannabis**
Use of or possession of:
- not more than 15 grams of cannabis (penalty $100)
- more than 15 grams and not more than 30 grams of cannabis ($150 penalty)

**Cultivation**
Cultivation of not more than two non-hydroponically grown cannabis plants at a person’s principal place of residence ($200 penalty).

### 3.3.3 Partial prohibition

The option of partial prohibition attempts to draw a distinction between minor and serious cannabis offences, by differentiating activities that involve ‘personal use’ which are not illegal and thus ordinarily not prosecuted and serious offences such as dealing and commercial supply, which are subject to criminal penalties.

“A rationale commonly offered is that the community should pursue a policy of discouraging cannabis used by penalising commercial cultivation or dealing, but that sanctions should not be applied where the law is effectively unenforceable, costly to administer and liable to abuse by law enforcement authorities.”\(^{224}\)

\(^{222}\) *Misuse of Drugs Act 1990*, Schedule 3.

\(^{223}\) Determined by the *Cannabis Control Regulations 2004*.

Partial prohibition appears to operate in Switzerland where there has been a shift in policing by tolerating the limited sale of cannabis products through hemp shops, even though possession and/or sale of cannabis has a penalty of up to five years imprisonment.\textsuperscript{225} There were also attempts to ratify the defacto decriminalised status of cannabis through a national referendum in November 1998, which proposed to depenalise personal use for all offences involving use possession, growing and consumption of cannabis. This referendum was defeated. It is believed that more recently a new referendum was to be held, once the requisite number of signatures could be obtained.

3.3.4 Legislative prohibition with expediency

3.3.4.1 Netherlands

The model of legislative prohibition with expediency, which has operated in the Netherlands since 1976, has been described as “an anomaly in the international prohibition movement, and, as such, a constant reminder that the rules set by the general conventions are not ironclad laws.”\textsuperscript{226}

In its original form, the policy of non-enforcement (‘gedoogbeleid’) applied to the possession or sale of up to 30 grams of cannabis through local authority approved coffee shops. There was a growth in the number of coffee shops between 1976 and 1986 which led to the development of guidelines, based on five rules, so-called AHOJ-G criteria,\textsuperscript{227} that coffee shop owners should observe. In 1980 there was a decentralisation of regulation of coffee shops, when the Ministry of Justice issued further guidelines that permitted greater local discretion to approve and monitor the establishment of coffee shops.\textsuperscript{228}

The five rules issued by the Public Prosecution Service state that a coffee shop will not be prosecuted for selling only ‘soft drugs’ (ie cannabis) if the shop owner does not sell more than 5 grams of cannabis to any person at any one time, does not sell ecstasy or any other ‘hard drugs’, does not advertise that they sell cannabis, ensures there is ‘no nuisance’ in the vicinity of the shop and does not sell cannabis to anyone aged under 18 or to permit persons under 18 years of age to be on the premises.\textsuperscript{229}

The coffee shop policy can be traced back to developments between 1965 and 1975 when there was growing concern in the Netherlands about cannabis, which resulted in two commissions of inquiry, the Hulsman Commission in 1971 and the Baan Commission in 1972.\textsuperscript{230} Both inquiries were established to investigate the use of cannabis and other illicit drugs in the Netherlands and to consider if there was more effective and less punitive responses to those using cannabis.

The approach in the Netherlands in the early 1960s resembles the first phase of a response cycle to drug problems followed in other jurisdictions, of relying heavily on the criminal justice system to deter and punish cannabis users, who are seen as rule breakers and deviant.\textsuperscript{231}


\textsuperscript{231} This cycle goes through a number of stages, from initial adoption of increasingly repressive measures directed at minority and fringe groups regarded as the locus of the problem and who pose a threat to the
“Around 1960, it was discovered that the use of cannabis was slowly spreading within certain groups of young Dutch people. At first, cannabis using was dealt with severely by law enforcement authorities. A psychiatric report was drawn up on detained users for the court, and they received prison sentences of up to a year. Some users were even forced to undergo detoxification in a psychiatric clinic. Such repressive action did not, however, serve to stop what appeared to be an explosive increase in cannabis use among the young.”

The Hulsman Commission recommended that the use and possession of small amounts of cannabis be decriminalised and that the production and distribution of hash and cannabis be reduced to minor offences rather than punished as serious offences. However, the recommendations of this inquiry were not accepted and instead the more cautious approach of the Baan Commission was implemented, that drug policy should be determined by the magnitude of health risks associated with different illegal drugs. This meant, for example, that cannabis offences should have lighter penalties compared to more harmful drugs such as heroin and cocaine. An outcome of the Baan Commission was to amend the Dutch Opium Act in 1976 to change the way cannabis offenders were dealt with by the expediency principle.

Whilst a number of commentators have vilified the Dutch reforms, it has been pointed out these reforms were not out step with other developments at that time.

“The amending of this law, however, was no unique event. A number of states in the USA were taking steps to distinguish ‘hard’ from ‘soft’ drugs and in virtually all Western countries controversy raged on the reform of narcotics legislation. This period of ‘lenience’ from roughly 1958 to 1976 now lies far behind us.”

Further reforms were implemented in the mid to late 1990s after concern about the proliferation of coffee shops which reduced the possession or sale limit to 5 grams, increased the age of admission to a coffee shop from 16 to 18 and that a coffee shop cannot have more than 500 grams of cannabis stock at any time. A factor in the reform of reducing the sale limit to 5 grams of cannabis was to deter the perceived appeal of the Netherlands to ‘soft drug tourists’, who come to the Netherlands “not so much on account of price differences because there are none really, but more because of the coffee shops themselves and the quality on offer.”

Following the introduction of curbs in the late 1990s the number of coffee shops declined by 31% from a peak of 1,179 in 1997 to 813 by 2000, with further smaller reductions occurring since 2000. The change in policy also meant by 2000 that only one in five municipalities...
approved the selling of cannabis from coffee shops, with 435 (81%) of the total of 538 municipalities in the Netherlands refuse to approve cannabis sales from coffee shops in their municipality.\textsuperscript{239}

It has been observed that the tightening of controls on the number of approved coffee shops has resulted in displacement of the cannabis market in the Netherlands, with the informal networks of friends and acquaintances to some extent subsuming the role of cannabis supplier previously performed by coffee shops.\textsuperscript{240} Apparently there has also been some consideration of the proposition that coffee shops could obtain their supplies from ‘non-criminal home growers’.\textsuperscript{241}

There has been much speculation and commentary about the consequences of the coffee shop policy in the Netherlands and whether it has achieved expected aims, such as separating the cannabis market from the market in ‘hard drugs’ (to weaken the possibility of gateway effects) and whether drug use has increased.\textsuperscript{242} One of the long standing counter arguments against reforms in the Netherlands is the claim that cannabis use is likely to increase due to the weakening of the legal consequences involving minor cannabis offences. It is possible to explore the impact of decriminalisation on the question of whether prevalence has increased as the Dutch policy has gone through a number of quite well defined phases.

The first phase of prohibition operated until 1976, which was followed from 1976 to 1984 by the second phase of depenalisation, the third phase was a de facto legalisation and was from 1984 to 1996 (being also been referred to being a shift “from a depenalisation era to a commercialisation era”\textsuperscript{243}) and the fourth phase commenced in about 1997 by reintroducing some regulation to reduce the number of coffee shops and the size of cannabis purchases.\textsuperscript{244}

Some of the virulent criticism that has been levelled at the Dutch coffee shop system can be gauged from comments from the International Narcotics Control Board (INCB), which has the lead role in monitoring and reporting the adherence of individual signatories and non signatories to the UN system of prohibition. The INCB also articulates what it believes should be the preferred domestic policies of countries such as the Netherlands. This can be seen in this excerpt from the INCB’s 2005 annual report, which implies that the reduction of the number coffee shops would a successful outcome of policy in the Netherlands.

“The Government of the Netherlands estimates that the cannabis industry in that country consists of 1,200 retail businesses, employing about 4,600 people. While the total revenue of the cannabis industry in the Netherlands is not known, the annual turnover of outlets where cannabis is sold and used (so-called “coffee shops”) is estimated by the Government to be between €211 million and €283 million. The number of so-called “coffee shops” continued

\textsuperscript{242}Leuw E. ‘Recent reconsiderations in Dutch drug policy.’ In Böllinger L (ed). Cannabis science: From prohibition to human right. Frankfurt, Germany, Peter Lang, 1997.
\textsuperscript{243}Abraham MD, Cohen PDA, Van Th, RJ & Langerijer PS. Licit and illicit drug use in Amsterdam III. CEDRO Centre for Drug Research, University of Amsterdam, Netherlands, 2000; Abraham DM, Kall HL & Cohen PDA. Licit and illicit drug use in Amsterdam. 1987 to 2001. CEDRO Centre for Drug Research, University of Amsterdam, Netherlands, 2003; Cohen P & Sas A. Cannabis use in Amsterdam. CEDRO Centre for Drug Research, University of Amsterdam, Netherlands, 1998.

\textsuperscript{245}It would appear that a feature of the fourth phase has been a restructuring of the domestic cannabis market, referred to as the ‘Green avalanche’ which involved production by “tens of thousands of small, mostly urban, producers” rather than through organised crime groups; Jansen ACM. The economics of cannabis cultivation in Europe. Paper presented at Second European Conference on Drug Trafficking and Law Enforcement. Paris 26 & 27 September 2002.
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to decline, from 1,179 in 1997 to 737 in 2004. The Board encourages the Government of the Netherlands to pursue its policy towards the elimination of those outlets.”

A number of studies have evaluated the impact of Dutch policy on patterns of consumption and prevalence of cannabis and whether decriminalisation has achieved its other goal of separating drug markets. A comparative study of long term cannabis users in Amsterdam, Bremen and San Francisco explored the proposition of whether as a result of nearly 20 years of tolerated selling and use of cannabis there would be higher rates of consumption and problematic use in Amsterdam compared to the two other cities. The researchers concluded that the Dutch policy had achieved a high measure of separation between drug markets, as 85% of the Amsterdam consumers stated that no other drugs were available at their source of supply (ie coffee shops), whereas in

“the purchase of cannabis in both Bremen and San Francisco is more socially embedded and arranged through peer group contacts. More than 80% of the consumers in Bremen and 95% of those in San Francisco buy their cannabis from friends who know a dealer or from a friend who is dealing.”

This study also identified five broad types of cannabis consumption which the researchers believed was a function of the drug culture and policies extant in each city. With respect to those described as ‘moderate consumers’ “increasing the liberal handling of cannabis produces only moderate consumption patterns and does not lead, as has been claimed by those who are against any liberation, to a wave of heavy use among the very young.”

However, the study also found that San Francisco had the greatest frequency of ‘leisure oriented consumers’ and ‘heavy consumers’, which it was claimed meant that “non problematic use patterns may develop under repressive conditions, although the proportion of excessive consumers found there was higher than for the two more liberal cities.”

Critics have pointed out that the coffee shop policy creates a dilemma for DLE agencies, for whereas the use of cannabis is tolerated in the network of semi-legal outlets operating through approved coffee shops, this also sustains a demand that needs to be satisfied from a well organised system of illegal cultivators and distributors. This dilemma was a factor in the adjustment to policy in late 1990s and is still a matter of debate in the Netherlands, as it involves the issue of whether to regulate the commercial production of cannabis. This has been described as the problem of the

“disparity between the judicial policy of the ‘front door’ and the ‘back door’ of the ‘coffee-shops’. Coffee-shops are more or less officially allowed to sell hashish and marijuana to customers at the front door. At the back door, however, the law ‘must be’ violated in providing the coffee-shop with their necessary stock. Back door transactions may occur between the coffee-shops and more or less organized ‘criminal’ wholesalers.”

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247 Id, 400.
248 The characteristics of this group included that they were older on average than other groups, emphasised more of the positive aspects of cannabis use and ceased use when they achieved a desired state of intoxication.
250 Id, 411.
3.3.4.2 Other jurisdictions

The 2000 report prepared for the Victorian Parliament’s Drugs and Crime Prevention Committee, considered the prohibition with expediency model and identified whilst the underlying law that criminalises cannabis use and related activities is retained, police do not investigate or prosecute cases where small amounts of cannabis are involved, but only prosecute those who are engaged in activities contrary to the ‘public interest.’\(^{252}\) It has been suggested that whereas this model requires the existence of a number of social and judicial factors, nevertheless it has a number of attractive features because it

“separates cannabis from more harmful drugs and that it provides a more helpful environment for education and treatment. However, it would also appear that this option, which is used in the Netherlands, as well as in Denmark, Germany and Poland, is also dependent for its successful implementation upon the existence of social and cultural factors, where there has always been low rates of drug use and by judicial systems where public prosecutors operate separately from the police.”\(^{253}\)

3.3.5 Prohibition with cautioning, diversion and referral

This option is intended to provide an alternative to court proceedings and minimise the deleterious consequences if a person was successfully prosecuted and received a criminal record. Formal cautioning operates with similar aims as other diversionary programs, which have the common aim of diversion of offenders away from contact with the court process. “A caution is like a warning: a person who is cautioned by police is not charged with an offence.”\(^{254}\)

The 1999 Queensland Criminal Justice Commission briefing paper identified five types of diversionary practices in Australia - informal police diversion (ie based on discretion of the individual police officer), formal police diversion (ie where programs are established which involve formal cautioning, such as the former UK scheme or the former CCME in WA), statutory diversion (ie where programs and processes are regulated by legislation to divert offenders to other forms of interventions), prosecutorial diversion (ie where prosecutors are able to intervene and direct an offender to another type of intervention) and judicial diversion (ie schemes which are reliant on discretionary powers exercised by either magistrates or judges).

It is helpful in considering this option to understand two influences on the growing use of cautioning of minor cannabis offenders in Australia. The first influence is the expanded role of the Commonwealth government, which has provided substantial funding to the States and Territories to develop diversion programs for minor cannabis and other drug offenders. The second influence has been the growing interest of incorporating principles of harm minimisation into police practices to provide more effective outcomes for dealing with minor cannabis offenders outside the criminal justice system.

The expansion of mechanisms in the Australian States and Territories to divert offenders through pre-trial diversion has been stimulated and funded via the Commonwealth Government’s National Illicit Drug Strategy (NIDS).\(^{255}\) The Commonwealth government’s strategy, *Tough on Drugs*, was launched after the Prime Minister John Howard in July 1997 successfully lobbied the Ministerial Council on Drug Strategy (MCDS) to oppose a proposed


\(^{253}\) Alcohol and Public Health Research Unit. *A submission to the Health Select Committee inquiry into the public health effects and legal status of cannabis.* Auckland, Alcohol and Public Health Research Unit, Faculty of Medical and Health Sciences, 2001, 43.


\(^{255}\) Australian Institute of Criminology. *Illicit drugs and alcohol. Australian responses to illicit drugs: pre-court diversion.*
heroin prescription clinical trial in the ACT. The use of the phrase ‘Tough on drugs’ has attracted some criticism as it adopts some of the rhetoric associated with the American ‘War on Drugs,’ as “(t)he Prime Minister has used this very phrase repeatedly, unambiguously and emphatically to describe his government’s approach to illicit drugs.”

Given that the ‘Tough on Drugs’ strategy is conceptually linked by the Commonwealth Government to ‘zero tolerance’, it is perhaps curious Commonwealth funding has been accepted by a number of the States and Territories in Australia to develop and support programs, such as the CIN scheme, which have the premise to decriminalise minor cannabis offences and provide mechanisms to expiate outside the criminal justice.

The Council of Australian Governments (COAG) Illicit Drug Diversion Initiative (IDDI), which is the source of Commonwealth diversion funds, arose from a 1999 inter-governmental agreement developed by the MCDS to increase the use of police power to divert minor drug offenders. There are two broad objectives of diversion programs funded through the IDDI - law enforcement interventions to reduce supply and therapeutic interventions via health and treatment services. The preamble in the IDDI states that

“illicit drug use imposes enormous social cost on individuals, families and societies. Helping drug offenders to regain control over their own lives will lead to safer environments for all Australians. The diversion scheme will result in:

- people being given early incentives to address their drug use problem, in many cases before incurring a criminal record;
- an increase in the number of illicit drug users diverted into drug education, assessment and treatment; and
- a reduction in the number of people appearing before the courts for use or possession of small quantities of illicit drugs.”

The Commonwealth arrangement provides significant funding to the Australian States and Territories for programs to divert some drug users away from the courts and criminal justice system to treatment or education programs, including those issued with infringement notices or ‘on the spot’ fines. The IDDI supports the expansion of police cautioning to divert minor drug offenders as this is considered as ‘harm minimisation.’ See Chapter 5 for a more detailed examination of the development of harm minimisation with a law enforcement framework, described as being a major shift away the use of legal sanctions to the use of public health principles to solve drug problems.

256 An expansion of the Commonwealth role in shaping cannabis policy can be seen by the announcement by the MCDS in late 2004 that it wished to develop a National Cannabis Strategy. A Project Management Group was established in 2005 and has sought submissions from the wider community, which closed at the end of November 2005. A draft strategy is expected to be submitted to the MCDS in May 2006. Cf: National Drug and Alcohol Research Centre. Development of the national cannabis strategy. Sydney, National Drug and Alcohol Research Centre, University of New South Wales, 2005.
259 See Appendix 5 for the text of the Commonwealth scheme for drug diversion, known as the Council of Australian Governments (COAG) Illicit Drug Diversion Initiative.
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“At the conceptual level harm reduction maintains a value-neutral and humanistic view of drug use and the user, focuses on problems rather than on use per se, neither insists on nor objects to abstinence and acknowledges the active role of the user in harm reduction programs.”  

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The incorporation of the principles of harm minimisation as a principle of national drug policy poses a number of challenges, as the Commonwealth government has a limited role in Australia of providing either health or law enforcement services. There are also jurisdictional level barriers to the adoption of harm minimisation, as it needs to be implemented separately by each Australian jurisdiction, depending on jurisdictional priorities and support for the concept.

As there are varied health and law enforcement structures within each jurisdiction, it is not clear how easily in practice these principles are translated into flexible and workable arrangements to complement the requirements of day to day policing. However, it should be appreciated whilst the Commonwealth role is apparently a limited one, nevertheless it can exercise significant leverage through tied funding arrangements between itself and each jurisdiction.

An unusual hybrid version of decriminalisation involving minor cannabis offences was proposed in a major report prepared in 2000 for the Victorian Parliament’s Drugs and Crime Prevention Committee.  

263  The law reform model proposed by the National Drug Research Institute (NDRI) consortium of researchers, described as “a variant of the prohibition with civil penalties approach”, involved cautioning for first time cannabis offenders and the issuing of infringement notices for second and subsequent offences. The model proposed that this two tier approach would involve those who had in their possession or cultivated a ‘small quantity’ of cannabis.

A ‘small quantity’ was defined as being not more than 10 growing plants, of which not more than three were to be mature plants (a mature plant being defined as having flowering head or not more than 50 cm in height) or the possession of not more than 50 grams of dried harvested flowering heads. The model also permitted the possession of not more than 10 grams of cannabis resin by a formula which deemed 1 gram of resin was equivalent to 5 grams of dried flowering heads.

The proposed scheme would have meant that an individual could have possessed a number of forms of cannabis which could have been expiated, if in aggregate the various amounts fell within the definition of a ‘small quantity’. This would have entailed the individual making a calculation of the different forms of cannabis they might possess to qualify for an expiable amount of cannabis. For example, possession of a total of 50 grams of dried harvested flowering heads would preclude possession of any cannabis resin. Possession of 10 grams of cannabis resin would preclude possession of any dried harvested flowering heads, as 1 gram of cannabis resin was treated as being equivalent to 5 grams of dried harvested cannabis.

The scheme arguably would have been complex to administer and potentially confusing as there would have been a number of theoretical combinations, for example possession of 5 grams of cannabis resin would be treated as equivalent to 25 grams of dried harvested flowering heads and accordingly the individual could possess no more than 25 grams of dried harvested flowering heads and so on.

The scheme also proposed a scale of penalties, with a proposed fee of $50 for possession of not more than 25 grams of dried harvested flowering heads, a fee of $150 for possession of more


than 25 grams and up to 50 grams of dried harvested flowering heads and a fine of $150 for possession of not more than 10 growing plants (a maximum of three could be mature).\textsuperscript{264}

It is apparent that the cautioning schemes in New South Wales (NSW), Victoria (VIC), Queensland (QLD) and Tasmania (TAS) have an over riding therapeutic purpose to ‘treat’ cannabis users by coerced attendance at education and/or counselling, as evidenced by the use of terms like ‘help’, ‘stopping’ or ‘reducing’ use, ‘growing up’, ‘making mistakes’, ‘responsibility’ and ‘correction’ in various materials describing the operation and intent of these schemes.

Information published by the NT Police about its pre-court diversion program provides an example of the therapeutic purpose of the DIN scheme.

“The program encourages individuals to be responsible for helping themselves our of drug use through education, counselling and treatment. Diversionary programs recognise that as part of growing up many people will make mistakes and should be given the opportunity to correct their behaviour without resorting to the formal criminal justice system as an early option. By intervening early, before a criminal record is incurred, the diversion initiative maximises the opportunity for drug users to break away from drugs and stabilise their lives.”\textsuperscript{265}

The QLD diversion program points out that “(d)iversion is not about the decriminalisation or legalisation of possession or use of illicit drugs.” It is asserted that the justification for linking education about the “consequences of cannabis use” is that it has been demonstrated that a “court appearance without appropriate health interventions has not been successful in reducing cannabis use or drug related offences.”\textsuperscript{266}

The NSW program includes as its goal that diversion “gives offenders who use drugs the chance of undertaking treatment and/or education aimed at helping them to stop using drugs and committing further crimes.”\textsuperscript{267}

WA has also developed diversion programs for drug offenders that involve drugs other than cannabis funded by the Commonwealth government, which includes the CIN scheme by reference to the cannabis education session (CES).

“A CES aims to educate participants about the (1) adverse health and social consequences of cannabis use, (2) treatment of cannabis related harm and (3) laws relating to the use, possession and cultivation of cannabis.”\textsuperscript{268}

\subsection*{3.3.5.1 Victoria}

Under Victorian legislation the use of cannabis is a summary offence with a maximum penalty of $500. Possession and cultivation are indictable offences. Possession of less than 50 grams (any part of the plant) for personal use attracts a maximum penalty of $500, and
possession of 50 grams or more for personal use a maximum penalty of $3,000 and/or one year
imprisonment.

Cultivation of less than 250 grams of cannabis (if not for trafficking) carries a maximum
penalty of $2,000 and/or one year imprisonment. 250 grams or more, or 10 plants, is counted as
a traffickable quantity, and possession of those amounts is taken as evidence of trafficking.

Victoria has statutory procedures for dealing with first and second time possession/use cannabis
offenders. 270 A system of adjourned bonds has applied for some time for first time minor drug
offences (eg possession and use). First time offenders are given a bond, and no conviction is
recorded if the bond conditions are complied with. In 1993, adjourned bonds were applied to 40
per cent of all minor cannabis charges in Victorian magistrate’s courts.

The cannabis cautioning program (CCP) has operated since 1998 and relies on police
discretion, as it is not legislatively based. 271 First or second time offenders (over 17 years of
age) who have had little or no previous contact with the criminal justice system can be issued a
cautions notice instead of having the offence proceeded with through the courts for
possession/use of up to 50 grams of cannabis. The notice given to an offender includes
information about the harms of cannabis use. Whether an offender is offered a caution is at the
discretion of the police officer concerned.

An educational intervention, known as Cautious with cannabis, has operated since August
2001 and is outlined in referral materials given to an individual when issued with a caution.
Like the previous scheme this appears to have a strong underlying therapeutic objective over
and above the two hour education session, as parents, sibling, partners and carers of those
cautioned are encouraged to attend. The program has been described as satisfying concerns
about the harms of cannabis use by extending its goals beyond the individual issued with the
cautions.

“While growing community concern over cannabis use, increased youth involvement in
cannabis use, implications on driving impairment and the debate over the relationship
between cannabis and psychological impairment, the Cautious with Cannabis program
provides clarity, objectivity and evidence based information that dispels many of the myths
associated with cannabis.” 272

3.3.5.2 New South Wales

In NSW possession or use of up to 200 grams of cannabis is a criminal offence with a
maximum penalty of $2,000 fine and/or two years imprisonment. 273 In 1993, 78 per cent of
cannabis offences were dealt with through a fine (often a small one of $200), and 90 per cent of
those found guilty had a conviction recorded against them. As a consequence of a
recommendation of the Drug Summit held in May 1999, a Statewide cannabis cautioning
scheme (CCS) was trialled for a 12 month period in April 2000. The CCS covered offences of
use and possession of dried cannabis leaf stalks, seeds, heads, and equipment for
administration, but did not include living plants or derived products such as hash and hash
oil. 274

Police guidelines apply to cautioning adults detected using or in possession of not more than 15
grams of dried cannabis and/or in possession of equipment for administration. When detected,
police are encouraged to exercise their discretion to issue the person with a caution, providing

270 Drugs, Poisons and Controlled Substances Act 1981 s 76.
271 McLeod Nelson & Associates. Evaluation of the drug diversion pilot program. Melbourne, Drugs and
Health Protection Branch, Public Health Division, Department of Human Services, 1999.
272 Tsakalos V. Drug diversion and the ‘Cautious with Cannabis’ education campaign. DrugInfo
the cautioning criteria are met. First time offenders are issued with a caution notice along with legal and health information and a number to call for confidential treatment and referral. The offender must admit to the offence and only possess the cannabis for personal use which can not exceed 15 grams.

The CCS was amended in September 2001 with the introduction of a mandatory education session for persons cautioned on a second occasion. Police still retain their discretion to charge an offender or issue a caution. A caution cannot be issued if there are prior convictions under the Drug Misuse and Trafficking Act 1985 or a violent or sexual assault offence was committed. No person can be issued with more than two cautions. This scheme does not have a legislative basis, but is dealt with by the New South Wales Police Service policy and procedures.

An evaluation of the first three years of the scheme noted that there was a very low rate, less than one per cent, of first caution recipients contacting the telephone help service, which rose to 14 per cent for second time caution recipients.

“The scheme also produced a number of unintended outcomes, including a degree of net widening, whereby some offenders who would previously have been dealt with informally, were dealt with by way of cannabis caution under the scheme. Other concurrent changes in policing, independent of the scheme, including a move toward pro active high visibility policing, the use of drug detection dogs and a move away from the use of informal warnings due to fear of allegations of corruption, have also increased the number of people required to be dealt with under the scheme.”

3.3.5.3 Queensland

In QLD it is an offence to possess up to 500 grams of cannabis, or where plants are concerned, up to 100 plants (or up to 500 grams equivalent in weight). (Offences involving larger amounts of cannabis or great larger number of plants are treated as serious ie indictable offences.) If the offence is dealt with as an indictment, the maximum penalty is 15 years imprisonment and/or $300,000 fine. If dealt with summarily, the maximum penalty is two years imprisonment and/or $6,000 fine.

There is no distinction under between small amounts (for personal use) and larger quantities up to 500 grams (which most other jurisdictions would regard as a traffickable quantity). Possession of drug paraphernalia is also an offence. Currently, under the Juvenile Justice Act, those under 17 years of age can receive a caution for possession of small amounts of illicit drugs including cannabis.

The police diversion program (PDP) commenced in June 2001, as part of the Queensland Illicit Drug Diversion Initiative to develop diversion programs for drug offenders as part of the Commonwealth Government’s NIDS. The Police Powers and Responsibility Act 2000 requires officers to offer a drug assessment program as an alternative to prosecution for persons found in possession of not more than 50 grams of cannabis or possession of a thing for use, or that the person has used, for smoking cannabis, unless the offence involves the supply of or trafficking in cannabis.

The aim of a drug diversion assessment program is to reduce the number of offenders appearing before courts for minor drug offences, provide incentives for these offenders to curb drug use and increase the number of offenders accessing drug education and treatment programs.

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276 Drug Misuse Act 1986.
278 Drug Misuse Act 1986 s 211.
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The cannabis cautioning scheme, which was introduced in June 2001, permits only one caution and requires attendance at a face to face assessment and education session for offences involving possession of not more than 50 grams of cannabis or possession of a smoking implement. Compared to other jurisdictions, the QLD scheme has resulted in a much higher rate of referral than other jurisdictions which operate cautioning schemes. Possible reasons for this marked difference in cautions were explored in an evaluation of the scheme.

“One of the key differences between the Queensland PDP and similar cannabis diversion programs in other states is that it is compulsory for police in Queensland to offer diversion if the offender meets the eligibility criteria, whereas in other states, police have discretion over this decision. ... The extent to which the graduated response evident in most other states’ programs affects police decisions to offer diversion is unknown at this stage.”

There also appears to have been a rigorous expansion of police activity concerning cannabis offences in QLD, as the annual number of cannabis offences has steadily increased from 9,436 offences in 1995/1996 to 23,355 offences by 2004/2005. See Table A2-8.

3.3.5.4 Tasmania

It is an offence in TAS to use or possess cannabis, to cultivate cannabis or possess smoking devices. The maximum penalty is 50 penalty units or two years imprisonment or both. In TAS, where police have been able to issue cautions for cannabis offences since February 2000, there is a three level approach, with a formal caution and the provision of educational materials to first time offenders, referral of second time offenders to a brief face to face counselling session and diversion of third time offenders to a drug assessment and treatment program (which is part of an overall diversion program for drug offenders).

The drug diversion program is based on police discretion and not legislatively based. It applies to most types of drugs including cannabis, but certain requirements must be met before a diversionary procedure can be followed, ie minimal quantities.

3.3.5.5 Western Australia

A Statewide cannabis cautioning scheme, the cannabis cautioning mandatory education scheme (CCMES), was introduced in WA in March 2000. This had been preceded by a 12 month trial of a formal cautioning scheme for first time cannabis offenders from October 1998 to September 1999 in two police districts, the Mirrabooka Police District (Perth metropolitan area) and the Bunbury Sub District (the State’s major regional city).

The CCMES obviated the need for legislative reform as it was established by an administrative direction by the Commissioner for Police, for police to have the option of issuing a formal caution for first time cannabis offenders who possessed up to 25 grams of cannabis. It did not apply to other cannabis offences, such as possession of smoking implements or cultivation.

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280 This trend is at odds with the trends concerning cannabis offences in all other Australian jurisdictions, which have declined, reflected in the national decline from 62,252 offences in 1995/1996 to 45,854 offences in 2004/2005. There has been a pronounced increase in cannabis offences in QLD since the introduction of the cannabis cautioning scheme, as there was about 13,500 offences per year in the five years prior to the scheme, whereas the number of offences has increased up to 2004/2005.
281 Poisons Act 1971 s 49.
282 Tasmania, Department of Health and Human Services. Drug diversion.
283 Ibid.
284 The issuing of cautions ceased after 21 March 2004 as the CCMES was replaced by the CIN scheme.
A person issued with a caution under the CCMES was required as a condition of the caution to attend a CES of an hour and half’s duration at one of the State’s 12 specialist non government service providers or Community Drug Service Teams (CDSTs). The caution in effect suspended prosecution for the offence, contingent on the individual attending and completing the education session. If an individual failed to attend a CES within two weeks of receiving a caution they would be charged for the original offence under section 6(2) of the Misuse of Drugs Act 1981 (MDA). This resulted an appearance at a Court of Petty Sessions with a high probability of conviction, involving either a fine, a community service order or intensive supervision order, with the attendant stigma of a criminal record. The CCMES ceased to operate when the CIN scheme commenced on 22 March 2004.

3.3.6 Prohibition with exclusion for medicinal use

This option permits cannabis to be used for the treatment of a number of medical conditions. Interest in the use of cannabis for medicinal purposes has grown since the late 1970s when in the US the Controlled Substances Act (CSA), a Federal law, established a comprehensive framework to regulate the distribution and manufacture of a wide range of illicit drugs.

The CSA continued and expanded the prohibition framework that had been created in two earlier key pieces of Federal legislation, the Harrison Act 1914 and the Marijuana Tax Act 1937, by categorising drugs into five schedules in order of perceived decreasing risk of harm. Substances were assigned to a schedule according to opinion and evidence of their potential for abuse, with those substances with the highest potential for abuse listed in Schedule 1. Although cannabis was listed as a Schedule 1 substance, the Federal government had indicated it might relax its strict approach towards cannabis being used for medicinal purposes, which prompted a number of States to pass laws to permit medical use of cannabis.

There were two broad approaches taken in the legislation passed by the States in the late 1970s, either to permit the conduct of therapeutic research programs or by rescheduling cannabis within the State’s controlled substances guidelines so it could be prescribed by a medical practitioner. Eventually these approaches failed because the Federal government was not prepared to permit the use of cannabis for medicinal purposes.

In the mid 1990s there was renewed interest by a number of US States to permit the use of cannabis for medicinal purposes, which compared to the earlier legislation, is “likely to provide explicit defences from prosecution for patients, physicians and caregivers who use, prescribe or supply marijuana for medical purposes.” Whilst the constitutional validity of State laws that invoke the defence of medical necessity have not been seriously challenged by the Federal government in the US Supreme Court, there was a successful Supreme Court challenge in 2001 against a provision in the Californian law being extended to third parties who provide cannabis for medicinal purposes. The area where the Federal government may seek to challenge the validity of States laws will be those jurisdictions were the State law permits a person to cultivate for the purpose of supplying cannabis for their own medicinal needs.

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287 In addition to the overarching Federal framework through the CSA, the States were also able to develop their own statutory framework by varying the scheduling to change the penalties applicable in State courts that are associated with particular drug offences and particular groups of drugs.
288 The problem with this approach was that it is required to be overseen by the Federal government.
289 For a description of the complex and protracted nature of attempts to have cannabis rescheduled by the Drug Enforcement Administration since 1972, which have involved constitutional appeals, Cf: Wikipedia. Cannabis rescheduling in the United States.
291 United States v Oakland Cannabis Buyers’ Cooperative & Jeffrey Jones. Case 00-151. 532 US, 14 May 2001. This was a successful appeal based on the Compassionate Use Act 1996, which had been passed by the Californian legislature.
By the year 2000 a total of 25 jurisdictions in the US had established some form of a legislative framework to regulate the use of cannabis for medicinal purposes. These laws involved a combination of approaches, such as the creation of a therapeutic research program (contingent on Federal approval), rescheduling so that cannabis was reclassified into a schedule that permits its use for medicinal purposes, passing laws which provide a defence from State prosecution to doctors who prescribe cannabis for medicinal purposes under State law or to provide patients and their caregivers who possess cannabis with a defence against prosecution.

Over the past decade a number of jurisdictions have permitted access to cannabis as an exception to the prohibition framework, with doctors in Canada, the UK and in a number of American states able to prescribe or oversee patients using cannabis as a treatment for certain medical conditions. However there is some concern that this option may be used as a ‘back door’ means for the legalisation of cannabis.

“Cannabis is unlikely to be legalised simply because it has medical uses. Legalisation requires a much stronger political justification. ... some proponents of ‘medical marijuana’ have arguably used citizen initiated referenda as a way to legalise cannabis by stealth and to embarrass intransigent defenders of prohibition who refuse to concede that cannabis may have any therapeutic uses. There are, however, ways in which patients could be given access to cannabis or cannabinoids for medical use without removing the prohibition on recreation cannabis use.”

There has been a cautious approach in relation to this issue by undertaking clinical trials, even though a number of reviews of the scientific material and medical literature have sought to determine whether there were sufficient grounds for further investigations into the treatment options. The US National Institutes of Health (NIH) undertook a review in 1997 and concluded because there were promising uses for cannabis, there should be controlled studies in its use for treating a number of symptoms for which there was evidence of possible benefit, including appetite stimulation and wasting, chemotherapy-induced nausea and vomiting, neurological and movement disorders, analgesia, glaucoma.

Along side the investigations by the NIH in the US, in the UK in 1997 the British Medical Association (BMA) released a report entitled Therapeutic uses of cannabis, which also recommended further research to establish suitable methods of administration, optimal dosage regimens and routes of administration. In 1998 the British House of Lords Science and Technology Committee recommended in a report that cannabis should remain a controlled drug, but the law should be amended to allow doctors to prescribe an appropriate preparation of cannabis if required. An editorial in the British Medical Journal in 1998 concerning the possible medicinal uses of cannabis agreed there were likely medicinal applications for the use of cannabinoids.

“The BMA is not alone in arguing for enhanced access to cannabinoids in clinical practice. Others include the Royal Pharmaceutical Society, the previous president of the Royal College of Physicians and many British doctors. The role of cannabinoids in modern

294 Because of the interaction between Federal legislation and court challenges aimed at stopping medicinal use of cannabis it is difficult to obtain a clear understanding of the extent of access to pharmaceutical cannabis in the US. Cf: Hall W & Pacula RL. Cannabis use and dependence. Cambridge, Cambridge University Press, 2003, Appendix 1.
296 Id, 227.
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therapeutics remains uncertain, but the evidence in this report shows that it would be irrational not to explore it. The active components of a plant which has been prized as a medicine for thousands of years should not be discarded lightly, and certainly not through political expediency or as a casualty of the war on drugs. 

A major US review in 1999 of the medical uses of marijuana, undertaken by the Institute of Medicine, which conducted an evidence based approach of the medical uses of cannabis, recommended there should be clinical trials and further research into the efficacy of the medical uses of cannabis. It is concluded that

“the accumulated data indicate a potential therapeutic value for cannabinoid drugs, particularly for symptoms such as pain relief, control of nausea and vomiting, and appetite stimulation ... the effects of cannabinoids on the symptoms studied are generally modest, and in most cases, there are more effective medications. However, people vary in their responses to medications and there will likely always be a subpopulation of patients who do not respond well to other medications. The combination of cannabinoid drug effects (anxiety reduction, appetite stimulation, nausea reduction, and pain relief) suggests that cannabinoids would be moderately well suited for certain conditions, such as chemotherapy-induced nausea and vomiting and AIDS wasting.”

A further report in March 2001 by the British House of Lords Science and Technology Committee, following on from its earlier report in 1998, recommended that genuine therapeutic users of cannabis who possess and cultivate cannabis for their own use should not be prosecuted.

A British review published in 2001 in the British Journal of Psychiatry identified a number of beneficial therapeutic uses of cannabis, including to suppress nausea and vomiting (especially in cancer patients), for use as a muscle relaxant to control muscle spasms and spasticity (associated with multiple sclerosis), to stimulate appetite and slow weight loss (cancer and AIDS patients), the relief of pain, the treatment of glaucoma (reduce intraocular pressure symptoms), treatment of insomnia, anxiety and depression and for use by those with epilepsy as anti convulsant to reduce the rate of seizures.

At its annual general meeting in June 2001 the American Medical Association amended its policy on medical cannabis, to broadly support further evaluation of the compassionate use of medical cannabis for treating certain conditions.

“The AMA calls for further adequate and well controlled studies of marijuana and related cannabinoids in patients who have serious conditions for which preclinical, anecdotal, or controlled evidence suggests possible efficacy and the application of such results to the understanding and treatment of disease.”

The Canadian Health Department has approved the use of Sativex, a cannabis derived under the tongue prescription pain killer for use in clinical trials to determine efficacy of this prescription drug. In Canada a scheme has also been established under the Marihuana Medical Access Program to provide access to cannabis for people with multiple sclerosis.

There is a degree of community support for the use of medical marijuana in the US and whilst a number of States have approved its use, there is a policy hiatus because of determined efforts by the Federal government to use its constitutional prerogatives to close down these types of programs. In 1985 the Food and Drug Administration (FDA) approved the use of dronabinol (marketed as Marinol), a form of synthetic THC, to treat chemotherapy induced nausea. Limited small scale trials have been approved in the late 1990s to examine applications for treating wasting from AIDS and cancer. There is also a growing body of work from a number of other Western countries indicating there is an appreciation that cannabis has clinical applications as outlined in a paper by Dr Lester Grinspoon in a European report on cannabis.

In the European Union (EU) a legislative framework has been developed to permit the use by humans of medicinal products by the ratification of an EU Directive in 2001, Directive 2001/83/EC. A variety of trials into the feasibility of the medicinal use of cannabis have been undertaken in Germany, Netherlands, Finland and the UK, trials with Marinol in France, studies on the effectiveness of cannabinoids on treating glaucoma in Finland, the use of cannabis to alleviate the symptoms of terminal lung cancer in Italy and the feasibility of the use of cannabis in Ireland to control cancer related pain. It has been concluded that so far at this time

“although a number of trials appear to be showing the therapeutic benefits of cannabis, a common finding is that smoking cannabis is seen to be one of the least reliable methods of administration for therapeutic purposes, as it has a poor dosage control and high number of pollutants.”

There has been some consideration of potential therapeutic uses of cannabis in Australia by a number of the State governments. The most recent was by an inquiry in 2002 in WA which briefly considered this matter and recommended support for a national trial into the efficacy of medicinal cannabis.

“It is recommended that the Government endorse the broad recommendations of the New South Wales Working Party on the Use of Cannabis for Medical Purposes as contained in Volume 1 Executive Summary of its report published in August 2000. This would involve a coordinated national approach through the Australian Health Ministers’ Forum to undertake trials of potential medical and therapeutic applications of cannabis.”

Discussion about the possible medicinal uses of cannabis was contained in a 1999 submission by the Law Society of New South Wales to the NSW Parliamentary Drug Summit. Included with this submission was a joint protocol between the NSW Branch of the Australian Medical Association (AMA) and the Law Society of New South Wales, proposing a variety of measures to improve responses to the problem of illicit drugs, including the issue of medicinal use of cannabis. Recommendation 8 of this joint protocol states that the two organisations support a trial in the following terms, that both organisations “endorse clinical trials of the provision of

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312 Held in May 1999.
313 Recommendation 6 is for the introduction of a civil based approach to the personal use, possession and cultivation of small quantities of cannabis.
cannabis for medical purposes for people with terminal illnesses where conventional treatments have failed to provide relief.”

A Victorian report published in 2000 recommended that the police and the courts should use discretion when dealing with people who had been using cannabis to manage the symptoms of serious debilitating and often terminal conditions where they had been using it for its therapeutic effects.314

An expert committee, the NSW Working Party on the Use of Cannabis for Medical Purposes, which was established as a result of the NSW Drug Summit, in August 2000 recommended that a compassionate regime be introduced in NSW to assist those suffering from a specified range of illnesses.315 It was also noted that for this scheme to work it would be necessary for these patients to be exempted from prosecution.316 The NSW Working Party also made a number of recommendations for further evaluation of the applications and efficacy of medical cannabis. One of the key recommendations was as follows.

“While recognising the limitations of currently available pharmaceutical preparations of cannabinoids, the Working Party recommends that they should be subject to further clinical trials of safety and efficacy.” (Recommendation 1)317

There appears to be evidence that some of the reported use of cannabis by older Australians is being used for medicinal and therapeutic purposes outside the medical system. For instance, a report released in October 2005 confirmed that a number of older Australians used cannabis to manage chronic pain and arthritis.318 A question concerning community support for use of cannabis for medical purposes was included in the 2004 NDSHS, which was supported by just over two thirds (67.5%) of Australians. There was also a further question involving clinical trials on the efficacy of cannabis to treat medical conditions, which was supported by nearly three quarters (73.5%) of all Australians. (See Table A1-7.)

It is apparent from research by NDARC in October 2005 and the 2004 NDSHS that there is a high level of community support for the provision of cannabis for therapeutic purposes through a medical access program. This seems to contradict the lack of action by the NSW government following an announcement in 2003 that clinical trials would be conducted into the medical use of cannabis, in response to the 2000 report from the Working Party on the Use of Cannabis for Medical Purposes.319

3.4 Regulation

3.4.1 Regulatory option

Regulation would create a structure for the controlled cultivation and distribution of cannabis, such as through a government monopoly or by strict licensing of growers and retailers outlets,
with associated restrictions on advertising and sale to minors. This would resemble the current framework that applies to alcohol and tobacco. It has been suggested that as drugs such as cannabis and cocaine become more widely used communities and social groupings start to develop collective norms which exert social control and regulate use. This phenomenon means that formal controls may be ineffective, for whereas

“full or almost full suppression of particular drugs is not very difficult to legislate and to maintain as a principal aim as long as these drugs are not or rarely used. Problems begin when prohibited drugs start to be part of new life styles in which the reasons for their suppression are irrelevant.”

Regulation would involve a major reconceptualisation of the role of government, which instead of suppressing drugs, would focus on creating a framework to regulate use. This would involve government putting its major effort into prevention of risks by undertaking roles such as monitoring potency and regulating price and distribution, reliable information about the risks of cannabis and how users may minimise these.

A report to the Victorian Parliament in March 1996 by the Premier’s Drug Advisory Council recommended that a number of minor cannabis offences should no longer be criminal offences and instead cannabis be regulated in conjunction with education and treatment measures.321 The specific recommendations for this proposed reform were –

“Use and possession of a small quantity of marijuana should no longer be an offence. ‘Small quantity’ should be defined as no more than 25 grams (half the amount currently specified in the Drugs Poisons and Controlled Substances Act 1981) [Recommendation 7.1]

Cultivation of up to five cannabis plants per household for personal use should no longer be an offence. ‘Household’ should be defined to exclude everything other than private residences. [Recommendation 7.2]”

These recommendations were, unsurprisingly, ‘emphatically rejected’ by the Government at the time, as it was considered there was little support for legalising cannabis.322

3.4.2 Free availability

The free availability option, which does not operate in any jurisdiction in the world, proposes that there would be no controls over the use, cultivation or distribution of cannabis.
4 Case Studies of Cannabis Law Reform

4.1 Introduction

This chapter examines some of the key processes that have occurred to reform the law concerning minor cannabis offences in WA, the UK and NZ since the 1970s. These three jurisdictions have been selected as they have similar political and parliamentary systems, share a common legal heritage and in relation to drug laws, have a very similar trajectory in the evolution of drugs laws and policies that have been adopted.

Our interest in examining the UK and WA is that reform through the parliamentary process resulted in legislation to establish a legal framework in early 2004 for police to have alternatives to prosecute minor cannabis offenders, whereas in NZ legislative reform has so far not occurred in spite of similar debates about policy reform. Although NZ may have progressed a short distance along the road to cannabis law reform, this has been confined to administrative measures for limited formal cautioning of minor cannabis offenders.

The interest in NZ is how reform has been stymied largely due to political constraints because of the leverage by minority parties who used their position to enable Helen Clarke to form a minority Labour government, but included restrictions on cannabis law reform in the enabling agreement. The NZ situation also demonstrates the value and importance of non-parliamentary avenues to create support for reform when the parliamentary process is unable to implement legislative reform.

A number of threads evident in these three jurisdictions will be examined. One thread concerns the strength and advantages a government having control of the parliamentary process to reform cannabis laws. In the UK as the Labour government had an absolute majority, it was relatively unfettered in what it could achieve, whereas in WA and NZ the role of minor parties was (and continues to be in the case of NZ) a critical factor for government to achieve reform through legislative means.

Another thread is the tension of whether reform of cannabis laws should be regarded as a process of being largely based on ‘objective’ evidence from scientific and research activity or whether reform should be primarily regarded as involving the adjudication of ethical values and philosophical principles. This tension is most clearly demonstrated by a debate of whether doctors should be licensed to be prescribed cannabis for medicinal purposes. As will be shown, in these three jurisdictions, government has relied extensively on expert ad hoc groups and parliamentary inquiries as mechanisms to negotiate this tension.

These three jurisdictions have a number of similarities. These include how controlled (ie ‘illicit’) drugs are administered by police, whereas pharmaceutical drugs are administered by health authorities and the Misuse of Drugs Acts have similar categories of offences and arrangements for scheduling groups of drugs according to perceived harmfulness. Also in each jurisdiction there is a system for licensing doctors to prescribe opioid replacement pharmacotherapies to registered addicts. In each jurisdiction the prescribing of substitute opioids to heroin dependent individuals has been embraced (in contrast to the US), referred to

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323 Western Australia and New Zealand are former colonies of the United Kingdom.
324 The UK’s first piece of legislation which prohibited drugs such as opium and heroin was the Dangerous Drugs Act 1920, in New Zealand it was the Dangerous Drugs Act 1927 and in WA it was the Police Offences (Drugs) Act 1928. In the UK the Misuse of Drugs Act 1971 repealed the Dangerous Drugs Act and related laws, New Zealand followed suit with the Misuse of Drugs Act 1975 and in WA with the Misuse of Drugs Act 1981 (which transferred drug offences previously in a section of the Police Act 1892).
325 A general election was held in New Zealand in October 2005.
326 Under health legislation.
as the ‘British system,’ to treat drug dependent individuals. The 1924 Rolleston Committee in the UK formalised this system, by stating the principle that “addiction is a disease … that may in some cases require treatment by the prescription of the drug of addiction, either as a prelude to withdrawal or as a form of maintenance of an incurable condition.”

The fact that in these three jurisdictions the principal legislation concerned with illicit drugs is called the Misuse of Drugs Act further underscores the close correspondence between the philosophical approaches and the legal and administrative frameworks in each jurisdiction which defines and regulates the use of illicit drugs. The cornerstone of all three jurisdictions is that the policy structure is underpinned by

“an essentially medical view of the world. This is reflected in the continued dominance of the ‘disease’ model of ‘addiction’ and is enshrined in existing legislation. The Misuse of Drugs Act 1971 established a legal framework within which illicit substances are classified according to their perceived dangerousness/harmfulness and, while legal classification has become increasingly contested, the medicalised philosophy which underpins the existing system has remained largely unchallenged.”

The approach for the 2004 reforms in the UK, achieved by reclassification of cannabis from a Class B drug to a Class C drug, highlights the dominance and continuing adherence to this medicalised model. The perception that cannabis is still a drug with some degree of dangerousness can be contrasted with the regulatory framework in each country concerning alcohol and tobacco.

Whilst these case studies are principally concerned with identifying the processes by which cannabis law reform has occurred and what other factors have driven and sustained reform in these three jurisdictions, it is suggested that the outcomes may also be of value to those in other jurisdictions interested in law reform, as many of these drivers are common to other jurisdictions.

4.1.1 International character of law reform

Western Australia (through the Australian federal government), NZ and the UK have been long standing adherents to drug prohibition in concordance with all other nations. This framework was initially developed in 1909 by a meeting of the Opium Commission in Shanghai and subsequently ratified in 1912 as the Hague Convention. The primary purpose of these early measures was to control the production of opium, subsequently expanded in the 1920s to encompass other substances, including cannabis.

In a history of the introduction of the provisions of the 1925 Convention into domestic law it is noted that the US, which was the major force behind the failed attempt to have cannabis

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331 A recent review has examined the evidence base to the classification of amphetamines, ecstasy, cocaine, cannabis and magic mushrooms with respect to the UK, the USA, the Netherlands and Sweden: Levitt R, Nason E & Hallsworth M. The evidence base for the classification of drugs. Santa Monica, CA, RAND Corporation, 2006.
332 Western Australia belongs to a federation of States. Whilst WA has apparent exclusive power to pass and enforce criminal laws, through the national government’s power under the Commonwealth Constitution to enter into treaties and conventions - the Commonwealth’s foreign relations power - the provisions in treaties and conventions ratified by the Commonwealth will only have effect in WA if the Western Australian government is prepared to enact laws which give effect to such provisions. This means that a State such as WA could have a greater degree of latitude than apparent in being able to pass laws which may offend or avoid the requirements of the treaties or conventions.
included in the 1912 Hague Convention, was able in the mid 1920s with the support of South Africa, Egypt and Turkey, to have cannabis included, without scientific inquiry, into the 1925 Convention. Thus it would appear the grouping of cannabis alongside harmful drugs such as heroin, occurred either because of a misunderstanding of the intent of the 1925 Convention or was a consequence of increasing emphasis on the criminalising the prohibition of these particular drugs due to strong pressure from the US.

It has been argued the 1925 Convention imposes only a limited obligation upon signatories to enact measures limited to medical and scientific purposes involving Indian hemp, with the remaining obligations being merely to

"control the import and export of the dried flowering or fruiting tops of the pistillate plant cannabis sativa from which the resin has not been extracted and to prohibit or exercise effective control over the export of the resin extracted from Indian hemp as well as the preparations of which the resin formed the base." 335

The Conventions between 1912 and 1925 plus later treaties were consolidated in 1961 and then extended by two further UN treaties in 1971 and 1988 to include additional areas and classes of drugs. 336 The operation of the rigid and complex regulatory system prohibiting the use of cannabis and other drugs in Australia and other nations is determined by the operation of the these three UN conventions337 which establish the international drug control framework.

"Global drug prohibition is a world wide system structured by a series of international treaties that are supervised by the UN. Every nation in the world is either a signatory to one or more of the treaties, or has laws in accord with them." 339

Australia is bound by the three UN drug conventions, the Single Convention on Narcotic Drugs 1961 340 the Convention on Psychotropic Substances 1971 341 and the Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988. 342 Together these conventions purport to limit acceptable use of drugs to medical or research purposes, which as a noted in a recent review, means that they represent

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335 Id, 41.
“a high level of international consensus on a complex policy issue that impacts on different societies in different ways. There is near universal recognition of the gravity of ‘the drug problem’ and a shared recognition that it has an irreducibly global dimension.”

As a consequence of the Commonwealth Government being a signatory and having ratified each of the three UN Conventions a series of complex and varying laws has been introduced by each of the Australian jurisdictions to implement the minimum requirements of these conventions. There is little consistency in the legislation passed by the States and Territories as in each jurisdiction drug laws have been driven by local factors, measures to counteract and anticipate emerging local and national trends and issues involving the use of cannabis and other drugs. In addition to separate laws concerned with prohibited drugs in each jurisdiction, there is a raft of complex Commonwealth, State and Territory laws covering other matters, such as confiscation of the proceeds of crime and money laundering.

Because of the interlinked relationship between domestic and international debate about reform, discourse about law reform in a specific jurisdiction inevitably includes references to and acknowledges DLE developments in other jurisdictions. The dominance of the UN framework means that reform in one jurisdiction are likely to be of significance in other signatory countries and an exemplar of how policies may apparently conform to the strictures of the UN conventions by adapting to domestic circumstances and values. There is also a sequential nature to drug reform as innovations and investigations undertaken in one jurisdiction tend to be built upon and developed by subsequent reforms in other countries.

However, the strictures from the UN drug conventions have attracted growing criticism, as it has been recognised the possibilities for law reform and policy development in jurisdictions like WA, NZ and the UK can be constrained by the extent to which legislators believe they have to defer to these conventions. In practice the majority of jurisdictions have adhered closely to the principles embodied in an international prohibition framework concerning both naturally occurring drugs (such as cannabis) and synthetic drugs.

“There is ... a North American bias in both drug policy and drug policy research. This bias takes many forms and contains a number of contradictions. Global drug policy, for instance, is being marketed to the general public as an emanation of the global villagers’ volonté générale, while serious analyses convincingly show that it really rests on a highly coercive consensus masterminded by just one international moral entrepreneur: the United States. Had it not been for a century of big stick diplomacy, contemporary ‘narcotics control’ would display the diversity of present day alcohol controls instead of the uniformity of international conventions.”

It has been argued that the dominance by the US and the key UN bodies responsible for implementation of the various drug conventions, the INCB and the UN Drug Control Program (UNDCP), has meant that policy development in Australia and other signatory nations has been substantially hampered.

“Both the UNDCP/INCB and the government of the USA have explicit policies that other nations should apply their (prohibitionist) approaches to drugs in society. The provisions of the international treaties recognising that legislation and its enforcement may reflect the

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344 It has been argued that the Commonwealth would probably be able to legislate to enable it to exclusively cover drug offences in Australia. Cf: Brown R. ‘Federal drug control laws: present and future.’ (1977) 8 Federal Law Review 435-452.
cultures of individual nations is generally ignored. In this context, it is worrying that many nations have incorporated the Conventions into domestic law without critical examination of (1) the implications of doing so and (2) the potential usefulness, for individual nations, of the provisions which apparently permit deviation from total prohibition where this reflects local cultures.

There is also concern that policy makers in a jurisdiction may uncritically apply research and principles developed according to the specific historical, social, ethnic and legal circumstances in the US. An example is the centrality of the concept of zero tolerance in American drug policy – embodied in the so called ‘War on Drugs’. There have been some divergence from the dominant principles of zero tolerance in some US States, as in spite of the overarching framework of prohibition applied at a Federal level, individual States are able to enact laws for dealing with minor offences whilst still remaining with the prohibition framework. However, as toleration of divergence from Federal law depends on the extent to which the Federal government has been prepared to enact laws to override state legislation, only limited reforms have occurred.

Over the past three decades a number of major North American inquiries have identified the policy options to regulate the use and availability of cannabis and other drugs. Two of these inquiries, the Shafer National Commission on Marihuana and Drug Abuse (NCMDA) and the Le Dain inquiry are of particular significance. Both reported in 1972 to the American and Canadian Federal governments respectively and although they provided an impetus for rethinking cannabis policy in other jurisdictions, ironically had limited influence in bringing about the reforms they recommended in their own jurisdictions.

It has been noted that for the US “the key triggering event in decriminalisation was the 1972 NCMDA report” which resulted in reforms of minor cannabis offences in a number of States during the 1970s to ameliorate some of the harshness of prohibition.

“By early 1978, ten American States had followed this general approach, basically in an attempt to overcome what was seen as the harsh and arbitrary nature of the cannabis laws as applied to users and to reduce sharply the costs of enforcing those laws through the orthodox criminal justice system.”

Until relatively recently there has been a reluctance to challenge the hegemony of the UN sponsored prohibition framework and for signatory nations such as Australia there is the added complexity of how far individual Australian States may be able to legislate and undertake de


348 The American national approach, the ‘War on drugs’, whilst intended to develop and maintain a high level of punitiveness for drug use, may be applied less rigorously at a local level, due to the complex structure of Federal laws, State legislative variations and local level ordinances. For example, in a case study of the activities of a police officer who stationed full time at an American high school, this officer when dealing with cannabis use by students where the amount is less than 10 grams, will issue the student with a minor fine under a local ordinance, whereas for larger quantities or dealing the student will be charged and appear in a county court. Cf: Graff JL. ‘High times at New Trier High. A model school struggles with a vexing issue: kids on pot.’ Time 9 December 1996.


Chapter 4: Case Studies of Cannabis Law Reform

jure versus de facto reform without being seen as undermining overall Australian commitment to the UN framework of prohibition.  

“Over the past seventy years Australian drug law and policy has developed more as a response to international pressure than as a well targeted response to the dimension and character of the real problems of drug abuse in this country. Drug policy, as it related to opium, then heroin and later cannabis and other drugs used non-medically (ie socially or recreationally primarily by young people) developed as a result of international and national forces.”

There has been some concern that Australia as a signatory to the three UN drug conventions has lost some of its sovereignty and freedom to develop drug policies and undertake law reform appropriate to its circumstances and preferences. However, a closer examination of the issue indicates there is probably more scope and flexibility than has been recognised in the past for sovereign states to craft their domestic cannabis policy. For instance, Article 36 of the 1961 Single Convention on Narcotics imposes an obligation upon signatory nations to enact legislation to prohibit drug use and drug trafficking. The 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances mandates that the possession, purchase or cultivation of illicit drugs for personal use should be made criminal offences by signatories.

“Subject to its constitutional principles and the basic concepts of its legal system, each party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption.”

However, in spite of this structure, the 1988 Convention also provides that signatories can implement alternatives to the criminal penalties as part of their domestic law in accordance with the Convention, by distinguishing the relative degree of harmfulness of different drugs.

“In appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social integration, as well as, when the offender is a drug abuser, treatment and aftercare.”

It has been noted that with respect to the 1988 Convention that “(t)here is thus considerable flexibility in the requirements of the convention. It is clearly within the terms of the convention to retain criminal sanctions for possession, but not to prosecute or punish the offender.” The possibilities for reform of cannabis law reform in NZ in relation to the obligations and restrictions that may apply through it being a signatory to the 1961 and 1972 Conventions, but not the 1988 Convention, will be examined in further detail below.

4.1.2 European developments

Although a detailed review of European developments is beyond the scope of this thesis it should be noted that there is a divergence in approach in continental Europe, ranging from the ‘coffee shop’ policy in the Netherlands under the expediency principle which permits sale of cannabis from registered coffee shops to strict prohibition in Sweden. In spite of the strictures of the UN conventions it can be seen that a range of responses have been developed by a

355 Article 3, Clause 2.
356 Article 4 c.
358 For a consideration of how the various countries have approached minor drug offences cf: European Monitoring Centre for Drugs & Drug Addiction. The role of the quantity in the prosecution of drug offences. ELDD comparative study. Lisbon, European Legal Databases on Drugs, European Monitoring Centre for Drugs & Drug Addiction, 2003.
number of European countries in relation to the issue of dealing with minor cannabis offenders, which have been devised to be within the requirements of the three UN Conventions. See Table 4.  

A meeting in Frankfurt in November 1990 attended by representatives from the cities of Amsterdam, Frankfurt, Hamburg and Zurich has been regarded as influential on the course of development of European drug policy. The Frankfurt Resolution, which emanated from this meeting, represents a declaration that the prohibition of drugs exemplified by the American national policy of the ‘War on Drugs’ has failed.

“Drug using is for the majority of users a temporary part of their biography, which can be overcome within the process of maturing out of addiction. Drug policy may not render this process more difficult, but it must support this process... A drug policy fighting against addiction exclusively with the criminal law and the compulsion to abstinence and offering abstinence only has failed... Criminalisation is a counterpart to drug aid and drug therapy and is a burden for police and justice they cannot carry. ... The aid for drug users must no longer be threatened by criminal law... it is necessary to lay stress on harm reduction and repressive forms of intervention must be reduced to the absolute necessary minimum.”

The excerpt shows that the perspective advocated by the Frankfurt Resolution bears many of the hallmarks of harm minimisation. For example in the Italian approach, whilst personal possession is no longer a criminal offence, persons who are involved in conduct which would amount to an offence, can be subject to other sanctions, such as the suspension of their driver’s license. See Table 4. For a detailed consideration of approaches within particular European countries also see the NORML study of European drug policy.

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361 Those in WA who fail to expiate and transferred to the Fines Enforcement Registry process for recovery of unpaid infringement debts.
Table 4: European approaches to cannabis offences

<table>
<thead>
<tr>
<th>Country</th>
<th>Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>Personal possession is not a criminal offence. Civil sanctions such as the suspension of a driver’s license are, however, applied. Effectively, Italy has ‘decriminalised by law’.</td>
</tr>
<tr>
<td>Netherlands</td>
<td>Possession, selling and growing small amounts are not prosecuted. Small amounts (5g or less) are sold through ‘coffee shops’. The Netherlands’ approach could be viewed as ‘grudging toleration.’</td>
</tr>
<tr>
<td>Portugal</td>
<td>An individual found in possession of a small amount (not specified) has the drug seized from them and they are referred to a local commission. The commission’s remit is to (where possible) divert the individual from prosecution and into treatment. Effectively, Portugal has ‘decriminalised by law’.</td>
</tr>
<tr>
<td>Spain</td>
<td>Personal possession of less than 50g is not a criminal offence. It may attract a civil penalty or a fine. When an individual is caught in possession, the drug is seized and they are referred to the administrative authorities. Effectively, Spain has ‘decriminalised by law’.</td>
</tr>
<tr>
<td>Sweden</td>
<td>No distinction is made between drugs that are considered ‘hard’ and those considered ‘soft’. Usual court sentences are a fine or imprisonment for a maximum of six months. Sweden is widely known for its tough stance against drugs and it would appear that cannabis possession will remain – for the foreseeable future – within the criminal law.</td>
</tr>
<tr>
<td>Switzerland</td>
<td>Proposed legislation will legalise consumption of cannabis. Only adult Swiss residents will be able to purchase Swiss grown cannabis. The Government is to place greater emphasis on drug prevention policies, and will decide in the near future what quantities and prices will be acceptable. Switzerland – if proposals go ahead – will effectively have ‘decriminalised by law’.</td>
</tr>
<tr>
<td>France</td>
<td>Both simple possession and (uniquely) use are prohibited and punishable by one year’s imprisonment and/or 4,000 Euros. However, in practice, those found in possession of small amounts receive a warning which is often accompanied by a suggestion (from the police) to attend a social or health service. This process is termed ‘no further action with orientation’.</td>
</tr>
<tr>
<td>Germany</td>
<td>Possession is a criminal offence. However, the Public Prosecutor retains the right not to prosecute where the amount is small and for personal use and it is not in the public interest to prosecute.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Possession of less than 5 grams cannabis, or anyone smoking cannabis in private will no longer be prosecuted from 27 March 2003.</td>
</tr>
</tbody>
</table>

Source: Adapted from May T, Warburton H, Turnbull PJ & Hough M (2002). Table 1.

4.1.3 Law reform developments in other jurisdictions

The progress of drug law reform is influenced by contemporaneous policy developments in some jurisdictions, which in turn stimulates law reform in other jurisdictions which continue to maintain a strict prohibition framework. There are also eras when paradigm shifts have triggered reform elsewhere, such as the Shafer Commission (ie NCMDA) in the US, which was commissioned by President Richard Nixon and which presented its first report on cannabis law reform options in March 1972.  

The NCMDA was a watershed and recommended major reforms, including that cannabis should cease to be prohibited and that a social control policy be developed to discourage cannabis use, while concentrating primarily on the prevention of problematic drug use. Its key recommendation was based on the recognition that prohibition through the criminal law, which had placed cannabis in the Schedule I (ie most restrictive) group of drugs, was fundamentally flawed and that instead cannabis should be decriminalised.

“The criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. It implies an overwhelming indictment of the behaviour which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behaviour, a step which our society takes only with the greatest reluctance.”

363 However in June 2004 the Swiss parliament refused to undertake proposed reform: Oomen J. Cannabis legislation and practice in Europe. Antwerp, ENCOD, 2004. It is also noted that in Switzerland as there are 26 Kantone (states), there are in effect 26 different drug policies.


A study of the cannabis decriminalisation reforms during the 1970s in 11 American states\(^{367}\) has found wide variance in the approach undertaken of the scope of reform and of the role played by groups and consultative bodies in achieving reform. A key factor was that if cultivation was included as part of a proposition to effectively decriminalise minor cannabis offences this would result in failure.

“No matter what the traditions of the local political culture, if the bills proposed violated the narrow boundaries of successful decriminalisation legislation, the initiative inevitably failed. For example, in Virginia a legislative subcommittee recommended removing jail terms for marihuana possession and cultivation. The proposal got nowhere. Suggesting that cultivation be treated the same as simple possession apparently was beyond the bounds of possible reform.”\(^{368}\)

The Canadian Commission of Inquiry into the Non-Medical Use of Drugs (the Le Dain Commission) was established in 1969 to consider a wide range of drug issues and reported to the Canadian government in 1970.\(^{369}\) It adopted a different approach to the Shafer Inquiry in relation to cannabis and argued against liberalisation of the law, as it believed cannabis should be prohibited because decriminalisation would result in increased levels of use. It was also considered that the long term effects of cannabis use posed a particular risk for young people who used the drug.

More recently in the UK there have been a number of reviews which have examined the operation of the legal framework prohibiting drugs. The most notable of these has been the 2000 Runciman inquiry under the auspices of the Police Foundation, which undertook a considered investigation of the operation of the UK’s 

“\textit{Misuse of Drugs Act 1971}”. The Runciman inquiry dealt with a large range of issues, including the specific issue of cannabis law reform, recommending that cannabis should be reclassified to schedule in the \textit{Misuse of Drugs Act 1971} to more closely reflect its lower level of harm compared to other drugs.\(^{370}\)

In Australia the need for reform of minor cannabis laws was tackled along with other drug issues by the Royal Commission Into the Non Medical Use of Drugs, chaired by Professor Ronald Sackville, which reported to the South Australian Dunstan Labor government in 1978.\(^{371}\) In 1993 and 1994 a total of five studies, which provide a unique body of research addressing many of the issues and dimensions of cannabis use in Australia, were produced by the National Task Force on Cannabis which had been established by the Keating Australian Labor Party (ALP) Commonwealth government.\(^{372}\)


In 1994 the MCDS commissioned a research program to specifically examine the CEN scheme by funding the Social impacts of the cannabis expiation scheme in South Australia, which culminated in the publication in 1999 of a set of studies on the operation of the scheme. A recent examination of the possible options for reforming cannabis laws was dealt with in a report commissioned by the Victorian Parliament’s Drugs and Crime Prevention Committee which was published in April 2000.

### 4.2 Case study 1: Western Australia

#### 4.2.1 Introduction

The cannabis law reforms in WA that resulted in the CIN scheme were the culmination of a decade of intense policy debate, at both a State and national level, split largely along party political lines ie conservative (Liberal Party and National Party) versus progressive (ALP).

In 1992 the Commonwealth Government had sponsored the National Task Force on Cannabis through the National Drug Strategy Committee to conduct a wide ranging inquiry into cannabis use in Australia, including options for law reform. However, the National Task Force report was not favourably received by the incumbent conservative government in WA. Further consideration of cannabis law reform stalled in the early 1990s due to increased community concern in WA about the growing use of illicit drugs, particularly evidence of increasing levels of heroin related mortality and morbidity.

In 1994 the Court Liberal State government, which was elected in February 1993, established the Task Force on Drug Abuse (TFDA) to undertake a review of issues involving alcohol, tobacco and illicit drugs in WA and to suggest reforms. In relation to cannabis the TFDA recommended to the Government in its September 1995 report that policy concerning this particular drug should “reflect unambiguous opposition to the use of cannabis and actively seek to discourage its use and entail continuing focus by law enforcement agencies on higher level traffickers and street dealers.”

The TFDA observed that during community consultations it had found strongly polarised views on the issue of cannabis law reform, with a

“forceful case ... mounted by campaigners for the decriminalisation or legalisation of cannabis that there should be a radical change in the State’s approach and that such a change was inevitable ... (whereas on the other hand there were) a large number of submissions and views put at public hearings vehemently opposed (to) any revision to cannabis’ status as an illegal drug.”

Whilst not accorded the status of being a recommendation, there was also a suggestion, in response to evidence of the adverse social impact of the conviction for a minor cannabis offence, that “the Police Department should examine the area of formal cautioning for simple cannabis offences, and report back to government on this issue.”

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375 Atkinson L & McDonald D. Cannabis, the law and social impacts in Australia. Trends and Issues No. 48, Australian Institute of Criminology, 1995.


377 Id, 189.

378 Id, 198.
In June 1997 a Parliamentary Select Committee of the Legislative Assembly was established (by a Liberal and National Party government), in response to rising community concern about increasing heroin related deaths in WA. The overall emphasis of this investigation, as outlined in the first report of the Select Committee, was to strengthen police powers and activity in relation to serious levels of crime through amendment of the MDA. 379

The issue of cannabis law reform was addressed in a minority report by the Committee’s two Labor (Opposition) members, Hon. Jim McGinty (now Attorney General in the incumbent Labor government) and Hon. Megan Anwyl. The minority report forcefully argued that as the law in WA had been ineffective in stopping or containing the cultivation, possession and use of small amounts of cannabis, it should be reformed by establishing a scheme to expiate minor offences, along the lines of the South Australian CEN scheme.

4.2.2 Community Drug Summit

The election of the Gallop Labor government in February 2001 signalled the possibility of legislative reform of minor cannabis offences in WA. The ALP had included in its pre-election platform a commitment to convene a ‘community drug summit’ to canvass the depth of support in the community for drug policy reform, including cannabis law reform.

“We propose a decriminalised regime which would apply to the possession of 50 grams of cannabis or less and cultivation of no more than two plants per household. A person who admitted to a simple cannabis offence would be issued with a cautioning notice as a first offence, be required to attend an education and counselling session for a second offence or, in lieu of accepting that option, face a fine as a civil offence, and be fined for any subsequent offence.” 380

The WA drug summit was held in August 2001 and consisted of a total of 100 delegates, 80 ‘community representatives’ from public nominations plus a further 20 appointed because they possessed specialist experience in areas such as policy, service delivery or research.

Recommendation 39 of the drug summit, which supported the creation of a scheme to avoid minor cannabis offenders being charged with an offence, referred to as being a system of ‘prohibition with civil penalties’ for adults who either possessed or cultivated ‘small amounts of cannabis’. The full text of Recommendation 39 is as follows: 381

“For adults who possess and cultivate small amounts of cannabis the government should adopt legislation that is consistent with prohibition with civil penalties, with the option for cautioning and diversion. For those under 18 years old, the government needs to take the best possible steps to avoid young people commencing cannabis use (eg prevention and other effective strategies).

The same principles (as adults) of prohibition with civil penalties should be provided, with the expansion of options for cautioning and diversion to education or treatment programs and coercive treatment options should be available, that include the opportunity for parents and carers to influence outcomes. Implementation of these resolutions needs to be accompanied by:

• education for the public;
• this will include education on the implications of the legislation, education on the risks of cannabis use/misuse in general and in specific circumstances (eg for people

379 Western Australia, Parliament, Legislative Assembly, Select Committee Into the Misuse of Drugs Act 1981. Taking the profit out of drug trafficking. An agenda for legal and administrative reforms in Western Australia to protect the community from illicit drugs. Perth, Western Australia, Legislative Assembly, 1997.


who are vulnerable to mental health problems, for people who may be operating machinery, including vehicles) and education on available treatment options;

- the evaluation and monitoring of the impact of this legislation on patterns of cannabis use and related harms and coincidentally there should be routine monitoring of potency of available cannabis;

- the re-affirmation of relevant responsibilities and legislation (eg preventing intoxication while driving, preventing intoxication while at work); and

- to measure the overall impact of cannabis in the community, the Government should implement a comprehensive scheme to collect data through the health and justice systems."

This recommendation supported the model proposed in the ALP’s pre-election manifesto, accompanied by an over prescriptive statement that sought to outline the rationale for a legislatively based system for the expiation of minor cannabis offences.

4.2.3 Legislative process

In December 2001 the Minister for Health appointed the Drug Law Reform Working Party (DLRWP) to advise him on a model to expiate minor cannabis offences consistent with the objectives in Recommendation 39. In its report to the Minister in March 2002 the DLRWP reviewed the operation of the three established Australian schemes and identified areas of shortcomings of those schemes which the proposed WA scheme should overcome. It made a total of 22 recommendations, two of which outlined the core aspects of the CIN scheme as follows.\(^{382}\)

That an offender will be eligible to receive a cannabis infringement notice (CIN) if they possess a ‘small amount of cannabis’, which is defined as being two growing plants and/or a total of up to 30 grams of cannabis. [page 6]

That there be graduated penalties for the possession of cannabis, with a penalty of $100 for the possession of not more than 15 grams of cannabis and a penalty of $150 for the possession of between 15 grams and not more than 30 grams of cannabis. That there be a penalty of $200 for the cultivation of not more than two cannabis plants. [page 7]

A number of other matters addressed in the remaining 20 recommendations from the DLRWP, including that separate legislation should be used to set up a scheme in WA to expiate minor cannabis offences. The reason for this approach was that it would emphasise, it was contended, there had been a shift in emphasis to regulating cannabis as a health rather than as a law enforcement issue, that the community would be able to identify and obtain all information about relevant offences, penalties and provisions if contained a single statute and that it was logically consistent with a broad public health framework concerning the use of alcohol (in the Liquor Licensing Act 1988) and tobacco (in the Tobacco Control Act 1990).\(^{383}\)

The Government accepted the proposal for separate legislation to establish the CIN scheme along most other recommendations, with the exception of two key recommendations which it rejected - to repeal the offence in MDA s 5(1)(d)(i) concerned with the possession of pipes or utensils for smoking cannabis on which there are detectable traces of cannabis and that the cultivation of up two cannabis plants regardless of the method of cultivation should be an expiable offence.

However, reforms to the MDA that were accepted and implemented were that a new offence be created concerned with selling equipment for use in the hydroponic cultivation of cannabis (MDA s 7A), the threshold for the presumption of possession with intent to sell or supply be
4.2.4 Impact of CIN scheme

The second reading speech on 20 March 2003 by the Minister for Health, the Hon Bob Kucera, when the Cannabis Control Bill 2003 was introduced into the Legislative Assembly, sets out a number of criteria the Government indicated it would use to evaluate the success of the CIN scheme. These criteria were to:

- improve help seeking behaviour of those with cannabis related problems;
- increase the understanding of and knowledge about the harms associated with cannabis use among West Australians;
- prevent the adverse social and economic costs from convictions for minor cannabis offences;
- reduce the costs incurred by law enforcement organisations and the courts to prosecute and enforce those charged and convicted for minor cannabis; and
- focus the activities of police on the detection and prosecution of those engaged in the commercial cultivation and supply of cannabis.

4.2.5 Outline of the scheme

Even though the CIN scheme was established by the Cannabis Control Act 2003, the operation of the scheme requires an understanding of the relationship between the CCA and the Misuse of Drugs Act 1981, the State’s primary source of illicit drug legislation. A similar approach occurs in the three other Australian infringement schemes, the CEN scheme (established by the Controlled Substances Act 1984), the SCON scheme (established by the Drugs of Dependence Act 1989) and the DIN scheme (established by the Misuse of Drugs Act).

4.2.5.1 Police discretion preserved

An important distinction between the CIN scheme and the CEN scheme, is that in WA police discretion is preserved in relation to each of the four expiable offences by the inclusion of the term ‘may’.

“A police officer ... may, subject to subsection (2), within 21 days after the alleged offence is believed to have been committed, give a cannabis infringement notice to the alleged offender.”

The enshrining of police discretion contrasts with the South Australian CEN scheme which specifically excludes police discretion by stating that a police officer ‘must’ give a CEN.

“(If a person (not being a child) is alleged to have committed a simple cannabis offence, then before a prosecution is commenced, an expiation notice must be given to the alleged offender under the Expiation of Offences Act 1996”.

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384 See Appendix 4 for the text of s 5(1)(e) as now amended. The exception for cannabis means that smoking a prohibited drug or prohibited plant other than cannabis still remains an offence in WA. The difficulties of police charging someone under this section supported repeal of s 5(1)(e) altogether. The phrase ‘then being used’ in the section means that it would not be an offence for a person to be present at a place which being regularly used for smoking drugs other than cannabis. To be successful a prosecution would require evidence that the place or premises were actually employed for the purpose of smoking drugs, as it would not appear to be an offence to be present at a place where others are using drugs other than cannabis.


386 Controlled Substances Act 1984 s 45A(2).
4.2.5.2 Concurrent offences

There is a recognition that a CIN should not be issued in a situation where a person is concurrently charged with other serious offences. In these circumstances the person would be charged under the MDA with committing a minor cannabis offence, which would be dealt with concurrently at the trial for the serious offence (or offences). This degree of procedural flexibility is important as in SA police believed they were required to issue a CEN for a minor cannabis offences regardless of the circumstances. This interpretation resulted in those who had been concurrently charged with a serious offence also being issued with a CEN, which not unexpectedly they largely failed to expiate.\(^{387}\) As it was highly improbable that an offender would separately pay the outstanding CEN debt after having been dealt with by a court for the serious offence(s), the scheme was saddled with a growing number of unexpiated CENs.

A shortcoming of the CEN scheme was that as it provided little incentive and had limited flexibility for expiation, the overall expiation rate fell, resulting in adverse criticism of the CEN scheme on the grounds it had apparently failed to achieve one of its aims to reduce the number of persons before the courts for minor cannabis offences. In its first report the Drug Law Reform Working Party noted that as in

> "these circumstances there is little advantage for the individual to settle the expiation notice as he or she is facing much greater penalties for other offences ... (therefore) it is inappropriate and administratively complex for an individual to receive a separate expiation notice for an eligible minor cannabis offence."\(^{388}\)

4.2.5.3 Household where cannabis being cultivated

The CCA provides that an individual may only receive a CIN for the cultivation of two or less plants if they are “all located on the same premises and those premises are the alleged offender’s principal place of residence (and) there are no other cannabis plants being cultivated on the premises by any other person.”\(^{389}\)

This approach rectifies another shortcoming of the CEN scheme by setting a limit on the number of plants based on a household, as it had been contended that organised commercial cultivation of cannabis was facilitated under the South Australian scheme in households where a number of adults resided, each of whom could cultivate up to the statutory limit, as the scheme set the plant limit per adult, not household.\(^{390}\)

4.2.5.4 Cannabis smoking paraphernalia

The CCA expands the law in WA in relation to cannabis smoking paraphernalia by making it a summary offence to sell or offer to sell such items unless the retailer displays prescribed warning notices advising of the adverse consequences of cannabis use.\(^{391}\) A retailer must also make available prescribed educational materials to purchasers of smoking paraphernalia.\(^{392}\) The penalties for these offences are a fine of $1,000 in the case of a natural person or a fine of $5,000 if it involves a body corporate. The CCA also creates a new summary offence of selling


\(^{389}\) *Cannabis Control Act 2003* s 7 (2).


\(^{391}\) *Cannabis Control Act 2003* s 22. The *Cannabis Control Regulations 2004*, s 7, prescribes the text of the warning notice to be displayed by retailers: “Health warning. Cannabis may cause serious health and psychological problems. It is particularly dangerous to drive or operate machinery whilst under the influence of cannabis.”

\(^{392}\) *Cannabis Control Act 2003* s 23. The *Cannabis Control Regulations 2004*, s 8, prescribes the text of the education materials to be made available by retailers.
‘cannabis smoking paraphernalia’ to persons under 18 years of age.\(^{393}\) The penalty for this offence is a fine of $5,000 in the case of a natural person or a fine of $25,000 if it involves a body corporate.

### 4.2.5.5 Methods of expiation

Compared to the three other Australian schemes, the CIN scheme provides broadened methods for expiation, by either payment within 28 days of the aggregate fine if more than one expiable offence was committed (technically known as a ‘prescribed modified penalty’) or attendance at a CES.\(^{394}\) The scheme specifically provides an individual can elect within the first 28 days to go to a Magistrates Court\(^{395}\) to contest any of the expiable offences for which a CIN was issued, instead of opting to expiate a CIN.\(^{396}\)

Attendance at a CES does not involve the payment of any fees\(^{397}\) by the person and completion of a CES will expiate all CINs that had been issued for one or more offences committed on a single day. A final demand will be issued by the police if a CIN is not expiated within 28 days of it being issued, which provides a further 28 day period of grace to expiate any CINs issued. However, in the second stage expiation by payment of the relevant modified penalty is only permitted, as the CES option is only available in the first 28 days.

A CES is defined in the legislation as being for the purpose of educating an individual about “the adverse health and social consequences of cannabis use, the treatment of cannabis related harm and the laws relating to the use, possession and cultivation of cannabis.”\(^{398}\) Expiation by attendance at a CES is proven when the provider has issued a prescribed certificate of completion. (CCA s 18). The power to approve providers of CES and the content of education sessions rests with the Director General of Health, ie the Chief Executive Officer of the Department of Health.\(^{399}\)

### 4.2.5.6 Failure to expiate

Expiation under the CIN scheme can be understood as involving a three stage process. The first stage requires expiation by either payment or by attendance at a CES within 28 days of a CIN being issued.

The second stage occurs at the end of the first 28 day period if expiation was not effected within the first 28 day period. This involves the police issuing a final demand which gives notice that if payment is not made within the next 28 days, enforcement will be transferred to the Fines Enforcement Registry (FER).\(^{400}\) The only method for expiation during the second stage (ie second 28 day period) or thereafter is payment of the relevant modified penalty.

The third stage occurs if a person has failed to respond to the final demand by not paying the modified penalty enforcement and recovery of the unpaid fines will be transferred to the FER, where the provisions of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (FPINEA) apply. When enforcement of an unpaid CIN passes to the FER a person will continue to receive further demands for payment, in addition to incurred administrative fees. If a person

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393 Cannabis Control Act 2003 s 24.
394 Cannabis Control Act 2003 s 8(4).
395 On 1 May 2005 the former Court of Petty Sessions, which heard minor criminal matters, became part of the newly established Magistrates Court of WA, that was created as part of a major reform of the courts in WA and where minor criminal offences are now heard. Cannabis Control Act 2003 s 8(3).
396 However, CES providers are paid a sessional fee per attendance, as part of the funding agreements they hold with the Department of Health (through the Drug and Alcohol Office).
397 Cannabis Control Act 2003 s 17(1).
398 Cannabis Control Act 2003 s 17(2).
400 The FER is a statutory agency administered by the Department of Justice, which has responsibility for the enforcement of unpaid traffic infringement notices.
fails to respond to these demands for full payment they will eventually need to enter into an arrangement with FER to satisfy the outstanding debt, such as a time to pay arrangement.\footnote{401}{The FER is also responsible for the enforcement of unpaid traffic infringement notices.}

If an individual fails to meet further demands for payment of the unpaid CIN, there is the power under the FPINEA to suspend his or her motor drivers licence and refuse motor vehicle registration. Additional administrative charges are also incurred as demand notices are issued. The FER process does not permit enforcement of unpaid infringement notices through imprisonment.\footnote{402}{The original purpose of the infringement notice legislation was to deal with offences under the Road Traffic Act 1974, as the Fines, Penalties and Infringement Notices Enforcement Act 1994.}

\subsection*{4.2.5.7 Multiple infringements on one day}

The CIN scheme also provides that if a person has been issued with multiple infringement notices for offences committed on one day and has received a CIN in relation to each offence, then for purposes of expiation by CES, attendance at one CES will be taken to have expiated each of the separate CINs issued on that day.\footnote{403}{Cannabis Control Act 2003 s 14.}

It would appear that it may be possible for an individual to receive up to four separate CINs on one day.\footnote{404}{It is unclear whether the two different expiable offences concerning the possession of cannabis would permit in some circumstance the issuing of two CINs, such as if an individual had in their possession two separate amounts of cannabis, one of which weighed less than 15 grams and the other which weighed between 15 and 30 grams. In the alternative if the two separate amounts were treated as being one sample of cannabis which in aggregate weighed more than 30 grams then the person would be considered to be ineligible to receive a CIN and accordingly charged with possession of cannabis under s. 6(2) of the Misuse of Drugs Act 1981. The setting of the two sub amounts (ie not more than 15 grams and between more than 15 grams and not more than 30 grams) within the overall maximum amount of 30 grams [set out in s. 6(2) of the Cannabis Control Act 2003] which can qualify as expiable offences is not part of the Cannabis Control Act 2003 but is contained in Schedule 1 of the Cannabis Control Regulations 2004. The Cannabis infringement notice scheme guidelines, reproduced in Appendix 9, issued by the WA Police Service is silent on this issue.}

This provision needs to be read in conjunction with the second stage penalty structure (see recidivism section below), which removes the option for expiation by payment of the modified penalty(ies) incurred if an individual has been issued with two or more CINs on separate days within the past three years.\footnote{405}{Cannabis Control Act 2003 s 9.}

\subsection*{4.2.5.8 Recidivism}

Whilst the philosophy of the CCA is that individuals should not go to court if they fail to expiate a cannabis offence covered by the CIN scheme, the legislation contains a contrary provision targeted at those who might be described as ‘CIN recidivists’, who can be charged with the relevant offence under the MDA if they fail to expiate.

This provision was not in the original Cannabis Control Bill 2003 when first introduced into Parliament in 2003, but was inserted as an amendment by the Legislative Council and adopted by the Government on the final day of debate on the legislation on 23 September 2003.

“The amendment is directed at ensuring that repeat offenders take the opportunity for education and access to treatment services available under the CES option. Available...
evidence indicates that giving up drug dependence will often require more than one attempt, and exposure to treatment is the best option for changing drug using behaviour.”

Section 9 of the CCA provides that if a person has been issued with two or more CINs on separate days within the past three years, they cannot expiate any additional CINs by payment of the relevant modified penalty, but only expiate by attending a CES. The option of electing to challenge an offence in a Magistrates Court remains. The wording of the applicable part of section 9(1) is as follows.

“This section applies to a CIN issued for an alleged offence (the ‘new offence’) if, within 3 years before the new offence was allegedly committed, the alleged offender has been given a CIN for each of 2 or more offences, at least 2 of which are alleged to have been committed on separate days previous to the date on which the new offence is alleged to have been committed.”

This means that it is possible for a CIN recidivist to be convicted of an offence if they fail to expiate because the CIN scheme has a two stage penalty structure. The second stage applies to the situation where an individual has been issued with two or more CINs, two of which must have been issued on separate days within the past three years. An individual subject to a second stage penalty who fails to complete the CES cannot avail themselves of the procedures outlined in Part 3 of the FPINEA: CCA s 9(4). Under these circumstances failure to complete a CES within the 28 day period means that a person will be charged with the relevant offence under the MDA. A flow chart of the CIN scheme that demonstrates the operation of the arrangement with respect to recidivists is included in Appendix 8.

There is some misunderstanding as to the operation of section 9, as it has been stated that “people receiving more than three notices in a 3 year period would not have the option of paying a fine to expiate the offence.” Contrary to this interpretation, as the cut off is set at two offences, this means on the third offence, once the requirement in section 9(1) has been met (ie there have been at least two prior offences which have occurred on at least two separate days in the past three years), the CCA operates in a more coercive and punitive fashion. It has been suggested, apparently in defence of this provision and possibly as an opinion, that “(r)ead offenders, who are often dependent on the drug, are more likely to respond to education and contact with a treatment service than they are to a criminal conviction.”

Based on published data on the operation of the CIN scheme in the 12 month period April 2004 – March 2005, very few individuals had been issued with two or more CINs on two or more separate days. In the period April 2004 to March 2005 a total of 3,591CINs were issued to a total of 2,643 unique individuals, of whom 2,525 (95.5%) had only one occasion of contact, 117 (4.4%) had two separate occasions of contact and one person had three separate occasions of contact.

In the 12 month period from April 2004 to March 2005, of the 2,643 unique individuals, 1,797 (68.0%) had been issued with one CIN, 697 (26.4%) had been issued with two CINs on one occasion and 31 (1.2%) had been issued with three CINs on one occasion. In relation to the 117 unique individuals issued with CINs on two separate occasions, 61 (2.3%) had been issued with 2 CINs on two separate occasions, 46 (1.7%) had been issued with 3 CINs on two separate occasions and 10 (0.4%) had been issued with 4 CINs on two separate occasions.

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406 Legislative Assembly, Hansard 2003, 1166.
407 Cannabis Control Act 2003 s 9(1).
409 Ibid.
The CIN scheme has thus so far demonstrated a very low rate of recidivism. This may be contrasted with the outcome reported from the CEN scheme, where over the five year period from 1991/1992 to 1995/1996 there was a total of 7,730 repeat offenders who accounted for a total of 19,765 offences for which CENs were issued, representing 24% of all CENs issued.411

4.2.5.9 Method of cultivation

Hydroponically grown cannabis is now excluded in all four Australian expiation schemes, as both the CEN and SCON schemes removed hydroponically cultivated plants in February 2003 and June 2004 respectively. There has been some variation in how hydroponic cultivation is defined. In SA the CEN scheme contains the definition of “artificially enhanced cultivation” being the “cultivation in a solution comprised wholly or principally of water enriched with nutrients or cultivation involving the application of an artificial source of light or heat,”412 such that any plant cultivated in this manner is not a simple cannabis offence. In the ACT the SCON scheme has a definition of “artificial cultivation” which is intended to address the hydroponic cultivation of cannabis, being to “... hydroponically cultivate or cultivate with the application of an artificial source of light or heat.”413

In the WA the CCA refers to the hydroponic cultivation of cannabis, but does not provide a definition as to the meaning of this term. However, there is a reference in the Minister for Health’s second reading speech of the Cannabis Control Bill 2003. “Hydroponic cultivation in this context is intended to have its ordinary meaning; that is cultivation by placing the roots of the plant in a liquid nutrient solution rather than in soil.”414

As can be seen, the lack of a definition in the CCA is in contrast to SA and the ACT, both of which recently added broad definitions to prohibit hydroponic cultivation, along with any other form of artificial cultivation. One commentator has suggested that under the CIN scheme artificial cultivation of cannabis, so long as it excludes hydroponic cultivation techniques, is not proscribed and thus should attract a CIN, if it is within the two plant limit.415

However, whilst it is arguable that by not having a definition, the CIN scheme permits artificial cultivation, recourse to the Interpretation Act 1984 provides that when a court in WA interprets a provision in a statute, it may, when trying to ascertain the statute’s meaning, refer to certain extrinsic materials. A court may refer to these extrinsic materials under certain circumstances, namely, to confirm if the meaning of the provision is the ordinary meaning in accordance with the purpose or object of the statute or when the provision is “ambiguous or obscure” or when the ordinary meaning of the provision is “manifestly absurd or unreasonable.”416

The Interpretation Act 1984 lists certain extrinsic materials that a court may consult, including, “any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body”, “any explanatory memorandum relating to the Bill” or the text of the second reading speech of a Bill or “any official record of proceedings in either House of Parliament.”417

412 Controlled Substances Act 1984 s 45A.
413 Drugs of Dependence Act 1989 s 162(2).
414 Kucera, RC. Cannabis Control Bill 2003, Second reading speech by Minister for Health Hansard, Legislative Assembly. 20 March 2003, 5697.
416 Interpretation Act 1984 s 19(1).
417 Interpretation Act 1984 s 19(2).
The question of whether cannabis that is grown indoors, in soil and under artificial conditions is or is not within the meaning of hydroponic cultivation contemplated by the CCA is yet to be determined. It is submitted that if the application of artificial light to a plant growing indoors in soil is done for the purpose of accelerating growth and increasing the yield over and above may be achieved if a plant was grown outdoors, then is likely to be excluded from the CIN scheme. In his second reading speech the Minister also referred to rationale for the prohibition of hydroponic cultivation because “greater yields” are produced by hydroponically grown cannabis.

The CEN scheme in South Australia, by an amendment in December 2002, inserted the term “artificially enhanced cultivation” into the Controlled Substances Act 1984, to exclude hydroponically grown cannabis from the CEN scheme. In the ACT hydroponically cultivated cannabis plants were excluded from the SCON scheme from June 2004 by the inclusion of the term ‘artificially cultivate’ into the Drugs of Dependence Act 1989.

4.2.5.10 Review of the scheme
The CCA requires that the legislation should be reviewed after it has been in operation for three years (CCA s 26). Section 26 is cast in very broad terms, as it states that the review is to “have regard to (a) whether there is a need for the Act to continue; and (b) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.”

Prescribed review of legislation has not been a common provision in other WA criminal legislation and may reflect a change in approach by the legislature in matters which involve contested perspectives on the criminal law of areas of personal choice. A review is also a mechanism for renewed parliamentary debate about the law reform and places a government of the day under some pressure to demonstrate that the gains of the scheme outweigh its costs and that it was committed to the continuation of the CIN scheme.

4.2.5.11 Limitations of the scheme
The CIN scheme may have a too narrow definition of the meaning of cannabis as it is defined in the MDA as being the “plant of the genus cannabis (by whatever name designated) or part of that plant”. The scheme explicitly excludes possession or use of any refined or extracted cannabis product. It could be argued this is justified as these forms are manifestations of organised activities as they are likely to be either imported or if produced locally undertaken by a well organised enterprise and that also these products may be more harmful because they contain higher levels of THC.

However, if the narrow definition of cannabis is interpreted as also excluding from the CIN scheme the possession of 30 grams or less of cannabis seeds, this could expose some minor offenders to being charged if they had retained seeds which remained as an unwanted product after extraction of leaf material from cannabis heads. It is not clear at this time whether this narrow definition can be sustained, even though in the operational instructions issued to police possession of seeds is said to be outside of the scheme.

Another limitation of the scheme is that if a person has possession of one or two cannabis plants, as distinct from being a cultivator of not more than two non hydroponically grown plants, they will be ineligible to receive a CIN. This circumstance would apply, for example, if a cannabis plant has been uprooted from the soil or been cut down, even if none of the leaf material or heads has been removed as it is no longer being cultivated. Distinctions between cultivated plants and plants which have just been harvested was a subject dealt with in an

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418 Artificaly enhanced cultivation is defined as the “cultivation in a solution comprised wholly or principally of water enriched with nutrients or cultivation involving the application of an artificial source of light or heat.” (Controlled Substances Act 1984 s 45A)

419 Artificial cultivation is defined as meaning “(a) hydroponically cultivate or (b) cultivate with the application of an artificial source of light or heat.” (Drugs of Dependence Act 1989 s 162(2).

420 Misuse of Drugs Act 1981 s 3.
unsuccesful appeal in November 2001 to the Supreme Court of the Northern Territory, involving the case of R v Myra and Sibin Pavlovic, where there were two harvested plants which had produced 1.5 kilograms of cannabis which was in the process of being dried and two smaller plants still being cultivated.\footnote{R v Myra and Sibin Pavlovic Unreported Supreme Court of the Northern Territory, SC 20111031 & SC 20111029; 22 November 2001.}

### 4.2.6 Relationship with other legislation

As the CCA does not operate as a separate piece of legislation but is linked to sections 5(1)(d)(i), 6(2) and 7(2) contained in the MDA, it provides police with the considerable advantages of the MDA, eg on the grounds of reasonable suspicion being able to stop, search and detain a person or their vehicle or any belongings or packages or any other thing\footnote{Misuse of Drugs Act 1981 s. 23.} and also that police always have the option of charging someone instead of issuing a CIN.

There is an ancillary provision in the Police Act 1892 which is relevant in those circumstances where a police officer who has given a CIN to a person but the person has provided insufficient or false information as to their name or address. There is a general power in WA for police to arrest someone without a warrant if that person refuses to provide their name and/or their address or if a police officer believes the person has given false information as to their name or address.\footnote{Police Act 1892 s. 50.}

In the MDA, which is the basis of the framework in WA for drug offences, cannabis has been treated for some years as being less serious than other illicit drugs. Well before the CCA amendments in 2003 cannabis had been treated as a different category of seriousness, through the optional summary trial procedure for those charged with certain types of serious cannabis offences. To understand the distinction the MDA makes between cannabis and other drug groups, it is helpful to briefly outline the working of the MDA.

The MDA breaks cannabis offences into two groups, simple offences (i.e., minor offences) which are dealt with summarily by the Courts of Petty Sessions (Table 5) and crimes (i.e., serious offences) which are dealt with by the higher courts (Table 6). The MDA distinguishes between those crimes which involve a conspiracy, with a lower range of penalties, compared to those who commit the principal offence,\footnote{Misuse of Drugs Act 1981 s 33(1)(2)(a).} whereas attempts or incitement to commit a crime do not attract a lower penalty.\footnote{Misuse of Drugs Act 1981 s 33(1) and s 33(3) respectively.}

The scope of the MDA is augmented by including substances listed in the Poisons Act 1964.\footnote{Thus s. 4 of Misuse of Drugs Act 1981 states that the Act applies to three types of drugs – ‘drugs of addiction’, ‘specified drugs’ and the drugs that are specified in Schedule 1 of the Act, regardless of whether they are a drug of addiction or a specified drug. A drug of addiction and a specified drug are defined in s.5 of the Poisons Act 1964.} Furthermore the MDA stipulates in s. 4(2) that it applies to plants – which means both prohibited plants as defined in s. 5 of the Poisons Act 1965 and any other plants whether or not they are defined in the Poisons Act 1964, which are specified in Schedule 2 of the MDA.

Cannabis is specified in Schedule 2 of the MDA. The meaning of the term ‘prohibited plant’ is defined as being any plant or any part of that plant.\footnote{Misuse of Drugs Act 1981 s 4.}
### Table 5: Offences and penalties – simple cannabis offences

<table>
<thead>
<tr>
<th>Description of offence</th>
<th>Legislation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupier of any premises permitting premises to be used for the manufacture, preparation, sale, supply or use of cannabis</td>
<td>MDA 5 (1) (a)</td>
<td>$3,000, 3 years or both</td>
</tr>
<tr>
<td>Owner or lessee of any premises permitting premises to be used for the use of cannabis</td>
<td>MDA 5 (1) (b)</td>
<td>$3,000, 3 years or both</td>
</tr>
<tr>
<td>Person knowingly concerned in the management of any premises for the manufacture, preparation, sale, supply or use of cannabis</td>
<td>MDA 5 (1) (c)</td>
<td>$3,000, 3 years or both</td>
</tr>
<tr>
<td>Possession of pipes or utensils for smoking cannabis</td>
<td>MDA 5 (1) (d) (i)</td>
<td>$3,000, 3 years or both</td>
</tr>
<tr>
<td>Possession of utensils for manufacture or preparation of cannabis for smoking</td>
<td>MDA 5 (1) (d) (ii)</td>
<td>$3,000, 3 years or both</td>
</tr>
<tr>
<td>Being in a place where cannabis is smoked</td>
<td>MDA 5 (1) (e)</td>
<td>$2,000, 2 years or both</td>
</tr>
<tr>
<td>Possession of cannabis</td>
<td>MDA 6 (2)</td>
<td>$2,000, 2 years or both</td>
</tr>
<tr>
<td>Cultivation of cannabis</td>
<td>MDA 7 (2)</td>
<td>$2,000, 2 years or both</td>
</tr>
<tr>
<td>Contravention of order prohibiting sale of hydroponic equipment to cultivate cannabis</td>
<td>MDA 7A</td>
<td>$2,000, 2 years or both</td>
</tr>
<tr>
<td>Failure to display warning notice by retailer of cannabis smoking paraphernalia</td>
<td>CCA 22</td>
<td>$1,000 (person) $5,000 (body corporate)</td>
</tr>
<tr>
<td>Failure to provide education materials by retailer of cannabis smoking paraphernalia</td>
<td>CCA 23</td>
<td>$1,000 (person) $5,000 (body corporate)</td>
</tr>
<tr>
<td>Selling of cannabis smoking paraphernalia to person under 18 years of age by retailer of cannabis smoking paraphernalia</td>
<td>CCA 24</td>
<td>$5,000 (person) $25,000 (body corporate)</td>
</tr>
</tbody>
</table>


### Table 6: Offences and penalties - serious cannabis offences

<table>
<thead>
<tr>
<th>Description of offence</th>
<th>Legislation</th>
<th>Penalty (principal offence)</th>
<th>Penalty (conspiracy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of cannabis plants with intent to sell or supply</td>
<td>MDA 7 (1) (a)</td>
<td>$100,000, 25 years or both</td>
<td>34 (1) (a) $75,000, 20 years or both</td>
</tr>
<tr>
<td>Cultivation of cannabis plants with intent to sell or supply</td>
<td>MDA 7 (1) (a)</td>
<td>$100,000, 25 years or both</td>
<td>34 (1) (a) $75,000, 20 years or both</td>
</tr>
<tr>
<td>Sell, supply or offer to sell or supply cannabis plants</td>
<td>MDA 7 (1) (b)</td>
<td>$100,000, 25 years or both</td>
<td>34 (1) (a) $75,000, 20 years or both</td>
</tr>
<tr>
<td>Selling hydroponic equipment to cultivate cannabis</td>
<td>MDA 7A (1)</td>
<td>$20,000, 5 years or both</td>
<td>34 (1) (c)</td>
</tr>
</tbody>
</table>

In the MDA, when the offence involves cannabis, the place of trial is determined by the quantity of cannabis and/or number of plants involved, in effect provides the incentive of lower penalties for a person charged with an indictable ‘serious offence’ involving cannabis. The option of a defendant selecting the option of having a trial in a summary court instead of in a higher court, is available for cannabis offences which involve possession with intent to sell or supply, cultivation with intent to sell or supply, sell or offer to sell or supply or offer to supply.

428 On which there are detectable traces of cannabis.
429 On which there are detectable traces of cannabis.
The optional summary trial is not available if the charge involves a conspiracy. There is a scheme of different penalties depending on whether the person is convicted in a higher court or summary court (see Table 7). The MDA explicitly restricts the optional summary trial to offences only involving cannabis leaf or plants, but not any derivative of cannabis.\(^{431}\)

### Table 7: Cannabis offences - optional place of trial

<table>
<thead>
<tr>
<th>Type of cannabis</th>
<th>Threshold</th>
<th>Legislation</th>
<th>Optional summary trial</th>
<th>Trial in higher court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leaf</td>
<td>500 g</td>
<td>Schedule 3</td>
<td>$5,000, 4 years or both</td>
<td>$20,000, 10 years or both</td>
</tr>
<tr>
<td>Plants</td>
<td>100 plants</td>
<td>Schedule 4</td>
<td>$5,000, 4 years or both</td>
<td>$20,000, 10 years or both</td>
</tr>
<tr>
<td>Cigarettes(^{432})</td>
<td>400 cigarettes</td>
<td>Schedule 3</td>
<td>$5,000, 4 years or both</td>
<td>$20,000, 10 years or both</td>
</tr>
<tr>
<td>Hashish oil</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Resin</td>
<td>40 g</td>
<td>Schedule 3</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Tetrahydrocannabinols</td>
<td>-</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Selling hydroponic equipment to cultivate cannabis</td>
<td>-</td>
<td>-</td>
<td>$2,000, 2 years or both</td>
<td>$20,000, 10 years or both</td>
</tr>
</tbody>
</table>

Another concept in the MDA is that cultivation of greater than a specified number of cannabis plants or possession of greater than a specified quantity of cannabis is a deemed presumption to sell or supply,\(^{433}\) according to the thresholds in Table 8.

### Table 8: Cannabis offences - thresholds for serious offences (presumption of intention to sell or supply)

<table>
<thead>
<tr>
<th>Type of cannabis</th>
<th>Threshold</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leaf</td>
<td>100 g</td>
<td>Schedule 5</td>
</tr>
<tr>
<td>Plants</td>
<td>10 plants</td>
<td>Schedule 6</td>
</tr>
<tr>
<td>Cigarettes</td>
<td>80 cigarettes</td>
<td>Schedule 5</td>
</tr>
<tr>
<td>Hashish oil</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Resin</td>
<td>20 g</td>
<td>Schedule 5</td>
</tr>
<tr>
<td>Tetrahydrocannabinols</td>
<td>2 g</td>
<td>Schedule 5</td>
</tr>
</tbody>
</table>

The MDA requires that a court declare a person convicted of a ‘serious drug offence’ to be a convicted drug trafficker\(^{434}\) if the offence involves more or greater than the following thresholds of cannabis (Table 9).

### Table 9: Cannabis offences - thresholds for declaration as a drug trafficker

<table>
<thead>
<tr>
<th>Type of cannabis</th>
<th>Threshold</th>
<th>Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Leaf</td>
<td>3 kg</td>
<td>Schedule 7</td>
</tr>
<tr>
<td>Plants</td>
<td>250 plants</td>
<td>Schedule 8</td>
</tr>
<tr>
<td>Hashish oil</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Resin</td>
<td>100 g</td>
<td>Schedule 7</td>
</tr>
</tbody>
</table>

\(^{431}\) Misuse of Drugs Act 1981 s 34 (2).  
\(^{432}\) Containing any portion of cannabis.  
\(^{433}\) Misuse of Drugs Act 1981 s 11 (b).  
\(^{434}\) Misuse of Drugs Act 1981 s 32A (b).
4.3 Case Study 2: United Kingdom

4.3.1 Introduction

This section examines the major steps of the reform process in the UK which culminated in the reclassification of cannabis in October 2003, when the Blair government effectively decriminalised the possession of cannabis. Whilst this discussion is concerned with recent stages of the reform process, this was predated by evidence of the growing use of cannabis over a number years prior to the recent era of reform. For instance, in mid 1967 the Home Office established an inquiry under the aegis of the Advisory Committee on Drug Dependence. The inquiry, known as the Wootton Committee, examined the specific issue of whether cannabis was a dangerous drug and if it should continue to be subject to same penalties that applied to other drugs prohibited under the existing Dangerous Drugs Act 1951.\(^{435}\)

A theme of the Wootton Committee’s examination of this issue was that cannabis was associated with deviant and socially marginalised groups,\(^{436}\) a preoccupation that had close parallels with views articulated in the US where it was maintained cannabis was introduced in the first place to Americans by immigrant groups, taken up by those who were outsiders (such as musicians and hippies) and then some years later spread to wider American society. The Committee was particularly concerned that there had been a shift in use of cannabis in the UK during the 1950s from ethnically marginalised groups to mainstream British society.

“In the early part of the period most seizures were of green plant tops, found in ships from Indian and African ports and thought to be destined for petty traffickers in touch with coloured seamen and entertainers in London docks and clubs. By 1950 illicit traffic in cannabis had been observed in other parts of the country where there was a coloured population. ... by 1954 the tendency for the proportion of white to coloured offenders to increase was well marked, and in 1964 white persons constituted the majority of cannabis offenders for the first time.”\(^{437}\)

The Wootton Committee report presented statistics which showed a growth in the annual number of cannabis convictions, from 127 in 1951, to 288 in 1961 and reaching 2,393 in 1967. Since the Committee’s report more recent research has confirmed the continuing growth in cannabis related offences throughout the 1970s up until the late 1990s in the UK.

“Long run trends in possession offences are available only for the United Kingdom, but these indicate a tenfold increase in possession of cannabis since 1974. These trends are startlingly at odds with trends for all indictable offences, which increased by about a quarter over this period.”\(^{438}\)

The significance of police activity largely involving cannabis offences is seen in trends in drug charges in the UK, which indicate about 90% of all drug charges relate to possession of a drug, of which three quarters are concerned with the possession of cannabis. In the UK the number of drug offences grew from 26,278 in 1987 to a peak of 131,230 in 1998 and then fell to 113,050 in 2002.\(^{439}\) In 1997 cannabis offences made up 86,000 of all drug offences.\(^{440}\) There was also a similar trend with the number of seizures, consistent with the trend in drug shares, mostly


Chapter 4: Case Studies of Cannabis Law Reform

involving cannabis and with a peak of 151,750 seizures in 1998, of which cannabis made up 114,690 (76%) seizures. A key finding from the 2002 Joseph Rowntree Foundation (JRF) sponsored study of the policing of cannabis laws in the UK was how DLE practices and policies can have unintended major consequences, as demonstrated with increasing numbers of cannabis charges throughout the 1990s. It was suggested this increase did not appear to be due to a focus on cannabis, but because of a focus by police on groups in the community targeted through the extensive use of stop and searches as part of a street level law enforcement model associated which emphasised law and order issues. This approach to law enforcement, which is sometimes referred to as ‘crack downs,’ brought with it the attendant likelihood of inflated cannabis arrests as concurrent charges because of police attention on non cannabis offences. The 2002 JRF study found that in 1999 even though ostensibly three quarters of cannabis possession arrests involved simple possession (ie a minor offence) and the remaining cannabis arrests occurred concurrently with another offence, nevertheless

“(i)ff only a minority of possession arrests derive from arrests for other offences, they frequently result from stops and searches for other offences which lead only to the discovery of cannabis. In other words, the specific suspicion on which the search was based turns out to be unproven or unfounded, but cannabis is discovered in the process.”

There were profound cost implications for DLE agencies because of the increasing reliance on stop and searches, for as the JRF study found in 1999 “the average time it took an officer to deal with a cannabis offence was five hours. In most cases officers were operating in pairs. This yields a figure of 770,000 officer hours.” The total cost would be considerably higher if the costs of prosecuting agencies and courts were taken into account – it is estimated that whilst it cost £10,000 to take a matter to court there was an average fine of only £46 per minor cannabis conviction.

The police sought to manage the increased number of cannabis charges by issuing cautions, to such an extent that by the late 1990s over half of all cannabis arrests were dealt in this fashion. Even though this meant there was some concomitant reduction in the burden placed on the court system, considerable police resources were still required to process minor cannabis offenders. However, in addition to the considerable variation between police regions in the use of cautions, one of the major problems was that a criminal record was created when a caution was issued to an offender.

Alongside the escalating law enforcement response to increasing use of cannabis in the UK, a number of prevalence surveys tracked the widespread nature of cannabis use, as determined through the British Crime Survey (BCS), the British equivalent to the household surveys that are conducted on a regular basis in the US, Australia and NZ.

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442 A useful study of policing in the Ottawa-Carleton region by the RCMP, which sought to demonstrate whether police over-targeted cannabis users, found that between 90 to 95% of drug charges were linked to other charges, which meant that the “vast majority” of those charged for simple cannabis offences were incidental to another offence. It was found that 19% of those charged with motor vehicle offences were in possession of cannabis and that in relation to cannabis offenders, 41.3% of arrests were concerned with traffickers and 8% were concerned with possession; Olson S & Loree D. Drug crimes case study data analysis for the region of Ottawa-Carleton, 1996-1998. A preliminary report on cannabis. Ottawa, Royal Canadian Mounted Police, 1999.
Data from the seven most recent BCS surveys indicates cannabis use increased from the mid-1990s until about the year 2000 and since then has declined across all age groups up to the most recent survey in 2004/2005. Annual prevalence for the 16 to 59 age group increased from 1996 (9.5%) to 2002/2003 (10.9%) and has since declined to 9.7% in 2004/2005. With respect to monthly prevalence of the 16 to 59 age group, use increased from 1996 (5.5%) to 2002/2003 (6.7%) and has since fallen to 5.6% in 2004/2005.

With respect to annual prevalence for the 16 to 24 age group, use increased from 1996 (26.0%) to 2000 (27.0%) and then declined to 23.5% in 2004/2005. There was a similar pattern by the 16 to 24 age group with respect to monthly prevalence, with use increasing from 1996 (16.1%) to 1998 (18.0%) and then declining over subsequent surveys to 14.1% in 2004/2005.

This data would indicate that cannabis use prevalence in the UK in the 16 to 24 age group had clearly peaked some years before the reclassification of cannabis, with declining annual and monthly rates of prevalence since 2000 and 1998 respectively. Although there has also been a more recent decline in the 16 to 59 age group, with both annual and monthly rates of prevalence peaking in 2002/2003 and subsequently declining over the two following surveys (in 2003/2004 and 2004/2005), this peak also predates the reclassification of cannabis, which came into effect on 29 January 2004 in England, Wales and Northern Ireland.

4.3.2 Late 1990s to the present

The starting point for examining the recent history of British cannabis law reform is the November 1998 report by the Science and Technology Committee of the House of Lords. Whilst this inquiry was confined to the therapeutic uses of cannabis and recommended it be made legally available for medicinal and therapeutic purposes it precipitated a wider debate about the use of cannabis for non-medicinal purposes.

Arguably one of the most influential reports on drug law reform was the Police Foundation’s investigation by Viscountess Runciman, which released its report in March 2000 barely two years after the report by the House of Lords’ Science and Technology Committee. The Runciman inquiry had a wide remit to canvass the operation of the Misuse of Drugs Act 1971, including the consequences of how cannabis offences were being dealt with. The inquiry observed the law in the UK, as it existed at that time,

"produces more harm than it prevents. It is very expensive of the time and resources of the criminal justice system and especially of the police ... It criminalises large numbers of otherwise law abiding, mainly young, people to the detriment of their futures. It has become a proxy for the control of public order."

The Runciman report proposed that cannabis should be rescheduled from a Class B to a Class C drug in Schedule 2 of the Misuse of Drugs Act 1971, because of the comparative lower level of harm compared to the other drugs with which it was scheduled as a Class B drug. Other recommendations included that possession of cannabis not be an arrestable offence, that offences concerned with cannabis being used at a premises be repealed and that aggravating factors be introduced in sentencing guidelines.

447 Ibid Table A2.1.
449 Ibid, Table A3.5.
453 Id, 7.
The inquiry understood that for cannabis law reform to succeed it would be necessary to remove the profits which attracted highly organised groups distributing cannabis to the large numbers of recreational users in the UK. It recommended that the solution to this issue was to undermine the operation of a criminalised black market by reform so that

“cultivation of small numbers of cannabis plants for personal use should be a separate offence from production and should be treated in the same way as possession of cannabis, being neither arrestable nor imprisonable and attracting the same range of sanctions.”  

The Runciman report’s recommendations on cannabis, were stoutly rebuffed by the Blair Labour government soon after the report’s release in March 2000.

“The government, however, rejected the proposals to reclassify LSD and ecstasy. A Home Office statement declared: ‘The government has a clear and consistent view about the damage which drugs can cause to individuals, their families and the wider community, the link between drugs and crime – and the corresponding need to maintain firm controls.’ The drugs tsar, Keith Hellawell, warned that reclassifying the drugs would do nothing to help the fight against illegal substances and said the proposed penalties for cannabis use were nothing more than a ‘slap on the wrist’.”

However, by October 2001 the government had reversed its earlier opposition when the former Home Secretary David Blunkett appeared before the Select Committee on Home Affairs as part of its investigation into the UK Government’s drug policy, when it was announced the Government wanted cannabis to be reclassified to a class C drug. The Home Secretary emphasised this did not equate with decriminalisation and accordingly “cannabis would remain a controlled drug and using it a criminal offence.”

Statistics cited in an October 2001 article in the Guardian Unlimited indicate that the reclassification of cannabis was perhaps not unexpected, as there had already been a major shift in policing practice in respect to minor drug offences, as the number of drug charges had continued to climb.

“(E)ven before the proposed new change, there has been a massive increase in the proportion of offenders cautioned over the past 25 years. Formal cautions now account for half of all sanctions against arrested drug offenders, compared with just 3% in 1974. Fines have dropped from almost 60% to just over 20%. Imprisonment has fallen from just above 10% to just below.

The large shifts related to the huge proportion of drug offences linked to possession. Over 90% of all drug charges related to possession, cannabis accounted for 75% of these. As the number of drug offences climbed from 12,500 in 1974 to 113,000 in 1997, cannabis possession continued to dominated, making up some 86,000 cases in 1997.”

Prior to the announcement of the reversal of policy a House of Commons research paper had been released in August 2000 to assist investigations by the House of Commons Select Committee on Home Affairs into options for cannabis law reform, as part of a wider ranging review of drug policy. The Select Committee, which published its third report in 2002,
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Included an examination of the reforms recommended by the Runciman inquiry. In relation to the recommendation for separate offences of cultivation for personal use and cultivation to sell to others, the Committee believed it would be difficult to clearly distinguish between the serious offence of possession with intent to supply, referred to as ‘commercial supply’ and a proposed lesser offence described as ‘social supply’.

“The second problem put to us was that the law does not distinguish adequately between ‘social supply’ – between friends ad not for profit – and large scale commercial supply. We note that this type of ‘social use’ is the main cause of the proliferation of drug use. It seems likely that more new users are introduced to drugs by friends than by street dealers.”

Another trigger for cannabis law reform was a six month trial that commenced in July 2001 to evaluate a change in the way police in the London Borough of Lambeth dealt with adults who had committed a simple offence of possession of cannabis. The trial involved police giving formal warnings instead of prosecuting offenders.

In the Lambeth trial police issued a total of 450 warnings, which it was estimated saved at least 1,350 hours of police time by avoidance of custody procedures and interviews of suspects. In addition to the savings in police resources it was estimated that a total of 1,150 hours of time was avoided by prosecutors who did not need to prepare briefs. Compared to the same six month period in the previous year, there were 35% more offences involving possession of cannabis, 11% more charges involving trafficking of cannabis and increased activity in offences involving Class A drugs. It was concluded that the trial did have a wide measure of community support and was an effective method for diverting police resources to higher priority areas.

4.3.3 Steps to reform

4.3.3.1 Formal advisory process

In October 2001 the Government requested the Advisory Council on the Misuse of Drugs (ACMD), a statutory body established under the Misuse of Drugs Act 1971, to examine the classification of cannabis. The ACMD recommended in 2002 that cannabis be reclassified as a Class C instead of a Class A substance, as it could no longer be justified as classifying it in the same category as more harmful Class B drugs.

“Cannabis, however, is less harmful than other substances (amphetamines, barbiturates, codeine-like compounds) within Class B of Schedule 2 to the Misuse of Drugs Act 1971. The continuing juxtaposition of cannabis with these more harmful Class B drugs erroneously (and dangerously) suggests that their harmful effects are equivalent. This may lead to the

462 Id para 78.
463 The Borough of Lambeth contains the locality of Brixton, which was identified in early 2002 as an area which had a ‘major crack market’. This raises the possibility that the trial was triggered by pressure for police resources to be redirected to the crack market as a high priority. By September 2002 ‘over 100 crack houses’ had been closed, there had been a fall in robberies and arrests had been raided in response to local pressure. “Much more action is underway as part of a comprehensive multi-agency plan to tackle the crack problem in the borough and much more is needed to sustain the progress made, but Lambeth shows that community pressure, coupled with a rapid response can make a difference.” United Kingdom, Home Office. Updated drug strategy 2002. London, Drug Strategy Directorate, Home Office, December 2002, 9.
belief, amongst cannabis users, that if they have had no harmful effects from cannabis then other Class B substances will be equally safe.”

The updated UK drug strategy, published in December 2002, indicates the Government believed an important advantage from the reclassification of cannabis would be economic because police resources could be allocated to more serious priorities.

“One of the objectives behind the decision to reclassify cannabis from a Class B to a Class C drug is to free up the considerable amount of police time currently spent in dealing with minor cannabis possession offences. Most of these offences lead to small financial penalties – in 2000, 19,000 cannabis possession offences were prosecuted resulting in fines averaging £80. A new cannabis enforcement model being developed by the Association of Chief Police Officers will provide police with a clear and firm steer on dealing with cannabis possession, including any aggravating circumstances. Police time saved as a result can then be redeployed, supporting the wider strategy objective of refocusing efforts – including enforcement action – on the drugs that cause the most harm, ie heroin and cocaine.”

In February 2003 the British government was harshly criticised in the 2002 INCB annual report, which contended that the intention to reclassify would send “the wrong message and could lead to increased cultivation of cannabis destined for the United Kingdom and other European countries.” In a response to this criticism the Parliamentary Under Secretary of State, Bob Ainsworth, claimed that the INCB had made a number of misleading statements viz:

“I would find it extraordinary if the Board thought that the UK Government should have ignored the science and based our decision on what people in some quarters might think. ... In its report on cannabis, the Advisory Council on the Misuse of Drugs concluded on the basis of all the available evidence that, although cannabis use can unquestionably worsen existing mental illness, no clear causal link has been demonstrated between cannabis and the onset of mental illness. As to the health risks arising from smoking, the Advisory Council report made clear that while smoking cannabis may be more dangerous than tobacco, it needs to be set within the context that in general cannabis users smoke fewer cigarettes per day than tobacco smokers and most give up in their 30s, so limited long term exposure.”

4.3.3.2 Reclassification of cannabis

Amendments to the Misuse of Drugs Act 1971 were agreed to in late October 2003 which reclassified all cannabis and THC preparations as Class C drugs. Importantly, whereas all other Class C drugs were non arrestable offences, an amendment to the Police and Criminal Evidence Act 1984 (PACE) ensured that cannabis was treated differently from other Class C drugs when the reforms came into effect on 29 January 2004.

The amendment to the PACE reduced the maximum penalty for possession of cannabis from five years to two years but also created an exception with respect to cannabis to still make it an arrestable offence, as only offences with a maximum sentence of imprisonment of five years or

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470 Drug Reform Coordination Network. Road to Vienna: British government chides international narcotics control board on cannabis rescheduling critique. 28 March 2003. For a more recent criticism by the Executive Director of the UN Office on Drugs and Crime, at the release of its 2006 World Drug Report, see Daily Mail. ‘Cannabis pandemic blamed on soft UK drug policy.’ Daily Mail (UK). 26 June 2006.
471 Ibid.
472 While the Misuse of Drugs Act 1971 is the primary source of drug legislation, there are also a number of other laws and associated regulations that contain relevant provisions, such as the Medicines Act 1968, the Road Traffic Act 1972, the Customs and Excise Management Act 1979, Licensing Act 1964, Intoxicating Substances (Supply) Act 1985, Children and Young Persons (Protection from Tobacco) Act 1991, Drug Traffickers Offences Act 1994, Crime and Disorder Act 1998, the Criminal Justice and Police Act 2001, the Anti Social Behaviour Act 2003 and the Drugs Act 2005.
more are arrestable offences. Without this amendment police would have been unable to make an arrest, as possession of a Class C drug is not ordinarily an arrestable offence. It should be noted that if a minor offence, such as possession of cannabis, is dealt with in a Magistrate’s Court, the maximum term that can be given is a sentence of three months and/or a fine of up to £1,000.

Whilst the amendment did not include giving police to power to arrest those found in possession of other Class C drugs, a related amendment increased the maximum penalty from 5 years to 14 years imprisonment for trafficking in any Class C drug. It has been suggested that the increase in the penalty for supply of a Class C drug may mean

“that the judiciary will interpret this as Parliament’s intention to treat the supply of Class C drugs more harshly than previously. This would be of particular concern where someone is found guilty of possession with supply, where that supply was for a non-profit making purpose.”

The final step in the process of implementation of the reform involved the Association of Chief Police Officers (ACPO) issuing new guidelines which set out the procedures to be followed by police in England, Wales and Northern Ireland. Although the amendment in October 2003 to the Misuse of Drugs Act 1971 reclassified cannabis and THC preparations as Class C drugs applied to England, Wales, Northern Ireland and Scotland, the ACPO guidelines were only limited to police forces operating in England, Wales and Northern Ireland. In April 2002, in anticipation of the reform, the ACPO issued a revised drugs policy which took account of the government’s intention to reclassify cannabis from a Class B drug to a Class C drug.

“The ACPO welcome recent government announcements dismissing decriminalisation as a policy proposal. ... From the policing perspective, the ACPO’s concern is the impact on communities and criminal justice where the consequences are not fully known. We are firmly of the view that the status quo should be maintained ... That said, there is scope within the criminal justice system for greater consideration of alternative means of disposal for individuals found in possession of, or using, small quantities of illegal substances.”

### 4.3.3.3 Implementation of reclassification

The general provisions for police to implement the UK reform are contained in the Cannabis enforcement guidance issued on 12 September 2003 by the ACPO which stipulated that

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473 Section 24(1)(b) of the Police and Criminal Evidence Act 1984 gives police powers to arrest, detain and search offenders if an offence has a penalty of imprisonment of five years or more, by defining such offences as ‘arrestable offences’. Without this amendment it was noted that police would have been unable to arrest minor cannabis offenders, if considered necessary, when cautioned under the UK reclassification of cannabis reform. Cf: Monaghan G. Policing cannabis reclassification: easy as ABC. UK Cannabis Internet Activists.


476 Home Office Circular 05/2004, which outlined the specific legislative and administrative revisions that were made to effect the reclassification of cannabis (ie Misuse of Drugs Act 1971 (Modification) (No. 2) Order 2003, amendments to the Police and Criminal Evidence Act 1984 and the Criminal Justice Act 2003 (Commencement No. 2) Order 2004), it provided inter alia that whereas these orders applied to England, Wales and Northern Ireland, “In Scotland, the existing conditional powers of arrest … will remain, although it should be noted that arrest for possession of cannabis is not automatic and depends on the facts and circumstances in each case.”

477 Police services in England, Wales and Northern Ireland operate as nine police regions and in turn within this structure there are 44 separate sub-regional police forces, each of which operate within defined regional boundaries. There is a well established process of mechanisms like the ACPO to establish and maintain cross regional administrative arrangements to ensure a degree of uniformity and consistency in law enforcement in England and Wales.

ordinarily there is a presumption against arrest by a police officer when dealing with someone in possession of cannabis.\footnote{See also guidelines issued by the Crown Prosecution concerning the requirements for cautioning and diversion in general: United Kingdom, Crown Prosecution Service. Cautioning and diversion.}

"In reclassifying cannabis from Class B to Class C, the Government has made it quite clear that should an offender found with a 'small amount' of cannabis intended for personal use they should not, wherever possible, be arrested"\footnote{Association of Chief Police Officers. Cannabis enforcement guidance: Frequently asked questions. 12 September 2993, Can/FAQ/03, 2.}

The importance of this principle may be insufficiently appreciated as it means because there is a presumption against arrest of someone with a small amount of cannabis there is limited scope or incentive for police, compared to the framework in WA, to perceive the process as a quasi-arrest situation or to insist on verification of the offender’s identity, determine the weight of cannabis involved and ensure secure handling of seized items. The UK approach makes it plain that once a police officer has made general inquiries as to the circumstances of the offence and has adequately identified the offender, the remaining duty is to seize any cannabis involved and place it in a tamperproof bag which is sealed and signed in the presence of the offender.

As the emphasis is on usually issuing a formal warning in the street, rather than at a police station, this means that offenders need not have any further involvement with the criminal justice system. An unusual feature of the UK scheme is that terms like ‘formal warning’ or ‘caution’ do not appear in the ACPO guidelines that outline the requirements of the scheme. Similarly the guidelines do not stipulate the quantity of cannabis to be regarded as possession for personal use, the latter issue being dealt with in a document with eight frequently asked questions that accompanied the cannabis enforcement guidance.

"Both the ACPO Drugs Subcommittee and the Home Affairs Select Committee ... firmly believe that if a specific quantity is stipulated as to what constitutes simple possession then street dealers will only carry around amounts smaller than that prescribed and carry on dealing to individuals. Secondly, there are occasions when an individual may only have a small amount but also have scales, dealers lists etc. ... Finally, it could be problematic for officers to determine weight or quantities on the street causing greater potential for inconsistent application of any policy."\footnote{Association of Chief Police Officers. Cannabis enforcement guidance: Frequently asked questions. 12 September 2993, Can/FAQ/03.}

However, the enforcement guidelines indicate there a number of aggravating circumstances that may be relevant and accordingly police may arrest someone if the offence involves conduct such as smoking in public, if the person is a repeat offender, that possession occurs in the vicinity of premises frequented by young people or “under circumstances that are causing a locally identified policing problem”.\footnote{Association of Chief Police Officer. Cannabis enforcement guidance. Press release, 12 September 2003, Can/guide/03.}

\subsection{4.3.3.4 Reconsideration of reclassification}

In May 2005 the UK the government requested the ACMD to provide it with new advice as to whether it should reconsider the reclassification of cannabis “in the light of new evidence that cannabis can lead to mental problems in later life.”\footnote{Edwards J. 'Don't upgrade cannabis says top policeman. Law U-turn would 'waste our time'.' The Mirror, 20 May 2005.} Prior to the Government’s announcement a private member’s bill, the Drugs (Sentencing and Commission of Inquiry) Bill had been introduced into the House of Commons on 12 January 2005, with its second reading scheduled in late February 2005.\footnote{Haire K, Young R, Broadbridge S. The Drugs (Sentencing and Commission of Inquiry) Bill. Bill 21 2004-05. Research Paper 05/16. London, House of Commons Library, 2005.}
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It is plausible that as the proposed amendment (which subsequently lapsed), included a provision to establish an inquiry into the effects of cannabis and the consequences of the reclassification of cannabis, this was a trigger for the government to reaffirm its credentials by requesting a re-examination by the ACMD of the earlier decision.

Reactions from a number of quarters to the May 2005 announcement would indicate the cannabis decriminalisation enjoyed a wider degree of support than perhaps appreciated by the government. For instance, reported comments in May 2005 by the Metropolitan Police Commissioner, Sir Ian Blair, claimed the Government’s decision was hasty and had very limited support within the police service. Of interest Sir Ian indicated that if the Government wanted to declassify cannabis from a Class C drug back to a Class B drug, then the police would lobby ‘very hard’ for ‘fixed penalty notices’. It is not clear if this indicated support for the introduction of an expiation scheme based on infringement notices, as such schemes are based on the concept of a fixed penalty, regardless of guilt or circumstances of the offender.

“In my view, we should stay where we are. … I am talking about pragmatic policing. It’s a waste of time, in terms of policing, to deal with small amounts of cannabis because the courts and the Crown Prosecution Service have consistently failed to do anything about it.”

Another area of concern by some commentators was the Government’s proposal to distinguish between cannabis on the basis of potency by retaining the Class C classification for low potency cannabis and shifting hydroponic cannabis back to a Class B classification. “Police fear a decision that more potent forms of ‘skunk’ should carry heavier penalties will cause more confusion, as it will mean officers being expected to recognise the differences during a street search.”

A further issue concerned the possibility the government would introduce reforms to revise the threshold amounts which determined whether the amount of a drug was for personal use or was possession with intent to sell or supply. This reform was not confined to cannabis, but involved a number of other drugs - with proposed thresholds of 500 gms for cannabis leaf, 500 cannabis joints with any amount of cannabis, 4 ounces of cannabis resin, 7 grams of heroin, crack or cocaine or 14 grams of amphetamine. Some commentators claimed these proposals would facilitate dealing, even though in the Home Secretary’s proposal it was stated that police would always had the prerogative to charge someone with dealing regardless of the amount they possessed if evidence existed of that intent. The Metropolitan Police Commissioner also criticised the proposed thresholds.

“We have already made clear to the Home Office we are surprised by the amount being discussed for what would not be for personal use. It’s a great deal higher that we would have expected. Our view is we would need to negotiate that figure a long way down.”

In contrast to concerns that the proposed thresholds were too high, DrugScope, a major non government organisation, pointed out that even within the threshold amounts young people could be charged for a serious offence if they intended to share the drug with friends and acquaintances.

487 The Telegraph. ‘New drug limits to allow 500 ‘joints’ for personal use.’ The Telegraph 30 November 2005.
488 Steele J. ‘Police chief says cannabis proposals far too lenient.’ The Telegraph 7 December 2005.
489 Young People Now. ‘Drugs policy changes threatens ‘social’ suppliers.’ Young People Now 7 December 2005.
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The ACMD’s new report on the issue was received by the Home Secretary, Charles Clarke, in early December 2005. The press had signalled before the report’s release that as the ACMD had not been able to provide unequivocal advice on this matter, this meant that “Ministers face a dilemma over the legal status of cannabis after a government review ducked the question of whether it should be reclassified and targeted with renewed priority by police.”

In early January 2006 the Home Secretary revealed that he believed that the public had been ‘misled’ about the dangers of cannabis use when it had been reclassified in January 2004. While the justification for review was to determine whether mental health problems were linked to cannabis use, concern about this issue seemed to be offset by criticisms like those by the chief executive of DrugScope and Dame Ruth Runciman, the former Chair of the Police Foundation inquiry, that the government had not implemented the reforms adequately.

The Home Secretary also agreed that over the period between January 2004 when reclassification had come into effect and early 2005 there had been a failure in implementation. This meant, the Home Secretary claimed, the public had become confused about the legal status of cannabis and thus it did not fully appreciate the harms that could arise from cannabis use. He stated

“(w)hatever happens after this, let me reveal one recommendation of the advisory committee, which they make very, very strongly, which is a renewed commitment to public education about the potential effects of the consumption of cannabis, and the legal status of cannabis. That is well made, and I will accept it.”

However, a number of commentators raised doubts as to the veracity of claims by the Government that the reason for conducting a review was that it had come upon previously unavailable information. It was considered that the need for the ACMD review was ill-considered and the government’s stated intention was based on data from a small number of studies.

“These studies do not add any significant insights into the impact of cannabis on mental health. They do not, for example, show unequivocally that the drug ever causes schizophrenia in an otherwise health person. What they do highlight is the possibility that cannabis may increase the risk of psychosis in a small group of young people.”

The Home Secretary’s announcement that he wanted to review the impact of the reclassification of cannabis from being a Class B drug to a Class C drug highlighted a dilemma that the Government would face if it declassified cannabis. This was that if the law reverted to its former classification and police resumed arresting people, it was doubtful this would bring about any reduction in cannabis use or reduce associated problems, unless declassification was accompanied by a comprehensive, intensive and expensive law enforcement campaign.

The another factor which precluded the declassification of cannabis was a widely held perception that reversal of the 2004 reclassification decision would be a return to an earlier and discredited response to cannabis.

“It will only bring us back to where we started with vast numbers of otherwise law abiding people, many of them young, needlessly criminalised; with the police going back to

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491 Bennett R. ‘We misled public over downgrading cannabis – Clarke.’ TimesOnLine 5 January 2006.
495 It would appear the Government had failed to adequately consider some of the implications if it had decided to declassify cannabis because of the ‘discovery’ of new advice.
enforcing a law that few care about; with the risible right suggesting stupidly harsh policies on drug possession only to be embarrassed by their own party members talking frankly about their own use.”

The debate highlighted there was a broadly held view the criminal law was a blunt and imprecise instrument of policy and it would have a very limited effect on changing the perceptions and attitudes about cannabis use if it reverted to the earlier approach. The Government’s decision in January 2006 to not declassify cannabis back to a Class B drug would suggest there had been an important shift in thinking, with the realisation that one of the potentially most important tools available to government to change community perceptions was to expand and mount a more effective education campaign and to improve the availability of treatment and support services.

4.3.4 Preliminary outcomes of reclassification

There have been a number of reports in the British press of claims by the Blair government there were already a number of positive consequences from the reclassification of cannabis, including high levels of awareness by 14 to 17 year olds through an intensive public education campaign, a reduction in the proportion of cannabis arrests of all drug arrests and that arrests for cannabis possession had fallen since the introduction of formal warnings.

It is helpful to understand the limitations in interpreting crime statistics in relation to the issue of the impact of the UK reforms of early 2004. An analysis of drug offence data from England and Wales for the year 2004 shows there was a total of nearly 106,000 drug offences, of which nearly 85% related to persons who had committed possession offences and that overall 56% of all drug offences related to specifically to persons who had committed cannabis offences. It was noted in this 2005 report that of the 82,790 persons who had been found guilty, cautioned or otherwise dealt with, a total of 49,840 received ‘cautions’ for cannabis as a Class C substance.

Another Home Office publication with statistical information about crime in England and Wales for the year 2005/2006 indicates there was an increase of 23% in recorded drug offences in 2005/2006, compared to the previous year. However, this should be qualified because of the impact of the reclassification of cannabis on recording police activity concerning drug offences.

“The increase, for the most part, was due to a 36 per cent increase in the recording of possession of cannabis offences that coincided with an increase in the number of formal warning for the possession of cannabis. This increase in formal warnings accounts for around two thirds of the increase in cannabis possession offences.”

A number of examples illustrate how this data can be misinterpreted to support claims cannabis offending has increased as a consequence of decriminalisation and that therefore this represents a ‘pandemic’ of cannabis use. For instance, an article in the Daily Mail referred to the increases in the 2005/2006 Home Office report as a “massive explosion in cannabis possession” and that people in the UK were now “smoking cannabis with impunity” because of the purported failure of the “softly softly approach” embodied in the reclassification of cannabis.

Government officials have also sought to make claims which may not be supported by the limited data that is available. For instance, a Home Office press release on 28 January 2005

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referred to data from the five most recent BCS surveys (1998, 2000, 2001/2002, 2002/2003 and 2003/2004) that showed a decline in the annual prevalence of 16 to 24 year olds from 28.2% in 1998 to 24.8% in 2003/2004, whereas from 1998 to 2003/2004 the rate for the general population (aged 16 to 59) remained stable. It was claimed by Caroline Flint, the Parliamentary Under Secretary of State for Public Health, this result meant these

“figures show that some predictions that cannabis use by young people would increase were wholly unfounded. Following a major Government information campaign to get across that cannabis is harmful and remains illegal, the figures show that young people’s cannabis use has remained stable since reclassification and is still significantly down from 1998 levels.”

Reductions in cannabis use were claimed in a report in September 2005 following the release of data from a major UK Department of Health funded study of young people. It was asserted that the decline in adolescent prevalence reported by this study was proof that the
downgrading of cannabis to a non-arrestable offence has not been associated with an increase in adolescents’ use of the drug ... (with) the number of young people who admitted having consumed cannabis in the past year fell from 13 percent to 11 percent in 2004 – the first reported dip in four years.”

A Home Office spokeswoman was quoted in an article in The Scotsman newspaper as saying these reductions meant “(t)his will help police and benefit the community by focussing police time and resources on the most serious drugs and offences.” However, reservations exist as to whether these purported positive changes in prevalence, arrests or other indicators could be claimed as a consequence of the decriminalisation so soon after its implementation in early 2004 in the UK and WA.

For instance, claims of a fall in cannabis use from the UK Department of Health survey of young people requires qualification, as the decriminalisation specifically targets adults and therefore 11 to 15 year olds are not eligible to receive a formal warning. As noted earlier, recent declines in cannabis use in the UK do not appear to closely related to the reform of January 2004, but rather due to other factors, such as changes in policing or shifts in the cannabis market independent of reclassification.

The Independent Drug Monitoring Unit has reported a longer term trend of falling prices of a number of illicit drugs in the UK from 1995 up to present (most recent data is for 2003), with a reduction of 50% in retail prices for cannabis resin, but not for ‘skunk’ ie hydroponic cannabis,

506 The importance government may try to attach to shifts in prevalence can be seen in a statement in a report on the first 12 months of operation of the CIN scheme. This sought to draw a link between released national data from the 2004 NDSHS conducted in the second half of 2004 and the CIN scheme by asserting a negative: “Mr Salter said cannabis use remains illegal and none of the evidence from the report, in terms of treatment, police seizures or telephone calls to the Alcohol and Drug Information Service, suggested an increase in the availability or use of cannabis compared to the period before the introduction of the scheme.” Drug and Alcohol Office. New cannabis laws have positive results. Media Statement, 27 April 2005. Cf: Drug & Alcohol Office & WA Police Service. Cannabis infringement notice scheme: Status report, April 2004 – March 2005. Perth, Western Australia, Drug & Alcohol Office, 2005.
507 The survey involved a sample of 9,715 school students aged 11 to 15 years conducted in autumn 2004. Biennial national surveys in the UK of young people’s drug use commenced in 1982, when it was confined to smoking and which continued until 1998, when the survey was carried on an annual basis. Alcohol questions were included for the first time in the 1988 survey and in 1998 the survey was further expanded to include questions on smoking, alcohol consumption and the use of other drugs.
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4.4 Case Study 3: New Zealand

4.4.1 Introduction

It might have been expected that the reforms which established the expiation schemes in SA, the ACT, the NT and WA and the use of formal warnings in the UK for the possession of ‘small amounts of cannabis for personal use’ would have made cannabis law reform more acceptable in NZ. However, the reluctance for NZ to undertake de jure reform deserves some consideration given similarities with Australia, such as a common legal heritage, a similar framework of legal principles and judicial supremacy, concerns by the community about the growing and widespread use cannabis and cannabis related health issues, a number of official and scientific reviews of policy options and proposals for law reform.

4.4.2 Development of cannabis policy

In NZ there have been a number of reviews over the past four decades into the rationale for maintaining the prohibition of cannabis. These reviews have been underpinned by extensive research addressing law enforcement, policy options and health concerns, augmented by input by groups who have argued and lobbied for reform. Whilst research by academic researchers in Australia and to lesser extent in NZ has been an important factor in establishing the case for reform, it would appear an unusual feature in NZ has been the prominent and important influence of community based organisations, some with close affiliations to political parties, who have played a major role in articulating the case for law reform.

The two most enduring and well organised groups, the first of which is the New Zealand Drug Foundation, established in 1989 and although initially had concentrated on tobacco and alcohol related issues, expanded its ambit to encompass cannabis. The second is the National Organisation for the Reform of Marijuana Laws (NORML), which is loosely affiliated with NORML in the US and elsewhere, who have mounted high profile public campaigns to reform cannabis laws by supporting a partial prohibition model, which would make

“the use, cultivation and possession of cannabis for personal use and non profit supply of small quantities of cannabis to adults (as) neither a criminal or civil offence. Commercial supply and supply to minors would remain offences but penalties would not be as strict.”

4.4.2.1 1960s to late 1980s

The first formal inquiry into drug issues, triggered by an increasing use of cannabis and other drugs, was undertaken in 1968 as a Board of Health Committee which reported to the Government in 1970. In its first report the Blake-Palmer Committee, recommended that

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511 One of the influences for establishing the Committee was the circumstances of the death by drug overdose in June 1967 of a 17 year old young man in an Auckland suburb: Yska R. ‘Hemi’s rehab pad:'
“there should be no relaxation in the current control of cannabis (marijuana) and its preparations, considering the present state of knowledge of its properties.”

However, the Committee which reconvened in 1970 after concerns about the use of cannabis, delivered its second report in 1973. The second report contained recommendations that included defining supply to exclude casual transfers of small amounts of cannabis without payment, to classify different forms of cannabis into separate schedules according to their potential for harm and to replace the blanket provisions of the legislation concerned with possession, use and dealing by graduated penalties based on relative potential harm. The Committee also ‘urged the police to make wider use of their discretion in deciding how to deal with offenders and to explore alternatives to prosecution by diverting offenders to treatment or other programs.”

A number of the reforms of the second Blake-Palmer Committee were accepted and became part of the Misuse of Drugs Act 1975, including the classification of cannabis and other drugs into three schedules, a differentiation between small scale supply to adults as equivalent to procuring or possession for personal use, whilst retaining supply to a person under 18 or sale as more serious dealing offences and the removal of cultivation of cannabis from being a dealing offence.

“Compared with equivalent legislation then in force elsewhere, the 1975 Act could be fairly described as progressive in its approach to the classification of drugs and its penalty provisions, especially for less serious offences. Yet, in themselves, those changes were relatively modest initiatives and the opportunity to introduce more innovative measures was not taken.”

Over the period 1981 to 1991 in NZ the preponderance of drug offences dealt with by the courts were cannabis related, involving about nine out of 10 of all drug offences—a similar pattern also been reported in the UK, WA and other jurisdictions. The significance of the conviction harm (from DLE activity) can be seen by the marked increase in the annual number of cannabis offences dealt with by the courts, which increased from 8,130 in 1981 to 19,291 in 1991.

Against this backdrop of growing prevalence of cannabis use, coupled with a growth in the annual number of convictions and associated costs borne by the courts and the justice system, by the early 1980s there was growing concern about the effectiveness of the legal framework and options for dealing with cannabis offenders. A public debate was held in Auckland in 1984, organised by the Auckland Criminal Bar Association, attended by over 1,200 people,

“to present a range of perspectives on cannabis use and policy and to encourage informed public discussion on the issues related to it. Lively debate occurred on the effects of criminalisation and the health effects of cannabis use.”

516 There was a major shift in how the Committee in its second report conceptualised the harmfulness of cannabis compared to its first report and in spite of pressure to conform with the dominant US view of the time said that “cannabis was less harmful than narcotics and criticised penalties that were too harsh and carried too high a social cost”. McIntyre S. ‘Prohibition in New Zealand 1945-1975: the Misuse of Drugs Act.’ NORML News Summer 2003/04. NORML New Zealand.
521 Ibid, 15.
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In response to a growing number of cases involving the cultivation of cannabis, the courts sought to differentiate between the levels of seriousness of cases involving use and supply in the 1981 Court of Appeal case of *R v Dutch*, which set out the criteria for the courts to follow to determine relevant penalties for those who cultivated cannabis for personal use as distinct from those who cultivated cannabis for commercial gain. 519

### 4.4.2.2 1990s

Some of the statistics on trends in drug related offences from the 1980s and throughout the 1990s reveal a startling growth in DLE activity, especially concerning cannabis. For instance, the annual number of cannabis plants seized grew from nearly 37,000 in 1980 to a total of 231,000 in 1989 and continued to increase throughout the 1990s, reaching a peak of nearly 352,000 plants being seized in 1994/1995 – an annual average of about 225,000 plants throughout the 1990s. There was a corresponding increase in offences involving cannabis derivatives such as hash oil and resin produced from low grade cannabis sourced from local production.

Annual charges for cannabis offences also substantially grew over the two decades, constituting between 92 and 94 per cent of all drug offences, increasing from nearly 6,000 cannabis offences in 1980 to 18,000 in 1989 and continued to increase throughout the 1990s and then after reaching a peak of nearly 26,000 in 1994, had declined to about 25,000 cannabis offences by 1999.

In response to the growing number of cannabis offences a national adult pre trial diversion scheme for minor cannabis offences was introduced in 1990. 520 The scheme, which still operates, is based on police discretion and requires offenders to acknowledge guilt and in lieu of appearing before a court make a ‘donation’ to a chosen charity and/or perform community service. However, there is reason to believe that there is a relatively low rate of diversion of minor cannabis offenders in spite of official statements to the contrary. 521 A 1992 Justice Department review of the pre-trial diversion scheme cited in the 1993 Alcohol and Public Health Research Unit (APHRU) report two years after its introduction, found that

"the scheme has resulted in some net widening in that some offenders who might otherwise have avoided penalty enter the scheme. Because the diversion scheme is punitive but does not entail obtaining a record some police officers chose to use it where previously they might have issued a warning or caution or taken no action. Some of those who have been diverted have actually ended up with more severe penalties than would be likely if they had gone through the courts and been fined." 522

A number of other shortcomings were also noted in the 1992 review of the pre-trial diversion scheme. One issue was that contrary to initial expectations, it resulted in increased law enforcement costs due to the need for police to organise and supervise the diversion scheme. Another issue was that whereas previously offenders were fined if convicted, because offenders made ‘donations’ instead of being charged there was a net loss of revenue to the state in favour of private charities.

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520 The introduction of pre trial diversion was linked to the shift towards restorative justice as a result of the *Children, Young Persons and Their Families Act 1989*, which provided for juveniles to be dealt with outside of the court system by minor matters being dealt with by Family Group Conferences. A similar approach has applied in WA through the role of Juvenile Justice Teams, because of the provision in Part 5 of the *Young Offenders Act 1994*, which requires police in WA to first consider before they charge a juvenile with an offence, of whether to take not action or issue a caution.

521 Alcohol & Public Health Research Unit. *A submission to the Health Select Committee inquiry into the public health effects and legal status of cannabis*. Auckland, Alcohol & Public Health Research Unit, University of Auckland, 2001, 35.

A comprehensive review and discussion of the policy options for the use, possession and supply of cannabis in NZ was undertaken in the early 1990s by the APHRU at the University of Auckland, funded by the New Zealand Police and the Department of Health.\textsuperscript{523} The report of this review was published in May 1993 at around the same time as a major national inquiry into cannabis policy in Australia by the National Task Force on Cannabis was getting underway.

The 1993 APHRU study showed cannabis was widely used and that there was a growing number of cannabis convictions. The report cites a 1990 survey of just over 5,100 people\textsuperscript{524} aged between 15 and 45 years, of whom 43% had ever used cannabis, 18% had used cannabis in the past year and 12% were current users.

A follow up household survey in 1998, based on the same regions as the 1993 APHRU study, found that prevalence had increased on all measures - 52% for lifetime prevalence, 21% for annual prevalence and 16% were current users compared to the 1993 survey.\textsuperscript{525} Another finding from the 1998 survey was that there were high levels of cannabis use amongst the Maori population, with rates above non-Maori rates. For instance by 18 years 70% of Maori had ever used cannabis compared to 47% of non-Maori, which increased to 84% of Maori by 21 years of age compared to 67% of non-Maori.\textsuperscript{526}

In addition to the increased levels of use, a number of longitudinal developmental studies of young people confirmed a similar upward trend in cannabis use and of higher rates involving Maori youth. For instance, in 1997 the Dunedin Multidisciplinary Health and Development Study found that adolescent use increased from 15% at age 15, to just over 46% at age 18 and continued to climb to 62% of 21 year olds. The Christchurch Health and Development Study also identified increasing rates of cannabis use by young people, with 9% of the 1,265 respondents in the study reporting ever use of cannabis by 15, with nearly 50% having ever used by age 18 and at age 21 just under 70% had ever used.\textsuperscript{527}

A synopsis of the consequences of cannabis policy was provided in the speech given by the then leader of the opposition, the Hon Helen Clark, at the ‘Great marijuana debate seminar’ held at the University of Waikoto in July 1994.

> “New Zealand’s approach to marijuana today is a combination of total prohibition of marijuana under the Misuse of Drugs Act legislation, and limited and largely ineffective education on the drug undertaken by state and voluntary agencies.”\textsuperscript{528}

The Drug Policy Forum (DPF), which had initiated community consultation on cannabis law reform by releasing a discussion paper in July 1997,\textsuperscript{529} released a final proposal for reform in March 1998.\textsuperscript{530} In its final report the DPF proposed large scale reform by bringing cannabis into line with the regulatory principles that already applied to the production, distribution, sale and use of alcohol and tobacco overseen by the creation of a Tobacco, Alcohol and Cannabis Authority. While the primary goal of these proposed reforms was to disrupt the operation of the illicit cannabis market by permitting the operation of a licit cannabis market, the reform also

\textsuperscript{523} Id.

\textsuperscript{524} Of whom 4,088 were residents of Auckland and 1,038 were residents of the Bay of Plenty.


\textsuperscript{526} Dacey B & Barnes HM. Te ao kin drug use among Maori, 1998. Auckland, Alcohol and Public health Research Unit, University of Auckland.


\textsuperscript{528} Clark H. Address to the great marijuana debate seminar. University of Waikato, Hamilton. 30 July 1994.


sought to shift the regulation of cannabis from a law enforcement context to a public health framework. It was the view of the DPF that

“The New Zealand politicians grasp the nettle and take control of cannabis commerce. Abdicating such control to the black market only magnifies the harmful health effects of cannabis.”

A parliamentary inquiry by the Health Committee of the NZ House of Representatives was established in November 1998 in response to two developments, the presentation of a petition to the Parliament in 1996 and release in March 1998 of the DPF’s final report. Following release of the Health Committee’s report in June 1999 there was renewed debate about the issue of legal status of cannabis. The Chair of the Committee, Brian Neeson, was cited in an article in New Zealand Herald as suggesting the government was unwilling to proceed any further without support from the community.

“Mr Neeson, who does not personally favour liberalisation, said yesterday that while the Government had no plans to review the legal status of cannabis, that did not mean it was not being talked about. ‘What we’ve got to look at is the use of it, the recreational use of it. We have to understand that there is an epidemic out there as far as the distribution of cannabis is concerned’, he said. ‘The Government itself and the country and the community have to decide exactly what they want to do from now on.’”

The Committee had a narrow ambit as it focussed on issues concerned with health and other harms attributable to cannabis use, the adequacy of services and programs to prevent such harms and provision of treatment to those with problematic cannabis use. In spite of the Committee’s reluctance to address issues involving the legal status of cannabis, some of its comments were considered to provide support for decriminalisation.

“It is acknowledged that cannabis prohibition enforced by traditional crime control methods has not been successful in reducing the apparent number of cannabis users in New Zealand. That the police are open minded on the issue of decriminalisation of cannabis is an indication that thinking on the subject is changing... Methods other than prohibition certainly deserve consideration.”

In its report the Health Committee acknowledged there were increased concerns about mental health issues due to the increased use of cannabis and also about law and order concerns arising from the development of a domestic industry which produced significant amounts of cannabis.

“In recent years there have been numerous claims that cannabis consumption has led to mental illness and violent offending. Indeed, this view has gained widespread currency in New Zealand, though a considerable body of research refutes such claims. At the same time, figures show that a large number of New Zealanders use, or have used cannabis, and recent reports have shown that cannabis represents an important cash crop in some areas of New Zealand. The effects of cannabis and means of controlling its use have become increasingly significant issues for debate in this country.”

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531 Ibid.
532 A petition was presented by 327 persons requesting decriminalisation of the recreational use of cannabis (Petition 1996/686), which was in turn referred on 25 July 1997 to the Justice and law Reform Committee of the House of Representatives, which in turn referred the matter to the Health Committee in November 1998, to undertake a public inquiry.
Thus it can be seen that by the end of 1990s a large body of information had accumulated about the use and the difficulties confronting DLE and health agencies in adequately managing the issue of cannabis. The development of comprehensive prevalence surveys also permitted policy makers and lobby groups to identify some of the dimensions of cannabis use, including the possibilities for law reform.

4.4.2.3 2000 to the present

By the year 2000 the possibilities for legislative change appeared to have largely stalled because of an inconclusive parliamentary inquiry and the inability of the Government to promote reform. This meant debate continued in NZ about how to respond to increased cannabis use by either law reform to mitigate some of the severity of prohibition or alternatively to expand police powers and use other coercive measures. In spite of the failure of the government to promote reform, there was an optimistic belief by some, such as articulated in a July 2000 paper, that

“New Zealand may be moving towards a version of the cannabis expiation notice (CEN) scheme which operates in South Australia. This is despite worrying evidence of net widening and concerns over the automatic prosecution of CEN defaulters, which suggest that the South Australian model may not be the optimal approach.”

Areas for minimal reform that were identified included the expansion of schemes to remove minor cannabis offenders from the court system through either expiation or cautioning. The pre-trial diversion scheme which had operated since 1990 “probably accounts for the small but steady decrease in the percentage of reported offenders who were prosecuted between 1991 and 1996. However, over that period, the number of cannabis related prosecutions did not change.”

A number of adverse consequences from the implementation of rigorous supply side measures by police, especially the adoption of large scale crop eradication by aerial spraying of herbicides have been identified. One consequence has been a shift away from cannabis being largely supplied from imports up to the early 1980s, to the market becoming substantially based on domestic cultivation by the early to mid 1990s. It might be concluded that the increased emphasis on surveillance and border control failed to achieve the underlying goal of curtailing the prevalence of cannabis, as

“within little more than a decade a thriving cannabis market had been established. Cannabis had become the most widely used of all the controlled drugs and although increased vigilance at the border had stopped large scale importation, the void had soon been filled by more intensive domestic plantation and production. ... By any measure, the cannabis market expanded in bounds.”

In May 2001 the Health Select Committee of the NZ House of Representatives, chaired by Hon Steve Chadwick, commenced a new inquiry into cannabis, with a specific term of reference –

“To inquire into the most effective public health and health promotion strategies to minimise the use of and harm associated with cannabis and consequently the most appropriate legal status of cannabis.”

539 New Zealand Drug Foundation. Law and policies.
The Select Committee’s report was tabled in parliament in August 2003, with recommendations for further research into issues such as cannabis and suicide and the role of cannabis in road accidents, improved health and education campaigns to target both young people and the community about the risks of cannabis and consideration of the use of cannabis for medicinal purposes.

However, as the Select Committee was unable to reach a consensus on the legal status of cannabis, there was a recommendation that this issue should be further considered by the Expert Advisory Committee on Drugs, an advisory body created under the Misuse of Drugs Act 1975. There was also a recommendation that there should be “greater use of diversion for minor cannabis offences ... (who) should be diverted to compulsory health assessment for first possession and use offences, rather than receiving a criminal conviction.”

The Select Committee’s report includes the costs for police of enforcing the Misuse of Drugs Act 1975 concerning cannabis offences, which estimated that in the year 2000/2001 cannabis related law enforcement activities cost a total of $19 million, approximately 2% of the total cost of police activities. It was also noted that there was about a 4% annual chance for a person in NZ to be arrested for a minor cannabis offence, somewhat higher than a rate of 1.25% in Australia and 2% in the US.

An authoritative and comprehensive submission by the APHRU to the Chadwick inquiry, after canvassing the relative merits and shortcomings of the various policy options, concluded the preferred approach was not the decriminalisation model in three Australian jurisdictions because

“there is little evidence to support such systems in their current form as the lead policy option from a public health perspective. These reduce the stigma associated with cannabis convictions and can reduce some administrative costs of convictions. However, fines impact most on people with lower incomes who are often subsequently convicted for non-payment. Such systems may also result in ‘net widening’ as fines are issued to people who would formerly have only received a warning and reduce the symbolic deterrence value of prohibition legislation.”

These reservations about net widening and the disproportionate impact of fines on those with lower incomes need to be qualified as the WA reforms of 2004, introduced some two years after the Chadwick inquiry, differ from the three earlier Australian schemes, as failure to expiate under the CIN scheme does not result in a person being charged. The APHRU submission recommended that a trial be conducted of formal cautioning for first time minor cannabis offenders and diversion for those who commit subsequent minor cannabis offences.

The Select Committee’s report reveals that a major impediment for cannabis law reform in NZ was the constrained parliamentary authority of the Labour government, which after the 2003 general election required the support of a number of minor political parties to form government

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541 Some of the focus of Select Committee seems to have been influenced by emerging research at that time, such as a West Australian study: Hillman SD, Silburn SR, Green A & Zubrick SR. Youth suicide in Western Australia involving cannabis and other drugs. Perth, WA Drug Abuse Strategy Office, 2000.
542 At the time of writing this issue had not considered or listed for consideration by the EACD: <www.ndp.govt.nz/committees.eacd.htm>
543 New Zealand Drug Foundation. Health Select Committee report on cannabis and the government’s response.
544 New Zealand Green Party. Briefing notes to the report of the Health Select Committee inquiry into cannabis.
545 Alcohol & Public Health Research Unit. A submission to the Health Select Committee inquiry into the public health effects and legal status of cannabis. Auckland, Alcohol & Public Health Research Unit, University of Auckland, 2001, 44.
546 However, in WA there is arguably other serious outcomes from failure to pay, as the FER system results in suspension of a motor driver’s license.
by entering into a ‘Supply and confidence agreement’. The Government was reminded in the minority report by one of these parties, the United Future Party,\(^547\) that

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\text{“as part of our supply and confidence agreement with the Labour/Progressive Government ... (there is) an undertaking from the Government that there will be no government led move to change the legal status of cannabis during this term of government.”}\(^548\)
\]

In its minority report the United Future Party also articulated strong opposition to “the ideology that public health policy and programs should be planned, funded and delivered within a harm minimisation strategy.”\(^549\) Prior to the 2003 election the Greens had held the balance of power and were the only one of the seven parties in the Parliament to have adopted cannabis law reform as part of their platform. In spite of the Greens increasing the number of seats they held from seven to nine, its position on cannabis failed to achieve sufficient leverage on the Government, because of the Clark Labour government’s reliance on the minority support of United Future through a ‘supply and confidence agreement’ after the March 2003 general election.\(^550\)

A response by NORML (NZ) to the formation of the Clark Government in 2003 by entering into an agreement with United Future suggested a number of avenues which might be open to the Government to reform minor cannabis offences that possibly avoided the restrictions placed on legislative reform because of this agreement. These avenues included a private member’s bill with a free conscience vote to effect policy change through the expanded use of diversion or cautioning or that cannabis could be reclassified by an Order in Council to a lower level within Category C drugs.\(^551\)

The New Zealand Green Party after the 2003 election continued to lobby for cannabis law reform. In its platform it distinguished between personal and commercial levels of cannabis use by proposing to eliminate penalties for personal cannabis use by adults, set a minimum age of 18 for cannabis (as already applied to alcohol) and permit cultivation of cannabis for personal use.\(^552\) It developed a number of innovative strategies to maximise public knowledge about some of the consequences of the prohibition of cannabis such as a ‘Cannabis arrest-o-meter’ on its website, which displayed a progressive total of arrests for cannabis and other drug offences, based on analysis of official data. For instance, data for the years 1998 to 2003 showed that annual cannabis offences decreased from 25,309 in 1998 to 19,897 in 2003 and that cannabis offences as a proportion of all drug offences declined from 94.1% in 1998 to 84.8% by 2003.\(^553\)

Another strategy used by the Greens was for one of its parliamentary members, Nandor Tanczos MP, to use the parliamentary process through questions of various Ministers to obtain detailed information on DLE activity.\(^554\) For instance, in the year 2000 it was determined that 4,550 people had been arrested for possession or use of cannabis, 3,695 people were arrested for cannabis dealing offences and 2,109 were arrested for other types of cannabis offences (eg possession of smoking implements or using cannabis in a public place). In the financial year 1998/1999 there was a total of 298,000 hours spent by police enforcing cannabis laws at a total

\(^{547}\) Which has been referred to as a ‘born again Christian party.’ Cf: Damuzi R. ‘NZ pot reform gets shafted.’ Cannabis Culture Magazine (Vancouver), Issue 44, 16 April 2003.
\(^{549}\) Ibid.
\(^{553}\) NORML New Zealand. Cannabis arrest-o-meter.
\(^{554}\) NORML New Zealand. Parliamentary questions.
cost of $21 million (at a cost of $70 per hour), of which 74,658 hours involved possession offences.\(^{555}\)

In July 2005 the Green Party introduced a private members bill, the Misuse of Drugs (Cannabis Infringement) Amendment Bill 2005, which proposed to introduce an infringement notice system (described as ‘instant fines’).\(^{556}\) The Government’s response to the Bill was swift, with the release of a media release by the Justice Minister which stated that “Labour party policy does not include support for legalising marijuana and it does not support taking action that might promote its use.”\(^{557}\) However, the Bill appeared to have some public support, as a newspaper article contained comments from Professor David Fergusson, the director of 27 year long Christchurch Health and Development Study, who stated it “was a pragmatic response to the fact that 80 per cent of New Zealand’s had used cannabis on at least one occasion by the age of 25. ‘The frequency with which it’s being used makes it unrealistic to continue with prohibition’, he said.”\(^{558}\)

The Green’s proposed amendment lapsed when the Parliament was prorogued in October 2005 for the 2005 general election - which resulted in the return of the Clark Labour Government. To form government in November 2005 Labour again required an agreement with United Future to form a minority government. Given the unlikely possibility of cannabis law reform following the November 2005 election, the Green Party’s high profile MP Nandor Tanczos relinquished his former role as party spokesperson on law reform, such that by the end of 2005 the parliamentary avenue for cannabis law reform had all but closed. Instead, an alternative course of action was proposed at the NORML New Zealand Conference in late November 2005, that reform would require the development of a broad constituency in the community to support decriminalisation, as “the momentum in favour of reform has been lost and that we therefore need to go back to the grass roots to build a massive public campaign for reform. This includes a renewed emphasis on forming NORML branches and increasing our membership base. It also recognises that to make progress we must engage the wider issues of drug law reform.”\(^{559}\)

### 4.4.3 Legislative framework

The key piece of legislation that prohibits cannabis and other substances is the *Misuse of Drugs Act 1975*, which classifies drugs into three groups according to their purported potential for harm, from the most harmful Class A group (eg heroin), Class B group (eg hash and hashish oil) to the less harmful Class C group (eg cannabis).

Since the 1920s NZ had pursued a similar approach as followed in the UK and Australia, by legislating to prohibit use of a number of cannabis and other drugs, with the passage of the *Dangerous Drugs Act 1927*. The trigger for 1927 legislation was the 1925 Convention on Traffic in Opium and Other Drugs, which was ratified in 1926, as had been done by Australia.\(^{560}\) The approach followed in NZ of bringing cannabis within the definition of a ‘dangerous drug’ following the 1925 Convention meant that it was included alongside drugs like opium, heroin, morphine and cocaine, an approach consistent with legislation introduced in the UK and in Australia at the same time.

There are a number of points to be made from considering this early history of UN Conventions and their relationship to NZ domestic drug laws. This first point is that it set in place a broad...
framework of criminal sanctions which did not differentiate between the possible degrees of harm. The second point is that this framework has largely persisted to the present day and that there have further parallel amendments to domestic law in response to revisions in the UN conventions. The framework that was established by the Dangerous Drugs Act 1927 remained largely unchanged until 1960 when amendments were made to make cultivation of cannabis an offence and to make possession of and supplying cannabis punishable with up to seven years imprisonment.\footnote{561}

In 1963 the definition of cannabis was expanded to include any part of the cannabis plant, not just its flowering or fruiting tops.\footnote{562} Further amendments were made in 1965 following ratification in 1963 by NZ of the 1961 Single Convention which created the offences of possession of pipes or utensils for smoking cannabis and the offence of possession with intent to sell or supply where there were 100 or more cannabis cigarettes or 28 grams or more of cannabis.

The penalties in the Misuse of Drugs Act 1975 reflect the level of seriousness with respect to cannabis, where for ‘provider’ offences (ie dealing, supply or importing) there is a maximum penalty of up to eight years and for ‘consumer’ offences (ie possession, use or possession of paraphernalia) a maximum penalty of up to three months imprisonment or a fine of $500, or both.\footnote{563}

It has been suggested cannabis law reform in NZ should not constrained because whilst it was a signatory to the three to the UN drug conventions, because it has ratified only two of the three conventions, the 1961 Single Convention and the 1971 Convention,\footnote{564} this means that

\begin{quote}
"the fact that most parties to the 1961 Convention have criminalised activities involving cannabis is far from conclusive evidence that the Convention requires them to do so as a matter of international legal obligation."
\end{quote}

A 1997 study suggests that the 1961 Convention could be read as permitting the decriminalisation of cannabis in a narrowly defined manner, so long as the preparation consisted of the leaves of the plants but excluded the flowering or fruiting tops, as Article 28(3) of the Convention requires parties to adopt "such measures as may be necessary to prevent the misuse of, and illicit traffic in, the leaves of the cannabis plant." This interpretation arises as both seeds and leaves were excluded from the definition of cannabis, being considered innocuous compared to the flowering tops and resin of the cannabis plant.

\begin{quote}
"However, decriminalisation of the leaves and seeds alone would introduce an untenable legislative distinction between different forms of cannabis, leaving the two most commonly used preparations in New Zealand still subject to total prohibition."
\end{quote}

The 1961 Convention is a complex document which also needs to be read in conjunction with Article 3(2) of the 1988 Convention, as it appears is to be designed to require parties to implement "such measures as may be necessary to establish a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs …for personal consumption contrary to the provisions of the 1961 Convention."

\footnote{561} At this time a number of UN conventions were consolidated into the 1961 Single Convention on Narcotic Drugs.
\footnote{562} In the terms of the legislation at this time cannabis was referred to as 'Indian hemp' – with Indian hemp being replaced by the term cannabis in 1963.
\footnote{563} Whilst possession of paraphernalia is classified as a simple offence, it attracts a higher penalty, of up to one year's imprisonment, $500 fine or both.
\footnote{564} However whilst New Zealand had signed the 1998 Convention it had not been ratified at the time the research was published.
\footnote{566} Id, 282.
However, as NZ has not ratified the 1988 Convention, it is arguable that it would be free to decide whether prohibition is the ‘most suitable measure,’ it has been argued that it could decriminalise private cultivation of amounts of cannabis which neither threaten the ‘public health and welfare’ nor contribute to the ‘illicit traffic’.  

567 Dawkins (1997) points out that this distinction arises as Article 22 provides that a party shall prohibit cultivation whenever prohibition is the “most suitable measure, in its opinion, for protecting the public health and welfare and preventing the diversion of drugs into the illicit traffic.”
5 Decriminalisation of Cannabis: What is Known?

5.1 Introduction

This chapter will consider the decriminalisation of minor cannabis offences in WA and the UK by identifying some of the themes and processes which shaped these reforms to develop a better understanding of the limitations and achievements of these particular reforms. A feature of the CIN scheme is that it operates within a legislatively imposed time frame for it be reviewed three years after its commencement (ie in about mid 2007) to determine its “operation and effectiveness,” whereas the reforms in the UK do not have a timeline to evaluate the outcomes from reclassifying cannabis from a Class B drug to a Class C drug.

The first section will provide a preliminary analysis of limited data concerning the CIN scheme, outline areas for further investigation and highlight issues pertinent to the statutory review of the CIN scheme. The analysis of information about the CIN scheme may also assist those interested in identifying data and related information that could useful to identify outcomes of the reforms, such as in the UK and elsewhere. However, as the CIN scheme has only operated since late March 2004 discussion of outcomes is constrained by the limited amount of published data concerning measures of DLE activity, such as formal and informal warnings, charges, convictions and price data, as well as other indicators that may measure the impact of the scheme, such as prevalence surveys, attendances at specialist treatment services and episodes of cannabis related mental disorders. As at the time of writing only conviction data was available, the analysis will examine in trends in convictions for minor cannabis offences over the five quarters of the CIN compared to the nine quarters before the CIN scheme, from March quarter 2002 to March quarter 2004.

The second section will compare the themes, similarities and divergence in approach followed in WA and the UK and how these enabled the two governments to successfully achieve reform. This section examines some of the important factors that shaped the approach to reform in WA and the UK, such as the consultation process, how government in WA and the UK created perceptions about the nature and purpose of these reforms and of how the reform process in both jurisdictions embraced principles of harm minimisation.

The third section will examine how DLE activities may impact on drug markets, especially those involving cannabis, with particular reference to the experience in the Netherlands and NZ, to demonstrate that drug markets adapt their structure and operation in response to police strategies. The section will also argue greater value should be given to drug market data, that DLE activity should be understood as altering behaviour of participants in the drug market and greater value should be given to acquiring drug market data to understand and better inform DLE strategies and outcomes.

The fourth section examines the consequences of cannabis law reforms in both WA and the UK with reference to the impact of DLE activities on the cannabis market associated with cannabis decriminalisation. There will be a consideration of examples from other jurisdictions which demonstrate that cannabis markets have considerable resilience and an innate capacity to adapt to changes in law enforcement priorities and tactics such as by evolving new methods of cultivation and the development of increased potency products.

5.2 Study of the CIN scheme

It is hypothesised that following the decriminalisation of minor cannabis offences in WA in 22 March 2004 the number of convictions for the three minor cannabis offences covered by the scheme would decrease and there would be a corresponding rise in the number of CINs issued.

569 As there were only 52 CINs issued in the March quarter 2004, this quarter has been treated as a pre-CIN data period.
over the same period of time.\textsuperscript{570} It would be expected, therefore, that there should be an inverse relationship between the number of CINs issued and the number of convictions for each of the three minor cannabis offences involving sections 5(1)(d)(i), 6(2) and 7(2) of the MDA.

As the CIN scheme gives police the option of issuing a CIN if a person has committed an expiable offence, counts of the number of CINs and counts of the number of convictions are a measure of the extent to which minor cannabis offenders would have been issued with CINs instead of being charged. If the CIN scheme is working as might be expected, to reduce the number of offenders formally dealt with by the criminal justice system, there should be fewer quarterly convictions recorded for the three relevant minor cannabis offences over the period since the CIN scheme commenced ie from the June quarter 2004 compared to quarterly convictions prior to the CIN scheme, ie from the March quarter 2002 to March quarter 2004.

The operation of the CIN scheme requires the police to maintain a database to register the details of those issued with a CIN and to monitor compliance of whether a person has expiated an issued CIN (or CINs) by either attendance at a CES or by payment of the prescribed modified penalty. The database ensures that those who fail to expiate are transferred to the FER which then assumes responsibility for the recovery of the unpaid debt. The CIN database must also monitor those individuals who are issued with multiple CINs on different occasions, to identify those ‘recidivists’ who may only expiate by attending a CES once they have received two or more CINs on more than two separate days within a three year period.

\textbf{5.2.1 Infringements: April 2004 – March 2005}

In the first 12 full months of the CIN scheme, in the period from April 2004 to March 2005, a total of 3,591 CINs were issued, of which 1,559 (43.4\%) had been expiated and 2,032 (56.6\%) were unexpiated at 31 March 2005 (Table 10).\textsuperscript{571}

In relation to the 1,559 expiated CINs, 591 (37.9\%) were expiated by attendance at a CES and 968 (62.1\%) were expiated by payment of the prescribed modified penalty. Of all the CINs issued, 16.5\% were expiated by attendance at a CES and 27.0\% were expiated by payment of the prescribed modified penalty. At 31 March 2005 of the 2,032 unexpiated CINs 1,684 (82.9\%) were registered with the FER, 240 (11.8\%) had progressed to the final demand stage, 98 (4.8\%) were unpaid and 10 (0.5\%) had been contested in a Magistrates Court (Table 10).

A total of 2,643 unique individuals were issued with one or CINs in the 12 month period, of whom 2,224 (84.2\%) were Caucasian, 278 (10.5\%) were Indigenous, 45 (1.7\%) were Asian and 96 (3.6\%) were from another ethnic group\textsuperscript{572} (Table 11).

Trends in CINs issued by WA Police from the 22 March 2004 show that the greatest number of CINs were issued in the first full quarter of the scheme (June quarter 2004) when a total 962 CINs were issued. Since the June quarter 2004 (962) the number of quarterly CINs declined up to the March quarter 2005 (838) and then increased to 917 in the June quarter 2005. See Table 12.

In every quarter the majority of CINs involved two types of expiable offences, possession of a smoking implement with detectable traces of cannabis [s. 5(1)(d)(i)] and possession of up to 15 grams of cannabis [s. 6(2)]. There were very few CINs for the two remaining expiable offences, possession of more than 15 grams of cannabis, possession of more than 15 and not more than 30 grams of cannabis and the non hydroponic cultivation of not more than two cannabis plants, these offences are encompassed by three correlative sections in the Misuse of Drugs Act 1981: s. 5(1)(d)(i), s. 6(2) and s. 7(2).

\textsuperscript{570} Whilst the CIN scheme has four expiable offences, ie possession of a smoking implement, possession of not more than 15 grams of cannabis, possession of more than 15 and not more than 30 grams of cannabis and the non hydroponic cultivation of not more than two cannabis plants, these offences are encompassed by three correlative sections in the Misuse of Drugs Act 1981: s. 5(1)(d)(i), s. 6(2) and s. 7(2).

\textsuperscript{571} The data in this section is based on data in a report jointly published by the Drug & Alcohol Office and the WA Police Service, Cannabis infringement notice scheme: Status report, April 2004-March 2005.

\textsuperscript{572} The designation of ‘ethnic status’ is based on the issuing officer’s visual identification of the individual at the time they were issued with a CIN.
possession of more than 15 grams and up to not more than 30 grams of cannabis or the non hydroponic cultivation of two or less plants. See Figure 1.

**Table 10: CINs issued by status & sex, April 2004 – March 2005**

<table>
<thead>
<tr>
<th></th>
<th>Males</th>
<th>Females</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
</tr>
<tr>
<td>Expiated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CES completed</td>
<td>470</td>
<td>16.3</td>
<td>121</td>
</tr>
<tr>
<td>Paid</td>
<td>835</td>
<td>28.9</td>
<td>133</td>
</tr>
<tr>
<td>Total expiated</td>
<td>1,305</td>
<td>45.2</td>
<td>254</td>
</tr>
<tr>
<td>Unexpiated</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unpaid</td>
<td>78</td>
<td>2.7</td>
<td>20</td>
</tr>
<tr>
<td>Final demand</td>
<td>194</td>
<td>6.7</td>
<td>46</td>
</tr>
<tr>
<td>FER registered</td>
<td>1,301</td>
<td>45.1</td>
<td>383</td>
</tr>
<tr>
<td>Court</td>
<td>9</td>
<td>0.3</td>
<td>1</td>
</tr>
<tr>
<td>Total unexpiated</td>
<td>1,582</td>
<td>54.8</td>
<td>450</td>
</tr>
<tr>
<td>Total</td>
<td>2,887</td>
<td>100.0</td>
<td>704</td>
</tr>
</tbody>
</table>


**Table 11: CINs issued by ethnic status & sex, April 2004 – March 2005**

<table>
<thead>
<tr>
<th></th>
<th>Caucasian</th>
<th>Indigenous</th>
<th>Asian</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
<td>n</td>
</tr>
<tr>
<td>Males</td>
<td>1,825</td>
<td>82.1</td>
<td>197</td>
<td>70.9</td>
<td>37</td>
</tr>
<tr>
<td>Females</td>
<td>399</td>
<td>17.9</td>
<td>81</td>
<td>29.1</td>
<td>8</td>
</tr>
<tr>
<td>Persons</td>
<td>2,224</td>
<td>100.0</td>
<td>278</td>
<td>100.0</td>
<td>45</td>
</tr>
</tbody>
</table>


Table 12 shows that there was a gradual increase in the proportion of CINs expiated over time, from just over one third (35.4%) in the June quarter 2004 to nearly half (47.6%) by the June quarter 2004. The small number of CINs in the March quarter 2004 should be discounted for the purposes of this analysis, as this data covers the period from 22 March to 31 March 2004.
Table 12: Quarterly CINs issued by expiation status & sex, 2004 – 2005

<table>
<thead>
<tr>
<th></th>
<th>Expiated</th>
<th>Unexpired</th>
<th>Total</th>
<th>Expiated</th>
<th>Unexpired</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>CES</td>
<td>Paid</td>
<td>Total</td>
<td>%</td>
<td>Final</td>
<td>Final</td>
</tr>
<tr>
<td>2004 Mar qtr</td>
<td>8</td>
<td>21</td>
<td>29</td>
<td>55.8</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>2004 Jun qtr</td>
<td>170</td>
<td>288</td>
<td>458</td>
<td>47.6</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2004 Sep qtr</td>
<td>132</td>
<td>212</td>
<td>344</td>
<td>36.4</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2004 Dec qtr</td>
<td>148</td>
<td>256</td>
<td>404</td>
<td>47.0</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>2005 Mar qtr</td>
<td>146</td>
<td>219</td>
<td>365</td>
<td>43.6</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>2005 Jun qtr</td>
<td>125</td>
<td>200</td>
<td>325</td>
<td>35.4</td>
<td>5</td>
</tr>
</tbody>
</table>

Figure 1: Quarterly CINs issued by type of offence & expiation rate, 2004 - 2005

The CIN expiation rate (based on the two police enforcement stages) in Figure 1, increased from 35.4% in the June quarter 2005 to 55.8% in the March quarter 2004, with the exception of the drop to 36.4% in the September quarter 2004. The upward trend of the rate of expiation is expected because of the operation of statutory delays represented by the three stages of the expiation process.

The police expiation rate in Figure 1 consists of the outcomes of the first two enforcement stages, when management of the CIN remains with Infringement Enforcement Section. The first stage applies to the first 28 day period when expiation can be by either payment or attendance at a CES. Delays can arise in the expiation process (which is the same for traffic infringements) if a CIN has not been expiated by the elapse of the first 28 day period by either payment of the modified penalty or attendance at a CES when police issue a final demand. During the second
stage, when a final demand has been issued, an individual has a further 28 days to expiate a CIN, but only by payment of the outstanding modified penalty.

The third enforcement stage occurs if the outstanding modified penalty has not been paid at the end of the second stage (ie at least 56 days after a CIN was issued) as the police refer the matter to the FER where additional administrative costs will be incurred as further steps of the debt recovery process progress if payment is not finalised. Ultimately if the outstanding debt is not paid an individual will need to enter into a time to pay arrangement and if the debt is not settled, the person’s motor drivers license will be suspended. For an overview of stages of the enforcement process prior to transfer of enforcement to the FER see Appendix 8.

It is likely there will be additional increases in expiation after a matter has been transferred to the FER due to threatened loss of a person’s motor drivers license and increased administrative costs if an outstanding CIN remains as an unpaid debt. With the inclusion of additional CINs expiated through the FER enforcement system it is likely the overall expiation rate of the CIN scheme may increase up to 60% or more from the third stage of the enforcement process, up from an underlying base rate of about 45% achieved through the first two stages.

5.2.2 Convictions: 2002 - 2005

Persons who have been charged with a minor cannabis offence, like other minor offences, appear before a Magistrate, where the charge may be dealt with in a variety of ways, including conviction, dismissed for lack of evidence or the person being found not guilty.

The term ‘conviction’ used in this context refers to the outcome recorded in a database maintained by the former Department of Justice (DOJ) after a person has appeared before a Magistrates Court charged with an offence. Non-identifying published conviction data were examined for the three relevant offences under the MDA – s. 5(1)(d)(i) [possession of smoking implement with detectable traces of cannabis], s. 6(2) [possession of 30 grams or less of cannabis] and s. 7(2) [non-hydroponic cultivation of not more than two cannabis plants].

Each record listed in the dataset which has an additional field to identify specific types of drug was examined to select those offences which specifically identified cannabis. This process is not required in relation to the offence of possession of a smoking implement on which there are detectable traces of prohibited drug, s 5(1)(d)(i), as this section of the MDA is specific to cannabis. See Appendix 4 for text of this and other relevant sections of the MDA.

The lack of identification of cannabis specific offences meant it was necessary to use the additional drug code field for convictions for offences involving sections 6(2) and 7(2) of the MDA, to filter out cases which involved drugs other than cannabis. (See Appendix 3 for details of the DOJ cannabis codes.) The conviction database does not include CINs, as that dataset is separately maintained by the police and is not accessible to nor linked to other law enforcement databases.

There are some shortcomings with the conviction database as it does not provide additional data to determine if some types of cannabis convictions fall within the CIN scheme, such as the amount of cannabis for s. 6(2) ie possession offences, the method of cultivation or the number

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573 If someone is charged with an indictable, ie serious offence in WA, whilst they may appear initially in a summary court, this type of matter is referred to a higher court.
574 Court functions were transferred to the Department of Attorney General in February 2006 from the Department of Justice when it was dissolved, with the remaining functions transferred to the new Department of Corrections.
575 There are a number of limitations in this data, for example, not all court records may accurately identify the type of drug or that age was unavailable (ie it is not possible to determine whether the person was an adult).
576 If the offence involved the possession of 100 grams or more of cannabis or the cultivation of 10 or more cannabis plants then a person will be charged with a more serious offence of having possession or cultivation with the intent to sell or supply.
cannabis plants for s. 7(2) ie cultivation offences, as none of these details are captured by the database.

Tables A2-9, A2-10 and A2-11 contain a quarterly breakdown of conviction data from the March quarter 2002 for offences under sections 5(1)(d)(i), 6(2) and 7(2) of the MDA. Table A2-12 provides quarterly aggregate totals for these three offences. A comparative analysis of convictions for each of these offences, covering the period of the nine quarters before the CIN scheme, from the March quarter 2002 to the March quarter 2004 and the five quarters since the introduction of the CIN scheme, from the June quarter 2004 to the June quarter 2005) follows.

5.2.2.1 Possession of smoking implement - section 5(1)(d)(i)
The quarterly breakdown of adult convictions for the possession of a smoking implement with detectable traces of cannabis in Table A2-9 shows that over the nine quarters before the CIN scheme there was an average of 598 convictions per quarter. Over the five quarters of the CIN scheme there was an average of 445 convictions per quarter, overall, a drop of an average of 153 (ie 598 – 445) convictions per quarter compared to the period before the CIN scheme.

5.2.2.2 Possession of cannabis - section 6(2)
The quarterly breakdown of adult convictions for the possession of cannabis in Table A2-10 shows that over the nine quarters before the CIN scheme there was an average of 859 convictions per quarter. Over the five quarters of the CIN scheme there was an average of 640 convictions per quarter, overall, a drop of an average of 219 (859 – 640) convictions per quarter compared to the period before the CIN scheme.

5.2.2.3 Cultivation of cannabis - section 7(2)
The quarterly breakdown of adult convictions for the cultivation of cannabis in Table A2-11 shows that over the nine quarters before the CIN scheme there was an average of 183 convictions per quarter. Over the five quarters of the CIN scheme there was an average of 149 convictions per quarter, overall, a drop of an average of 34 (183 – 149) convictions per quarter compared to the period before the CIN scheme.

5.2.3 Cannabis seizures: 1998 - 2005
Table A2-3 indicates there has been an overall decline in quarterly cannabis seizures from 4,330 in the March quarter 1998 to 2,591 in the December quarter 2005, a decrease of 40.2%. Figure 1 shows there was a pattern of about 3,500 to 4,500 seizures over the four year period from 1998 to 2001, after which quarterly seizures declined somewhat and since 2003 has been relatively static with about 2,500 seizures per quarter throughout 2004 and 2005. Therefore, the overall trend of declining quarterly seizures over this eight year period would appear to be unrelated to operation of either the system of cautions issued for possession under the CCMES which was introduced on a Statewide basis in March 2000 and ceased in March 2004 or infringements under the CIN scheme which commenced in late March 2004.

Over the period since 1998 the proportion of cannabis seizures of all drug seizures has declined from 87.2% in the March quarter 1998 to 68.1% of all drug seizures by the December quarter 2005 (Table A2-3). On annual basis there were about 17,000 cannabis seizures between 1998 and 2001, with a decrease in annual seizures in more recent years. In the year 2004 there was a

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577 For the purposes of this analysis the total of 52 CINs that were issued between 22 and 31 March 2004 are not referred to in the comparative study of trends in convictions before and after the CIN scheme.

578 A seizure is not a count of the total number of plants seized, but a count of the aggregate number of separate types of items seized in relation to each offence. For example, if six cannabis plants, two smoking implements and five packets of cannabis leaf were seized, this would be counted as three cannabis seizures.
total 9,644 seizures – the lowest number of seizures over the eight year period, with a relatively small increase to 10,337 seizures in 2005. See Table A2-3.

As data is not available in relation to the number of plants seized, the maturity of plants, the method of cultivation or the quantities of cannabis seized as either leaf, resin or hashish over this period, it is not possible to determine if the trend of decreased seizures would confirm a shift away from minor offenders, whether there had been a growth in the number of detections of cultivating cannabis by a sophisticated hydroponic setups compared to outdoor crops or whether the decline reflected targeting of other serious drug offences.

Whilst it may be speculated that a decrease in the number of seizures represents a reduction in DLE activity, this may not be the case if there had been a shift to investigating more serious offences, such as those engaged in sophisticated hydroponic cultivation or that these seizures may involved greater number of mature plants compared to immature seedlings.

**Figure 2: Quarterly cannabis seizures, 1998 - 2005**

![Graph showing quarterly cannabis seizures, 1998 - 2005](image)

A breakdown of the frequency distribution of the weight of cannabis for CINs issued for s 6(2) offences (ie possession of up to 30 grams of cannabis) found that of a total of 2,157 CINs issued in the 2004/2005 year, 85% of the samples weighed less than 5 grams. A frequency distribution of the weight of seized cannabis presented in Figure 3 shows that just over three quarters (77.9%) of cannabis samples weighed less than 2.5 grams, with a further 7.1% of samples weighing between 2.5 and 4.9 grams.
Figure 3: Frequency of CINs issued by weight of cannabis seized (gms) for s 6(2) offences, July 2004 – June 2005

<table>
<thead>
<tr>
<th>Weight Range</th>
<th>Females</th>
<th>Males</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;2.5</td>
<td>287</td>
<td>1384</td>
<td>1681</td>
</tr>
<tr>
<td>2.5-4.9</td>
<td>27</td>
<td>125</td>
<td>152</td>
</tr>
<tr>
<td>5.0-9.9</td>
<td>25</td>
<td>92</td>
<td>117</td>
</tr>
<tr>
<td>10.0-15.0</td>
<td>21</td>
<td>78</td>
<td>99</td>
</tr>
<tr>
<td>15.1-30.0</td>
<td>26</td>
<td>82</td>
<td>108</td>
</tr>
</tbody>
</table>

5.2.4 Preliminary outcomes of CIN scheme

As the CIN scheme has operated for a relatively short period of time, it may be difficult to determine whether the outcome of net widening, a consequence of decriminalisation which was apparent soon after the introduction of the CEN scheme in SA, may also have occurred in WA. It has been suggested that the effect of net widening, which became evident soon after the CEN scheme was introduced, could be attributed to how the scheme facilitated the issuing of infringement notices. Whereas prior to the CEN scheme police in South Australia had the options of either informally cautioning or otherwise charging a person, after the CEN scheme the reform was interpreted as meaning police could only issue an infringement. This meant that informal cautioning was largely abandoned as an option in South Australia.

“Simplified procedures have rendered police far more likely than previously to take action against people found to be possessing, using or cultivating small amounts of cannabis. ... Clearly, the introduction of CENs in South Australia seems to have undermined law enforcement officers’ willingness to exercise discretion in relation to minor cannabis offending – an effect which would appear to be inconsistent with legislators’ intentions but which has persisted to the present.”

In this preliminary analysis of the CIN scheme covering the period from 2002 the term ‘formal consequences’ is used to reflect that in WA there were three possible formal consequences when someone was apprehended if they had committed a minor cannabis offence, viz:

579 See below in Section 7.6 for a discussion of net widening and that it has been recognised as an outcome of reform in a number of other jurisdictions.


581 Prior to the CIN scheme, as is still the case, an adult could be informally cautioned by a police officer for committing a minor cannabis offence.
be charged and convicted for a cannabis related offence under the MDA of either
possession of a smoking implement with detectable traces of cannabis [s.5(1)(d)(i)],
possession of cannabis [s.6(2)] or cultivation of cannabis [s.7(2)];
be cautioned for possession of up to 25 grams of cannabis (from 1 January 2002 to 21
March 2004 under the previous CCMES); and
since 22 March 2004 receive a CIN for possession of a smoking implement with
detectable traces of cannabis, possession of not more than 30 grams of cannabis or the
non hydroponic cultivation of not more than two cannabis plants at the person’s
principal residence.

A comparative analysis of trends for each of the three MDA offences covering the period of the
nine quarters before the CIN scheme (from the March quarter 2002 to the March quarter 2004)
and the period of the five quarters since the introduction of the CIN scheme (from the June
quarter 2004 to the June quarter 2005) follows. Figure 4 presents quarterly trends in formal
consequences broken down into three types of consequences - convictions, CINs (since March
quarter 2004) and cautions (ie up to March quarter 2004) and as all formal consequences (ie
convictions plus CINs/cautions).

5.2.4.1 All offences

The data in Table 13 indicates there was a total of 16,946 formal consequences, an average of
1,883 per quarter, in the nine quarters before the CIN scheme (ie from 1 January 2002 to 31
March 2004). Over the five quarters since the CIN scheme has operated (ie 1 April quarter 2004
to 30 June 2005) there was a total of 10,692 formal consequences, an average of 2,138 per
quarter. This indicates a net increase of an average of 256 total formal consequences per quarter
(ie 2,138 – 1,883) since the introduction of the CIN scheme compared to the period before the
scheme.

582 For the purposes of this analysis the 52 CINs that were issued between 22 and 31 March 2004 are not
referred to in the comparative study of quarterly trends in convictions before and after the CIN scheme.
5.2.4.2 Possession of a smoking implement [s. 5(1)(d)(i)]

Over the period before the CIN scheme there was a total of 5,401 formal consequences, an average of 600 formal consequences per quarter involving s. 5(1)(d)(i) offences. (There were no other formal consequence other than a conviction in the period before the CIN scheme for this offence.) Over the period after the introduction of the CIN scheme there was a total of 3,854 formal consequences, an average of 771 formal consequences per quarter involving s. 5(1)(d)(i) offences. This represents a net increase of an average of 171 (771 – 600) formal consequences per quarter since the commencement of the CIN scheme, compared to the period before the CIN scheme. See Table 13.

5.2.4.3 Possession of cannabis [s. 6(2)]

Over the period before the CIN scheme there was a total of 9,899 formal consequences, an average of 1,100 formal consequences per quarter involving s. 6(2) offences. (There were two types of formal consequences, a conviction or a caution in the period before the CIN scheme for this offence.) Over the period after the introduction of the CIN scheme there was a total of 5,967 formal consequences, an average of 1,193 formal consequences per quarter involving s. 6(2) offences. This represents a net increase of an average of 94 (1,193 – 1,100) formal consequences per quarter since the commencement of the CIN scheme, compared to the period before the CIN scheme. See Table 13.

5.2.4.4 Cultivation of cannabis [s. 7(2)]

Over the period before the CIN scheme there was a total of 1,646 formal consequences, an average of 183 formal consequences per quarter involving s. 7(2) offences. (There were no other formal consequence other than a conviction in the period before the CIN scheme for this
offence.) Over the period after the introduction of the CIN scheme there was a total of 871 formal consequences, an average of 174 formal consequences involving s. 7(2) offences. This represents a net decrease of an average of 9 (183 – 174) formal consequences per quarter since the commencement of the CIN scheme, compared to the period before the CIN scheme. See Table 13.

Table 13: Quarterly formal consequences – minor cannabis offences 2002 – 2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Mar qtr</th>
<th>Jun qtr</th>
<th>Sep qtr</th>
<th>Dec qtr</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CINs</td>
<td>Convict</td>
<td>Cautions</td>
<td>CINs</td>
<td>Convict</td>
</tr>
<tr>
<td>2002</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mar qtr</td>
<td>-</td>
<td>285</td>
<td>-</td>
<td>835</td>
</tr>
<tr>
<td>Jun qtr</td>
<td>645</td>
<td>281</td>
<td>-</td>
<td>967</td>
</tr>
<tr>
<td>Sep qtr</td>
<td>615</td>
<td>283</td>
<td>-</td>
<td>902</td>
</tr>
<tr>
<td>Dec qtr</td>
<td>590</td>
<td>241</td>
<td>-</td>
<td>861</td>
</tr>
</tbody>
</table>

On the basis of this preliminary data based on quarterly data since the introduction of the CIN scheme, it would appear that a degree of net widening has occurred as a consequence of the CIN scheme. The main area in which this effect has occurred appears to mostly involved s. 5(1)(d)(i) offences, as there was a net increase of an average of 171 formal consequences per quarter, whereas there was a smaller net increase of an average of 94 formal consequences per quarter for s. 6(2) offences. Formal consequences involving s. 7(2) offences showed the opposite trend, with a small net average quarterly decrease.

It should be noted that the count of the number of CINs issued for s. 5(1)(d)(i) offences does not equate to the actual number of smoking implements that police dealt with, as it is understood that in practice police do not issue a separate CIN for each smoking implement in an offender’s possession. This interpretation of s. 5(1)(d)(i) on this point is unclear as the MDA refers to the “possession of any pipes or utensils”. (See Appendix 4.) This would indicate that the number of CINs issued is likely to under enumerate the actual number of distinct offences, if the possession of each smoking implement is a separate offence, because of the practice of aggregating offences on one CIN. This means that therefore an additional degree of net widening has probably occurred with respect to s. 5(1)(d)(i) offences as a consequence of the CIN scheme making this an expiable offence.
Table 13 indicates in early 2005 there been an increase in convictions involving s. 5(1)(d)(i) and s. 6(2) offences compared to the number of quarterly convictions in the June, September and December 2004 quarters. This trend would require more recent data to determine whether it reflected increased charges being laid by police since late 2004 or may have been due to unusual factors, such as delays in processing of data or delays in the courts hearing charges from the previous year.

5.2.4.5 Multiple CINs and recidivism

As data is only available for the first 12 months (ie 1 April 2004 to 31 March 2005) of the operation of the CIN scheme it is only possible to undertake a preliminary examination of the provision in the CCA intended to address recidivism in the scheme.

In the first 12 months a total of 2,643 unique individuals were issued with a total of 3,591 CINs, ie an average of 1.4 CINs per person. A breakdown of the number of days in the 12 month period that these 2,643 individuals received one or more CINs, found that for 2,525 (95.5%) they were issued one or more CINs on only one day, 117 (4.4%) were issued with one or more CINs on two separate days and 1 was issued with one or more CINs on three separate days. This means that at 31 March 2005 there was only one individual who had triggered the provision in s. 9 of the CCA and that a further 117 persons would be unable to expiate by payment if they were to receive any more CINs over the three year period since they last received a CIN.

An examination of the offences committed by the 2,525 individuals who had received one or more CINs on only one day found that 1,797 (71.2%) had committed one cannabis offence, 697 (27.6%) had committed two cannabis offences and 31 (1.2%) had committed three cannabis offences. With respect to the 117 persons who had been issued with one or more CINs on two separate days, 61 (52.1%) had committed two cannabis offences, 46 (39.3%) had committed three cannabis offences and 10 (8.6%) had committed four cannabis offences.

Out of the total of 2,643 individuals who had been issued with one or more CINs in the 12 month period, a total of 1,797 (68.0%) involved just a single offence on a single day, of which a total of 1,307 (49.5%) had committed just the single offence of possession of cannabis, 436 (16.5%) had committed just the single offence of possession of a smoking implement and 54 (2.0%) had committed just the single offence of cultivation.

Out of the 2,643 unique individuals who were issued with one or more CINs in the first 12 months of the scheme, there were 697 (26.4%) persons who had received two CINs on a single day, of which 668 persons involved the offences of possession of a smoking implement and possession of cannabis on the one day.

In summary this data would suggest the overwhelming majority of individuals had very limited contact with the police in relation to minor cannabis offences dealt with by way of a CIN, with 19 out 20 having contact with the police on only a single day in the 12 month period. It can also be seen that as just under half (49.5%) of all individuals were issued with a CIN for possession of only cannabis, which as noted above, largely involved small quantities of cannabis, with just over three quarters of samples weighing less than 2.5 grams (see Figure 3).

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583 An examination of cannabis conviction data over the duration of the CIN scheme found the vast number of charges were processed within a short period of time between when a cannabis charge was laid and when the matter was disposed of at court, with 83.1% of offences being dealt with within 90 days and 89.7% of offences dealt within 180 days of a charge being laid. This indicates that lag effects concerning conviction data are unlikely to affect interpretation of long term trends.

584 In s. 9 of the CCA ie those who are issued with more than two CINs on at least two separate occasions within a three year period can only expiate by attending a CES.

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An analysis of the proportion of CINs expiated by a person according to the total number of CINs issued found there was a lower frequency of expiation for those who had received one CIN compared to those who had been issued with two CINs (39.3% vs 46.1%). It was also found that the method of expiation varied depending on the number of CINs issued, with expiation by CES increasing from 11.4% of those who had received one CIN, to 19.6% of those who had received two CINs and to 25.7% of those who had received three CINs, whereas expiation by payment dropped by about half as the number of CINs increased, from 27.9% of those who had received one CIN, to 26.0% of those who had received two CINs and to 14.9% of those who had received three CINs.¹⁰⁸⁶

5.3 Themes of cannabis law reform

This section is concerned with identification of some of the key themes that have shaped how the reforms in WA and the UK developed and were conceptualised. Three specific areas of interest will be considered, consultation with the community, the extent to which the concept of decriminalisation was explicitly acknowledged to ‘explain’ and promote the reforms and the importance which was given to the principles of harm minimisation as an integral part of reform.

As harm minimisation has become a major influence of how DLE agencies in Australia understand their role, this concept needs to be considered with particular reference as to whether one of the consequences of cannabis reform may largely involve shifting cannabis related harm rather than reducing overall net harm attributable to cannabis use.

First of all it is useful to describe how the process of reform occurs, which a number of commentators have suggested is that drug problems and the policy response occur in a cyclical fashion, driven initially by increased levels of drug use manifested by growing levels of crime and other social and health problems, creating pressure for the imposition of increasingly severe penalties and methods of deterrence.¹⁰⁸⁷ However, the imposition of more severe penalties in response to community concerns produces short-lived gains as use continues and the courts and correctional institutions become overwhelmed by offenders as a consequence of the excessive use of official sanctions. Disappointment with the harsher law enforcement response becomes a trigger to consider the feasibility of non-custodial options to temper the earlier excessive and harsh punishments. This stage may also involve an examination of drug law reform options and redefining the means of social control to deal with the deviant behaviour, such as cannabis use in this instance, away from the courts to the health system.

An understanding of this cyclic process of responding to drug problems is important as it creates opportunities for law reform and identifies strategies to ameliorate the problem depending on the stage of the cycle.

“However, the strategies are not equally effective in all stages of a drug use epidemic. For example, law enforcement is most effective in the early stages of a drug epidemic, when relatively fewer suppliers are available and suppressing the supply is easier. In contrast, treatment is more effective in the later stages of a drug use epidemic, when a much larger percentage of ongoing users are drug dependent.”¹⁰⁸⁸

Within the respective stages of policy responses a number of possibilities of reform can be debated, one of which is decriminalisation, which if adopted would represent a compromise between competing interests, as it

¹⁰⁸⁶ Id Table A-4.
¹⁰⁸⁸ RAND Corporation. RAND study finds strategies in ‘War on Drugs’ need to be reassessed as drug use patterns change. Media Release, 21 March 2005.
“is usually a double process. On the one hand, repressive government policies are used with more restraint as repression is seen to contribute to, rather than solve, the problems they were designed to alleviate. On the other hand, a range of policies are put in place in order to regulate the excesses or dangers that might result from deviant behaviour. Understood in this way, decriminalisation can be considered as the way in which society accepts paternalistic responsibility for social problems that are experienced by groups that are culturally deviant or socially marginalised.”

The question of whether the criminal justice system or the medical system is the preferred form of social control appears to be determined by the relative power and influence of groups most affected by the use of the drug at that time. When the majority of users are predominantly marginalised groups, such as African Americans and Hispanic groups in the US context, the legal-judicial system appears to be most likely adopted as the agent of social control because of the perceived threat to social order.

A discussion of a process of cyclical drug law reform suggests that at least in the US, these cycles include ‘drug wars’ as a response to underlying social concerns such as social and cultural change and family breakdown and have the purpose of purging society of ‘undesirable’ individuals and ‘unacceptable’ behaviours by severely punishing those who have transgressed.

“These cycles link drug wars to larger cultural trends of which drug use is a part. In simple terms, after we as a society binge on narcotics or other vices, we purge ourselves by engaging in zealous prosecution until we have worked our collective guilt and anxieties out of our system. Race plays a key part in this account. Because the purge takes place after mainstream America completes its binge, drug wars get underway only after predominantly white upper and middle class America has reduced its level of consumption of drugs. Those left using drugs during the purge are largely the poor and the presence of large numbers of people of colour among them facilitates – and for some undoubtedly motivates – the dysfunctional scapegoating.”

In his 2003 article Joseph Kennedy observes that because of the reactionary nature of the policies involved, the ‘drug war’ phase may occur after there has already been a decline in prevalence of drug use. However, when increasingly numbers of middle class children and their families become affected, then the medical system will be preferred, a response it is suggested, that is used by

“the middle class (seeks) to protect its own children who were increasingly involved in illicit drug use. The desire to control drug use survived, but no longer at the cost of incarcerating users for a major portion of their lives .... the implication of treatment served a ritual or ‘ceremonial’ function. It served to exemplify public values condemning drug use by requiring drug users to undergo treatment, while at the same time circumventing those values in the technical details of the requirement.”

This phenomenon has been noted in other jurisdictions, such as in the Netherlands, where in response to a perceived epidemic of cannabis use in the early 1960s, repressive measures such as harsher penalties and coerced treatment were instituted. This led to an eventual backlash as middle class cannabis users were severely affected by some of these consequences and because of disagreement and confusion between government agencies as to whether responsibility for managing and solving the solution lay with law enforcement or health agencies. In the Netherlands the Ministry of Justice

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“was being subjected to strong public pressure from the media. Harsh punishments dealt out to young middle class cannabis users had touched off a storm of protest. Justice officials assumed the position that not their ministry, but that of Public Health held prime responsibility for defining drug policy: drug users were not criminals, but patients. Application of criminal law with respect to drug users was always to be a last resort.”

A similar cycle was apparent in the response to the growth in cannabis use in Canada in the 1960s, which involved an initial reaction by the judiciary implementing a ‘get tough’ policy by giving harsh sentences, resulting in more than half of those convicted of cannabis possession in 1967 being imprisoned. However, by 1975 the courts had substantially revised their response to the issue and instead fines and discharges became the most frequent response, with less than five per cent of those convicted being imprisoned.

5.3.1 Approach to reform

The approach taken towards reform in the UK, in contrast to that in WA, sought to convey the impression that reform was of a relatively minor nature as it involved a shift in the location of cannabis from one schedule to another schedule in the *Misuse of Drugs Act 1975*. The description of the reform as being the ‘reclassification’ of cannabis reinforced the perception that reform was not a revolutionary change but an evolutionary development as cannabis still remained within a pantheon of drugs covered by the *Misuse of Drugs Act 1971*.

The other feature of the British reform process was that there was a much more explicit involvement by law enforcement agencies in developing the proposals for reform. The prior six month trial of police cautioning in Lambeth, which was widely discussed and reported in the press, engendered an understanding of the rationale for reform, whilst continuing to support the pivotal role of the police in dealing with those who commit the minor cannabis offence of possession.

The closer involvement by police in the development of the UK reforms can be contrasted with the earlier experience of cannabis cautioning in WA which had operated over a four year period and appeared to have been largely overlooked. In WA there was a police cautioning scheme for first time offenders, restricted to the possession of 25 grams or less of cannabis, implemented in March 2000 by the previous Liberal government, after a 12 month pilot trial.

The ALP government apparently regarded this reform as lacking legitimacy as it was largely ignored as a potential source of knowledge about redefining cannabis use as a health rather than law enforcement problem, that it might be a possible foundation on to which further reforms might be built or that it might be redefined and enhanced. However, whilst the CCMES was discarded, the content and structure of its CES component was largely unchanged and continued by the CIN scheme as the educational option to expiate a CIN.

5.3.2 Consultation

In WA reform was developed through a hybrid form of ‘community consultation’, the Drug Summit. Whilst this may be a laudable mechanism to determine support for contentious issues, the rationale for undertaking this expensive exercise can be questioned. There appeared to be a contradiction in adopting this approach as the ALP had gone to the State election in February 2001 with the stated aim of reforming minor cannabis offences, referred to in its pre-election manifesto as ‘decriminalisation’. It is argued that as it had acquired a mandate to reform

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595 The cannabis cautioning mandatory education scheme (CCMES).
minor cannabis offences when it won government it could have proceeded to do this when parliament reconvened.

Prior to the 2001 WA State election ‘drug summits’ had been popular in the pre-election manifestos of a number of other ALP State Branches in Australia as a hybrid forum to canvass public opinion, identify issues, determine priorities and make recommendations on drug policy. Except for the NSW Alcohol Summit, all largely focussed on illicit drugs. The first drug summit was in Queensland, with a ‘youth’ focus and was held in March 1999. This was followed by the New South Wales Drug Summit in May 1999, which unlike the Queensland summit consisted of both members of parliament and invited ‘community representatives’.

Another drug summit was held in South Australia in June 2002. During the NSW election campaign in March 2003, the incumbent ALP Premier Bob Carr announced that a further drug summit, the State Alcohol Summit would be held as part of the ALP’s re-election platform. This summit was held in August 2003 and was attended by both members of parliament, key government departments, community representatives and a range of experts.598

The perception that the WA Drug Summit reflected the spectrum of community opinion, thereby constituting a representative forum, was reinforced by the selection of 80 ‘community representatives’ who were selected from a larger pool of individuals who had nominated themselves. However, in spite of a perception of representativeness, the selection process was carefully managed, as community representatives were not selected by ballot or by random selection but by careful deliberation under the overall direction of the Office of the Drug Summit.598 In addition to the 80 community representatives, a further 20 delegates were individually selected because of their perceived expertise and experience in the area.

The WA Drug Summit was held in August 2001 at Parliament House with proceedings recorded and all resolutions resolved by majority voting. This meant the process resembled a parliamentary process of committees which discussed and identified issues and formulated recommendations which were then discussed in a plenary session, with the final decision on wording of each resolution separately determined over the course of the debate through majority voting. It can be argued the WA Drug Summit created the perception that this forum was acting as a rubber stamp in agreeing to cannabis reform, when it was already become part of the Gallop government’s agenda for reform on its election.

5.3.3 Decriminalisation and law reform

A difficulty with the WA approach to reform was that it involved a complex package of legal and administrative reforms and may have unwittingly created a perception government might be engaged in a deceptive process which would pave the way for subsequent and more comprehensive reforms involving other drugs.600 The potential for confusion and suspicion about the purpose of WA legislation was further aggravated, it is contended, by using the complex and formalistic description of the reforms as being ‘prohibition with civil penalties for the personal use of cannabis’.

The use of the term ‘decriminalisation’ in the popular press to describe the nature of the proposed reform, during the stage when the legislation was before Parliament and in subsequent public debate about the operation of the CIN scheme lent strong support to the perception that

599 The Office of the Drug Summit was appointed by the Minister for Health.
600 In January 2004 a cautioning scheme, based on police discretion, was introduced in WA for first time offenders with small amounts of a number of illicit drugs (other than cannabis) to receive a caution if they participated in a brief treatment intervention. Later in 2004 newspaper publicity about this scheme implied it was part of a Government approach of going ‘soft’ on drugs: Pryer W. “Roberts in dark on drugs let off.” The West Australian 29 October 2004.
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de jure decriminalisation had occurred. The term was also used in the ALP’s pre-election manifesto, which was not renounced.

It is submitted if the scheme had been referred to differently, such as ‘partial decriminalisation,’ it would have been a tacit acknowledgement of an important change to a policy which was an intermediate step along the continuum of possibilities instead of prohibition, to “reduce some of the societal costs of complete cannabis prohibition while retaining some of the benefits of criminalising cannabis.”

It would appear that another audience of researchers, as well as the wider community, understood the reforms in WA as ‘decriminalisation’ rather than as ‘prohibition with civil penalties’. A number of Australian studies about the CEN scheme also appear to reflect uncertainty about the meaning of the term ‘prohibition with civil penalties’, describing the SA reform as involving ‘partial decriminalisation’. It is submitted the term ‘decriminalisation’ has gained wider acceptance for the simple reason that it correctly identifies the purpose of this type of reform, as the “elimination or substantial reduction of penalties for possession of modest quantities of the drug in question ... (which) may or may not be punished by a civil fine.”

The NCMDA described the term ‘decriminalisation’ as being intended to

“define state laws in which possession of marijuana for personal use or casual distribution of small amounts for no remuneration would no longer be a criminal offence. Those states that retained the level of offence corresponding to a crime, which includes all misdemeanour and felony charges, but simply lowered the severity of penalties for possession of small amounts of marijuana were not properly termed decriminalised.”

Since the 1972 NCDMA definition there has been a shift in perception of decriminalisation, as acknowledged in a comprehensive review of American drug policy in 1992 by Mark Kleiman.

“Decriminalisation means leaving production and distribution of the drug entirely illegal, but removing criminal penalties – that is, the threat of arrest and trial, though not necessarily the threat of monetary penalty – for possession for personal use. (This was exactly the situation of alcohol under the Volstead Act.)”

The impetus for reform in the early 1970s in the US could be attributed in part to a demographic transformation in the population of cannabis users, away from minority groups to increasing numbers of white affluent young people. The growth in exposure to cannabis by a

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602 Another difficulty in describing the nature of the reforms is that there is also a tendency to confuse the terms decriminalisation, legalisation and harm reduction with one another. Cf: MacCoun R & Reuter P. Testimony before the House Government Reform and Oversight Committee. Washington DC, Subcommittee on Criminal Justice, Drug Policy and Human Resources, House of Representatives, 13 July 1999. For instance the term ‘harm reduction’ can refer to a beneficial policy goal of reducing the harm if instead of a minor cannabis offender being convicted he or she be issued with an infringement notice or cautioned. Cf: Ditchfield J & Brewer SL. Cannabis – proposals for a harm reduction strategy. UK Cannabis Internet Activists, April 2005.
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broad demographic in the US, as elsewhere, means that governments have had to contemplate law reform, to reconsider the rigour of how the law is enforced, the magnitude of penalties available to punish offenders, the selective manner in which the law has been applied and of the serious consequences for those convicted of minor cannabis offences.

There is a claim in a 2003 article by Maag that the wave of decriminalisation measures that occurred in the US during the 1970s have since been ‘annulled,’ purportedly as there was insufficient public support.

“However, decriminalisation of cannabis use undoubtedly eliminated the negative consequences of criminalisation for the users and the milder sentences imposed reduced prison administration costs. Despite this empirical evidence, the view took hold in the United States that drug use had to be severely punished, ie a ‘zero tolerance’ policy was called for. As a result, the decriminalisation measures taken at the state level were short lived, with all of them being annulled within the following two decades.”

This claim appears to be incorrect, as recent commentary indicates the reforms concerning cannabis possession are still operational in 11 American States – California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon. Alaska recriminalised cannabis possession in 1990 and in November 2004 this issue was reconsidered in a referendum, but defeated. Therefore, the status of the reforms in the States which decriminalised cannabis between 1973 and 1978 may require further clarification as whether while they are still remain on the statute books. Contrary to the statement in the 2003 article there continues to be support for decriminalising minor cannabis offences outside of these original 11 States, such as a 1997 report by the Connecticut Law Revision Commission and a consideration of drug reform issues in 2001 by the New Mexico’s Governor’s Drug Policy Advisory Group.

The meaning given to the term ‘decriminalisation’ as it is now used in contemporary debates on drug law reform, which refers to “how drugs should be legally regulated rather than criminalised,” is considered to involve conflicting interpretations and responses to two propositions, of whether cannabis causes harm to others and whether cannabis is harmful to the person themself.

With respect to the first proposition, if it can be shown the drug is harmful this could be a justification for having laws which make possession an offence. Those who are opposed to

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612 Apparently most of these jurisdictions have retained the reform because of public support and demonstrated cost savings for the courts and police: Blachly P. ‘Effects of decriminalisation of marijuana in Oregon.’ (1976) 282 Annals of the New York Academy of Sciences 405-415.

613 The Alaskan reform process evolved through a series of constitutional challenges. In 1975 the Alaskan Supreme Court ruled that the right to privacy in the Alaskan Constitution allowed adults to use and cultivate a limited number of cannabis plants. In 1990 a citizen’s referendum was passed which reimposed criminal sanctions on cannabis use and cultivation. However, in 1993 an Alaskan Superior Court judge ruled that the 1990 anti-cannabis law was unconstitutional and that only a constitutional amendment could recriminalise the personal use and cultivation of cannabis.


decriminalisation are likely to “view restrictions on drug use as a legitimate defence of general social or religious principles,” whereas proponents of decriminalisation are likely to highlight

“both the effects of drug use and the effects of drug control laws (and) ... therefore rephrase the moral question as to whether this particular type of behaviour should be banned into the morally relevant by more pragmatic question about the consequences of criminalisation (rather about than the effects of drugs).”

With respect to the second proposition, there are already a number of analogous areas, such as prostitution, abortion or homosexuality which in a number of jurisdictions have now been decriminalised whereas previously they were criminalised. Those opposed to decriminalisation are likely claim that a relaxation in the legal status of cannabis would mean a loss of moral opprobrium previously associated with this behaviour, whereas proponents of decriminalisation would argue that criminalisation imposes an unacceptable degree of moral restraint on a person. Opponents of decriminalisation would

“tend to argue that repressive laws are effective, or can be effective, on the condition that they are rigorously enforced and supplemented by campaigns and social pressure that serves to emphasise negative aspects of cannabis use.”

Following the introduction of the Cannabis Control Bill 2003 in the WA Parliament in March 2003 a number of participants in the ensuing debate used the term ‘decriminalisation’. For instance, during the passage of the Bill through parliament and since the CIN scheme came into operation it has been referred in the popular press as ‘decriminalisation of cannabis’. A debate about differences in semantic meaning of a description of the WA reforms appears to be grounded in divergence within the community about the nature of the reforms, confirmed by research about community perceptions of the meaning of the term ‘decriminalisation’.

“Both the government and the Liberal Opposition became aware of the research that many in the community confused the term ‘decriminalisation’ with ‘legalisation’. As a result, while the government subsequently avoided using the term, and emphasised that cannabis use and cultivation would remain illegal under the proposed scheme, the Opposition frequently used the term ‘decriminalisation’ and said that the government scheme would ‘allow’ possession and cultivation of cannabis.”

Some may contend the use of the term ‘decriminalisation’ reflects a wider uncertainty and limited understanding by the community about the objects and details of the CIN scheme. It is argued the continued reference to the CIN scheme as being ‘prohibition with civil penalties’ rather than as ‘decriminalisation’ seems to imply that opponents of reform have failed to understand what the reforms are ‘really’ about. There was arguably a strong element of political opportunism on the part of the Opposition during parliamentary debate to refer to the cannabis law reforms in WA as ‘decriminalisation’ and at the same time to link this to health and law and order concerns.

“It is clear, through both anecdotal and factual evidence provided by the South Australian experience, that the decriminalisation of cannabis, particularly its cultivation, carries many adverse effects for the community. It poses a direct threat to the wellbeing of our community,
with evidence clearly pointing to growth of supply of both cannabis and harder drugs, organised and violent crime, exposure of more people to the criminal justice system and greater public health risks.”

However it is suggested the Opposition’s approach accurately reflected some of the community concern about the government’s use of the vague phrase ‘prohibition with civil penalties’ given the community appeared to understand the reform was ‘decriminalisation.’ The Opposition appear to have also sought to capitalise on a perception that by not using the term ‘decriminalisation’ that there may have been a hidden agenda for more extensive drug law reform at some time in the future.

“The great lie of the Gallop government in its first four years was to suggest that the policy for decriminalising cannabis was as a result of the Drug Summit. ... It was not as a result of the summit. ... I find that a fairly sloppy media in Western Australia still talk regularly about the decision to decriminalise cannabis being a result of the Drug Summit. It was not. It may have been endorsed by the Drug Summit but it was clearly laid down as Labor Party policy by the Premier and, in particular, by the then Minister for Health at the commencement of the Drug Summit.”

5.3.4 What do community surveys say?

It is useful to refer to some of the data which has examined trends over nearly three decades in public attitudes towards cannabis law reform in Australia, as this information forms a backdrop used by both supporters and opponents of cannabis law reform. This material also shows that semantics can often be important in debates about law reform and indeed are often used by both proponents and opponents of reform to differentiate a particular reform, such as the CIN scheme, from other variants of reform which may attract greater or lesser levels of community support.

A series of public opinion polls in Australia since 1977 have sought to determine trends in attitudes of Australians about the legal status of cannabis, including the extent of support for its legalisation, decriminalisation and penalty options. In addition to findings from a number of Morgan Gallup polls, questions on this issue have also been included in most of the National Drug Strategy Household Surveys, the National Social Science Surveys (in 1984-85 and 1986-87) and the 1987, 1990 and 1993 Australian Election Study surveys.

A problem with some of these surveys, which may affect response validity and constrain comparability, is that there have been changes in wording over time to try to measure different types of concerns and that a variety of terms such as ‘legalisation’, ‘decriminalisation’ and ‘personal use’ have been used to try to differentiate degrees of support for a spectrum of legal consequences and variations in permissible use. A study of trends in public opinion, based on results from the five NDSHS surveys conducted in 1985, 1988, 1991, 1993 and 1995, concluded that

“there is a large and stable majority opposed to the legalisation of marijuana. Although the trends in opinions over the past decade suggest that there has been a gradual increase in

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623 Barnet CJ. Hansard, Legislative Assembly, 16 November 2005, 7389.
support for reform, the surveys also show that the majority who oppose such a change hold their opinion more strongly than the minority who support such change.\textsuperscript{626}

5.3.4.1 Morgan Gallup polls: 1977 - 2001

A number of Morgan Gallup polls have considered the degree of support for changes in the legal status of cannabis over a number of surveys between 1977 and 2001, which are presented in Figure 5.\textsuperscript{627} The surveys asked the followed question on this issue - *In your opinion, should the smoking of marijuana be made legal – or should it remain illegal?*

This data indicates the majority of Australians oppose the legalisation of cannabis, with the lowest level of support for legalisation expressed by about one in four Australians in the two surveys in the late 1970s, which rose to 31% in 1984 and then fell to 25% in 1987. From 1987 to the early 1990s support gradually increased and reached 33% in 1993, with this level of support continuing up until the year 2000. However, more recently there appears to have been some decay in support, with a decline to 31% of Australians reporting support for legalisation in the most recent survey conducted in 2001.

\textbf{Figure 5: Trends in public opinion towards legalising cannabis in Australia 1977 - 2001}

5.3.4.2 National Drug Strategy Household Surveys: 1995 - 2004

The four most recent NDSHS surveys in 1995, 1998, 2001 and 2004 are another source of data on trends in support by Australians regarding policy options for cannabis (and other selected illicit drugs), such as legalisation of cannabis for personal use, increased penalties for the sale or supply of cannabis, support for cannabis measures, actions for possession of cannabis for personal use and support for possession of cannabis being a criminal offence.

Over the four most recent surveys support for legalisation of cannabis for personal use declined from 42% in 1995, to 29% (where it remained in 1998 and 2001) and then fell further to 27% in


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2004. It has been suggested the recent decline in support for legalisation in Australia is similar to that observed in the USA and probably due to a more conservative economic situation, increasing youth unemployment and a general weakening of interest in illicit drug use generally. It is also speculated that the increase in support for cannabis law reform up to the early 1990’s was due to generational change.

In Australia attitudes to ‘civil penalties’ for cannabis have been measured in both Roy Morgan Research polls and NDSHS research. Data from Morgan polls between 1979 and 1987 indicate that support for the application of civil penalties to minor cannabis offences fluctuated between 45% and 49% over the five surveys conducted up to 1987.

A 1993 survey conducted for the National Task Force on Cannabis found that approximately 75% of the sample believed that ‘growing or possessing cannabis for personal use’ and ‘using cannabis’ should not be criminal offences. In this survey some effort was made to explain the terms used, such as ‘criminal’ and ‘non-criminal’, to reduce definitional confusion. It was concluded that the greater support for civil penalties compared to other surveys could be attributed to the advantage of having the meaning of terms being explained.

The NDSHS surveys have specifically sought information on the issue of decriminalisation of minor cannabis offences. In the 2004 NDSHS there was lower support by males than females that possession of cannabis should be a criminal offence (36.3% vs 40.3%), with overall support of 38.3% for this proposition. (See Table 14.) The highest levels of support that possession of cannabis should be a criminal offence occurred in the youngest and oldest age groups, with 47.1% of those aged 14 to 19 and 50.7% of those aged 60 years and older supporting criminalisation.

Table 14: Support (%) for actions for possession of cannabis being a criminal offence by age group and sex, Australia, 2004

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-19</td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>45.2</td>
</tr>
<tr>
<td>Females</td>
<td>49.2</td>
</tr>
<tr>
<td>Persons</td>
<td>47.1</td>
</tr>
<tr>
<td>20-29</td>
<td>31.3</td>
</tr>
<tr>
<td>30-39</td>
<td>28.5</td>
</tr>
<tr>
<td>40-49</td>
<td>28.9</td>
</tr>
<tr>
<td>50-59</td>
<td>36.5</td>
</tr>
<tr>
<td>60+</td>
<td>51.7</td>
</tr>
<tr>
<td>Total</td>
<td>36.3</td>
</tr>
</tbody>
</table>


There has also been an examination in the NDSHS of consequences for those found in possession of small amounts of cannabis for personal use by asking – “What single action best describes what you think should happen to anyone found in possession of (cannabis)?” Question B2.

632 Id, 55-56.
Chapter 5: Decriminalisation of Cannabis: What Is Known?

In the 1998 NDSHS respondents stated that compulsory drug education was the preferred penalty option (36%), followed by a fine similar to a parking fine up to $200 (21%), a substantial fine of about $1,000 (16%) and a caution or warning only (12%). Other options such as community service order, weekend detention, jail or ‘other’ were endorsed by 5% or less of the sample.633

In the 2004 NDSHS respondents stated that a caution/warning or no action was the preferred penalty (44.4%), followed by referral to a treatment or education program (28.6%) and a fine (18.1%). The other options received low rates of support - community service or weekend detention (5.0%) and a prison sentence (3.2%). (See Table 15.) The trends between 1998 and 2004 there has been an increased level of support for cautioning/warning or no action, whereas support for education or treatment has declined.

The 2004 NDSHS asked the following question to determine the degree of support for legalisation for marijuana/cannabis, heroin, methamphetamines/amphetamines and cocaine by asking - “To what extent would you support or oppose the personal use of the following drugs being made legal?” 634

There were very low rates of support (between about 3 to 5%) for the legalisation for the three illicit drugs other than cannabis. Overall there was a higher level of support by males than females for the proposition of cannabis being made legal (29.6% vs 24.4%). The highest support amongst males was in the 20 to 29 and 30 to 39 age groups, with four out of 10 supporting this proposition, compared to one third of 40 to 49 year olds and 25.4% of 14 to 19 year olds. This data may contradict the perception that young people would strongly support a change in the legal status in cannabis as support is greatest in those aged between 20 and 49 years. (See Table 16.)

Table 15: Support (%) for actions for possession for personal use of cannabis by age group, Australia, 2004

<table>
<thead>
<tr>
<th>Age Group</th>
<th>14-19</th>
<th>20-29</th>
<th>30-39</th>
<th>40+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A caution/warning or no action</td>
<td>37.6</td>
<td>48.5</td>
<td>49.5</td>
<td>42.7</td>
<td>44.4</td>
</tr>
<tr>
<td>Referral to treatment or education program</td>
<td>22.3</td>
<td>19.7</td>
<td>23.8</td>
<td>34.1</td>
<td>28.6</td>
</tr>
<tr>
<td>Fine</td>
<td>28.0</td>
<td>22.5</td>
<td>19.0</td>
<td>14.6</td>
<td>18.1</td>
</tr>
<tr>
<td>Community service or weekend detention</td>
<td>7.1</td>
<td>6.3</td>
<td>4.1</td>
<td>4.5</td>
<td>5.0</td>
</tr>
<tr>
<td>Prison sentence</td>
<td>3.4</td>
<td>2.6</td>
<td>3.0</td>
<td>3.4</td>
<td>3.2</td>
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<tr>
<td>Some other arrangement</td>
<td>1.5</td>
<td>0.5</td>
<td>0.6</td>
<td>0.7</td>
<td>0.7</td>
</tr>
</tbody>
</table>


634 Question YY5.
Table 16: Support (%) for legalisation of cannabis & other selected illicit drugs by age group & sex, Australia, 2004

<table>
<thead>
<tr>
<th></th>
<th>14-19</th>
<th>20-29</th>
<th>30-39</th>
<th>40-49</th>
<th>50-59</th>
<th>60+</th>
<th>Total</th>
</tr>
</thead>
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<tr>
<td><strong>Males</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>25.4</td>
<td>40.2</td>
<td>39.7</td>
<td>33.5</td>
<td>24.9</td>
<td>12.8</td>
<td>29.6</td>
</tr>
<tr>
<td>Heroin</td>
<td>3.4</td>
<td>5.0</td>
<td>6.4</td>
<td>6.7</td>
<td>6.8</td>
<td>4.0</td>
<td>5.5</td>
</tr>
<tr>
<td>Meth/amphetamines (speed)</td>
<td>4.9</td>
<td>7.3</td>
<td>6.8</td>
<td>5.6</td>
<td>5.0</td>
<td>3.1</td>
<td>5.5</td>
</tr>
<tr>
<td>Cocaine</td>
<td>4.7</td>
<td>6.3</td>
<td>6.8</td>
<td>5.7</td>
<td>5.4</td>
<td>3.5</td>
<td>5.4</td>
</tr>
<tr>
<td><strong>Females</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>21.8</td>
<td>31.0</td>
<td>31.3</td>
<td>28.7</td>
<td>21.2</td>
<td>12.9</td>
<td>24.4</td>
</tr>
<tr>
<td>Heroin</td>
<td>3.6</td>
<td>3.5</td>
<td>4.2</td>
<td>4.9</td>
<td>5.5</td>
<td>4.6</td>
<td>4.4</td>
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<tr>
<td>Meth/amphetamines (speed)</td>
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<td>4.2</td>
<td>3.9</td>
<td>3.7</td>
<td>4.1</td>
<td>3.7</td>
<td>3.9</td>
</tr>
<tr>
<td>Cocaine</td>
<td>3.7</td>
<td>3.9</td>
<td>3.7</td>
<td>3.9</td>
<td>4.4</td>
<td>3.8</td>
<td>3.9</td>
</tr>
<tr>
<td><strong>Persons</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>23.6</td>
<td>35.6</td>
<td>35.5</td>
<td>31.1</td>
<td>23.0</td>
<td>12.8</td>
<td>27.0</td>
</tr>
<tr>
<td>Heroin</td>
<td>3.5</td>
<td>4.2</td>
<td>5.3</td>
<td>5.8</td>
<td>6.2</td>
<td>4.3</td>
<td>5.0</td>
</tr>
<tr>
<td>Meth/amphetamines (speed)</td>
<td>4.5</td>
<td>5.8</td>
<td>5.3</td>
<td>4.7</td>
<td>4.6</td>
<td>3.4</td>
<td>4.7</td>
</tr>
<tr>
<td>Cocaine</td>
<td>4.2</td>
<td>5.1</td>
<td>5.3</td>
<td>4.8</td>
<td>4.9</td>
<td>3.7</td>
<td>4.7</td>
</tr>
</tbody>
</table>


The high level of support by Australians for increased penalties for those who sell or supply cannabis or other illicit drugs is confirmed by the 2004 NDSHS – though whereas generally 80 per cent or more of Australians supported increased penalties for those who sell or supply heroin, methamphetamine/amphetamines and cocaine, there was a somewhat lower level of support for increased penalties for those who sell or supply cannabis.

There was a similar pattern of higher levels of opposition by females compared to males concerning the question of legalisation. The lowest level of support for increased penalties amongst males rose from 41.8% of the 20 to 29 age group to 49.6% of the 40 to 49 age group, then 54.3% of the 14 to 19 age group, followed by an increase of 79.2% of those aged 60 years and older. (See Table 17.)

There is some evidence the community may be unaware of the laws which apply to cannabis use in their jurisdiction and that there is a deal of confusion as to the meaning of terms such as ‘decriminalisation’ and ‘legalisation’ when applied to cannabis. Furthermore, where ‘civil’ rather than criminal penalties apply, respondents are more likely to incorrectly state that cannabis possession and use is legal.

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### Table 17: Support (%) for increased penalties for sale or supply of cannabis & other selected illicit drugs by age group & sex, Australia, 2004

<table>
<thead>
<tr>
<th></th>
<th>14-19</th>
<th>20-29</th>
<th>30-39</th>
<th>40-49</th>
<th>50-59</th>
<th>60+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Males</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>54.3</td>
<td>41.8</td>
<td>47.3</td>
<td>49.6</td>
<td>60.4</td>
<td>79.2</td>
<td>54.2</td>
</tr>
<tr>
<td>Heroin</td>
<td>81.4</td>
<td>82.5</td>
<td>83.8</td>
<td>85.4</td>
<td>86.5</td>
<td>88.3</td>
<td>85.0</td>
</tr>
<tr>
<td>Meth/amphetamines (speed)</td>
<td>76.6</td>
<td>74.6</td>
<td>80.3</td>
<td>84.0</td>
<td>86.2</td>
<td>87.7</td>
<td>82.0</td>
</tr>
<tr>
<td>Cocaine</td>
<td>80.0</td>
<td>77.1</td>
<td>80.9</td>
<td>84.0</td>
<td>86.0</td>
<td>88.1</td>
<td>83.0</td>
</tr>
<tr>
<td><strong>Females</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>58.6</td>
<td>53.8</td>
<td>55.9</td>
<td>58.8</td>
<td>66.1</td>
<td>74.9</td>
<td>62.0</td>
</tr>
<tr>
<td>Heroin</td>
<td>79.9</td>
<td>88.0</td>
<td>87.1</td>
<td>88.9</td>
<td>87.3</td>
<td>87.6</td>
<td>87.1</td>
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<tr>
<td>Meth/amphetamines (speed)</td>
<td>76.4</td>
<td>82.7</td>
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<td>88.3</td>
<td>87.5</td>
<td>87.4</td>
<td>85.3</td>
</tr>
<tr>
<td>Cocaine</td>
<td>77.8</td>
<td>85.4</td>
<td>86.1</td>
<td>88.4</td>
<td>87.3</td>
<td>87.5</td>
<td>86.1</td>
</tr>
<tr>
<td><strong>Persons</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marijuana/cannabis</td>
<td>56.4</td>
<td>47.8</td>
<td>51.6</td>
<td>54.3</td>
<td>63.2</td>
<td>73.1</td>
<td>58.2</td>
</tr>
<tr>
<td>Heroin</td>
<td>80.7</td>
<td>85.3</td>
<td>85.5</td>
<td>87.2</td>
<td>86.9</td>
<td>88.0</td>
<td>86.0</td>
</tr>
<tr>
<td>Meth/amphetamines (speed)</td>
<td>76.5</td>
<td>78.7</td>
<td>82.8</td>
<td>86.2</td>
<td>86.8</td>
<td>87.5</td>
<td>83.7</td>
</tr>
<tr>
<td>Cocaine</td>
<td>78.9</td>
<td>81.3</td>
<td>83.5</td>
<td>86.2</td>
<td>86.7</td>
<td>87.8</td>
<td>84.6</td>
</tr>
</tbody>
</table>


A national survey carried out in 1993 in those jurisdictions that had decriminalised cannabis possession and use through an infringement notice scheme found 34% of those in SA and 43% of those in the NT incorrectly believed it was legal to possess cannabis for personal use. This relatively high level of misunderstanding occurred despite the concepts of legality and civil penalties being explained to respondents. Overall 14% of those surveyed across all jurisdictions incorrectly believed possession of cannabis for personal use was legal. In the 1995 NDSHS 44% of those in the SA and the ACT incorrectly believed this was the case, as opposed to only 9% in states where criminal penalties applied.

Similarly, in the 1998 NDSHS, between 46% and 55% of respondents in SA and the ACT wrongly suggested that personal use, cultivation of small quantities for personal use, possession of small quantities for personal use were legal under infringement notice schemes in those jurisdictions. In the NT, which also had an infringement scheme, fewer respondents (23–28%) incorrectly said cannabis possession and use offences were legal.

The 2004 NDSHS examined two areas concerned with the use of cannabis for medical purposes. In relation to the proposition of changing the law to permit cannabis to be prescribed by medical practitioners to treat medical conditions, this was supported by two thirds (67.5%) of Australians aged 14 years and older and nearly three quarters (73.5%) of Australians aged 14 years and older supported a clinical trial to determine the use of cannabis to treat medical conditions. (See Table 18.)

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640 Question YY3 in Section YY – Policy support of the questionnaire.
Chapter 5: Decriminalisation of Cannabis: What Is Known?

Table 18: Support (%) for cannabis measures by Australian jurisdiction, 2004

<table>
<thead>
<tr>
<th>Measure</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Aus</th>
</tr>
</thead>
<tbody>
<tr>
<td>A change in legislation permitting the use of marijuana for medical purposes</td>
<td>68.3</td>
<td>66.3</td>
<td>66.5</td>
<td>67.6</td>
<td>67.5</td>
<td>70.6</td>
<td>75.5</td>
<td>69.9</td>
<td>67.5</td>
</tr>
<tr>
<td>A clinical trial for people to use marijuana to treat medical conditions</td>
<td>74.2</td>
<td>72.8</td>
<td>72.3</td>
<td>73.1</td>
<td>74.0</td>
<td>77.9</td>
<td>78.6</td>
<td>77.5</td>
<td>73.5</td>
</tr>
</tbody>
</table>


A 1997 telephone survey of South Australian residents found that only 32% of respondents knew it was illegal to possess less than 100 grams of cannabis, 24% incorrectly believed it was legal, and 44% were unsure. Only 23% understood it was illegal to grow three cannabis plants, 54% thought it was legal and 24% were unsure.641

Together these results suggest that low levels of knowledge about the legal status of personal use offences may be due to confusion about the distinction between illegality and criminality, with this problem particularly evident in jurisdictions where ‘civil penalties’ applied.

The 1998 NDSHS sought to determine misunderstanding about decriminalisation by asking respondents to choose the statement that most closely corresponded to their understanding of the term ‘decriminalised’. Overall, 53% of the sample incorrectly believed it meant ‘legal, no penalties apply’, only 36% said correctly that it was ‘illegal and only a caution or a small fine applies’ and 11% were unsure. Residents in two of the three jurisdictions where civil penalties applied were more likely (49% in the ACT and 50% in the NT) to identify the correct definition for ‘decriminalisation’ although, even in these places, half the respondents were incorrect or unsure.642

A telephone survey in WA in December 1993 canvassed the knowledge and attitudes of 400 West Australians aged 17 years and older.643 The survey dealt with two possible strategies to reduce the harm associated with illicit drug use, the provision of needles and syringes and the possibility of changing the laws in relation to cannabis. There was a total of 244 (61%) respondents from the Perth metropolitan area and a further 156 (39%) respondents from Geraldton and Bunbury, two of WA’s major regional cities. There were a number of findings in relation to the issue of cannabis decriminalisation, with just over one third (36.7%) believing cannabis should be made as legal as alcohol whereas 53.2% believed it should not. The survey posed two scenarios about decriminalisation of possession and use of small amounts of cannabis for personal use.

Respondents were asked in the first scenario –

“Do you believe that the possession of small amounts of cannabis for personal use should remain a criminal offence in WA. That is, result in a criminal record and possibly a jail sentence if convicted?”

Respondents were asked in the second scenario –

“Penalties for people charged with possession of small amounts of cannabis for personal use should be like those for speeding in a motor vehicle, they should get a fine but not a criminal record”.

In the first scenario, the criminal penalties were described but those associated with decriminalisation were not described. In the second scenario, likely non criminal penalties were described. When possible penalties were not described, 64% of respondents were in favour of decriminalisation. Where penalties were described, support for decriminalisation increased to 71.5% of respondents. Males were significantly less in favour of decriminalisation than females when the term was explained (65.9% vs 78.9%). It was also found that the majority of respondents believed that most cannabis users did not experience problems.

“Just under two thirds (63.0%) of respondents believed that many people in our community use cannabis without experiencing serious problems due to its use, and a similar proportion (63.3%) believed that the court system is overburdened by minor cannabis offences. Forty percent of the sample believed it would be a bad thing for our community if people were legally able to grow small amounts of cannabis for their personal use, while 50.7% did not.”

The most recent survey of the attitudes of West Australians towards cannabis laws was conducted in October 2002, about six months before the legislation to establish the CIN scheme was introduced into the WA Parliament in March 2003. The survey of a total of 809 respondents involved a similar methodology as had been adopted in earlier research in 1993 which involved ‘explanation’ to respondents of the meaning of the legislative model of ‘prohibition with civil penalties’. It is possible, in spite of stated aim, that confusion could have been created with the elaboration of this particular law reform, as the term ‘decriminalisation’ is used in conjunction with a description of this aspect of the research project.

“Prior to answering relevant items, standardised information was provided verbally by the interviewer to ensure that respondents were aware of the details of the new legislative model and the idea of decriminalisation was explained. That is, it was explained that an activity could remain illegal and carry penalties although these were not necessarily criminal sanctions, a concept illustrated using the example of traffic infringements.”

It is suggested the reference to ‘decriminalisation’ in the introductory stage of the interview may have had the effect of shaping respondents subsequent answers to questions concerned primarily with exploring the concept that the proposed CIN scheme did not amount to ‘decriminalisation,’ because it could distinguished as being something different, ‘prohibition with civil penalties’ and thereby enjoyed high levels of support.

It is submitted that the comparison of a CIN being similar to a traffic infringement notice is also misleading as whilst both are ‘infringement notices’, unlike the traffic infringement notice, a CIN involves two penalties - the monetary penalty (‘fine’) to be paid within 28 days or attendance at a CES at no financial cost (but nevertheless some personal cost) plus the confiscation of any smoking paraphernalia, cannabis plant material and/or growing cannabis plants found at the same time.


646 A traffic infringement does not entail the confiscation of the vehicle. The loss of any cannabis plus the necessity for proof of identity and weighing of cannabis is likely to involve attendance at a police station. This underscores that receiving a CIN cannot be regarded as merely suffering ‘civil penalties’ as the individual experiences a process as if they have been charged a minor criminal offence.
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The loss of these items could potentially represent a significant monetary value, for example an ounce of cannabis in WA could be worth up to $400 if it was hydro cannabis and between $200 to $300 if was non hydroponic cannabis. (See Table A2-1.) Growing cannabis plants could well be worth considerably more depending on their maturity.

It is asserted the process of comparing a CIN to a traffic infringement cannot be sustained as it appears to produce a result highly favourable to the proposition there is a high level of support for reform of minor cannabis offences. The other concern is that attendance at a CES is not an option for a traffic infringement. The attendance at a CES implies that the person may have a potentially underlying serious problem, whereas there is apparently not the same degree of opprobrium attached to a traffic infringement notice. Therefore, the impact of giving the ‘explanation’ can be seen from the result that

“prior to any explanation about the law, 41.9% of the sample agreed with the statement that it ‘should be legal for people over the age of 18 to use cannabis’”, whereas “after the concept of the proposed ‘prohibition with civil penalties’ legislative model was explained in detail to participants, a substantial majority of the sample was found to be in favour, with 79.0% believing it to be a ‘good idea’.”

5.3.5 Principle of harm minimisation

Harm minimisation is based on the premise that only a proportion of drug users at any time will be able or willing to reduce or cease their drug use. Accordingly this principle does not maintain that abstinence from drug use is the preferred goal for intervention programs, but that interventions should be concerned with public health goals, so that a user’s drug use may cause less harm to themself or others.

“A public health approach to the problem of illicit drug use and addiction views the problem not as a phenomenon caused by individual psychological (or moral) factors but rather as one causing extensive social problems and threatening public health. Harm reduction reflects this attitude and goes a step further, holding that many of the most destructive consequences and refractory problems of illicit drug use are not the results of the drugs per se, but rather of drug policies, ie the prohibition of drug use and the criminalisation of the drug user.”

This interpretation of harm minimisation emphasises the close relationship between public health outcomes and the law reforms. There is also an important element of transformation of policy by moving harm minimisation away from the criminalised prohibition end of the spectrum, such that it “is a movement within drug prohibition that shifts drug policies from the criminalised and punitive end to the more decriminalised and openly regulated end of the drug policy continuum.”

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648 The terms harm minimisation and harm reduction are used interchangeably in the literature. A useful analysis of the key concepts and principles that support harm reduction are in a 1996 publication by the National Working Group on Policy under the auspices of the Canadian Centre on Substance Abuse. The review offers the following working definition. “Harm reduction approaches are restricted to those strategies which place first priority on reducing the negative consequences of drug use for the individual, the community and society while the user continues to use drugs, at least for the present time. In harm reduction approaches, the use of drugs is accepted as a fact and focus is placed on reducing harm while use continues. A harm reduction approach to a person’s drug use in the short term does not rule out abstinence in the longer term. Indeed, harm reduction approaches are often the first step towards the eventual cessation of drug use. There are many possible strategies that can be taken to address drug related problems, harm reduction and abstinence being two of these.” Conley P, Hewitt D, Mitec W, Poulin C, Riley D, Room R, Sawka E, Single E, Topp J. Harm reduction: concepts and practice. A policy discussion paper. Ottawa, Canadian Centre on Substance Abuse, 1996.
There is historical precedent to a statement contained in the report of the 1979 Woodward Royal Commission concerning the legal justification for the law to regulate and/or prohibit the use of drugs such as cannabis.

“The report then cites with approval this statement of principle from the Canadian Le Dain Commission of 1972:

‘The criminal law may properly be applied, as a matter of principle, to restrict the availability of harmful substances, to prevent persons from causing harm to himself (sic) or to others by the use of such substances and to prevent the harm caused to society by such use. In every case the test must be a practical one: we must weigh the potential for harm, individual and social, of the conduct in question against the harm, individual and social, which is caused by the application of the criminal law, and ask ourselves whether, on balance, the intervention is justified. Put another way, the use of the criminal law in any particular case should be justified on an evaluation and weighing of its benefits and costs.’”

This statement continues to be relevant to the debate for and against decriminalisation of cannabis, as it recognises the importance of the concepts of self harm, harm to others and social harm by linking these to the goals and sanctions of the criminal law. An important development in Australian drug policy has been the adoption and incorporation of harm minimisation principles into DLE activities.

A review of the operation of National Drug Strategy (NDS) over the period 1993 to 1997 undertaken by Professors Eric Single and Timothy Rohl demonstrates the principle of harm minimisation has become an integral factor in the success of the Australian approach to addressing drug problems.

As a consequence of this review the NDS was revamped and renamed the National Drug Strategic Framework 1998-99 to 2002-03 (NDSF). As the NDSF placed a greater emphasis on preventing the harmful use of drugs, rather than on preventing the use of drugs per se, this meant that harm minimisation became to be understood as a means to develop cohesion and direction across a spectrum of measures, rather than reliance of DLE activities alone.

“Harm minimisation aims to improve health, social and economic outcomes for both the community and the individual and encompasses a wide range of approaches, including:

• supply-reduction strategies designed to disrupt the production and supply of illicit drugs;
• demand-reduction strategies designed to prevent the uptake of harmful drug use, including abstinence-oriented strategies to reduce drug use; (and)
• a range of targeted harm-reduction strategies designed to reduce drug-related harm for individuals and communities.”

A review in the late 1990s of police diversion practices in all Australian States and Territories, which sought to identify professional barriers and organisational structures, concluded that

“the goals of the National Drug Strategy might only be achieved if police are given the confidence to adopt a flexible approach towards alcohol and drug issues, and if they are appropriately trained in the rationale and strategies of harm minimisation. It is also recommended that police consider sharing the responsibility for ‘policing’ alcohol and drug problems with health agencies and community groups.”

This means that training and skilling police in the use of the principles and their application in specific contexts is a key consideration for the successful implementation of harm minimisation measures such as cautioning or issuing cannabis infringement notices. It is important there are sufficient resources for police to adjust and adapt established practices given that a significant amount of police time involves dealing with the sequelae of drug related harm. Research conducted in 1999 confirmed that operational police in fact spent a large proportion of their time responding to drug related harm. It was considered that

“police do have an important role in drug harm minimisation and that such a role is consistent with the strategic directions of policing in general. However, there has been limited attention to operationalise harm minimisation for police and it has been noted that effort needs to be expended in providing relevant training.”

It is important to be aware that there can be a large gap between the expression of global principles such as harm minimisation in national policy documents like the NSDF and how these are implemented into the realities of policing practice. A 2002 review of the implementation of harm minimisation programs in Australia, from the inception of the NCADA in 1985 up to 2000, argued there needed to be a considerable investment of resources on an ongoing basis.

“(F)rom the mid to late 1980s (there was) ... a significant focus on prevention programs. From the late 1980s to the late 1990s ... (there was) a narrower focus and primarily referred to programs that sought to reduce the risk for those using drugs. In the late 1990s and early 2000s harm minimisation has developed a more inclusive meaning, at least as far as supply and demand reduction strategies are concerned. It would have to be observed, however that at least until recently, the application of this more inclusive use of the term has not found expression in terms of programs with a drug use prevention focus.”

5.4 Impact and effectiveness of law enforcement activities

5.4.1 Introduction

The New South Wales Bureau of Crime Statistics and Research has noted whilst it is difficult to measure law enforcement goals and priorities in general, this is a particularly acute problem with respect to DLE activities, as “drug offences are virtually only ever recorded as a result of


658 Id, 17.

drug arrests, the recorded rate of drug crime is more a record of police activity than it is a measure of the frequency of illegal drug use." The same paper highlighted another difficulty of using indirect measures such as arrests and seizures as DLE effectiveness indicators as “illegal drug use does not always cause harm and, when it does, the person most immediately harmed is often the person committing the offence.”

The NSW Crime Commission, a statutory body established in early 1986, is primarily concerned with reducing the activities of those engaged in illegal drug trafficking and organised crime. It has outlined four main objectives and related performance indicators to measure effectiveness, of which Objective 1, To identify high level organised crime figures and their associates, and to conduct effective criminal investigations with a view to apprehension of those persons, is relevant to this discussion.

There are two performance indicators under Objective 1 which could potentially measure the extent to which police have focussed on serious cannabis offenders and how effective they have been in achieving this outcome by two measures, the extent to which criminal networks are damaged by the apprehension of key members and the extent to which criminal activities (such as drug supply) are prevented or reduced by the apprehension of offenders.

These performance indicators imply that DLE agencies have a sufficient understanding of drug markets to identify ‘key members,’ that they are able to evaluate the impact of apprehensions on the operation of criminal networks and that specific DLE actions can be measured through appropriate indicators, such as changes in the size of the cannabis market, price and cannabis potency. Although these measures are potentially useful, their utility is yet to be demonstrated and caution should be exercised if they were used to measure effectiveness of DLE activities in relation to serious drug offending involving cannabis. It should also be acknowledged police are likely to have imperfect knowledge of the activities of individuals and groups who have successfully maintained strict secrecy over their operations for a number of years.

A mechanism that could be developed in the UK to measure the impact of cannabis decriminalisation is through Public Service Agreements (PSAs) by which means government set targets and outline actions to reach specific objectives. For example, the 2004 Spending Review contains a breakdown of resources and associated targets to deliver the 2005/06 – 2007/08 UK drug strategy. The overarching target being to “reduce the harms caused by illegal drugs to individuals, their families and the wider community.” However, as PSA Chapter 21 presently stands it may not be applicable without modification to being able to measure the impact of reclassification of cannabis in January 2004 in relation to drug related harm.

The Home Office has developed a promising framework, the Drug Harm Index (DHI), which measures trends in harm indicators by a series of complex indices. The DHI contains a number of indicators which could be further developed to measure outcomes of DLE activities with

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661 Id, 1.
666 http://www.hm-treasury.gov.uk/media/E46/7F/sr04_psa_ch21.pdf
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respect to serious cannabis related crime.\textsuperscript{668} An updated version of the DHI, containing data for 2004 was released in 2006.\textsuperscript{669}

A recent Beckley Foundation report has observed that one of the difficulties with being able to accurately measure drug related harm is that there needs to be “a common standard of commensuration that can be used to quantify a range of qualitatively different harms.”\textsuperscript{670} With specific reference to DLE activities this report notes that

“monitoring of drug policy has tended to focus on prevalence statistics, such as the number of people who use drugs in a given time period or the hectares of land under opium or coca cultivation. This is a natural by product of drug strategies for which the elimination – or substantial reduction – of drug use and drug markets is the ultimate – and sometimes only – objective. However, increasing seizures of illegal drugs or the number of users or dealers arrested, is rarely associated with a reduction in drug related harm.”\textsuperscript{671}

It should be recognised that some of the desired outcomes of reform of DLE practices and priorities from decriminalising cannabis can be affected by a wide range of intervening factors, some of which are difficult to determine and not routinely measured as they involve shifts in police culture, training and adoption of workplace values.

Other ways in which reform objectives may be thwarted include reallocating policing resources to immediate and politically more attractive priorities in response to community concern (such as giving greater priority to property crimes involving private dwellings or the development of community policing in conjunction with local communities), changes in administrative structures (such as replacement of police districts with regional structures or devolution of activities formerly the preserve of specialist units to regional and district police groups), reinterpretation of the role and significance of principles like harm minimisation and that reforms may be resisted if they undermine accountability or create perceptions of opportunities for corruption.

5.4.2 Model of drug markets

The size of a cannabis market will be determined by the amount of cannabis sold and the price obtained for cannabis being sold in that market. This relationship is conventionally represented as reaching an equilibrium price according to the intersection of demand and supply curves.

The first consideration in understanding a cannabis market is the demand curve, a conceptual depiction of the relationship between price and amount sold, as neither price or quantity are independent of one another. The demand curve is represented as a downward sloping curve, as lower prices equate to higher amounts of the commodity being sold. There are a number of complex factors which determine the slope of the demand curve, such as income and the existence of both incentives, such as preferences for highly desired types of cannabis\textsuperscript{672} and disincentives, such as the effectiveness of DLE operations and prevention campaigns.

The second consideration is the supply curve, a conceptual depiction of the relationship between price and the amount of the commodity that will be offered for sale or trade in the


\textsuperscript{671} Ibid.

\textsuperscript{672} Atha MJ. Cannabis use in Britain 2003/2004. London, Independent Drug Monitoring Unit. IDMU surveys indicate that prices of cannabis resin have fallen steadily since 1994 after peaking in the late 1980s, as have prices for imported herbal cannabis, whereas prices of domestically produced higher potency cannabis (‘skunk’) have remained stable, at a price premium compared to resin.
market. The supply curve is represented as an upward sloping curve, the slope of which is determined by factors such as the underlying cost structure of producing the commodity.

In the case of cannabis there appear to be relatively low production costs as it can be readily cultivated outdoors or with additional inputs its cultivation can be maximised under controlled conditions by the use of artificial lights, regulation of temperature and the supply of nutrients. However, whilst there are low cost inputs operate for cultivation, the most significant factor in the cost structure is the degree of risk, which is determined by effectiveness of DLE activities in detecting crops and identifying those who cultivate and distribute cannabis.

Another dimension that is relevant to the size of a cannabis market is represented by elasticity of demand which is a determinant of consumer behaviour, it being a representation of the sensitivity of consumers to changes in effective price and their willingness to bear higher costs for the same quantity of cannabis. The price of cannabis may vary for a number of reasons, including seasonal factors, decriminalisation of possession by setting a benchmark of specified amounts of cannabis which would be regarded as for ‘personal use’ and penalties and other types of ‘costs’ associated with an infringement notice or formal warning instead of a person being charged and appearing in court.

Decriminalisation could mean demand for cannabis may increase if there is a perception by users that reform had resulted in reduced DLE priorities with respect to minor offences which translated into lower rates of detection or perceptions that the use of cannabis had become tacitly condoned. For example, decriminalisation could result in increased short term demand thereby stimulating increased cultivation of cannabis in the medium and longer term to meet the demand unless counter measures were introduced by police to create and maintain an effective higher price for cannabis.

The economic importance of the cannabis market, like any other drug market, depends on the total number of current users, such as represented by prevalence rates of those who have used cannabis in the past year, the amount of cannabis they purchase and the effective price. However, it should be acknowledged there is an important distinction with respect to the cannabis market compared to other illicit drugs.

"Even though the number of cannabis users is greater, the prices of cannabis are far lower than those of cocaine or heroin. As a result, cannabis markets are, in economic terms, smaller than those of heroin or cocaine."

The disparity between drug markets is illustrated by data from an American report which shows that whereas 78 per cent of all illicit drug users use cannabis, expenditure on cannabis represented only 12 per cent of total expenditure by users on illicit drugs. A similar pattern of use and expenditure on cannabis compared to other illicit drugs has been observed in a number of other countries. A study was conducted of the value of drug consumption in the UK for the year 1996 as a part of a larger study of measuring illegal activity to include hidden economic activities as part of the national accounts. The measurement of illegal activity was required to be provided by the UK as part of its membership of the European Union, in accordance with the European System of Accounts (ESA95).
United Kingdom drugs users take cannabis. In economic terms the cannabis market is, however, still less than a third of the total United Kingdom drug market, reflecting low cannabis prices and thus overall low per capita expenditure on cannabis.\footnote{United Nations Drug Control Program. *Cannabis as an illicit narcotic crop: A review of the global situation of cannabis consumption, trafficking and production.* Geneva, United Nations Drug Control Program, Research Section, 1999, 15.}

West Australian prevalence data provides a similar distribution of users by type of drug, with a total of 273,000 persons aged 14 years and older in the 2004 NDHS who had used any illicit drug in the last year, of whom 103,231 (ie 37.8\%) had used any illicit drug excluding cannabis. This indicates that about two thirds of illicit drug users in WA consume cannabis. (See Table A1-1.) However, further research would be required to determine overall expenditure patterns in all illicit drug markets as it is likely shifts in consumption patterns are possible as a consequence of changes in the effective price and consumption of other drugs relative to changes in the effective price of cannabis.

### 5.4.3 The use of drug market data

Elasticity of demand has long been treated as a key principle to ‘explain’ the operation of drug markets, especially involving heroin and cocaine, which are regarded as being largely driven and largely shaped by the demand of those dependent on these drugs. As elasticity of demand has been considered as a proxy measure of an individual’s preparedness to commit crime, to enter treatment or to voluntarily cease use, this concept underlies a range of strategies adopted by DLE agencies, such as ‘hot spot’ policing and targeting of street level drug markets, designed to put pressure on regular/problematic users in particular. However, as there is a degree of uncertainty as to the elasticity of demand of dependent and regular/problematic cannabis users,\footnote{Who consume the bulk of cannabis in the market. It has been estimated that daily and weekly cannabis users in Australia account for 80\% of all cannabis consumed: Hall W & Swift W. *The THC content of cannabis in Australia: evidence and implications.* Sydney, National Drug & Alcohol Research Centre, University of New South Wales, 1999, ii.} it is difficult to determine the impact of DLE strategies in cannabis markets.

Therefore, a key question for policy makers and DLE agencies to consider is the extent to which a higher nominal price for cannabis may result in decreased consumption, especially given that not all cannabis is sold.\footnote{American research has shown that a significant amount of cannabis used by past year cannabis users may be acquired for free: Caulkins JP & Pacula RL. ‘Marijuana markets: inferences from reports by the household population.’ (2006) 36 *Journal of Drug Issues* 173-200. Therefore it is arguable that DLE activities may have a greater importance with respect to demand than previously appreciated given that nominal price of cannabis is not a major determinant of demand compared to effective price which would be a composite of non monetary costs – see also Chapter 2.} There is evidence suggesting that shifts and variations in street level prices of drugs are not reliable proxy measures of DLE activities in shaping a drug market, as high level seizures do not correlate with shifts in prices paid by consumers.\footnote{Cf: research concerning impact of heroin seizures on heroin prices and availability: Best D, Strang J, Beswick T & Gossop M. ‘Assessment of a concentrated high profile police operation.’ (2001) 41 *British Journal of Criminology* 738-745; Degenhardt L, Reuter P, Collins L & Hall W. ‘Evaluating explanations of the Australian ‘heroin shortage’.’ (2005) 100 *Addiction* 459-469; Weatherburn D & Lind B. ‘The impact of law enforcement activity on a heroin market.’ (1997) 92 *Addiction* 557-569; Wood E, Tyndall MW, Spittal PM, Li K, Anis AH, Hogg RS, Montaner JSG, O’Shaughnessy MV & Schechter MT. ‘Impact of supply side policies for control of illicit drugs in the face of the AIDS and overdose epidemics: investigation of a massive heroin seizure.’ (2003) 168 *Canadian Medical Association Journal* 165-169.} “It is clear that street prices are not a valid performance indicator of the effectiveness of enforcement efforts at interception levels. Increases in prices at importation and wholesale levels can sometimes be identified as a result of successful high level interception operations, but these costs are absorbed and not passed on to the consumer.”\footnote{Pearson G, Hobbs D, Jones S, Tierney J & Ward J. *Middle market drug distribution.* Home Office Research Study 227. London, Development & Statistics Directorate, 2001, vii.}
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It has been observed there is limited information about the long term response of cannabis users to shifts in price, as “most studies have been based on rather short time horizons, they have not provided much evidence of any significant price elasticities.”\(^{681}\) It is plausible that cannabis is price elastic for demand, as substantial price elasticity of demand has been confirmed for both tobacco (regarded as a particularly addictive drug) and alcohol.\(^{682}\)

“(I)f enforcement is able to raise prices, an untested proposition, then tougher enforcement can substantially reduce consumption. If the elasticity is less than one in absolute value, then that reduction in use will none the less result in increased expenditures.”\(^{683}\)

However, caution may need to be exercised in applying some of the principles generated from research of markets in drugs other than cannabis, as the cannabis market structure is more fragmented.\(^{684}\) It has been noted that

“... the rather decentralised nature of the cannabis market and the many actors involved on both the supply and the demand side ... results in less influence of organised crime over the cannabis market than is the case in the heroin or cocaine markets. Such market structures and the defacto lower risks of imprisonment in many countries for cannabis-related offences than for those involving heroin or cocaine are factors contributing to the lower prices of cannabis. The lower prices, reflecting easy access and large scale supply, may also be seen as one of the reasons for the global popularity of cannabis, clearly exceeding that of heroin or cocaine.”\(^{685}\)

A study of cannabis prices and demand in the US from 1983 to 1995 found that the price per pound of cannabis leaf rose from a mean of $450 per pound (1983) to $2,150 per pound (1995). “Adjusted for inflation, mean cannabis prices tripled between 1983 and 1995, while annual prevalence rates of cannabis use almost halved, from 15.9 per cent in 1982 to 8.6 per cent in 1996.”\(^{686}\)

There may also be other types of unexpected outcomes from changes in DLE priorities, as demonstrated in a 2001 NSW study which found regular users of cannabis have a higher risk of negative outcomes from cannabis use iif the price of cannabis increased, resulting in substantial social costs (ie externalities). It was concluded that comparing regular users to infrequent users “l(aw enforcement measures designed to reduce the availability or increase the cost of cannabis ... appear likely to prompt drug switching.”\(^{687}\)

As one of the arguments offered for decriminalising cannabis in WA and the UK was that it would free up resources so that police could target more serious offenders, then it follows that whilst tracking cannabis prices according to source and type of cannabis may indicate the relative success of police in the short term in imposing higher costs on those involved in the organised cultivation and distribution of cannabis, this would fail to capture the increased harm that would arise involving regular/problematic users.

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683 Id, 1262.


686 Id, 14.


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5.4.4 The Netherlands drug market

There is a body of research which has examined the operation of the cannabis market in the Netherlands by virtue of the Dutch having developed and maintained a continuous process of development of the ‘coffee shop’ policy over the past three decades. This policy has been recognised as having created a stable domestic cannabis market in the Netherlands which has facilitated and stimulated the growth of a significant local industry, regarded in economic terms as a classic case of import substitution. It is worth examining this phenomenon in further detail, because it is applicable to other jurisdictions which are considering or have already decriminalised cannabis possession.

Historically as cannabis was largely cultivated in geographic areas outside the main consuming nations of the Western world, such as in the Middle East and Western and South Eastern Asia, cannabis was imported because of limited local sources of supply. A new variety, referred to as Eurocannabis, was developed primarily in the Netherlands during the 1980s, where in addition to the existence of a stable domestic market, there also existed the horticultural expertise to undertake selective breeding to produce new hybrid strains suited to being grown under the climatic conditions of Western Europe. The new variety of cannabis became the basis for the growth of a local industry built around domestic cultivation rather than on imported cannabis. This change in market structure had major implications for how cannabis was produced and distributed, compared to the earlier phase where highly organised criminal groups which possessed significant resources controlled the importation and distribution of large shipments of cannabis throughout Europe, with the attendant issues of corruption of DLE agencies.

The other important factor in the Netherlands was the existence of enterprises related to the horticultural industry which were able to readily provide equipment and services to develop and perfect hydroponic techniques of cannabis cultivation, overtaking the poor performance that had occurred with the ‘Netherweed’ variety bred in the early 1980s for outdoor cultivation. The outcome of this period of intense development was that by the early 1990s indoor cultivation, under artificial lights, created a highly productive local Dutch market, resulting in

“four crops a year ... which means an annual yield of over one kilogram of Eurocannabis per square metre. Innovations did not only relate to genetics, fertilisers, lighting, air conditioning and pest control, but also to fighting of smell and the prevention of noise. It goes without saying that all technical and managerial innovations reflect the illegality of Eurocannabis.”

The average THC content of Eurocannabis was considered to be about 10 per cent, certainly well below the THC content of imported hashish available throughout Western Europe. However, over the course of the 1990s the local industry became a dominant force in the market and by the late 1990s it is believed that more than 80 per cent of local demand was sourced from the domestic production. In economic terms a key factor in the transformation of the Dutch domestic cannabis market was the existence of a market which had high priced imported cannabis and cannabis derivatives, as much of the local demand was met from imported cannabis provided and distributed by small number of highly organised criminal groups. The market was then replaced by a different type of cannabis market which consisted of “tens of thousands of small, mostly urban producers.”

The effective price of imported cannabis sold in the domestic market in Netherlands (and elsewhere) was determined by DLE activity, which had raised the effective price well above the cost of production, as much of the price consisted of high transaction costs and other risks and

690 Ibid.
691 Ibid.
uncertainties importers faced in dealing with such a bulky and difficult to conceal drug. Import substitution occurred because domestic producers were able to reap high profits due to the substantial margin between the market price for cannabis and the low cost of domestically produced cannabis. Indeed the volume of cannabis produced in the Netherlands was so large due to the intensive cropping and high productivity that it became known as the ‘Green avalanche,’ some of which was exported to other European countries.

“Producers in traditional cannabis countries ultimately do not receive much more than a few percent of the price that Western consumers pay for their product. Guerrilla farming in the Netherlands and elsewhere turns out to be a lot more profitable. Producers of Eurocannabis get at least 50% of consumer prices. To put it differently: import substitution could (and can) benefit hugely from exorbitant commercial profits made on the import of cannabis from outside.”

The situation described in the Netherlands, of import substitution by replacing imported cannabis with domestically produced cannabis, has also occurred to a lesser extent in Australia and in NZ, where the bulk of cannabis is now produced locally, whereas up to the 1970s a sizeable proportion was imported.

5.4.5 The New Zealand drug market

Research in NZ which examined the operation and structure of the cannabis market in a particular region, confirms that cannabis markets are integrated into and part of wider economic activities of the formal economy. The methodology used in this 1999 research involved commodity chains analysis, which identified that the cannabis industry consists of four stages – production, processing, distribution and consumption. The significance of these stages is that they have implications on how DLE activities may be deployed, as

“the allocation of resources to enforce the law are often unevenly distributed across the steps in the commodity chain and this has the effect of establishing different levels of both risk and returns in terms of the cultivation, processing, distribution, and use of the commodity.”

The uneven distribution of hazards arising from DLE strategies means that those who have larger amounts of capital, such as well organised cultivators and high level distributors, will be better placed to avoid DLE efforts at disruption, than small scale cultivators and low level distributors in the market. This analysis also argues that the cannabis market should be understood as being determined by the same economic principles that govern the production of other types of agricultural commodities. Indeed it has been claimed “that ‘the marijuana industry is one of the only truly competitive industries in the US’ since its prices is determined solely by supply and demand, and entry and exit from the market is relatively easy.”

A unique feature that created the favourable circumstances for the regional concentration of cannabis production in northern NZ was that it had a history of pastoral and agricultural activity and a disproportionate level of socioeconomic disadvantage – factors which may also be significant in agricultural regions with similar socioeconomic conditions in other jurisdictions that would also facilitate cannabis cultivation.

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694 Egan C. ‘Old and off their faces.' Australian, 14 November 2005.
696 Id, 242.
The interrelationship between the formal and informal economy is demonstrated in Figure 6 (below), which also attempts to capture the four stages of the commodity chain alongside internal and external governance factors. These two types of governance factors are important in relation to illicit drug markets, as they are absent in markets in other commodities, which are affected only by conventional governance factors such as taxation, tariffs and formal government policies, whereas both internal factors which determine production and distribution of cannabis and external factors which refer to the legal structure and DLE strategies impact on the market.

5.4.6 Police impact on cannabis market

It has been noted in a number of jurisdictions that over a number of years methods of cultivation have changed from being predominantly outdoors and relatively unstructured operations to more organised capital intensive use of hydroponic methods to efficiently produce large quantities of cannabis increasingly controlled by organised criminal associations. For example in the 1972 the Canadian Le Dain Commission it was suggested that

“(t)he Canadian cannabis market, unlike that of heroin, is loosely organised, unstable and, until very recently, relatively free of professional criminal involvement. Some large scale importation operations are probably controlled or financed by traditional criminal organisations, but more distribution ventures involve ‘amateurs’ supplementing their conventional income or professional smugglers and dealers whose criminal experience is restricted to the trafficking in illicit drugs.”

A 2002 Royal Canadian Mounted Police (RCMP) study of the cultivation of cannabis concluded that compared to the fragmented type of market identified in the early 1970s, thirty years later cannabis was cultivated in medium and large scale operations controlled at arms length by criminal organisations. Within some provinces there was evidence the cultivation of cannabis had been ceded to highly organised criminal organisations who resorted to violence and intimidation and who were involved in exporting significant amounts of cannabis to the

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698 Id, 243.
Chapter 5: Decriminalisation of Cannabis: What Is Known?

US market. It was also suggested in the 2002 RCMP study that in the province of British Columbia, outlaw motorcycle gangs (OMGs) and Vietnamese based crime groups controlled “85 percent of the marihuana production and distribution in that province.”

An ethnographic research project conducted in northern NSW in the mid 1990s which involved eight ‘large scale crop growers’ identified that the commercial cultivation of cannabis was a high risk activity which involved “repeated crop thefts and very high personal risk (due to) … unreported violent crime, alienation from the legal system, the possibility for corruption and widespread fear.”

Other research which has examined the NZ cannabis market in some detail should be given some weight as it appears to be applicable to DLE perceptions in the UK and Australia about the structure of cannabis markets. This research has concluded that

“black markets for cannabis are less harmful than black markets for heroin and cocaine. This is due to the less harmful and addictive qualities of cannabis compared to heroin and cocaine, the unprocessed nature of cannabis products, the relatively low price of cannabis compared to other illicit drugs and the tradition of sale through peer networks, rather than street markets. In the New Zealand context these tendencies appear to be further promoted by the widespread domestic cultivation of cannabis … (which) provides cannabis at low prices and undermines attempts by organised groups to gain monopoly control over the cultivation and distribution of the drug.”

In Australia there has been observations by DLE organisations, similar to the observations in the 2002 RCMP study, that illicit drug markets, including the cannabis drug market, have evolved in Australia where now OMGs and specific ethnic groups play a dominant role, typically operating as “highly fluid combinations of criminals that are constantly forming, disbanding and reforming.” This model has been described as being ‘transactional crime’ and thereby provides a significant challenge to DLE agencies, who

“as well as targeting major drug criminals, the law enforcement sector needs to maintain pressure at all levels of the illicit drug supply chain. It also needs to direct considerable efforts towards the ancillary illegal activities that support the illicit drugs trade.”

In spite of these concerns about crime groups, it would still appear that cannabis markets does not have the level of harms attributed to markets in other types of drugs such as heroin or crack cocaine which in the strict prohibition framework in the US are associated with high levels of violence. Further research is required about the involvement of organised criminal groups in Australian cannabis markets to determine whether decriminalisation will have some of the impacts on the structure of the cannabis market as has occurred in the Netherlands, such as maintaining a separation between the cannabis and ‘harder’ drug markets.

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707 Ibid.
5.4.7 Trends in cannabis potency

Further consideration is required as to whether potency of cannabis has increased over recent years given it has been asserted that potency has increased by ‘between 10 and 30 times’ compared to the potency of cannabis available twenty years ago. It should be noted there is some difficulty in determining whether potency has increased because of limited time series data and concerns about representative sampling of cannabis used by cannabis smokers.

The most complete set of time series data on trends in potency is from the Potency Monitoring Project which has analysed samples of cannabis seized obtained by DLE activities in the US since the mid 1970s. It has been noted, based on analysis of more than 34,000 samples, that there was a small increase in THC content in US from 1980 to 1998 (from 3.3% to 4.4%) and that “between 1989 and 1998, at least two thirds of all seizures had a THC content of 5% or less, with an average of only 3.9% of seizures containing more than 9% THC.”

A 2004 review concluded that potency levels throughout Europe have been stable for many years, with levels of between 6 and 8%, with the exception of the Netherlands, where rates as high as 16% had been detected in 2000-2001. This review also considered that “(s)tatements in the popular media that the potency of cannabis has increased by ten times or more in recent decades are not supported by the limited data that are available from either the USA or Europe.”

The proposition that there has been a large increase in potency levels over the past two decades has been relied upon to ‘explain’ a perceived increase in cannabis related adverse effects, especially in young people and an increased incidence of cannabis-related mental health problems. There has also been attempts to link this issue to growing attendances for treatment for cannabis dependence at specialist service providers.

In spite of limited evidence, this issue would seem to have played a significant role in shaping public concern about the harms of cannabis and the views of policy makers regarding hydroponic cultivation. Thus hydroponically cultivated cannabis plants were excluded from the CEN scheme in February 2003, from the SCON scheme in June 2004 and excluded altogether from the CIN scheme when the Cannabis Control Act 2003 was passed by the WA Parliament in September 2003.

The complexity of determining the harms from higher potency forms of cannabis involves understanding a number of issues, such as the half life of cannabinoids in humans and identification of active ingredients which have effects on humans. For instance, in addition to the well known active ingredient of THC, there has also been research about the effects of another active ingredient, cannabidiol (CBD) and its usefulness as anti-convulsant, as a treatment for opiate withdrawal and an anti-psychotic.


713 However, the growing attendances at treatment programs of persons with cannabis as the principal drug of concern may be closely related to the growing number of cannabis related cautions linked to conditional attendance at an educational and/or brief intervention session. Cf: Australian Institute of Health and Welfare. Alcohol and other drug treatment services in Australia 2003-04. Report on the National Minimum Data Set. AIHW Cat. No. HSE 100. Canberra, Australian Institute of Health and Welfare, 2005.
“The market place for home grown varieties of cannabis seed does point to a worrying trend. A company selling cannabis seeds has published the relative rates of THC and CBD in their products.\textsuperscript{714} They showed the claimed THC contents of between 5.7% and 19.5% of plant weight (mean – 11.6%), with CBD rates of between <0.01% and 0.6%. CBD rates are rarely published in research reports, despite the anxiolytic and antipsychotic effects. Earlier studies into cannabis did attempt to analyse CBD rates; these found wide variations but the most potent breed found was 3% THC and 0.5% CBD. This picture suggests that while THC rates are rising, CBD rates are remaining the same. If this is the case not only will high potency products be stronger they may have the potential to be more harmful.”\textsuperscript{715}

A 1999 Australian review considered data from NZ which showed that hydroponically cultivated cannabis typically had THC levels of about 6% to 8%, with an occasional sample producing a higher result. With respect to Australian data it was not possible to determine if there had been any change in potency levels as this had not been tested systematically over a sufficient length of time by any of the Australian police services.

“Over the past two decades a large scale illicit cannabis industry has developed in Australia to meet the demand for cannabis products among a growing number of cannabis users. It has been estimated that daily and weekly cannabis users, who prefer the more potent forms of cannabis, account for 80% of cannabis consumed. Any increase in the number of regular cannabis users that may have occurred in recent decades may have increased the demand for and availability of more potent forms of cannabis. Any such increase in the availability of more potent forms of cannabis would have increased the amount of THC consumed by heavier cannabis users without there having been any increase in the average THC content of cannabis plants.”\textsuperscript{716}

In their review Wayne Hall and Wendy Swift concluded that although Australian data was absent, it was plausible to believe that THC content of the most widely used cannabis in Australia had increased modestly, in line with reliable evidence from the USA and NZ of similar increases in potency.\textsuperscript{717} However, it was observed whilst there may have been a modest increase of THC content, it was believed there were two more important factors concerning the cannabis market and cannabis related harms -

“an increase in the availability of more potent forms of cannabis and the increased use of these more potent forms by regular cannabis users. These trends have been encouraged by a rising prevalence of cannabis use among young people, earlier initiation of use and higher rates of regular use by adolescents and young adults. Law enforcement efforts to reduce large scale cannabis plantations may have also played a contributory role, although this is less certain.”\textsuperscript{718}

As a low priority is placed on regularly collecting this type of indicator data, this means information is largely gathered through occasional \emph{ad hoc} surveys in Australian jurisdictions rather than collected and managed in a systematic and reliable fashion at a national level. An example of an occasional survey was a brief project that analysed the THC content of cannabis plants seized by police in WA between March and May 1996. This research yielded a mean THC level of 3.8% from a total of 168 samples of cannabis and also confirmed like surveys

\textsuperscript{714} Pukka Seed Company - http://www.ganja.co.uk/.
\textsuperscript{716} Hall W & Swift W. \textit{The THC content of cannabis in Australia: evidence and implications}. Sydney, National Drug & Alcohol Research Centre, University of New South Wales, 1999, ii.
\textsuperscript{717} Wayne Hall and Wendy Swift made the observation that there needs to be an investment in establishing and maintaining good data systems to measure changes in operation of the cannabis market, including potency, for without reliable data it is not possible to determine or monitor the impact of law reforms from measures such as the CIN scheme.
\textsuperscript{718} Hall W & Swift W. \textit{The THC content of cannabis in Australia: evidence and implications}. Sydney, National Drug & Alcohol Research Centre, University of New South Wales, 1999, 11.
elsewhere, that relatively higher THC levels were obtained from the flowering tops of cannabis plants (mean 6.4% THC) compared to leaf (mean 2.2% THC). This data shows there was a lower range of THC levels obtained from leaf material (from <1.0% to 6.0%) compared to the levels in flowering tops (from <1.0% to 20.0%). See Table A2-15.

Another example is data from a two year project in Victoria that commenced in December 2000 and involved the analysis of over 550 samples of cannabis material. The survey confirmed there was considerable variation in the range of THC levels, with female flowering heads from hydroponically cultivated plants having levels in the range from 5 to 25% and those from plants cultivated in soil having a range from 2 to 25%. Overall

“69% of the hydroponic samples tested had THC levels in the range of 11-20% whereas 79% of soil grown samples had THC levels in the range 6-15%. The average THC content also differed between the two groups, with the hydroponic group having an average of 15% THC and the soil group averaging 11% THC.”

A more extended project was undertaken by the Criminal Intelligence Directorate of the RCMP under the auspices of Health Canada, which involved analysis of a total of 3,160 cannabis samples collected by provincial police forces throughout Canada between 1996 and 1999. It was found that whilst there was some variability in potency, yearly national averages were relatively low, with annual means of 6% for 1996/1997, 5.5% for 1997/1998 and 5.7% for 1998/1999 and that nearly a third of all samples were under 3%. This research has been interpreted as indicating the potency of cannabis has gradually increased in Canada in recent years.

“Before the early 1980s, the average THC content of the marihuana seized in Canada seldom reached one percent. Since it now hovers around 6 percent, the increase in potency cannot be denied. The interest here is merely to underscore the reality that not all growers have the expertise, the technological means and the will necessary to produce marihuana with a very high THC content.”

A study in 2001 by the Surete du Quebec confirmed a similar pattern of THC levels from qualitative analysis by Health Canada of 503 samples over the five year period 1996 to 2000, with an average THC level of about 7%, with annual averages ranging from 3.5% in 1996 to 8.8% in 1999.

An important outcome from this range of research is that it is not possible to conclusively demonstrate that hydroponic cultivation produces female flowering heads with higher THC levels compared to other methods of cultivation. To be able to resolve this issue it would be necessary to generate data from cloned (that is genetically identical) plants grown under different conditions. A recent Australian review has concluded that

“source of plant stock could have been a major contributing factor, as it appears ... that hydroponic growers commonly grow their crops from clones raised from mother plants derived from imported seed, whereas soil grown plants are commonly grown from seed, often collected from an earlier crop.”

720 Id, iii.
722 Ibid.
723 Fiddian S & Quin C. Determination of the THC levels and variation in the physical appearance of cannabis. NDLERF Monograph Series No. 8. Canberra, National Drug Law Enforcement Research Fund, 2004 iii.
If there has been an increase in higher potency cannabis over recent years, it is most likely from the use of clones from plants grown from imported seed. If there had been an increase availability of higher potency cannabis, then, as this is likely to have been largely consumed by regular users, average THC levels may not have risen. Whilst there may have been an apparent increase in the number of cannabis users with problems which could be explained by an increase in average THC, it has been suggested there are two more plausible explanations. One explanation is that the cannabis market has changed to produce more potent forms of cannabis and the other is that more harmful forms of cannabis use has become more prevalent among cannabis users.

It can be difficult to disentangle some of the interactions between DLE strategies and shifts in the cannabis market. For instance, it could be suggested that cultivation of higher potency forms of cannabis was a predictable response by the cannabis market to consumer preferences or that growers adapted their methods of cultivation in response to effective DLE activities. There has been some support for the latter proposition.

“It is also a plausible hypothesis that the supply of more potent cannabis products has been encouraged by the success of domestic law enforcement in detecting and destroying large scale cannabis plantations by operations from the air and satellite surveillance. This success may have created an incentive for illicit suppliers of cannabis to grow small numbers of cannabis plants capable of supplying high THC products.”

The preference for higher potency cannabis is indicated by the existence of higher prices for hydroponic (or ‘skunk’) cannabis shown in Table A2-1, which at the deal (1 gram) and the ounce (28 grams) retail level can be up to twice as expensive as non-hydroponic cannabis leaf. This indicates that the market places a premium on this form of cannabis for its purported higher potency levels compared to lower yield cannabis not grown under controlled conditions. The possibility there are close parallels in consumer behaviour between alcohol and cannabis users in response to price has been suggested.

“The alcohol and public health literature points to the crucial importance of price in determining population consumption. In respect to cannabis, robust data in this area are lacking. However, what we know is that different cannabis products are priced differentially and that prices reflect both potency and variety. In the Netherlands a close correlation between the mean THC content of different products price has been documented. In the United Kingdom the price differential between good quality sinsemilla and imported resin (a factor of around 1.5) is consistent with their relative THC concentrations.”

While there is evidence of some increase in potency levels, this does not necessarily mean that cannabis users are smoking more cannabis. Indeed it is possible the increased availability of higher potency cannabis has resulted in less cannabis being smoked to obtain the desired effect, which previously would have required the consumption of a larger quantity of cannabis. Canadian research on this issue drew the following observations.

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726 Sinsemilla is derived from the Spanish word ‘sinsemilla’, meaning without seeds. It is also known by other terms such as ‘skunk’ or ‘buds’ and is cultivated hydroponically through a combination of artificial control of the duration of light, the selective propagation of female cuttings and the prevention of fertilisation.
727 King LA, Carpenter C & Griffiths P. ‘Cannabis potency in Europe.’ (2005) 100 Addiction 885.
728 The issue of cannabis users being able to titrate their dose of THC, in a similar manner as has been found with tobacco smokers, would mean that use of more potent forms of cannabis could result in less cannabis material being smoked. If this outcome did occur, then it “would marginally reduce the risks of developing respiratory diseases, the most likely adverse health effect of regular cannabis smoking.” Hall W & Swift W. The THC content of cannabis in Australia: evidence and implications. Sydney, National Drug & Alcohol Research Centre, University of New South Wales, 1999, 10.
“Much has been made of the increase in THC levels in cannabis of the 1990s; critics of decriminalisation point to an elevation in THC content as a reason for alarm, suggesting that the marijuana of the 1960s bears no relationship to the marijuana currently circulating on Canadian streets. ... many marijuana smokers suggest that with higher quality cannabis they tend to smoke much less of the drug. ... Accordingly, it may well be that higher THC levels are consistent with a diminished intake of marijuana smoke, thereby reducing rather than raising the health risks associated with cannabis consumption.”

There are a number of implications from this discussion of potency, especially as to concern about possible serious harms, which if sustained, would support arguments that measures could be implemented through schemes such as the CIN scheme to address this issue. For instance, higher potency forms of cannabis could be defined as falling outside the criteria for issuing a CIN or in the alternative could trigger compulsory treatment, compared to the standard voluntary CES, as a requirement for expiation.

A distinction in the legal response to those who possess lower compared to higher potency forms of cannabis is justified for the simple reason that “THC content is important because it has an effect on the psychoactive effects of cannabis.” However, there are some significant administrative, logistical and resource implications if testing was adopted, as would be required, to identify those samples of cannabis which triggered a more severe consequence.

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729 Boyd N. ‘Rethinking our policy on cannabis.’ Policy Options, October 1998, 32.
6 Consequences of Cannabis Law Reform

6.1 Introduction

This part of the thesis will examine a number of consequences of cannabis law reform, such as has occurred in WA and the UK. As this examination is not intended to be a conclusive and comprehensive examination of all issues, it is a selective consideration of areas that appear to be of greatest interest and which have been identified as important by researchers in other jurisdictions. One of the difficulties in examining consequences arises because of the contested nature of cannabis law reform due to some extent to the polarised nature of the debate, which results in a limited presentation and consideration of the advantages and consequences of reform.

“The cannabis policy debate in the USA has often been presented as a false forced choice between two positions: law reformers who argue that cannabis use is harmless, and hence it should be legalised or decriminalised and supporters of current policy who argue that cannabis use if harmful to health, and hence should continue to be prohibited. This false antithesis has meant that the community has been largely exposed to two polarised and selective interpretations of evidence on the adverse health effects of cannabis. The reformers emphasise the modest health risks of occasional cannabis use; the prohibitionists present the worst case interpretation of evidence on the risks of daily cannabis use.”

Comments by Tony Fitzgerald, who conducted the Commission of Inquiry in Queensland into police corruption between 1987 and 1989, identified that many of the improprieties involving police in that state were related to the enforcement of drug laws. Comments attributed to former Commissioner Fitzgerald reflect the sense of frustration, shared by others, leading to the conclusion that because of the pervasive and enduring nature of drug use and in spite of the substantial amount of resources and legal powers granted to police, the problem is due to the continuing adherence to prohibition.

“Attempts to stamp out the illegal drug trade have failed all over the world and have consumed more and more resources. There is no benefit in blinkered thinking. The starting point must be an acceptance that illegal drugs are established in the community and that prohibition has not worked. Orthodox policy is quite unable to enforce the law. Priorities must be established for the use of the (limited) available resources. One thing is certain: the conventional method of giving the job to the police, on top of all their responsibilities, has failed all over the world and a new approach is needed.”

6.2 What do the reforms mean?

It is important to consider whether the wider community might have fully understood the purpose for decriminalising minor cannabis offences in WA and the UK. It is argued that this issue is of salience with respect to the CIN scheme as the WA reform was carefully referred to as ‘prohibition with civil penalties’ involving the ‘personal use’ of cannabis, apparently to distinguish it ostensibly from perceptions that it involved ‘decriminalisation’.

The phrase ‘prohibition with civil penalties’ had possibly enjoyed its greatest popularity in 1970s to describe the reforms in the US that followed the 1972 Shafer inquiry. With the exception of the reforms that have occurred in Australia, the phrase does not seem to have been used elsewhere to describe or advocate reform of minor cannabis offences. The phrase has been used to describe the South Australian reforms of 1987 which established the CEN scheme,
nearly ten years after it was first recommended by the Sackville Royal Commission in 1979.\(^{735}\) The description of the CEN reform as ‘prohibition with civil penalties’ is understandable given the close temporal relationship to the US reform movement of the 1970s and that also the term created a linkage between the South Australian reforms and those that had already occurred in the US.

However, in spite of the narrow meaning associated with ‘prohibition with civil penalties’ given to the reforms in 11 US States, in SA in 1987 and three other Australian jurisdictions, this term has continued to be used by a number of commentators to describe this particular reform.\(^{736}\) Recent examples of use of this phrase are when it was advocated as a template for cannabis law reform in the State of Victoria in 2000\(^\textnormal{737}\) and again in 2002 to describe the reform in WA that resulted in the CIN scheme.\(^\textnormal{738}\)

It is submitted the purpose for referring to the WA reforms as ‘prohibition with civil penalties,’ more than three decades after it was used to describe the limited reforms in a number American States in the 1970s, was ostensibly to minimise negative connotations of the reforms being described as ‘decriminalisation’.\(^{739}\) It needs to be recalled that whereas the US reforms were concerned with reducing the penalties for first time offenders for the specific offence of possession of cannabis, both the CEN and CIN schemes had a much broader ambit as they encompassed cultivation, possession of cannabis and possession of smoking paraphernalia. (The CEN scheme includes the additional offence of possession of cannabis resin.) It has been noted that out of the 11 US states which undertook these reforms,

> “the only common denominator across the 11 statutes was the removal of jail/prison terms. In some cases, these reduced penalties applied to first and subsequent offences (eg Alaska, California and Colorado) and in other cases the reduced penalties only applied to first time offenders (eg Minnesota, Mississippi and North Carolina).”\(^\textnormal{740}\)

Another source of confusion is that ‘civil penalties’ is a concept most associated with European legal system rather than with common law jurisdictions. It has been suggested that the more appropriate term to describe the US and Australian reforms would be ‘depenalisation’ as these reform involves the “relaxation of the penal sanction provided for by the law. In the case of drugs, and cannabis in particular, depenalisation generally signifies the elimination of custodial penalties.”\(^\textnormal{741}\) The use of ‘depenalisation’ to describe this type of reform has also been noted in a recent major treatise on the American ‘War on Drugs’, where reform is described as

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\(^{735}\) South Australia, Royal Commission Into the Non-medical Use of Drugs. Final report. Adelaide, Royal Commission Into the Non Medical Use of Drugs, 1979.


\(^{739}\) An illustration of the importance of semantics can be seen in a recent discussion of the CIN scheme, where the CCMES, which preceded the CIN scheme and relied on an administrative direction issued by the Commissioner of Police, was described as being “‘de facto decriminalisation’ in the form of prohibition with cautioning and diversion for minor cannabis offences.” Lenton S. ‘Pot, politics and the press – reflections on cannabis law reform in Western Australia.’ (2004) 23 Drug & Alcohol Review, 234. However, throughout the article the ‘prohibition with civil penalties’ reform is not referred as being decriminalisation.


“depenalisation (often confusingly called decriminalisation) (and) refers to a substantial reduction of penalties for possession of modest quantities of prohibited psychotropic drugs (eg civil monetary fines).”

However, the reluctance of the Government at the time it introduced the enabling legislation into Parliament and for some time after the commencement of the CIN scheme to refer to the reform as ‘decriminalisation,’ instead using the phrase ‘prohibition with civil penalties,’ appears to have more recently been relaxed and not embraced as rigidly as was the case earlier. For instance, the State’s new premier, Alan Carpenter, who replaced Dr Geoff Gallop in January 2006, was interviewed for a local newspaper article in February 2006 in response to the proposal by the Prime Minister at the February 2006 COAG to fund mental health programs. The Prime Minister had referred to the need to target cannabis users because of his concern about cannabis related mental health problems. “Premier Alan Carpenter, who confirmed yesterday that he had smoked marijuana as a young man, said that WA would continue it policy of decriminalising personal use of cannabis.”

There are also other possible areas where a lack of clarity about the CIN scheme may have arisen due to unclear information or conflicting descriptions of the purpose of the reforms, with some confusion occurring due to the use of the vague phrase ‘prohibition with civil penalties.’ For instance, it is difficult to determine what weight might be given by the wider community to some of the educational material describing the features of the CIN scheme contained in newspaper advertisements, radio ads, posters, pamphlets, a departmental website and TV ads at the inception of the scheme.

Three booklets were released as part of a three week long public education campaign (from 10 to 31 March 2004) associated with the commencement of the CIN scheme - Take in the facts on the new cannabis education session, There are new laws on cannabis in Western Australia and Cannabis: the health effects. The other public source of information about cannabis and the CIN scheme was through the Drug Aware website run by the Government agency the Drug and Alcohol Office. See Appendix 10 for the reprinted text of the three booklets and the text from cannabis page and sub-pages from the Drug Aware website.

It would appear that some of this material may be contradictory and imprecise. An example of inconsistency within one source appears in the pamphlet, There are new laws on cannabis in Western Australia, which initially refers to the CIN scheme as being concerned with the ‘possession of small amounts of cannabis’. The text of this particular pamphlet is reproduced in its entirety on the Cannabis: Law sub page on the Drug Aware website.

“The Cannabis Infringement Notice (CIN) Scheme enables police, at their discretion, to issue an infringement notice for possession of small amounts of cannabis. People who receive a CIN will be required to pay a financial penalty within 28 days, complete a Cannabis Education Session within 28 days or can choose to have the matter heard in court. There is a limit to the number of times within a three-year period that a person who is issued with a CIN may choose to pay a financial penalty rather than complete a CES or go to court. A person who is issued with one or more CINs on each of three separate days within a three-year period will be required on the third and any subsequent occasion to attend a Cannabis Education Session or go to court, and will not be eligible to pay a financial penalty.

743 Ruse B. ‘PM warns on States’ soft cannabis laws.’ The West Australian 11 February 2006.
Chapter 6: Consequences of Cannabis Law Reform

If police have relevant evidence, a person found in possession of a small amount of cannabis could still be charged with the more serious offence of possession of cannabis with intent to sell or supply.

The CIN Scheme does not apply to possession by an adult of any quantities of cannabis resin (hash), hash oil, or other cannabis derivatives. The possession of any quantity of these substances will continue to be prosecuted through the courts.

As this information about the legal framework of the CIN scheme is made available and intended to be read by young adults in particular, it may well have an important impact on this population. At a later point in the pamphlet (as in the web page) the circumstances under which a CIN may be issued are listed, ie possession of not more than 30 grams of cannabis (with the two splits of less than and greater than 15 grams), possession of a smoking implement with detectable traces of cannabis and non hydroponic cultivation of not more than two plants at a person’s principal place of residence.

This text is then followed by the statement “Under the Misuse of Drugs Act 1981 police have the power to seize and destroy cannabis, cannabis plants and/or pipes or other implements (with detectable traces of cannabis) when a CIN is issued.” It is suggested this section understates the severity of the consequences of seizure by the police by using the terms ‘have the power to’ whereas, if the term ‘will’ had been used, this might have emphasised the magnitude of loss. In some instances, such as when the amount of cannabis was nearly 30 grams (ie a street ounce) or the two plants were fully mature, this could represent a significant monetary value.

An example of imprecise information appears in the Cannabis: long term effects sub page of the cannabis page of the Drug Aware website as follows.

“Cannabis can also cause dependence. Frequent use can lead to dependence for some people; however, there is minimal neuro-adaption to cannabis (neuro-adaption refers to adaptation of nervous tissue cells to the presence of a drug). This means that cannabis dependence is due to the influence of factors other than the presence of THC, such as psychological motivations for use, the amount used, why it is used, and the effect of use.”

It is submitted this information may cause confusion about whether an individual could become dependent, as it implies the psychoactive ingredients of cannabis are not the cause of consequences such as dependence that an individual may experience from using cannabis, as it is the individual’s psychological make up which is determinative. In contrast to the equivocal reference to cannabis, earlier in the same sub page there is an emphatic reference to the dependence producing nature of tobacco – “Tobacco is also a very addictive drug.” The differential use of terms referring to tobacco as being addictive, whereas the use of cannabis can result in dependence, but depending on the role of individual psychological factors, may be interpreted as meaning that cannabis is a less serious health issue. Another example of potential confusion, also on the same sub page, occurs in some of the bullet points under the heading ‘Psychological effects,’ viz:

“Cannabis does not cause mental illness, but it can trigger certain feelings or intensify them. For example anxiety or depression. Cannabis can precipitate schizophrenia in those who have a predisposition to the condition.”

The limited nature of the educational material that was distributed in conjunction with the CIN scheme can be contrasted with the approach followed in the UK, which has a well developed website ‘Talk to Frank’, targeted at young people. Talk to Frank includes interactive materials and has a current information about the cannabis law reforms, including clarification of the Government’s position on the reconsideration of the reclassification in January 2006. <http://www.talktofrank.com/>

746 www1.drugaware.com.au/pages/cannabis_5.asp>
As will be discussed in more detail below there is an emerging body of literature which indicates a growing recognition of significant mental health problems associated with cannabis use, especially involving young people. (See Section 6.6)

6.3 Commonwealth and State relations

Although there has been speculation of whether the Commonwealth government could by legislating in the area of criminal law involving drugs override applicable State legislation which covered the same field, it would appear to have little difficulty in so doing through its external affairs power as a signatory to the three UN drug conventions.  A recent Commonwealth briefing paper on the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 considered this point.

“There is probably little doubt that the Commonwealth’s ratification of international treaties such as the Single Convention on Narcotic Drugs 1961 and the 1988 Convention gives it wide scope to legislate in the area of illicit drugs and, indeed, to cover the field should it wish to do so.”

However, until recently this had appeared to be largely a theoretical issue, but since the release of draft Commonwealth legislation for the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 there is justifiable concern of significant conflict over and divergence about drug policy between a conservative Commonwealth government (the Howard Liberal government) and the various States (all of whom are at present held by the ALP). The Commonwealth government has through its ‘Tough on Drugs’ policy vigorously promoted a prohibition approach which places reliance on the criminal law as the template for dealing with those who use illicit drugs, including cannabis.

However, it is apparent that the proposed Commonwealth Bill may have a wider ambit than intended under the Model Criminal Code (MCC), as in the draft Chapter 6 of the MCC report minor possession offences were to be expressly excluded as the legislation was to focus on the organised commercial trade involving illicit drugs. If the Commonwealth’s Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005 was passed this could have unexpected consequences on jurisdictions which have established schemes which decriminalise minor cannabis offences, for

“while proposed sections 308.1 and 300.4 allow for the continued operation of State and Territory laws, it would not appear that there is any guarantee that a person who commits an offence of say, simple cannabis possession, in a jurisdiction that allows for the offence to be expiated on payment of a fine will not be proceeded against under Commonwealth law.”

The Bill contains a number of savings with respect to State and Territory laws, such as the rule against double jeopardy, which would mean that if someone had been punished under a State or

749 An example of how the Commonwealth has given effect to these conventions is the approach followed with respect to the 1988 Convention Against Illicit Traffick in Narcotic Drugs and Psychotropic Substances, which was incorporated into Commonwealth law by the enactment of a Commonwealth law, the Crime (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990. Cf: Victoria, Parliament, Federal-State Relations Committee. Report on international treaty making and the role of the states. Melbourne, Victorian Parliament, 1997.
Territory law then they could not be punished again for the same offence under the proposed Commonwealth law. There is another saving outlined in Clause 308.1, which is intended to allow those who have been charged with possession of a drug under State or Territory law to be dealt with by the procedures of that jurisdiction. This provision is specifically concerned with allowing drug users to be diverted from the criminal justice system to receive education, treatment and support.

Concerns in particular about the potential of this Bill to undermine the operation of cannabis expiation schemes at present operating in the four Australian jurisdictions were raised in a submission by Families and Friends for Drug Law Reform (FFDLR) to the Senate Legal and Constitutional Affairs Committee investigating the impact and scope of the proposed Commonwealth legislation. In its submission the FFDLR noted that

“(n)either this nor the other savings for State and Territory law would seem to prevent a Commonwealth prosecution under the Bill where proceeding under a cannabis expiation notice system may seem to be appropriate. Nor does the wording in Cl 308.1(3) seem wide enough to have recourse to a State or Territory expiation system once a person is charged with possession under the Commonwealth Bill.”

The Commonwealth appears to have actively sought to discredit the cannabis law reforms in SA, the ACT, the NT and WA by attempting to establish a linkage that increased rates of cannabis-related mental illness are a consequence of these specific reforms. A claimed linkage between ‘soft cannabis laws,’ by implication the expiation schemes in SA, the ACT, the NT and WA and mental health problems became the subject of national debate on the occasion of the 17th meeting of the Council of Australian Governments (COAG) in Canberra on 10 February 2006.

The COAG meeting addressed a wide range of matters, one of which concerned additional Commonwealth funding to the States and Territories to expand mental health services. One of the issues highlighted in statements by Prime Minister, John Howard, after the 17th COAG meeting concerned cannabis, where he reiterated claims made previously that the laws concerning minor cannabis offences had implicitly failed to deter cannabis use because of inadequate penalties and consequences. However, as has been indicated earlier, the cannabis cautioning schemes in place in a number of the States, such as in NSW, where first time offenders do not suffer specific adverse consequences and mandatory attendance at a CES applies to second time offenders or the system of cautions in Victoria, could be also described as being ‘soft drug laws’.

At the COAG meeting the Prime Minister restated his views about cannabis use.

“Citing cannabis use as a big contributor to mental illness, the Prime Minister said tackling drug abuse would be a major plank of the new strategy. ‘At least a generation of Australians were too passive about the consequences of illicit drug use,’ Mr Howard said.”

It would appear that the Prime Minister’s concerns about cannabis may have been partially in response to the publication in October 2005 of a major report examining the adequacy of...
mental health services in Australia. The report included a number of incidental accounts in submissions that another family member’s cannabis use had exacerbated pre-existing mental disorders and that such use may have played a role in some of the difficulties of managing young adults with psychiatric problems. The Not for service report contributes to the perception that cannabis use is a major cause of schizophrenia, without thoroughly teasing out causality linkages of whether schizophrenia is exacerbated by cannabis use or that the use of cannabis by some individuals is a cause of schizophrenia.

Comments made by some of the State Premiers at the February 2006 COAG, which echoed the Prime Minister’s concerns about cannabis use, were published in an article in the Melbourne Age newspaper. The Premier of Victoria, Steve Bracks, observed that the meeting had agreed to take further action because of the link between cannabis and mental illness and that he believed “we need to get out of our language this notion of recreational drugs – there’s no such thing.”

The Premier of New South Wales, Morris Iemma, also outlined in the article of 10 February 2006 some of the responses NSW had taken on this issue. For instance it

“had recently increased the penalties for growing hydroponic marijuana, which is stronger than other types. ‘There’s a lot to learn from our approach in NSW,’ he said. ‘A week ago we increased the penalties for hydroponic use and growth of marijuana. They’re the toughest penalties in the country and we also have a whole range of rehabilitation and cannabis clinics in NSW to get people off cannabis.’”

These reports of an increased incidence of mental health problems related to regular cannabis use may have encouraged exaggerated claims about the magnitude of the problem, especially given that one commentator went as far to claim cannabis was a more serious drug problem in Australia than heroin dependence. For instance, an article in The Australian on 21 November 2005 referred to a five year review of the histories of mentally ill patients in NSW who required compulsory treatment, which had found that 75 to 80 percent regularly smoked cannabis between the ages of 12 and 21. Dr Andrew Campbell from the NSW Mental Health Tribunal warned

“that a hidden epidemic of cannabis induced psychosis could make the so called soft drug more dangerous than heroin. ‘It’s much safer to take heroin – you can live to be 90 with heroin,’ Dr Campbell said. ... ‘That’s four out of five who were healthy, they could smoke, they were not sensitive to the stuff, then they hit the wall.’”

Comments in the same article in The Australian by Professor Paul Mullen from Monash University, who supported the previous remarks by Dr Campbell, suggested that one of the measures to be considered was to provide clear health warnings as while occasional cannabis use was not a factor in schizophrenia, heavy cannabis use could be.

“’The people who are out there, who at 13 are smoking several bongs a day, are in deep trouble,’ he said. Dr Campbell said his work showed that many people using cannabis experienced years of normality before succumbing to the psychosis associated with

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759 What is known from a number of studies is that schizophrenic patients generally have higher rates of cannabis use than the general population: Hall W & Pacula RL. Cannabis use and dependence. Cambridge, Cambridge University Press, 2003, Ch 9.
760 Age, The. ‘Marijuana concerns COAG leaders.’ The Age 10 February 2006.
762 Kearney S. ‘Cannabis is worst drug for psychosis.’ The Australian 21 November 2005.
schizophrenia. In men it mostly happened in their late 20s, while in women it could be as late as their 40s.”

A further article in The Australian on 23 November 2005, which examined the risks of cannabis use after the release of the national results from the 2004 NDSHS, referred to comments by the Premier of NSW, Morris Iemma, who “warned people contemplating using cannabis of the mental health risks, particularly those taking potent hydroponic grown marijuana.”

It would appear that opponents of decriminalisation could have relied selectively on some of this research to bolster arguments that minor cannabis offences should be recriminalised. As discussed elsewhere in this thesis, higher potency cannabis has become more readily available because of the development of hybrid strains of cannabis cultivated by both indoor and outdoor methods. The shift to hydroponic cultivation is partly a consequence of police targeting outdoor cannabis crops and accordingly has encouraged the creation of a market which increasingly involving hydroponic cultivation by a large number of small scale operators, as well as well established operations.

The FFDLR, a Canberra based community organisation which provides advocacy and support, appeared to have considered the implications of the COAG meeting in relation to the Commonwealth government’s approach to link funding of expanded mental health services as a platform to attack the decriminalisation of minor cannabis offences that has occurred in SA, the ACT, the NT and WA.

“When COAG meets on Friday Prime Minister Howard plans to urge the Premiers and Chief Ministers to adopt draconian laws on cannabis as a means of tackling mental health problems. Although claimed to be directed at drug dealers these laws will effectively widen the net to catch and prosecute young occasional users and the mentally ill. ... Instead of dealing with the complex problem of mental illness as a health and social issue Prime Minister Howard plans to use the criminal justice system and put more of our mentally ill in jail. Subjecting young, health occasional cannabis users to the stresses and abuse brought about the criminal justice system for a victimless crime has serious consequences to their health and future life chances, but it would be many times worse for people with a mental illness.”

The tenor of these remarks indicate that it is plausible the Howard government may attempt to undo the decriminalisation of cannabis in four Australian jurisdictions where expiation schemes have been established. As the Commonwealth acquired significant power to legislate after it gained a majority in the Senate in mid 2005 it would encounter few impediments to legislate to include minor cannabis offences in the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Bill 2005, capitalising on growing concern in the community about cannabis related mental health issues. Even if the legislation was revised to exclude minor drug offences in response to the criticism by the FFDLR and others and just focus on trafficking and serious offences, it is suggested the Commonwealth could still frustrate the operation of the four expiation schemes through significant leverage it exercises over the States and Territories through conditions it might attach to the funding of diversion programs.

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763 Ibid.
6.4 Costs and benefits

As an expected benefit of decriminalisation was to reduce the substantial costs that arise when an individual were to be charged and appear before the courts instead of either receiving a CIN in WA or a formal warning in the UK, it is important to identify whether the cannabis law reforms have achieved this goal. It is submitted that expected law enforcement savings from decriminalisation of cannabis may, however, be difficult to realise in practice. Therefore, it may be preferable that quantification of gains from reform are not based primarily on cost and economic savings but on other advantages, such as improving access to health and support services by those with problematic cannabis use.

"While more liberal laws would generally result in law enforcement and criminal justice savings, it may not result in vast savings, as any form of legalisation is likely to incur some costs. Economic considerations should clearly not form the basis of cannabis policy and other social costs of the different legislative options must take precedence."  

Because of limited data on the costs incurred at different stages of the law enforcement process in both WA and the UK it is not possible at this time to undertake an analysis of this issue. In the interim data from comparable reforms schemes can be used to develop a preliminary understanding of the issues which should be considered when undertaking a detailed analysis of costs and benefits of decriminalisation.

Reviews of reforms in a number of the US States that decriminalised cannabis in the 1970s have confirmed savings in law enforcement costs, such as the 1976 Moscone Act in California  and an evaluation by the State Office of Legislative Research in the State of Oregon one year after it decriminalised the possession of up to less than one ounce of cannabis with a $100 expiation notice. A comment on the State of Oregon review also highlights the importance of the underlying policy objective of police redirecting their efforts, concluded that "the law removes small users or possessors from the criminal justice machinery without relaxing criminal penalties for pushers or sellers of the drug and permits the law to concentrate on other matters without precipitating major negative effects."  

A study of the costs of the South Australian CEN scheme was published in 1999 as part of a larger comprehensive review of the social impacts of the cannabis expiation notice scheme. The study provides two comparisons of the cost to the criminal justice system concerning minor cannabis offences, without the option of expiation and with the option of expiation through the CEN scheme.

The cost base year for the South Australian study was the year 1995/1996. It was determined that it cost a total of $2,014,000 to prosecute a total of 7,500 minor cannabis offences in the year 1995/1996 - a mean cost of $268 per offence (ie $2,014,000/7,500) without the operation of the CEN scheme.

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772 Data used in some of the following text is partly based on information in the report by the Working Party on Drug Law Reform, Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters. Perth, Western Australia, Drug & Alcohol Office, 2002, A61-A65.
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The SA study distributed costs depending on whether an offender paid a fine or not, with 77% of charges being resolved at court, resulting in guilty pleas at first instance and with either a fine being paid or charges were withdrawn. The value of the revenue obtained from fines in South Australia was $995,000. The remaining 23% of offences involved additional costs distributed according to whether the matter proceeded to trial or if warrants were issued for non payment of fines. In the year 1995/1996 the net cost for processing of minor cannabis offences through the court system in South Australia was $1,019,000 (ie $2,014,000 - $995,000).

In the year 1995/1996 it cost a total of $1,240,000 to process the total of 16,231 CENs issued. This figure includes costs such as arrest costs, hearing costs and the various levels of adjudication costs. This modelling is based on apportioning cost depending on how the 16,231 CENs were dealt with, as 7,165 (43.9%) were expiated, 8,995 (55.1%) not expiated and 161 (1.0%) were withdrawn at prosecution stage or no conviction recorded. This translated into a mean cost of $36 per CEN to process the expiated CENs and a mean cost of $121 per CEN to process the unexpiated CENs.

The value of the revenue obtained in the year 1995/1996 from the CEN scheme was $1,679,000. This figure consisted of $559,000 in CEN expiation fees, $791,000 from court imposed fines and costs and $329,000 from fees paid after warrants had been issued. This translated into a mean revenue of $78 per expiated CEN and of $122 per unexpiated CEN.

An attempt was undertaken as part of the investigations by the Working Party on Drug Law Reform into options for establishing an expiation scheme, to determine the likely law enforcement costs of processing minor cannabis offences in WA. The approach extrapolated the underlying estimates of costs from the 1995/1996 study of the South Australian scheme and projected this same cost base to WA. This analysis estimated that in the year 2000 there was a total of 7,170 minor cannabis offences in WA and that it cost a mean of $295 to process each such offence.

It was estimated that the total cost of processing these minor cannabis offences was $2,115,150 which was partly offset by a total of $1,039,650 from revenue from fines, resulting in a net cost of $1,075,500. If an expiation scheme had operated in WA it was estimated that it would have cost a mean of $36 per expiated minor cannabis offence and a mean of $121 per unexpiated minor cannabis offence to administer and enforce the CIN scheme.

The total cost of processing CINs was estimated at $204,610, which was more than offset from a total revenue of $371,560 (consisting of $225,500 from CINs that had been paid plus an additional $146,060 from the enforcement of unpaid CINs). It was concluded that there was a possible net benefit of $166,950 from operation of the CIN scheme.

To be able to evaluate the outcomes of the CIN scheme and to identify costs and benefits compared to if offenders were charged, it would be necessary to have access to a range of data including the cost of courts processing minor cannabis offences, the costs borne by the FER system in managing unpaid CINs, the costs incurred by policing (eg the cost of issuing CIN, costs of processing CINs, costs in processing, registering, storing and disposing of seized cannabis, cannabis plants and smoking paraphernalia and additional training and coordination costs), costs incurred by the designated body overseeing and monitoring of compliance by retailers of smoking paraphernalia, costs of conducting and evaluating public education campaigns, costs involved in funding the CDSTs who provide the cannabis education session and other administrative costs.

773 Based on a total of 13,937 drug offences that were processed by police in WA in 2000, of which it was estimated there were 7,805 cannabis offences (involving 5,197 offenders). Out of the 7,805 cannabis offences, 2,810 (36%) involved possession and use, 4,060 (52%) involved possession of smoking implements, 545 (7%) involved cultivation offences and 390 (5%) involved trafficking type offences.

774 This is a cost as the CES program, apparently fully underwritten through specific funding received by the State through the Commonwealth’s Illicit Drug Diversion (IDDI), which is received by service providers
One of the sub-studies funded through the National Drug Law Enforcement Research Fund (NDLERF) sponsored study of the CIN scheme indicates that the process adopted by police of issuing and recording CINs may not generate as significant savings as might be achievable. This issue was highlighted in the survey of a small number of police officers, who indicated rather than issue CINs to offenders ‘on the spot’,

“police were taking offenders back to the station in order to interview them, determine their identity and weigh and seal cannabis seized. Police saw this as necessary in order to minimise the possibility that, after a notice had been issued, an offender would allege that the apprehending officer had stolen part of the cannabis seized.”

It would be reasonable to estimate that the process of offender identification, weighing seized cannabis, the bagging and sealing of cannabis storage bags, their registration and storage means that it would conservatively take police at least an hour to issue and process each CIN. The 2005 Annual Report of the WA Police provides a breakdown of costs as one of its efficiency indicators. In the 2004/2005 year it was estimated that it cost an average of $76 per hour of providing services, across all portfolio areas.

As there was a total of 3,591 CINs issued in the first 12 months of the CIN scheme from April 2004 to March 2005 (Table 10), it is likely the total cost of police issuing and processing CINs was at least $272,916 (ie 3,591 CINs x $76). Additional costs that are incurred by the police are not known, such as training of officers and administrative and support costs.

6.5 Cannabis decriminalisation and the courts

One area of interest, which does not appear to have been considered as it could have been, is the potential impact of the decriminalisation of cannabis on the courts and how they take account of and interpret the changes in the legislation in WA and the UK.

For instance, there is always the possibility that an appeal from a decision in the lower courts (referred to variously as the Magistrates Courts or the Courts of Petty Sessions) to the Supreme Court of WA or even the High Court of Australia, could adversely impact on the legislation itself, as judicial oversight could result in key elements of the legislation being discredited or so narrowly interpreted as to substantially frustrate the implementation of reform. The results of appeals to the higher courts in other Australian jurisdictions, which have also established expiation schemes, may also be persuasive authority in some instances in the interpretation of the law in WA.

The other possibility is that an appeal could involve matters not connected with the legislation itself, such as legislation to expunge convictions or to not record a conviction for a first time offender, compliance with administrative law or procedural issues or divergence by the lower courts in sentencing principles due to inadequate or excessive penalties. These examples of indirect impacts means that reforms involving minor cannabis offences could have unexpected outcomes because of the interaction between the CCA and other related laws and applicable legal principles.

The following discussion involves a brief consideration of a number of decisions of the courts in WA, SA and the ACT which have interpreted provisions in each jurisdiction’s expiation scheme which interact with and affect other legislation. This is not intended to be an exhaustive or comprehensive examination but to identify some of the issues and developments which might have implications for reforms involving minor cannabis offences undertaken or


776 Western Australia Police. Annual Report 2005. Table 1, p. 86.
contemplated in other jurisdictions. This will be followed by a consideration of how the courts in NZ, where minor cannabis offences have not been decriminalised, have developed principles for sentencing of different categories of cannabis offenders which may be relevant to how Australian courts determine appropriate sentences.

6.5.1 South Australia & the ACT

There is evidence from both SA and the ACT that the courts in those jurisdictions have determined that the penalties which apply to minor cannabis offences within the ambit of the CEN and SCON schemes establish benchmarks for sentences involving minor cannabis offences dealt with by the summary courts outside of the expiation schemes.

For instance, in a December 2001 case on appeal regarding severity of sentence considered by the Supreme Court of the ACT, the court considered the situation where an individual had not received a SCON but instead had been charged with a minor cannabis offence and fined $100. The appeal in O’Brien v Clarke involved a case where there was the option under the legislation for an individual to receive a SCON but instead they had been charged for the original offence.

The court reasoned in this case that an individual should not receive the maximum fine available under the Drugs of Dependence Act 1989 but instead the penalty should be determined in accordance with the accepted principles that applied to a first offender, in which case a person would rarely receive the maximum penalty. The case was unusual in that the offence involved cultivation of four cannabis plants, which in spite of being ‘very large,’ were within the SCON scheme.

In the Court’s view as the maximum penalty under the SCON scheme for the offence of cultivation of not more than five plants was $100, the fine received was excessive (even though it was only $100) and accordingly under a provision of the Crimes Act 1900, which dealt with first offenders, the conviction and penalty were set aside. The Court also took into account mitigating factors, such that the appellant had no prior convictions and that if a conviction were recorded this would adversely affect future employment prospects.

A series of cases considered by the Supreme Court of South Australia, one of which involved an appeal in 1993 to the High Court of Australia, have affirmed that the pecuniary penalties of the CEN scheme were also applicable to minor cannabis offences dealt with outside the CEN scheme. In the High Court case of Anderson v the Queen the appellant had with two others cultivated a total of 66 plants in the backyard of a dwelling. The case included consideration of a defence available under the South Australian legislation which provided for a defendant to prove the plants were cultivated for their own consumption and not for a commercial purpose.

The High Court noted the appellant had admitted in his original statement to the police that whilst the cannabis was primarily for his own consumption, some of it was also for supply to friends on a non commercial basis. The fact there was some degree of supply did not mean the offence therefore fell outside the CEN scheme, for it was observed that while the cannabis was “not solely for his own smoking or consumption. Nonetheless, his production would not have been for a commercial purpose and his offence would have been within the s. 45A definition of a ‘simple cannabis offence’.”

The appellant successfully argued that the court had failed to consider whether the penalties prescribed for the CEN scheme should apply in circumstances where someone had been

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777 O’Brien v Clarke. Unreported, Supreme Court of Australian Capital Territory, SC 74/2001; 6 December 2001. (Transcript of proceedings)
778 The total weight of the four plants was in fact a total of 13.4 kilograms.
779 Offord v The Queen. 56 (1991) SASR 98.
780 Anderson v The Queen. 177 (1993) CLR 520.
781 Anderson v The Queen. 177 (1993) CLR 520, 535 per Deane, Toohey & Gaudron JJ.
charged and convicted by a court of a simple cannabis offence which in other respects met the definition of an expiable offence in the Controlled Substances Act 1984.

“Where the facts fell within the definition of a ‘simple cannabis offence’ but no expiation notice had been given, the maximum penalty remained that prescribed by s. 32. But the usual discretion existed as to the penalty to be imposed, and save in exceptional circumstances a proper exercise of that discretion would involve the imposition of the same penalty as if a notice had been given.”782

| Toughen sentences for ‘dangerous’ cannabis: DPP |
| Courts must impose tougher sentences for cannabis-related crimes because of the damage it does to the mental health of marijuana smokers, South Australia’s Director of Public Prosecution has demanded.  |
| Speaking at the first ever ‘open day’ for the office of the DPP in Adelaide, Stephen Pallas QC said the DPP was waiting for the right drug case to appeal to higher court. ‘I have heard the research on the link between mental illness and cannabis and it concerns me greatly,’ Mr Pallas said. ‘It may be time to reassess the way the court approaches sentencing in the light of research on cannabis. We are waiting for the right case to bring before the court of appeal.’  |
| Mr Pallas’s plan to test judges’ sentences for cannabis crimes comes as both sides of state politics have announced tougher policies on hydroponic cannabis grown for trafficking. But personal use of cannabis – defined as possession of one marijuana plant – remains decriminalised since 1988.  |
| Offenders face a maximum of 25 years in prison and maximum fines of $500,000 if caught with more than 2 kg of cannabis or more than 19 plants. A growing scientific consensus suggests cannabis produces serious and chronic mental illness among people would not otherwise suffer it.  |
| Mr Pallas’s plan to toughen his office’s stance on sentencing in cannabis cases follows his decision last month to appeal against what he considered to be a ‘manifestly inadequate’ sentence handed to a woman convicted of cannabis offences. It was the second appeal against lenient cannabis sentences since September. The Weekend Australian has studied the cases of 15 people convicted of offences including possession and production of cannabis since October.  |
| Of those convicted, one person was given a two year sentence and 12 people were handed suspended sentences. The DPP appealed the three year sentence of George Petroff, 35, in late November – which was upgraded to four years and six months – and in January successfully appealed against the sentence of Dianna Ivic, 40. The Court of Appeal replaced a suspended sentence in the District Court for Ivic with three years and a non parole period of 18 months.  |

In February 2006 there was commentary about the adequacy of sentences involving cannabis offences by the courts in SA,783 which referred to remarks made by Stephen Pallaras QC, the South Australian Director of Public Prosecutions (DPP)784 which amplify debate about the

782 Anderson v The Queen. 177 (1993) CLR 520,  535 per Deane, Toohey & Gaudron JJ.
784 It is likely these remarks would earn the South Australian DPP some plaudits from the South Australian ALP Rann Government, with whom the DPP has had a somewhat acrimonious and testy relationship, involving a number of issues such as his criticism in May 2005 of insufficient funding: Roberts J. ‘DPP sits tight in row over private office loo.’ The Weekend Australian 25-26 February 2006.
linkage between cannabis and mental disorders following the Prime Minister’s remarks at a meeting of the Council of Australian Government (COAG) on 10 February 2006.\textsuperscript{785}

At the COAG meeting the Prime Minister asserted that ‘soft cannabis laws’ in those States which had reduced the penalties for minor cannabis offences through expiation schemes had been a factor for the increased incidence of cannabis related mental disorders such as schizophrenia. The DPP’s remarks appear to lend credence to the Prime Minister’s argument about inadequate penalties and bear repeating along with the remainder of the text of the article in The Weekend Australian of 25-26 February 2006 reproduced above.

However, a closer examination of two of the cases referred to in the article raises doubts about their relevance to sentencing of cannabis offenders. In the case of \textit{R v Ivic}\textsuperscript{786} the respondent was charged with the serious offence of possession of methylamphetamine with intent to sell, which involved a total of 70.73 grams which had been broken up into 61 deal bags. A further 13 deal bags containing a total of 22.5 grams of cannabis was also seized from the respondent, who had been apprehended by the police in the act of selling methylamphetamine from her car to a person in a street. It would appear the cannabis was not the principal drug of concern in this matter. The penalty for that offence was a fine $2,000 or two years imprisonment or both, whereas the penalty for the methylamphetamine offence was a fine of $200,000 or 25 years imprisonment or both. At trial the respondent was given a suspended sentence, which would appear to be ‘manifestly inadequate,’ as asserted by the DPP.

In the case of \textit{R v Petroff}\textsuperscript{787} the respondent had been charged with the production of a crop of cannabis consisting of nearly 2,000 plants in glasshouses cultivated by an automated watering system. The penalty for this offence is a fine of $500,000 or imprisonment for 25 years or both. At trial the respondent was jailed for a period of three years with a non parole period of two years. Given the large number of plants being cultivated this penalty would also appear indeed to be ‘manifestly inadequate’.

The DPP successfully appealed in May 2004 against an inadequate sentence in the case of \textit{Director of Public Prosecutions v Stamos}.\textsuperscript{788} In this case the respondents seemed to have received sentences at the lower end of expected range of penalties that might be given for an offence which involved a cannabis distribution and marketing enterprise that sold more than 100 kilograms of cannabis over a six month period. The tenor of the comments made by the three justices of the Supreme Court of South Australia indicate that the higher courts are acutely aware of the seriousness of these types of offences. It might be concluded that rhetoric of the DPP that cannabis sentences in SA need to be toughened is not in accordance with how the Supreme Court has approached this issue, as can be seen from part of the judgement of two justices in \textit{Stamos}.

\begin{quote}
\textit{The drug problem has been described as a very serious evil in our society. Those involved as organisers and wholesalers must expect substantial custodial sentences. Stamos’ offending was grave. He was the major organiser giving direction to others. He received significant profits from his illegal activities. General deterrence must be a significant consideration in offending of this magnitude. The sentence imposed was manifestly inadequate. It fell so far short of an appropriate sentence that the application for leave should be granted and the appeal allowed.} \textsuperscript{789}
\end{quote}

Given the limited depth of analysis and rather poor research in the two cases cited in the February 2006 article, there must be some doubt whether the remaining 13 cases cited in The Weekend Australian support the case being made on behalf of the DPP that inadequate

\begin{footnotes}
\item\textsuperscript{785} Karvelas P. ‘Health battle targets marijuana.’ \textit{Weekend Australian} 11-12 February 2006.
\item\textsuperscript{786} \textit{R v Ivic} [2006] SASC 8.
\item\textsuperscript{787} \textit{R v Petroff} [2005] SASC 449.
\item\textsuperscript{788} \textit{Director of Public Prosecutions v Stamos}. [2004] SASC 132.
\item\textsuperscript{789} \textit{Director of Public Prosecutions v Stamos}. [2004] SASC 132 per Gray and Sulan JJ.
\end{footnotes}
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sentences were being given by South Australian judges. It is suggested the press reporting on the DPP’s comments on two cases where the DPP had recently succeeded in having sentences increased on appeal, which had been linked to mental health issues, sought to create a perception of a crisis due in part due to the courts perceived failure to more severely punish offenders. It is submitted the reader may be tempted to extrapolate from this article that increased punitive measures are required to address this problem rather than consider arguably more effective measures involving the development of additional treatment services that specifically targeted cannabis users with mental health concerns.

6.5.2 Western Australia

The operation of the Cannabis Control Act 2003, which was assented to on 10 October 2003 and came into operation on 22 March 2004, is an opportunity to determine whether the courts have interpreted the penalties of the CIN scheme are applicable to other areas of criminal law. Even though the CIN scheme has operated for a comparatively short period of time, the courts have already determined that the CCA is relevant to dealing with minor cannabis offenders, when the Supreme Court of WA considered the case of Harper v Page involving convictions for a number of concurrent minor cannabis offences.

In Harper v Page the appellant was convicted on 5 March 2004 for three offences which would otherwise met the criteria for her to have been issued with three CINs - possession of 1.7 grams of cannabis, possession of a smoking implement with detectable traces of cannabis and cultivation of two plants in the backyard of her principal place of residence. The offences arose from a single incident when police searched her house on 1 February 2004.

However, as the CIN scheme had not commenced, the appellant was charged under the Misuse of Drugs Act 1981 and pleaded guilty on 5 March 2004 when she appeared in the Fremantle Court of Petty Sessions. The basis of the appeal was that although at the time when the matter was dealt the CIN scheme had not been proclaimed, nevertheless the appellant was entitled to have had the three convictions expunged in accordance with the Spent Convictions Act 1988, as the three offences had become trivial offences with the enactment of the CCA.

The argument succeeded and as a result the appellant received a spent conviction order as it was considered the lower court failed to place sufficient weight on the appellant’s individual circumstances and good character. Section 39(2) of the Sentencing Act 1995 provides that a court may not make a spent conviction order unless the offender meets the test contained in Section 45. The relevant part of s. 45 is as follows -

45. Spent conviction order: making and effect of

(1) Under section 39(2), a court sentencing an offender is not to make a spent conviction order unless –

(a) it considers that the offender is unlikely to commit such an offence again; and

(b) having regard to —

(i) the fact that the offence is trivial; or

(ii) the previous good character of the offender, it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

In his judgement LeMiere J stated:

“If it were not for the provisions of the Cannabis Control Act, I would consider that the offences of which the appellant was convicted are not trivial. In general, an offence is not to be regarded as trivial if it is a typical example of the behaviour prescribed for such an

offence. There must be something that distinguishes the circumstances of the offence under consideration from what is to be regarded as typical breach of the particular provision. However, in my view, the offences of which the appellant was convicted should, since the Cannabis Control Act has come into effect, be considered to be trivial for the purposes of s 45(1) of the Sentencing Act.”

The significance of this appeal to a single Judge in the Supreme Court, is that with the enactment of the CCA the four expiable offences under the CCA will now be regarded by courts for sentencing purposes as trivial offences for the purposes of the test under s 45(1) of the Sentencing Act 1995. However, it is submitted the case is of wider significance as it establishes that the principle in R v Tognini793 had been so narrowly interpreted by the courts in WA such that virtually nobody in WA convicted of a minor cannabis offence was granted a spent conviction order.794

“Drug offences are not to be treated differently from other offences when determining whether to grant a spent conviction order. Furthermore, in considering the seriousness of the offence, the offence to be considered is the offence committed by the offender and not the offence in the abstract. Seriousness is not to be determined by reference to the class of offence committed, but must be ascertained by reference to the conduct which constitutes the offence for which the offender was convicted and to the actual circumstances in which the offence was committed.”

Over a number of years prior to the introduction of the CCA the Supreme Court of WA had indicated in a number of appeals from lower courts, that in relation to cannabis, the courts should discriminate between minor offences and those cases which involved the organised supply and production of cannabis. This distinction closely resembles the dichotomy made between minor and serious offences when the CCA was introduced and which has also articulated in the policy framework when the Cannabis Control Act Bill 2003 was introduced.

In the 1998 case of Bidwee v Robinson796 the Supreme Court of WA referred to a schedule of cases which McKechnie J indicated established the acceptable range of penalties for minor cannabis offences. These were a fine of $200 for possession of a smoking implement (at first instance the appellant had been fined $1,000 in the former Kununurra Court of Petty Sessions) and $150 for possession of approximately 2 grams of cannabis (the appellant had been fined $500). His honour observed that a second offence would incur a fine of between $100 and $300 to $400.

However, while the courts have recognised significant harms can arise if an individual is convicted for a minor cannabis offence, until the advent of the CCA and the case of Harper v Page, the option of recording a spent conviction order was denied to defendants in WA. An example of the approach pre Harper v Page is the 1997 case of Riley v Gill,797 in which the appellant was fined $125 on each of two charges of possession of a smoking implement and possession of 1 gram of cannabis. Both offences occurred at appellant’s living quarters at a minesite near Port Hedland.

The appeal in Riley v Gill involved the issue of whether a spent conviction order should have been granted as the appellant was of good character and the offence was trivial. Parker J

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794 Cf consideration by Supreme Court of the Northern Territory that the reforms in the Northern Territory meant minor cannabis offences were trivial and thus sustain argument that a conviction not be recorded, per Martin CJ in Jamie John Glasson v Robert Bruce Materna and Shane Tapp v Robert Bruce Materna Unreported, Supreme Court of the Northern Territory, Appeals JA 58 AND JA 59/1996; 5 February 1997.
considered that neither of the offences were trivial, which his Honour defined as meaning of “little importance, petty, frivolous, trifling”. The appellant sought to have the court accept that because the convictions were not spent he was likely to suffer considerable harm in his occupation as leading hand shot firer, as this would preclude future employment opportunities. In rejecting this submission the court placed some emphasis on the significance of the public interest over the interests of the appellant, as it maintained the occupation of shot firer

“involves considerable responsibility for safety. There is a public interest in any employer or potential employer being aware of the appellant’s conduct ... (as it) has clear relevance in assessing his reliability and suitability for the type of work which he pursues.”

It is submitted that this was a harsh test as it appeared to treat the issue of a cannabis conviction as being sufficient proof that the person was cannabis dependent or used cannabis in such a manner as to create an occupational and safety hazard in the course of their employment. As the court did not take evidence on whether the individual’s capacity to perform his job is affected by his use of cannabis, it would appear that the refusal to grant a spent conviction order was based on an untested assumption.

It is suggested there are other offences which should equally raise concerns about fitness of an employee working at a minesite, such as a conviction for driving a motor vehicle whilst under the influence of alcohol. If the grounds for refusing a spent conviction order were not in relation to fitness to perform, but because a minor cannabis conviction is a serious offence per se and justifies retention of a conviction as a notice to employers, then it might also be argued there are other minor offences when a person might receive a spent conviction order, which would otherwise be of concern to an employer, such as ‘shoplifting’ or minor fraud offences.

An unresolved matter is whether the CIN database maintained by the police which records details of those who have been issued with a CIN could be accessed in the same way as now occurs for a ‘police clearance’ for disclosure of a prior criminal record as a pre condition of employment or the purpose as determined in Riley v Gill. There may also be other circumstances where a record of receiving a CIN could be required, such as for a motor vehicle insurance contract or an application for a visa. As the CCA does not stipulate whether such records are protected or sealed this could mean that whilst the ostensible purpose of the CIN scheme is to avoid the adverse effects of a conviction, nevertheless an individual could be penalised if their history of receiving a CIN can be disclosed to third parties or considered by the courts as part of a pre sentence investigation.

6.5.3 New Zealand

The courts in NZ have developed principles to set appropriate legal consequences for those who commit serious cannabis offences because of shortcomings in the enabling legislation, the Misuse of Drugs Act 1975, which does not have a structure which sets out penalties based on degrees of seriousness and the quantity of drugs involved. Thus under the NZ legislation, as the maximum penalty for supplying a drug is life imprisonment, in theory all levels of supply could attract this sentence.

The shortcomings of the NZ legislation can be contrasted with other jurisdictions, such as Victoria, where under the Drugs, Poisons and Controlled Substances Act 1981, penalties are set according to whether the amount of drug is a ‘large commercial’, a ‘commercial quantity’ or otherwise low level supply and whether there are aggravating circumstances, such as if the drug was supplied to a juvenile. In Queensland there is a similar approach to setting penalties by reference to the amount, with an additional refinement based on the type of drug under the Drugs Misuse Act 1986. In NSW sentencing guidelines have also been developed by the courts and there are also three broad categories of supply under the Drug Misuse and Trafficking Act 1985.\footnote{R v Arthur. (2005) 3 NZLR 739.}
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Because of the need to consider seriousness to determine appropriate sentences, the NZ courts have developed principles, such as in the instance of cannabis cultivation, which necessitate a consideration of the circumstances, including productivity and degree of sophistication. The 1999 case of *R v Terewi* sets out three categories of seriousness when sentencing those who have been convicted of cannabis cultivation, taking into account mitigating and aggravating circumstances.

In the first category, which would involve the cultivation of a small number of plants for personal use without any sale to another person, the courts invariably give a fine or other non custodial sentence. If there was an element of supply to others on a non commercial basis then a larger monetary penalty would be expected. In the second category, which would involve small scale cultivation for a commercial purpose, the punishment would most likely be between two and four years imprisonment. In the third category, which would involve large scale commercial cultivation, with attendant sophistication and organisation, the penalty would most likely be four or more years imprisonment. The other criteria for this category would be if the operation was producing annual revenues of $100,000 or greater.

The important principle articulated in *R v Terewi* to determine the level of seriousness is that a court should consider the value of the cannabis and anticipated annual gross revenue, rather merely basing its decision on the number of plants that were cultivated. This approach means the courts can value the productivity of both indoor and outdoor cultivation – with a productivity of about one ounce per plant per year per crop cycle for indoor cultivated plants and two ounces per plant per year for outdoor cultivated plants. To be able to place a value on crops involving cases of cultivation the courts have stipulated that they should be provided with evidence of the likely amounts of annual gross revenues, or turnover, obtained by the offender from a cannabis growing operation or which the offender must have anticipated deriving from the activity. That will reflect crop cycles and yields and will be a better measure of the size of an operation than simple reference to the number of plants which have been found. The sentence should also take into account the period over which the offending has continued.

It is argued that the approach of the NZ courts, which involves examination of the method of cultivation and productivity to determine the value of a cannabis growing operation would be applicable in WA and other Australian jurisdictions and would be preferable to less precise methods of valuing a cannabis crop, like a bare count of the number of plants. It is possible that the *Misuse of Drugs Act 1981* does not encourage the development of more rigorous methods of crop valuation as it merely stipulates that the cultivation of 10 or more plants is deemed cultivation with intent to sell or supply.

Arguably, the courts in WA could routinely undertake a similar approach to valuing a cannabis crop as has occurred in NZ as a consequence of *R v Terewi*. If such an approach had been followed, the arguably lenient 18 month sentence given at original trial before a Magistrate in the 2001 WA case of *Price v Davies* may not have occurred. It is useful to briefly refer to this case as it illustrates the problem confronting the courts of being able to sentence those engaged in serious cannabis offences.

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801 *R v Terewi* (1999) 3 NZLR 62 per Blanchard J.
802 Prior to an amendment which came into effect in March 2004, which was part of the legislative reform package introduced with the Cannabis Control Bill 2003, the threshold was 25 plants: *Misuse of Drugs Act 1981*, Schedule 6.
At original trial the appellant had been convicted by a magistrate and sentenced to 18 months imprisonment for the cultivation of cannabis with intent to sell or supply. The circumstances of the case involved hydroponic cultivation of 47 cannabis plants, which were grown in a substantial concealed concrete bunker, 5.2 metres long, 2.8 metres high and 2 metres wide. The bunker was purpose built and accessible only by a concealed trapdoor under a shed on a property in a semi rural area on the outskirts of the southern Perth metropolitan area. The operation was set up with carbon dioxide bottles, the walls were covered with reflective material and it had circulating fans, gas discharge monitoring devices, submersible pumps and ducting pipes for air inlet and exhaust as part of the hydroponic arrangement.

The police gave evidence the cannabis buds were of extremely high quality and that in their opinion each plant would have yielded 300 to 500 grams of ‘bud’, which if sold in ounce weights would have meant the total crop would have been worth $188,000 or if sold in pound weights, be worth $124,000. The court also noted if value was based on a per plant basis, that as the street value of each plant was between $2,000 to $3,000, the total value of the crop would have been between $100,000 to $150,000. Therefore according to these methods, the total crop on a per growing cycle basis, would have been worth between $100,000 and $188,000.

In spite of the evidence that this was clearly a well organised and commercially oriented operation, the appellant successfully appealed against the severity of the 18 month sentence by claiming the large number of cannabis plants was for personal use as analgesic relief for a long standing back pain due to an injury. Further, the appellant claimed that although he did not smoke the cannabis, he converted it into ‘butter’, which was used in cooking. The latter claim indicates a substantial degree of expertise, effort and the existence of an array of equipment and solvents to process the large quantities of cannabis needed to extract sufficient volumes of refined oil from the cannabis. The production of oil also raises questions about value adding dimension of the enterprise by being involved in producing a cannabis product which had high value and could be readily sold in small volume units.

At the original trial before a magistrate the police provided expert testimony that the cultivator had also undertaken extensive research into hydroponic cultivation of cannabis. The expert testimony included a reference that

“usual growth cycle for hydroponic cannabis cultivation was 14 weeks and is capable of producing three crops per year. However, skilled cultivators can reduce this to as little as 10 weeks (and that) … the gender of the cannabis plants shown in the photographs is clearly female due to the presence of substantial flowering buds.”

The court on appeal appeared to place little if any weight on the existence of what appeared to have been a well organised and commercially driven operation, which apparently involved a number of other family members (who were tried separately on minor charges). Furthermore the appellant had admitted in an interview with police that he had shared some of the cannabis with others. The approach in this case when compared to the NZ approach, suggests there may have been a limited understanding by the appeal court that it could have considered the number of crop cycles and productivity of the operation to calculate the annual value of the crop. It is plausible that if at least three crops were able to be produced per year by the cultivator and each crop was worth between $100,000 to $188,000, then the annual gross revenue could have been between $300,000 and $564,000, indicative of a serious level of offending.

6.5.4 United Kingdom

The courts in the UK have considered whether the reclassification of cannabis may have revised the benchmarks for sentencing cannabis offenders. In the 2005 case of R v Herridge (Matthew John) the appellant was convicted for the cultivation of 52 cannabis plants, involving

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806 [2005] EWCA Crim 1410; Times 7 June 2005 (CA (Crim Div))
extractor fans and heating, in his place of residence. In spite of the large number of plants under cultivation, this was regarded as for personal use and not for supply. At trial the appellant was sentenced to 12 months imprisonment. On appeal the court ruled in favour of the appellant, found that the sentence was excessive and substituted a sentence of six months.

A commentary on the case noted that it meant that in circumstances where cultivation did not involve supply but for personal use, the appropriate sentence should be at the lower end of the penalty range of between six to nine months. The court observed that reclassification of cannabis to a Class C drug indicated the intention of parliament was to reduce the penalties for possession of small amounts of cannabis, as the reform resulted in the penalty for cannabis possession being a maximum of two years, whereas previously it had been five years when a Class B drug.

However, as the same maximum penalty of 14 years for cultivating cannabis years was retained after the reform, this posed some difficulty for the court, as this meant cultivation was still to be regarded as a serious offence. Nevertheless given there was a range of degrees of scale, level of planning and sophistication involved in cultivating cannabis, the court pointed out that there was a degree of latitude when sentencing offenders.

“The offence of cultivation covered a very wide spectrum of criminality, from industrial farming for substantial commercial profit down to those who keep cannabis plants where others might keep pot plants. ... no reduction in sentence should be made where an element of supply was involved. What concerned the court was whether some reduction was called for where clearly personal use alone was the object, so as to reflect the significant reduction for simple possession of cannabis. Given that a significant element of calculated defiance of the law was required to commit the offence of cultivation even on a small scale, the court would expect to see such offences as ordinarily attracting a custodial sentence.”

6.6 Cannabis related mental health problems

Another area of concern about a possible consequence of decriminalisation is that the prevalence of cannabis use would increase and thereby in turn increase the likelihood of regular cannabis users becoming cannabis dependent and/or experiencing other mental health problems. This consequence is of some importance as there is an extensive body of literature concerning the proposition that a close relationship exists between the regularity and frequency of cannabis use, cannabis dependence and the development of other indicia of mental health problems.

A recent article which examined research around the issue of psychosis noted this question involves determination of whether “cannabis use precipitates psychosis, or represents a risk factor in psychosis-naïve individuals.” Further investigation on this point is required as can be seen in recent differing statements about causality. For instance, it has been observed that “research also suggests that cannabis use in those who have psychosis vulnerability increases the chances of experiencing psychotic symptoms, especially when this use is regular.” However this can be compared to a claim that “the evidence for the existence of a dose-
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response relationship (an association between frequency of cannabis use and the development of psychosis) is, on the presently available evidence, weak."  

There is a growing body of evidence that some individuals, especially young people, are at an increased risk of developing schizophrenia from using cannabis because of a predisposition arising from a combination of genetic and environmental factors. In relation to whether the use of cannabis may trigger schizophrenia in those who are vulnerable or that the use of cannabis aggravates the symptoms of those who are schizophrenic, it would appear that,

"the available epidemiological evidence suggests that cannabis can exacerbate the symptoms of schizophrenia. The best available evidence from the existing range of prospective epidemiological studies indicates that cannabis can precipitate schizophrenia in people who are already vulnerable for individual or family reasons. Those with a psychosis vulnerability may also be at an increased risk of experiencing psychotic symptoms, particularly if their cannabis use is regular."  

Because of growing recent concern about mental health problems and regular use of cannabis further consideration of this issue is required as it pertinent to a wider debate about consequences of decriminalisation. However, it is acknowledged there are also a spectrum of other types of health problems which can arise from cannabis use, such as respiratory diseases, increased low birth weight babies of mothers who have used cannabis during pregnancy and cognitive impairment.

The particular vulnerability of young people becoming cannabis dependent has been examined in a study of a nationally representative sample of adolescents and adults of data from the American NHSDA surveys for 1991, 1992 and 1993 which used a proxy measure of last year cannabis dependence. It was found that nearly twice as many adolescents as adults (35% vs 18%) who had used cannabis at a near daily or daily level in the past year were considered

815 Such as in the UK when the ACMD was requested by the Government in May 2005 to conduct a further review of the October 2003 reclassification of cannabis: United Kingdom, House of Commons, Science and Technology. Drug classification: making a hash of it? Westminster, House of Commons, 2006. There have also been public debate from bodies such as the Australian Medical Association and others on this issue: O’Leary C. ‘Teenagers on cannabis risk heroin addiction.’ The West Australian 7 July 2006; Rule P. ‘Doubt on dope law link to health.’ The West Australian 22 August 2006; Strutt J & Spencer B. ‘UN drug report puts pressure on McGinty.’ The West Australian 28 June 2006. Cf: Hall W & Degenhardt L. ‘What are the policy implications of the evidence on cannabis and psychosis?’ (2006) 51 Canadian Journal of Psychiatry 566-574.
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cannabis dependent, because while adolescents used at a slightly lower frequency compared adults, they used larger quantities of cannabis.817

“Among last year marijuana users, adolescents experience higher rates of proxy dependence than adults, not because they use marijuana more frequently than adults (although they used at higher quantities), but because they appear to be more sensitive to the effects of the drug: at a very low dose adolescents are more likely to be dependent than adults; this pattern is stronger for females than for males.” 818

A 2004 US study of changes in the prevalence of cannabis use, abuse and dependence, which compared data from the National Longitudinal Alcohol Epidemiologic Survey of 1991-1992 with data from the National Epidemiologic Survey on Alcohol and Related Conditions of 2001-2002, found that whilst the prevalence of cannabis use was stable over this period, there were more adults in 2001-2002 who had a cannabis use disorder than in 1991-1992.

It has been speculated that the increase in cannabis use disorders could be attributed to a long term rise in cannabis potency in the US, as evidenced by an increase of a mean of 3.08% in 1992 to 5.11% in 2002 of THC from analysis of cannabis seized by the police.

“Increasing rates of marijuana use disorders among marijuana users in the absence of increased quantity and frequency of use strengthens the argument that the increasing rates may be attributable, in part, to increased potency of marijuana.”819

Another finding from this study which suggested that the increased prevalence of cannabis related disorders among users may be partly attributed to the

“increase in marijuana use among the youngest individuals observed in this and other studies. ... The early onset of drug use has been consistently associated with greater risk of the development of abuse and dependence. Thus, the marked increase in marijuana use among the youngest age group may be linked to the increases in abuse and dependence.”820

The 2001 American National Inpatient Survey undertaken by the Agency for Healthcare Research and Quality involved a study of hospital inpatient data of those who had been admitted with a primary diagnosis concerning cannabis, alcohol, heroin or cocaine. It was found that mean cost per cannabis discharge ($12,447) was nearly twice as high as the mean cost for any of the other three drugs ($6,707 for alcohol, $5,734 for heroin and $6,667 for cocaine). The increased cost of treating cannabis related admissions identifies that while

“the number of marijuana primary diagnoses is significantly lower than those for alcohol, heroin and cocaine, the mean length of stay for marijuana episodes is three times longer than for alcohol and heroin discharges and more than two times longer than for cocaine diagnoses.”821

However, although there has not been a rise in the treated incidence of schizophrenia, a contrary trend has been identified in the US of increased rates of the indicia of problematic use of cannabis, even though prevalence rates have not generally increased.

820 Ibid.
821 Pacula RL. ‘Marijuana use and policy: What we know and have yet to learn.’ NBER Reporter. Winter 2004/5, 24.
“Although prevalence rates for the general population have been relatively stable over the past decade, the proportion of current users who meet criteria established by the American Psychiatric Association for dependence or abuse of marijuana has increased at a statistically significant rate, from 30.2 percent to 33.6 percent.”

There is emerging Australian prevalence data from a number of the household surveys which indicates important differences in preferred strength of cannabis and preferred method of use between younger and older cannabis users. Specifically Australians aged between 14 and 29 preferred smoking ‘heads’ and strongly preferred to consume cannabis by using bongs rather than by smoking cannabis as joints – the latter method preferred by older age groups.

Method of cannabis use has been identified as predictive of mental health problems as it has been shown users shift to methods of delivery, especially to using bongs, to deliver higher doses of THC away from methods which deliver lower doses of THC such as smoking joints. Research which involved a sample of 390 French students confirmed a link between cannabis dependence and the use of bongs for whom this was their preferred method of consumption, compared to students whose preferred method was smoking cannabis as joints. Dependence was assessed according to seven DSM-IV criteria and was by way of a self administered questionnaire derived from Mini International Neuropsychiatric Interview. (See the box with DSM-IV criteria used to diagnose a cannabis use disorder.)

Overall 55% of the French students were cannabis users, of whom 43.7% met the DSM-IV criteria for dependence. The preferred methods of use were joint (49.5%), bong (33.5%), ingestion (8.5%) and pipe (4.5%). It was found that for users who met the criteria for cannabis dependence there was no significant differences between boys and girls, but that the rate of dependence amongst bong users was significantly higher than among joint users (54.4% vs 25%). It was concluded that “the link between bong use and cannabis dependence may reflect the fact that bong use contributes to dependence and (or) that dependence leads to using stronger methods, such as bongs.”

### Defining cannabis related disorders

The Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV) sets out a number of diagnostic criteria to determine whether a person is considered to have a cannabis related disorder.

#### Cannabis abuse
An individual has to report experiencing at least one of the following four criteria in the past year:

- recurrent cannabis use resulting in failure to fulfill major role obligations;
- recurrent cannabis use in physically hazardous situations;
- recurrent cannabis-related legal problems; and
- continued use despite recurrent or persistent social or interpersonal problems caused or exacerbated by cannabis use.

#### Cannabis dependence
An individual has to report past year experience of at least three of the following six criteria:

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822 Id, 22.
824 The diagnosis of cannabis dependence was met if a respondent met three or more of the seven DSM-IV criteria of dependence.
826 Adapted from Zickler P. ‘Marijuana-related disorders, but not prevalence of use, rise over past decade.’ (2005) 19(6) NIDA Notes 10-11.
• need for increased amounts of cannabis to achieve desired effect;
• use of cannabis in larger amounts or over longer periods than intended;
• persistent desire or unsuccessful efforts to cut down cannabis use;
• a great deal of time spent obtaining, using or recovering from the effects of cannabis;
• giving up important social, occupational or recreational activities in favour of using cannabis; and
• continued use despite persistent or recurrent physical or psychological problems caused or exacerbated by use.

A major study in 1997 of regular cannabis users in Sydney identified the importance of demographic factors in the development of cannabis dependence, with the most consistent relationship involving age, quantity of cannabis used and the severity of dependence. It was found that

“Older users were less severely dependent than young users, largely because they had begun using later than their younger peers. There is support for some of these findings from the North Coast sample and recent population studies. Further, Kandel and colleagues (1986) found that those who began drug use earlier were at greater risk of continued use, and thus may arguably be at greater risk of developing dependence.”

A study undertaken in 1999 by researchers at the NDARC examined the proposition of whether increases in cannabis potency may explain some of the increase in cannabis related mental disorders. It was concluded the apparent increase in problems was most likely due to changes in patterns of use, rather than due to changes per se in potency, which have largely contributed to the growth in problems.

“All these changes in patterns of use – earlier initiation of cannabis use, greater use of more potent cannabis products such as heads, and possibly the use of water pipes – have probably played a greater role in increasing the amount of THC consumed by regular cannabis users than any increase in the average THC content of cannabis plants.”

Australian research published in 2001 estimated about 21 per cent of people who have used cannabis more than five times over the previous 12 months met the DSM-IV criteria for cannabis dependence and in addition there was a further 11 per cent who satisfied the DSM-IV criteria for cannabis abuse. It was observed from the same research conducted by the National Survey of Mental Health and Wellbeing, that “by way of comparison, the prevalence of alcohol use disorders among those who have had 12 or more drinks in the past year is around eight per cent.”

In addition to the increased risk of dependence, use of cannabis has also been found to be “statistically linked to increased risk of psychosis. (A review of five studies) ... found that all the studies were in agreement that the use of cannabis increases the risk of subsequent schizophrenia and psychotic symptoms.”

829 Swift W, Hall W & Teesson M. 'Cannabis use and dependence among Australian adults: Results from the National Survey of Mental Health and Wellbeing.' (2001) 96 Addiction 737-748.
A large Victorian longitudinal study of adolescent health conducted a follow up study in 1998 involving a sample of just over 1,600 young adults who had been surveyed on a number of occasions in the early and mid 1990s whilst secondary school students. This study considered the issue of frequency of cannabis use and found 59% of the young adults had ever used cannabis and 17% had used at least weekly, with 7% meeting the criteria of cannabis dependence.\(^{832}\) One of the conclusions from the study was that a public health response was required for those who had progressed beyond weekly use, as consumption at this intensity was considered to be a significant risk of a cannabis user becoming cannabis dependent.

A telephone survey conducted in NSW in June 2001, which involved a total of nearly 1,000 completed interviews with regular cannabis users (defined as those who had used cannabis in the last 12 months), investigated the likelihood of whether any of six factors might reduce or stop these individuals from using cannabis. Some of these findings are relevant to the issue of the impact of decriminalisation on regular cannabis users.

“Superficially, these data suggest that law enforcement offers greater potential leverage over cannabis consumption than treatment. Law enforcement, however, appears to exert its strongest effects on those whose cannabis use is less frequent and therefore less risky. Those who use cannabis monthly or less frequently were more likely than those who use the drug at least once weekly to indicate that they would stop using or use less cannabis if arrested or imprisoned. Those who have used cannabis for less than five years were more likely than long standing cannabis users to indicate that they would stop using or use less cannabis if arrested, imprisoned or if drug testing were introduced into the workplace.”\(^{833}\)

A prospective study published in 1987 of 50,465 Swedish conscripts\(^{834}\) found a dose response relationship between the number of times cannabis had been used and the subsequent risk of developing schizophrenia. This study compared conscripts who had not used cannabis with those who had and found that those who had used one to 10 times were 1.5 times more likely and those who had used 10 times or more were 2.3 times more likely to have been diagnosed with schizophrenia than those who had not used cannabis. Whilst these risks were substantially reduced after adjustment for variables related to the risk of developing schizophrenia (such as having a psychiatric diagnosis at 18 and parents who had divorced – an indicator of parental psychiatric disorder), nevertheless

“these relationships remained statistically significant after adjustment. Compared to those who had never used cannabis, those who used cannabis one to 10 times were 1.5 times more likely and those who had used 10 or more times, were 2.3 times more likely to receive a diagnosis of schizophrenia.”\(^{835}\)

A 27 year follow up study of a cohort from the original Swedish conscript study confirmed the relationship indicated in the earlier study, that cannabis use at baseline predicted an increased likelihood of schizophrenia developing.\(^{836}\) A recent article in New Scientist provides an overview of the findings and shortcomings of research used to support the proposition that cannabis use increases the risk of schizophrenia.\(^{837}\) It notes that the seminal and widely cited 1987 Swedish conscript study which had identified a link between cannabis and long term mental health problems in young men, may have failed to properly account for a number of

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\(^{837}\) Lawton G. ‘Too much, too young: are teenage cannabis users jeopardising their mental health?’ New Scientist 185.2492. 26 March 2005, 44.
confounding variables, such as that cannabis smokers were more likely to use other drugs such as LSD which also cause schizophrenia.

More recent research, such as the NZ Dunedin Multidisciplinary Health and Development Study, is regarded as confirming the earlier Swedish research, as it found that those who had smoked cannabis three or more times before the age of 15 were much more likely to suffer symptoms of schizophrenia by the age of 26 – a 10 per cent chance compared to the 3 per cent chance for the general population. 838

However, critics of studies which have demonstrated associations between cannabis use and mental health problems have raised concerns about some of this research. For instance, in the Dunedin study there was a total of 29 people who had smoked cannabis on three occasions by age of 15, of whom only three went on to develop psychosis by their mid twenties. One researcher cited in the 26 March 2005 article in New Scientist made the following conclusion.

“What the data show is that the risk applies to a small minority of young people who start smoking cannabis at a very young age. Are we going to change the law for the benefit of a vulnerable minority? A small minority of people are vulnerable to liver damage if they drink even a small amount of alcohol, but we haven’t changed the law to protect them.” 839

While these longitudinal studies demonstrate a consistent relationship between the use of cannabis in adolescence and the later development of psychotic symptoms in young adults,

“All share a weakness: there is uncertainty about the temporal relationship between cannabis use and the timing of the onset of psychotic symptoms. Subjects in these studies have usually been assessed once a year or less often and asked to report retrospectively on their cannabis use during the preceding number of years, often as crudely as the number of times that cannabis was used or the number of times it was used per week or month.” 840

An analysis of data from the 2001 WA NDSHS shows that between about 10 and 20 per cent of those who had used cannabis in the past year were concerned about the level of their use. (See Figure A1-4.) This information should be regarded as indicative of the need for further investigation, such as by analysis of more recent NDSHS data, to determine whether such individuals may demonstrate some of the features of dependence and whether there are age and gender related factors given that higher rates were recorded by males in the two youngest age groups (14 to 19 and 20 to 29 age groups), whereas the highest female rate occurred in the 30 to 39 age group.

The growth in the number of persons who have both used cannabis in their life time and in the past year means there are now large numbers of people in WA who have been exposed to the drug, the majority of whom who have done so without apparent significant detriment or harm. However, because of the relatively large numbers of people who use cannabis on a regular basis, this raises concern that a variety of cannabis related mental health harms are likely to occur in this population, even though this may only affect a relatively small proportion of regular cannabis users. The magnitude of the number of people who could experience these types of harms can be illustrated from data from the 2004 NDSHS, which estimated in WA there were just over 220,000 people aged 14 years and older who had used cannabis in WA in the past year and a further 127,000 who had used in the last month.

There is evidence that significant numbers of Australians are either presently dependent on cannabis, estimated to about 200,000 Australian adults, or at risk of becoming dependent and


839 Lawton G. ‘Too much, too young: are teenage cannabis users jeopardising their mental health?’ New Scientist 185.2492, 26 March 2005, 44.

that “about one in 10 people who ever try cannabis will become dependent on it at some point in their lives.”\textsuperscript{841} This same review also points out that the likelihood of dependence increases with frequency of use, to about one in five of those who have used “cannabis at least several times” and to about one in two of those who are daily users, with an even larger risk for young people who are daily users. These concerns suggest a greater emphasis is required to address the apparent increase in cannabis related mental health problems through broadened services and resources for problematic cannabis users as part of a response of addressing cannabis use as a mainstream health issue.

While the use of hydroponic grown cannabis may be implicated in the increase in cannabis mental health related problems, research suggests that the problem is closely related to the growing number of regular/problematic as opposed to occasional/recreational cannabis users, as problematic cannabis largely arises from the consumption patterns of regular users. This means the challenge for policy change and law reform is to specifically address the issue of the rise in the prevalence of regular cannabis use because of the attendant mental health harms.

“Even though only a small proportion of marijuana users adopt patterns of use that pose health risks, the growing prevalence of regular marijuana users suggests that the actual number of problem users is on the rise.”\textsuperscript{842}

The issue of dependence is relevant to the impact of cannabis law reform on cannabis consumption patterns. One such group who might change their consumption patterns following decriminalisation, are those who use cannabis on a weekly basis or more often, as this group is responsible for the largest proportion of the aggregate value of cannabis consumption. If the price of cannabis is reduced or if cannabis becomes more available following reform, then regular users, according to the principles of consumer behaviour, would be expected to increase their consumption, thereby resulting in more attendant harmful consequences.

There appears to be limited evidence of a causal relationship between the incidence of cannabis related mental disorders and decriminalisation from comparisons between jurisdictions which have and have not decriminalised cannabis. It has been suggested that explanations of increased rates of prevalence need to account for number of factors rather than solely changes to the legal framework as determinants of changes in cannabis use prevalence.\textsuperscript{843} It has also been suggested the increased prevalence of cannabis use has not resulted in increased rates of schizophrenia, because if there was a causal relationship

“the treated incidence of schizophrenia and particularly early onset, has not obviously increased during the 1970s and 1980s when there have been substantial increases in cannabis use among young adults in Australia and North America. Although there are complications in interpreting such trends, a large reduction in treated incidence has been observed in a number of countries which have a high prevalence of cannabis use and in which the reduction is unlikely to be a diagnostic artefact.”\textsuperscript{844}

Data from 2004 NDSHS identified in West Australians a pattern of higher male than female rates and a peak in lifetime, annual and monthly prevalence of young adults in the 20 to 29 age group (see Appendix 1). This has a number of implications in relation to possible consequences of decriminalisation, especially given the high male rates, such as the development of treatment approaches which have effectively reduced cannabis consumption of this specific group. It

\textsuperscript{842} Pacula RL. ‘Marijuana use and policy: What we know and have yet to learn.’ NBER Reporter. Winter 2004/5, 23.
\textsuperscript{844} Hall W & Pacula RL. Cannabis use and dependence. Cambridge, Cambridge University Press, 2003, 100.
would also be important to monitor whether after reform male and female rates converge to the higher male rate or the male rate decreases to the comparatively lower female rate.

Monitoring of the age of initiation of cannabis use is important as it has been show that commencement of cannabis use at an earlier age increases the likelihood of continued use with the attendant risk of dependence. Long term monitoring of the consequences of decriminalisation would also need to determine whether age related cohort effects might persist over time, such as whether the present heavy cannabis consumption patterns of males in the 14 to 19 and 20 to 29 age groups, of whom up to nearly one quarter are smoking 6 cones or more per day, are maintained for a longer time after decriminalisation or whether these high levels decline with age as has been the pattern from earlier surveys undertaken prior to decriminalisation.

The importance of having adequate prevalence data means reforms need to place value on the collection of high quality and detailed data from regular surveys to monitor trends and patterns of use and to underpin interventions and responses to target regular users and other groups who are at risk from cannabis related harms.

The importance of having improved data needs to be an integral part of a suite of measures accompanying decriminalisation, for example by enhancing the collection of a broader spectrum of information through the NDSHS involving domains such as frequency and intensity of use, self-reported problematic use of cannabis, sources and types of cannabis and expenditure on cannabis. The approach undertaken in national prevalence surveys in NZ is a good example of an approach towards data collection through the NDSHS in relation to cannabis.

These limitations include that the NDSHS collects limited data on cannabis concerning expenditure, problematic use and other issues, that police data systems do not produce reliable data on the weight of cannabis or the number or size of plants seized, that police data systems are not able to provide reliable data on the identity of the drug the subject of an arrest and inadequate data is available on prices and potency levels of cannabis.
7 Lessons From Cannabis Law Reform

It is clear that the steady increase in the prevalence of cannabis use over the past three decades in many Western countries has put pressure on many governments, such as those in WA, the UK and NZ, to consider law reform, including decriminalisation, as a palatable alternative to the growing numbers of minor cannabis offenders dealt with through the courts. The apparent failure of increasingly harsh law enforcement measures involving the abrogation of important established principles such as a growing reliance on reverse onus in drug offences and confiscation of assets to curb cannabis use has been an impetus to a wider debate about the justification of growing expenditure on DLE. This has also served to focus attention on the incorporation of some of the principles of the three UN drug conventions into domestic drug policies.

The policy response of increasing reliance on more severe sanctions was a major factor for debate in WA, the UK and NZ and other Western countries throughout the 1980s and 1990s, which still continues, about the feasibility of alternatives government might utilise to reduce the use of cannabis and the attendant harms of conviction. The apparent failure of DLE agencies being unable to reduce the use cannabis or curb the cultivation of cannabis has served to highlight the substantial costs of sustaining a DLE infrastructure which largely resulted in a high proportion of drug charges involving minor cannabis offenders and raised questions of whether there would be greater benefits if some of these resources were redirected to areas of higher policing priority.

The decriminalisation of cannabis in early 2004 in WA and the UK, both of which are signatories to the three UN drug conventions, warrants a close consideration of the factors which enabled the achievement of these reforms. As the UN framework is in effect a proxy for American drug policy, this means that limited reforms, such as decriminalising minor cannabis offences, will be in conflict with the underlying philosophy of prohibition embodied in the ‘War on Drugs.’

The ostensible purpose of the framework of the three UN drug conventions is to develop an international regime to regulate access to drugs considered to have legitimate medical purposes and implement a system of complex inter-related controls at the domestic level by signatory countries, including punitive measures, to restrict the availability and use of illicit drugs. As the development of the framework of the UN drug conventions has been closely related to the preoccupations and goals of American domestic drug policy this has profound implications for any sovereign nation that considers or implements divergent perspectives and approaches to illicit drug policy, such as decriminalising minor cannabis offences.

However, doubts have grown as to the continued justification for the repression of drug use since the 1970s by the ‘War on Drugs,’ when over the same period there has been an unparalleled expansion in the use of mood and performance enhancing substances in the United States, seemingly in contradiction to this policy.

“Drug use in the United States has always been consonant with powerful themes in our culture. Consumerism supports drug use as simply one more purchase that can make out lives better. Self realisation, super achieving and simply being happy are all things that our culture celebrates and drugs are easily portrayed as efficient means to these ends. The desire to believe in the ability of drugs to cure life’s more intractable problems fits in nicely with our cultural tendency to embrace scientific or technological solutions to problems that

846 Of Second reading speech Cannabis Control Bill 2003 by Hon RC Kucera, Minister for Health. Legislative Assembly, Hansard, 20 March 2003, 5696: “It is evident that the threat of criminal prosecution has not deterred many young Western Australians in particular from using cannabis. As a consequence, large numbers of Western Australians who on the whole are otherwise law-abiding are exposed to the possibility of criminal prosecution for minor cannabis offences. A conviction for a drug-related offence - even a minor one - can have disproportionate social and economic impacts for the individual by, for example, affecting employment and travel opportunities.”
might otherwise require sacrifice, suffering or hard work. ... Situated within this larger social context, it is not surprising that the use of drugs to satisfy every possible need was not, and is not, seen as bad in and of itself: Drug use is seen as bad only if it causes a problem. Under an older, more traditional, view recreational drug use and other diversionary devices were simply immoral. Whether one could keep one’s drinking or drugging under control, the easily achieved but artificial highs and lows of drug use were seen as weakening a person’s character and subverting their ethical vision."

Should we become imbued with a sense of failure because of the limited nature of cannabis law reform in early 2004 in WA and the UK because neither government was willing to re-evaluate or challenge the underlying prohibition framework derived from the UN framework? However, even though the reforms were narrowly defined, in the UK limited to possession of small amounts of cannabis and the reclassification of cannabis to a Class C drug and in WA the three offences still remained in the MDA with circumscribed police discretion to issue CINs covering four expiable offences, decriminalisation was an opportunity for a greater weight to be given to preventive measures to reduce demand and for advice about cannabis related health issues.

In WA the government had the opportunity, supported by a recommendation of an expert group, to completely remove the offence in s. 5(1)(d)(i) of the MDA concerning possession of a smoking implement with detectable traces of cannabis. Repeal of this section of the MDA could have been justified on a number of grounds, particularly in terms of relieving police from the resource intensive nature of apprehending those charged with this offence and that instead defined as a health issue, as the CCA specifically contained measures concerning smoking implements, such as prohibition of sale to minors, the provision of educational materials and display of warning notices at the point of sale.

It is suggested these two examples of decriminalisation have, at least in the UK (except in Scotland which has not adopted the necessary revised police guidelines), resulted in some shifts in law enforcement priorities and have provided police with alternatives for dealing with minor cannabis offenders outside the criminal justice system. The following points highlight some of the differences in approaches towards reform in WA and the UK and support the proposition that the British approach is preferable because of its flexibility, the use of formal warnings which effectively excludes minor cannabis offenders from the criminal justice system by avoiding arrest or quasi arrest procedures and because it explicitly acknowledges the importance of police discretion.

The approach followed in the UK may be more enduring and sustainable for the reason that it involved the decriminalisation of possession, whereas in WA reform was of a more comprehensive nature, involving four expiable offences linked to three existing offences in the MDA and created a complex legislative framework intended to circumscribe the scope of police powers concerning minor cannabis offences. It is submitted that the effectiveness of the reforms in early 2004 which decriminalised minor cannabis offences in WA and the UK can be judged by the extent to which they have impacted on and shaped law enforcement practices in each respective jurisdiction.

A recent report of research by Scotland Yard, based on the London metropolitan area, appears to have pinpointed the need to consider the importance of systemic and organisational policing issues in shaping the implementation of the British reforms, as it found that in situations where a person had cannabis in their possession police were more likely to give a formal warning to a white person than to a black person.

“*The study shows that around 40% of those caught in possession of cannabis are classified as African/Caribbean, while an almost identical percentage are described as white.*

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Chapter 7: Lessons From Cannabis Law Reform

European. This is despite the proportion of white residents in the capital far exceeding the number of black residents.”

An important difference between the approach followed in WA and the UK and WA was that in the UK the emphasis was on changing police procedures by issuing new guidelines to inform day to day police practice, whereas in WA police practice appears to have been constricted by the complexity of the enabling legislation and of its inter relationship with the MDA and other key legislation. There was an emphasis on UK police being able to exercise their discretion as to whether an individual could receive a formal warning, whereas in WA the approach reflected a high level of legislative oversight and control through specification of precise amounts of cannabis and tightly defined circumstances of permissible cultivation (e.g., number of plants, location, circumstances and method of cultivation).

The UK scheme has recently survived formal review through two public inquiries - an expert group (the Advisory Council on the Misuse of Drugs) and a parliamentary committee (the House of Commons Science and Technology Committee), whereas the CIN scheme will not be reviewed until mid 2007 in accordance with a provision in the enabling legislation. Another difference is that in the UK the overall responsibility for establishing and managing the scheme of formal warning was understood as a police service responsibility, whereas in WA the CIN scheme was explicitly set up as a coordinated approach involving both law enforcement and health agencies.

These substantial differences in approach are difficult to explain in spite of similarities in legal values and the drug policy framework extant in WA and the UK. However, in WA the Royal Commission into police corruption and misconduct, which was set up in December 2001 and finally reported to the Government in January 2004, would seem to have been an important, if unacknowledged, influence on government wanting to constrain police discretion.

It is instructive to also identify how these reforms, though limited, were achieved. One of the important pre-conditions for reform, illustrated by the failure of attempted reform of cannabis laws in NZ, is that government has a clear commitment to undertake reform and that it has the legislative competence to instigate the legislative reform to decriminalise minor cannabis offences.

Another feature of the decriminalisation of cannabis in both the UK and WA was that reform was placed within a context of a larger law and order agenda. This meant government emphasised that a major goal of decriminalisation was to reduce the amount of DLE time and resources police devoted to apprehending minor cannabis offenders so that they could instead focus on serious offences such as cultivation, trafficking and supply of cannabis (and other illicit drugs). An example of the significance of this goal can be seen in the Second Reading Speech of the Minister for Health when the Cannabis Control Bill 2003 was introduced into the WA Parliament.

“Another demonstrable and undesirable consequence of a conviction for a minor cannabis offence is the increased likelihood of the offender having subsequent contact with the law. Moreover, the prosecution of minor cannabis offences is costly in terms of both police and court time. Law enforcement and the criminal justice system should target and heavily penalise those connected or involved in the business of large-scale cannabis supply, those who also supply other prohibited drugs, and those engaging in violence or standover tactics.”

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A similar understanding of one of the primary goals of decriminalisation is contained in the ACPO’s cannabis enforcement guidance which states the purpose of reform meant that by police not arresting those in possession of small amount of cannabis there would be a ‘freeing up’ policing time to concentrate activity against Class A drugs.851

It can be concluded that in effect in both WA and the UK the decriminalisation of minor cannabis offences was achieved as the ‘price’ for increasing the powers of police to detect and apprehend those committing serious offences and for such offenders to be severely punished. Accordingly governments in both WA and the UK can claim the reforms did not undermine prohibition as they involved a shift in the emphasis and focus of DLE activities. However, by emphasising that a major goal of reform was to realign and shift DLE priorities, an area over which government may have only limited capacity to control, this creates an expectation such outcomes will occur by reallocating resources towards and improving DLE strategies involving serious offenders.

For both the WA and British Governments to retain public confidence in and ongoing support for decriminalisation police will need to demonstrate they have shifted away from focussing on ‘consumer type offences (in the language of the ABCI/ACC classification of offences) towards ‘provider’ type offences further up the supply/distribution chain end of the continuum. However, whilst the governments in both WA and the UK emphasised that a justification of cannabis decriminalisation was to free up police resources, it is not as clear whether this goal will be readily achieved in practice.

Another impetus for undertaking cannabis law reform is that it also makes economic sense, as decriminalisation is potentially a more cost effective method of managing the issue of cannabis use compared to the criminal justice system. This suggests that debate about drug policy should place a greater weight on the importance of cost benefit outcomes and that better returns can be gained from police focusing on serious rather than minor cannabis offenders. The issue of where DLE agencies might best use their resources for the greatest return has been recognised in recent work undertaken as part of the Drug Policy Modelling Project. “Is it a better investment to concentrate on the high level of the market (importers and wholesalers) or on the low level of the market (street retailers and users)?”852

It is argued the rationale for the UK reform was more easily understood by the community for a number of reasons, including that it was narrowly confined to the offence of possession, that it had been preceded by a well publicised trial of cautioning in a major London borough and that cannabis was reclassified from Class B to Class C drug under the Misuse of Drugs Act 1971 because of a revised understanding of its harm.

7.1 The risks of decriminalisation

As there are both short and long term consequences of cannabis law reform, governments need to implement measures to assess and mitigate the risks from decriminalisation. These risks include shifts towards patterns of more harmful patterns and frequencies of use and methods of consumption, increased availability of cannabis, attenuated perceptions of seriousness of minor cannabis offences, risks of cannabis posed for specific groups of the population and increased acceptability of cannabis use.

It is contended that while one of the laudable goals of decriminalisation of cannabis is to avoid harm if someone is charged with a minor cannabis offence, schemes such as the CIN scheme and formal warnings in the UK appear to have failed to adequately acknowledge that conviction related harm is implicitly ranked above other types of harm.

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“The first principle of a harm reduction approach to drug law enforcement should be the insistence of an over riding aim of reduction of drug related harm rather than the decrease of drug consumption per se.”\(^{853}\)

It is suggested that whilst decriminalisation may in effect involve a reduction of one type of harm (‘conviction harm’) for some groups who could have been charged if reform had not occurred, there are other groups in the community who may be exposed to increased cannabis use harm (‘prevalence harm’). This possibility was appreciated in a 1990 Australian paper which examined trends in charges and sentencing outcomes of different types of drug offences in different Western Australian courts before and after the introduction of the Misuse of Drugs Act 1981, which came into operation in September 1982. The paper notes that the CEN scheme, which had commenced at the end of April 1987 received evidence at an early stage that the scheme appeared to have not realised the expected savings in court costs. Furthermore it was noted that the

“question of whether decriminalisation will lead to increased use should also be addressed” ...

(by the analysis of a variety of indicators of cannabis use, so that) “it should be possible to answer the question as to whether the reduced savings achieved by freeing the judicial system of such cases are likely to be outweighed by the costs of increased use of cannabis.”\(^{854}\)

Indeed as it is naïve to believe there can only be a net reduction in harm from decriminalisation in WA and the UK, it is plausible to suggest that increased harm will occur for some groups in society if cannabis is used by more people, that more people use more frequently and that cannabis is used more intensively. This possibility should not be regarded as fanciful, as shown in an observation about the South Australian CEN scheme.

“The government at that time had pushed strongly for a new approach to cannabis possession, partly on the strength of the experience of US states which had adopted a less punitive approach. The main arguments for an expiation system were the potential cost savings and the reduction of negative social impacts upon convicted minor cannabis offenders. Implicit in this second view was the belief that the potential harms of using cannabis were outweighed by the harms from criminal conviction.”\(^{855}\)

The proposition that increased harms might occur for some groups as a consequence of decriminalisation is supported by the following argument. If as a result of the WA and UK reforms cannabis became more accessible and widely used than before reform, for reasons such there had been a reduction in effective price (for example due to lower transaction costs of suppliers or increased supply), increased supply (for example because of a greater number of small scale cultivators), changes in perceptions by community about acceptability (for example that cannabis was now more acceptable), that cannabis use has become normalised or that cannabis was regarded as less harmful, then it follows increased harms from cannabis are likely to occur.

The breadth of the meaning that might be attached to the harms from decriminalisation is apparent from a 2001 review of cannabis law reforms, with particular interest in the consequences that have occurred in the Netherlands since 1976.\(^{856}\) This 2001 review concluded there were four possible harms which could justify the prohibition of cannabis, being that cannabis may be a gateway to other drugs (some of which were very harmful), cannabis may

\(^{853}\) International Harm Reduction Association. Is drug law enforcement and harm reduction irreconcilable?


cause health problems amongst all users and may have a particular adverse impact on the development of young people, there may be adverse behavioural consequences from those who are intoxicated with cannabis and that those who are cannabis dependent may have considerable difficulty in stopping their use.

Another concern that overlays consideration of the impact of cannabis law reform involves the concept of ‘normalisation,’ which it is believed may determine the extent to which young people, in particular, perceive whether the consequences of cannabis use are harmful or not. The argument about the process of normalising drug use is that the phenomenon involves a

“cultural incorporation of drugs, drug use and drug users into (the) everyday lives (of young people) ... the acceptance of a wider range of substances as alternative choices for intoxication ... including alcohol, tobacco and cannabis quite routinely, and other drugs occasionally”\(^{857}\).

The normalisation of cannabis use has a number of implications such as that use is regarded as a standard and acceptable aspect of everyday social occasions and therefore it will be difficult to deliver health campaign to reduce sanctioned high risk behaviours considered by users to be non-problematic or that law reforms will be misinterpreted as condoning drug use.\(^{858}\)

The expanded use of cautioning of minor cannabis offenders which has occurred since the late 1990s in NSW, VIC, QLD and TAS would appear to preclude decriminalising minor cannabis offences as has occurred in the other four Australian jurisdictions. The perceived advantage of retaining cautioning, as is the case in NZ, is that the Government can emphasise that the instrumental role of the criminal law is to signify that the use of cannabis is unacceptable, that it is a crime and that it should be punished. However, it is not clear whether this aspect was such an important feature when cautioning had been used in the UK, where there seemed to be a greater emphasis on saving police resources and building improved rapport between police and young people.

### 7.2 Cannabis policy and prevalence

Over the past three decades the policy response in most Western countries has largely relied on more severe criminal sanctions against minor cannabis offenders in the belief this will deter cannabis use. In addition to the threat of criminal sanctions against minor cannabis offenders, the penalties for those who cultivate and sell cannabis have been substantially increased. However, it has been observed in spite of significant expansion in DLE activity that

“prices have declined despite very substantial increases in enforcement stringency (and in some cases to provide arguments for the legalisation debate), an important subset of this literature is models suggesting that enforcement can stimulate rather than suppress drug supply and/or drug-related crime and violence.”\(^{859}\)

The introduction in the 2002 report of House of Commons Home Affairs Committee contains a quotation from a submission by Mike Trace, the Chair of European Monitoring Centre on Drugs and Drug Addiction (EMCDDA) which had undertaken a study in relation to the proposition of whether there is a relationship between the severity and punitiveness of a country’s drug policies and its rates of prevalence of cannabis use.

“We could find no link across 15 member states between the robustness of their policies and the level of prevalence. There are some countries with high prevalence, harsh policies, some

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countries with low prevalence, harsh policies, other countries with liberal policies and low prevalence. There is no link, there is no conceivable link.” 860

American research has also considered the issue of whether there is a relationship between prevalence of cannabis use and the degree of punitiveness. For instance, successive American Presidents have expanded the ‘War on Drugs’ even though there has not been a rigorous examination of whether the policy was successful or that it produced lasting reductions in drug use in the US. It has been found that

“(t)he percentage of the population reporting past month use of some illicit drug declined by half between 1985 and 1992. Since then, however, drug use by that measure is up by about a third. Furthermore, current use of marijuana by teenagers increased substantially in the mid to late 1990s; in 2003, 21 percent of 12th graders reported having used marijuana or hashish within the previous month.” 861

Studies by the US based National Bureau of Economic Research (NBER) about outcomes of cannabis law reforms confirm the need to measure both the costs and benefits of cannabis law reform to determine the overall impact of harms such as prevalence harm. The NBER research involving a national representative sample of tenth grade students demonstrates that actual statutory penalties (as measured by higher fines and longer terms of imprisonment) were consistently associated with reduced prevalence. This finding would appear to have implications for outcomes of the decriminalisation effected through the CIN scheme and the reclassification of cannabis in the UK.

“If lower penalties indeed are associated with increased marijuana prevalence, then the next question is whether increases in use are associated with negative consequences and whether the economic value of those consequences is less than or exceeds the cost of maintaining the current policy.” 862

Other research by the NBER used time series prevalence data from Monitoring the Future (MTF) national surveys of high school seniors to examine the price sensitivity of young people to the price of cannabis. It was concluded that changes in real adjusted prices of cannabis contributed to trends in cannabis use by young people between 1982 and 1989 depending on the legal status of cannabis. 863 The 2000 NEBR paper found that “measures of the median fines for possession of marijuana (which) showed that individuals living in decriminalised states were significantly more likely to report use of marijuana in the past year.” 864 Other research considered by the 2000 NBER review

“found that marijuana decriminalisation had a positive and significant effect on marijuana prevalence, supporting the conclusion by Model that individuals in the general population are responsive to changes in the legal treatment of illicit drugs.” 865


861 Pamula RL. ‘Marijuana use and policy: What we know and have yet to learn.’ NBER Reporter. Winter 2004/5, 23.


A 2004 Australian review of the effects of price and policy on cannabis use prevalence considered the effect of the legal status of cannabis on use by examining data from two sequences of MTF surveys of high school seniors in the US. The first sequence involved an analysis of high school seniors surveyed between 1982 and 1989 and concluded that “decriminalisation is associated with a 5 percentage point increase in the probability of past year marijuana use, although no significant effect is found for past month use or conditional demand.” The second sequence involved a more recent analysis of data from the 1992, 1993 and 1994 MTF surveys of eighth, tenth and twelfth grade students and concluded that “decriminalisation is associated with a 1 percentage point in the probability of using marijuana in the past 30 days. Although jail terms and fines are not significantly related to participation in this sample, the authors do find that lower fines and decriminalisation are significantly associated with an increase in the frequency of use amongst marijuana users.”

There has been a recognition that price is a determinant of both use and initiation of cannabis use, particularly with respect to young people, contrary to the established view that price and other supply factors are not significant influences on consumption or initiation. As discussed earlier, the concept of price is not merely the dollar value for a particular quantity of a drug, but is the sum of a number of factors that can be represented by the concept of ‘effective price.’ It has been concluded that participation in cannabis use involving “youth (aged less than 25) is found to be more price sensitive than participation by the older age group (aged at least 25 years). ... there is evidence that living in a state that has decriminalised the consumption of marijuana is associated with a higher probability of use among males aged at least 25 year old. ... since participation in marijuana use by youth is more price sensitive than participation by older users, increasing the price of marijuana can be expected to have a larger impact on the prevalence of consumption in the youth population.”

This means that as ‘price’ has differential influence on use of cannabis which is mediated by a number of inter-related factors such as gender, age, educational level, marital status and employment status, it has importance as a policy goal. The other determinant of cannabis use examined by NBER research concerns perceived harmfulness.

“(T)he two most important predictive factors for explaining variation in both contemporaneous use rates and trends over time were attitudes about marijuana (perceived harmfulness) and price. The finding that marijuana use even among adolescents is sensitive to changes in the monetary price ... represents a major discovery. ... Estimates of the sensitivity of demand to changes in price (that is, the elasticity of demand) have been shown to be similar to those for smoking.”

870 Pacula RL. ‘Marijuana use and policy: What we know and have yet to learn.’ NBER Reporter. Winter 2004/5, 22.
However, it should be acknowledged that it may be difficult to determine whether a causal relationship exists between the laws applicable in a jurisdiction and perceptions of harmfulness, as the manner in which cannabis laws are enforced (i.e., de facto status) ultimately determines the use and availability of cannabis rather than the legal (i.e., de jure) status of cannabis under the law.

“Moreover, the law may say one thing but law enforcement activities may tell another story. Few investigations of the relationship between cannabis consumption and cannabis possession laws have included measures of enforcement, such as the probability of being arrested for use. The ‘bark’ of a country’s cannabis laws may not match the ‘bite’ of the actual enforcement of these laws in the streets.”

The need to determine how a law is implemented is illustrated by examining the 1970s reforms in the US which commenced with the decriminalisation of cannabis possession by Oregon in 1973 and had concluded by 1978, when a further 10 States had decriminalised possession. Research published in 1989 that was based on data from annual nationwide household prevalence surveys between 1972 and 1977 did not indicate apparent changes in prevalence as a consequence of these reforms.

The nature of the decriminalisation of cannabis in these 11 US States has been widely cited as support for the proposition that decriminalisation of minor cannabis offences has not resulted in increased prevalence. It should be reiterated that in these US States decriminalisation only involved possession of cannabis, in contrast to some other jurisdictions outside the US where decriminalisation has encompassed a broader spectrum of offences and types of cannabis.

However it has been pointed out that it is not possible to group together the reforms in these 11 US States and treat them as equivalent examples of decriminalisation, as there are

“subtle but important differences in how the legal penalties for marijuana possession offences are represented in various analyses, making the interpretation of specific penalty variables different across studies. ... a careful legal review of the eleven original US state decriminalisation statutes adopted in the mid 1970s that the lowest common denominator across state statutes was a reduction in jail time for first time marijuana possession offenders.”


874 The meaning of ‘decriminalisation’ in the US reforms of the 1970s was not to remove legal sanctions but to reduce penalties and so that imprisonment could not be imposed as a punishment for the possession of cannabis.

875 Pacula RL. “Marijuana use and policy: What we know and have yet to learn.” NBER Reporter: Research summary. Winter 2005.
A review of the consequences of decriminalisation of minor cannabis offences in the Netherlands and the 11 American States concluded that there was not a ‘discernible increase in use’ after reform, as

‘probably because merely removing the penalties for use, without permitting commercial promotion of the drug, does not make it significantly more available than under prohibition. In that sense decriminalisation offers only modest risks. But it also offers fairly modest gains, leaving black markets intact and failing to address the crime and health problems aggravated by prohibition.’

However, this assertion has been challenged, as it has been noted that a considerable amount of information needs to be considered in order to review all the consequences of decriminalisation. For example, care should be exercised in comparing prevalence data for one country, such as the Netherlands, with other countries which have not had reforms, as typically prevalence data is based on a comparison at the level of an entire nation or between largest cities within specific countries and that prevalence surveys in different countries rarely involve comparable age groups across surveys.

A 2001 paper in the British Journal of Psychiatry contains a useful discussion of the reforms that have occurred in the Netherlands over the past 30 years, since the formal introduction of the coffee shop system in 1976. The researchers focussed on three broad key areas to evaluate the impact of the Dutch reforms – comparative study of the prevalence rates of the Netherlands vis a vis other Western nations, measurement of changes in cannabis prevalence before and after the reforms and whether there were changes in the statistical relationships between cannabis and other drugs as a consequence of the reforms, the so called gateway association between cannabis and ‘hard’ drugs.

In relation to the question of whether cannabis prevalence increased in the Netherlands as a result of the reforms it was found that over the period 1984 to 1996 that the lifetime rate “increased consistently and sharply,” from 15% in 1984 to 44% in 1996 for the 18 to 20 year age group and that past month prevalence increased from 8.5% in 1984 to 18.5% in 1996 for this age group. A comparison of trends over the same period in the US and Norway, both of which strictly prohibit cannabis, was equivocal as the rates in these two countries increased differently over different time periods.

However, over the period 1992 to 1996 in the Netherlands, the US, Norway, Canada and the UK there were similar large increases in cannabis use. Therefore, it was concluded that while “the increases in Dutch prevalence from 1984 to 1992 provide the strongest evidence that the Dutch regime might have increased cannabis use among the young,” as there were comparable increases in both the Netherlands and in jurisdictions which had not decriminalised cannabis, the increased use by Dutch young people between 1992 and 1996 is not easily explained by the existence of the coffee shop policy.

One aspect of this 2001 paper which has important implications for evaluating the outcomes of the reforms in WA and the UK is the lag between when reform came into effect and when detectable shifts in prevalence occurred. Specifically it was found in the Netherlands that it took about eight years between the 1976 reforms and when shifts in prevalence first became apparent.

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876 MacCoun R & Reuter P. ‘Marijuana, heroin and cocaine. The war on drugs may be a disaster, but do we really want a legalised peace?’ (2002) 13(10) American Prospect, 27.
879 Id, 124.
880 Id, 126.
in 1984. This would suggest that consequences such as shifts in prevalence, may not be apparent or measurable until after the elapse of a number of years following decriminalisation, possibly even up to a decade later.\textsuperscript{882}

Italy is offered as another example of the difficulty of being able to readily identify the consequences of reform. In 1975 there was a major law reform that applied to a wide range of drugs including cannabis, which decriminalised possession of drugs for personal use, but also hardened the penalties for drug trafficking. Following the reforms there was an increase in illicit drug use which resulted in public pressure for the reintroduction of harsher penalties. The reimposition of more severe penalties occurred after a new law was passed in 1990 which “provided for the imposition of penalties for drug use in the form of civil measures such as a caution or withdrawal of the users’ driving license or passport.”\textsuperscript{883}

Research published in 2004 in the Economic Record compared cannabis use and consumption patterns in the three Australian states that had decriminalised cannabis (at the time of the study SA, ACT and the NT) with data from the non-decriminalised Australian jurisdictions. It was found that there were significantly more non-users in the non-decriminalised states - a difference which largely involved those who had high levels of cannabis consumption. It was concluded that “if an individual lives in a state in which marijuana has been criminalised, they are more likely to be users and, specifically, more likely to be heavy users.”\textsuperscript{884} This research would appear to throw some doubt on earlier Australian research which suggested that decriminalisation in Australia had not resulted in increased prevalence.\textsuperscript{885}

A recognition there may be a need to reconsider the earlier Australian research was flagged in a submission in 2001 to an inquiry conducted by the New Zealand House of Representatives Health Select Committee.\textsuperscript{886}

“Research from Australia and the United States has been interpreted as suggesting that this option does not in itself lead to higher rates of use. Since 1995, use has increased Australia (to a greater extent than has occurred in New Zealand), but until recently, analyses have shown no discernible pattern between states that have decriminalised and those that use other systems. ... More recent analyses however, using surveys from the 1980s and early

\textsuperscript{882} The importance government may try to attach to shifts in prevalence can be seen in a statement in a report on the first 12 months of operation of the CIN scheme. This sought to draw a link between released national data from the 2004 NDSHS conducted in the second half of 2004 and the CIN scheme by asserting a negative: ‘None of the available evidence in terms of prevalence of cannabis use, treatment, police seizures, juveniles offences relating to cannabis or calls to the Alcohol and Drug Information Services (ADIS) suggests an increase in the availability or use of cannabis compared to the period before the introduction of the Cannabis Control Act 2003.” Drug & Alcoholic Office & WA Police Service. Cannabis infringement notice scheme: Status report, April 2004 – March 2005. Perth, Western Australia, Drug & Alcohol Office, 2005.


\textsuperscript{886} New Zealand, Parliament, Health Committee. Inquiry into the public health strategies related to cannabis use and the most appropriate legal status. Wellington, House of Representatives, 2003.
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1990s, suggest decriminalisation may lead to increased use, indicated by higher levels of use among people (including young people) living in decriminalised states than those from prohibition states."\(^{887}\)

The most recent available Australian adult drug use prevalence data is from the 2004 NDSHS, a number of analyses of which has been published in reports by the Australian Institute of Health and Welfare (AIHW) and by governments in a number of Australian jurisdictions.\(^{888}\) It should be noted as the 2004 NDSHS was conducted between June and November 2004, this survey would appear to be of limited value in determining the impact of the CIN scheme on cannabis use prevalence, as the scheme only commenced about three months earlier, in late March 2004. See an examination of data from the 1995, 1998, 2001 and 2004 NDSHS in Appendix 1.

It is argued as it would implausible for data collected so soon after decriminalisation to reliably measure any impacts from reform, that data would be required from the 2007 NDSHS, at the earliest, to identify the possible impact of the reforms on patterns of use in the State, compared with baseline data from the earlier NDSHS surveys of 1995, 1998, 2001 and 2004. It would also be necessary to identify regional differences in prevalence, which could pose methodological concerns due to small sample sizes, as there are variations between different regional areas of WA in the issuing of CINs.\(^{889}\)

It is submitted that given the experience in a number of other jurisdictions, such as the Netherlands, of where changes in cannabis use prevalence were not evident for some years after decriminalisation, considerable caution should be exercised in using prevalence data in the short term to identify the impact of decriminalisation.

7.3 Social and commercial cultivation and supply

A number of propositions have been offered as to how government might conceptualise the purpose of cannabis law reform, particularly to differentiate between scale of cannabis cultivation and selling. One of these is that government should be prepared to strongly encourage DLE agencies to distinguish between social and commercial levels of cannabis cultivation and supply so that police can “drive a wedge between a significant proportion of users and the criminally sophisticated suppliers who might otherwise sell them cannabis – and other drugs.”\(^{890}\)

Another argument is that if reform permits cultivation for self supply this would undermine the cannabis market by facilitating the production of home grown, low cost cannabis that would “destabilise the criminalised distribution system.”\(^{891}\) It is also argued that as the cannabis market is potentially a source of other drugs, reform will create a separation between cannabis and other drug markets and thereby reduce the possibility of gateway effects, such as more riskier forms of drug taking and exposure to other drugs.

\(^{887}\) Alcohol and Public Health Research Unit. *A submission to the Health Select Committee inquiry into the public health effects and legal status of cannabis*. Auckland, Alcohol and Public Health Research Unit, Faculty of Medical and Health Sciences, 2001, 43.


\(^{891}\) Id, x.
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The proposition that DLE activities should differentiate between social and commercial cultivators was outlined in an October 2002 media release by the Hon Duncan Kerr and Hon Kerrie Tucker MLA, two members of the Australian Parliamentary Group for Drug Law Reform. The media release which referred to changes to CEN scheme to remove the hydroponic cultivation of cannabis, cites a submission by Dr Adam Sutton to the 2000 ACT Legislative Assembly inquiry into cannabis use.892

“An expiation system such as is currently in place in SA and the ACT could be used to undermine organised crime’s monopoly on cannabis production and distribution and to ensure that cannabis is kept separate from markets for other illicit drugs. ... The key would be for law enforcement authorities to accept that some small-scale cultivations (especially if hydroponic) were for commercial rather than purely ‘own’ use purposes. Rather than attempting to eliminate every commercial production, police should concentrate on eliminating producers who they believed to have organised crime connections. Small scale cultivators and distributors could be tolerated as long as they had no organised crime connections, were not marketing drugs other than cannabis, were non-violent in their business methods and so on.”893

When the 2004 cannabis law reforms were debated in WA and the UK both governments emphasised that decriminalisation did not mean either government was ‘going soft’ on cannabis users. Indeed, both reiterated reform was a redirection of police effort and resources away from minor cannabis offenders towards traffickers and other serious offenders engaged in commercial level activities for profit and personal gain. This distinction between minor and serious offenders is illustrated in comments by the Home Secretary in January 2006 when he tabled the UK Government’s acceptance of the ACMD recommendation to not declassify cannabis.

“Growing and selling cannabis is not harmless or idealistic. It is a multi million pound business, often organised by sophisticated and violent criminals. ... That is why I have discussed with the ACPO the need to focus police effort and to take strong action to reduce the supply of cannabis. The police and I agree that in recent years the production and major dealing of cannabis have not always been targeted sufficiently vigorously... The ACPO will draw up a consolidated campaign of action to attack the production and trafficking of cannabis which provides obscene profits out of the misery of users.”894

It could be concluded that the creation of a dichotomy between minor and serious offenders usefully serves government as it maintains a perception of a high priority on law and order issues, of which drug dealing and associated criminal activities are a particular manifestation. This phenomenon has been observed in the UK where it has been stated that “the government’s tough stance towards cannabis dealing could be seen as the political price to be paid for the policy of on the spot warnings for possession.”895

In the context of the WA reforms the government sought to emphasise that it was not ‘going soft’ on drugs, as part of the Cannabis Control Act 2003 package included other tangible reforms, such as reducing the threshold for cultivation with intent from 25 plants to 10 plants, creating new offences for selling hydroponic equipment and expanding police powers to limit the involvement of organised criminal groups in the hydroponic industry.

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The common parlance use of terms such as ‘pushers’ or ‘dealers’ reinforces the idea that serious offenders are considered evil and a cause of great harm, justifying the imposition of more severe penalties and more intrusive measures. If this dichotomy between minor and serious ‘for profit’ offenders was tenable then it would appear to be a relatively straightforward proposition for police to target serious offenders (assuming they have sufficient resources) in the cannabis market as they could largely ignore minor offenders. It is suggested that although the creation of this dichotomy is politically attractive, it creates considerable difficulties for police because of the existence of other policies, such as a zero tolerance to anti-social behaviour, which can include minor cannabis offenders.

“A worrying conflict exists between the stated policies on policing cannabis in many societies (going after the high level growers and traffickers rather than users and low level users/dealers), on the one hand, and emerging patterns of policing, especially ‘zero tolerance’ policing, on the other. At the heart of ‘zero tolerance’ policing is the removal of police officers’ discretion as to how to proceed when they become aware of an offence. ... localities can easily find themselves in a position where high level policy is to leave the minor cannabis offences alone, coupled with local police decision making to apply ‘zero tolerance’ tactics which target minor offences (including cannabis use and possession) and public disorder.”

In reality this perceived sharp distinction rarely exists as it is not possible to make a simplistic distinction between minor offenders/innocent drug users and ‘dealers’ as people commonly acquire cannabis for both their own use and to supply others through reciprocal relationships, by either selling or swapping or giving it to friends, family members or associates. All of this would clearly be supply, which in some instances could involve reward or in kind but would appear to be difficult to justify as serious offending. A person may also on occasions sell to others to partly underwrite or largely subsidise their own consumption of cannabis.

For police to develop effective strategies and maximise their allocation of resources they require a definition of what constitutes minor and serious offenders, as otherwise most minor offenders would at some point also be suppliers. As the declared purpose of decriminalisation was for police in WA and the UK to focus on serious offending this requires unambiguous criteria for police to identify an individual who moves from being a minor offender, to someone who cultivates cannabis for self supply (eg two plants), to someone who sells or supplies cannabis to a friend or associate, to someone who is a serious offender engaged in commercially oriented selling and distribution.

It is suggested if police find widespread evidence the cannabis market has adapted to the upper limits of the possession of an amount of cannabis considered as reasonable for ‘personal consumption’ and this is used as a shield for dealing then police will lose confidence in the law reforms. As it is likely it will be difficult for police to discriminate between minor and serious cannabis offenders this could result in increased DLE activities targeting minor offenders as some of these individuals will be quasi minor offenders who have adapted to the ‘personal consumption’ limits of not more than 30 grams in WA or in the UK.

This is a particular risk in the UK, as whether a formal warning may be issued will depend on the belief of the police officer that the amount possessed is for personal use. For instance, it was reported in December 2005 that the Brixton Metropolitan Police had decided “to reverse a decision not to prosecute people for possession of small amounts of cannabis, after it found that dealers were carrying small amounts of the drug to avoid being charged” and instead would...
launch a three month long campaign called ‘No deal’. This was described as being a ‘positive arrest policy’ to target those who possessed all quantities of drugs.

The CIN scheme attempts to preclude this problem by setting specific amounts of cannabis and numbers of plants which qualify as expiable offences. The significance of this dichotomy is highlighted in the Minister for Health’s second reading speech on 20 March 2003 when he noted there was to be a shift in the “focus in the activities of police on the detection and prosecution of those engaged in the commercial cultivation and supply of cannabis”.

Police in WA are exhorted to target those who whilst they may appear to be within the limits of the CIN scheme are not because they are ‘flouting’ the intention of the scheme. This term appears in the report of the Working Party on Drug Law Reform and in publicity associated with the introduction of the CIN scheme. The use of the term ‘flout’ presumably refers to offending where there was a clear element of wilful and deliberate contempt for the law, also appears in a number of articles about the CIN scheme.

“Police will lay criminal charges against those individuals who attempt to flout the intention of the scheme, for example by engaging in cannabis supply, even if they are only in possession of amounts otherwise eligible for an infringement notice.”

However, whilst this statement attempts to convey the impression that the laying of charges is mandated by the use of the word ‘will’, it is submitted this form of conduct is subject to police discretion. Indeed, there appears to be a divergence of opinion as to when someone has stepped across the boundary so as to speak (ie flouting) according to interviews conducted with a number of senior police for a sub-study part of the larger NDLERF project, as

“regardless of whether or not they were suspected of engaging in commercial production or distribution of cannabis, repeat offenders could be seen as flouting the law by their continued use of cannabis and therefore should be eligible to be charged rather than issued with a notice.”

The pamphlet, There are new laws on cannabis in Western Australia (reproduced in Appendix 10), is one of a number of educational materials and advertisements released over a two week intensive media campaign when the CIN scheme commenced, contains the following statement.

“If police have relevant evidence, a person found in possession of a small amount of cannabis could still be charged with the more serious offence of possession of cannabis with intent to sell or supply.”

This statement lends credence to that the proposition that the boundary is not nearly as well defined as would appear to be the case and contrary to initial impression, the specified quantities and number of plants should be regarded as qualified because of the overriding

898 “An important aspect of the scheme is that the police should retain an overriding power to prosecute instead of issuing a cannabis infringement notice in situations where the police believe the individual has flouted the intent of the scheme.” Working Party on Drug Law Reform. Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters. Perth, Western Australia, Drug & Alcohol Office, 2002. Chairman’s foreword.
discretion which requires police to satisfy themselves as to intention before they can issue a CIN.

Another difficulty involves the issue of police being able to distinguish between different levels of cultivation, what has been referred to in the UK as differentiating between personal and social cultivation. This issue could arise in situations where an individual would not be issued with a CIN if they possessed a quantity of cannabis leaf material which had just been removed from a plant which exceeded more than 30 grams, yet if the cannabis has not yet been removed from the growing plant the person could be issued with a CIN.

In spite of a degree of optimism that the CIN scheme might be an appropriate vehicle for police to shape the cannabis market, if they were prepared to tolerate cultivation and social supply of cannabis between peers, it has been accepted the CIN scheme is unlikely to achieve such a lofty aim.

"(T)he process of getting plants to maturity and a ‘quality product’ appears to be far more difficult than many might think. This has implications for the possible impact of the CIN scheme on cannabis cultivators. The exclusion of hydroponic cultivation from the scheme, and the difficulty in growing outdoor cannabis plants to maturity, may be factors which, together, limit the extent to which the scheme leads to more regular cannabis users cultivating cannabis for their own use.”

An area of difficulty for police with respect to the WA reform concerns the importance placed upon an offender’s intention as to whether or not they were involved in conduct that was inside or outside the CIN scheme. This problem sets up a dichotomy whereby police could become so focussed on determining whether conduct transgresses the boundary between minor and serious offending, that they may overlook the underlying purpose of reform, to reduce DLE activity concerned with minor cannabis offences.

This could mean police could fail to shape the cannabis market by using other principles, such as harm minimisation, because they are required to determine whether or not the person is a serious offender. As Professor Adam Sutton has noted in a 2000 study of the CEN scheme the adoption of the dichotomy between ‘innocent users’ and ‘harmful dealers’ means that

“cultivating and distributing commercial quantities of cannabis for South Australian markets becomes even more the prerogative of specialist criminal networks. ... This problem could have been addressed, of course, if rather than perceiving every instance of the cultivation of cannabis for non-personal use as an activity which must be suppressed, relevant authorities had begun to see this also as an opportunity to undermine criminal networks’ capacity to dominate cannabis markets.”

There would appear to be formidable political impediments for government to implement measures which countenance non-commercial activities - evidenced by decriminalisation reforms in the 1970s in the US which were confined to possession offences, that a formal warning in the UK is only applicable to possession of cannabis and that in the four Australian jurisdictions with expiation schemes only a limited number of plants can be cultivated.

It is contended that reforms like those in WA are unlikely to undermine the cannabis market and therefore the cannabis market will continue to prosper in spite of the police gaining


additional powers. This dilemma means that there may be some merit in cultivation for self-supply, if this could be defined. Whilst it would be politically difficult for government to formally regulate the cannabis market by permitting non-commercial cultivation and supply, there is some precedent as informal regulation of other illegal activities already occurs through police already tolerating other types of criminal activities, such as prostitution.\textsuperscript{905}

It is not possible at this time to determine the extent to which police have shifted their focus to targeting those engaged in commercial cultivation and supply of cannabis and whether any strategies implemented will produce anything more than short term gains, given the market is very resilient and adaptive to changes in DLE pressure. Indeed, it has been suggested that police intervention may have the unintended consequence of favouring those who are prepared and willing to engage in higher levels of criminal behaviour.

“While a tough stance towards cannabis dealing could be seen as the political price for the policy of on-the-spot warnings for possession, it may also have unwanted consequences. Cracking down on dealers, of whom an increasing number will be commercial and semi-commercial cultivators, will drive out the risk adverse, leaving the distribution system to the more criminal and risk tolerant operators.”\textsuperscript{906}

It is a moot point as to whether decriminalisation might undermine the cannabis market if the reform also permitted cultivation for self supply or permitted non-commercial supply between acquaintances. The possibility of police tolerating self supply was an issue that could have been incorporated into the revised administrative instructions issued to the police when the UK reforms were introduced in early 2004. There was consideration of cultivation for self supply when a cautioning and infringement scheme was recommended to the Victorian Parliament in April 2000, which argued that police should tolerate cultivation of what would appear to be a significant number of plants.

“The limit of 10 plants in total, with not more than three over 50 cms in height and not more than three containing flowering heads is designed to provide enforceable levels for police while allowing the grower to have a reasonable number of juvenile plants for crop selection and sexing while also acknowledging that some plants will not survive due to the vagaries of growing conditions.”\textsuperscript{907}

The scale of production achievable from a scheme which permitted 10 plants can be determined from a 1996 Australian study of the value of a cannabis plant, which estimated that the average mature cannabis plant produced about 200 grams (or four ounces) of heads per plant, with a total value of about $2,000.\textsuperscript{908}

It is difficult to see how the circumscribed police role contemplated by both the CIN scheme and the recategorisation of cannabis in the UK will reduce demand for cannabis, unless alternative vigorous measures were introduced to curtail the operation of the cannabis market.

\textsuperscript{905} There is ample precedent in WA for police to regulate legal activities by toleration and selective enforcement of the law, as they have for many years operated a ‘containment’ policy in relation to prostitution. The policy permits the operation of a defined number of premises, usually referred to as ‘massage parlours’ or ‘brothels’ in which sex workers are permitted to work. For many years brothels have been permitted to openly operate in Kalgoorlie, a major regional city in the State’s mining region, in addition to a number of premises in the Perth metropolitan area. Cf: Western Australia, Royal Commission Into Matters Surrounding the Administration of the Law Relating to Prostitution. Report. (Norris report). Perth, Government Printer, 1976; Edwards J. Prostitution and human rights: a Western Australian case study. Discussion Paper No. 8. Canberra, Human Rights Commission, 1986; Western Australia, Community Panel on Prostitution. Final report. (Beryl Grant Chairperson). Perth, Minister for Police, 1990; Western Australia, Minister for Police & Emergency Services. Summary notes: A green bill for a new Prostitution Control Act. Perth, Minister for Police & Emergency Services, 2002.


“If small scale cultivation for personal use were treated in the same way as possession, there would seem to be two important consequences. More users would grow their own cannabis, in preference to buying from criminal enterprises, and the low cost of home growing might destabilise the criminalised cannabis market. With a reduced return on investment in cannabis, criminal entrepreneurs might abandon this market.”

A difficulty for police implementing either the WA or UK decriminalisation reforms is to determine if there is evidence of selling and supplying cannabis to others, as this conduct would technically not be an expiable offence or be eligible for a formal warning. The Cannabis Control Act 2003 Cannabis Infringement Notice Scheme Guidelines issued by the WA Police Service state that

“When an offence is detected, police are encouraged to exercise their discretion to issue the person with an infringement notice (CIN), provided all the criteria for its issue are met.”

There are three criteria WA police are advised to use in shaping their discretion - the identity of the offender can be verified, there is evidence of an offence, which “must be sufficient to substantiate a prosecution in a court of law” and that the cannabis is only for “personal use (and that if) the circumstances indicate something other than personal use, then a CIN cannot be issued.” (Guidelines, 3)

The issue of self supply was considered in a sub study within a major project funded by the NDLERF to determine outcomes from the cannabis law reforms in WA. The NDLERF project consists of seven studies that examined issues such as changes in prevalence, utilisation of treatment services and consumption patterns of regular cannabis users. One of the NDLERF research projects involved a sample of regular cannabis users to examine whether they might engage in cultivation permissible within the scheme. The results from the first phase of the study of regular cannabis was published in late 2005.

“Clearly, the impact on the cannabis market is one of the major issues of interest in the evaluation of the proposed cannabis laws in for WA. While changes between the pre and post change phases of the research with regards to price, potency and availability will be important ... so too will be the proportion of the market supplied by small scale user growers as opposed to large commercial suppliers, the availability of other drugs when people are buying cannabis, the extent to which regular users attempt to self supply by engaging in growing and the extent to which regular users become involved in cannabis supply.”

The sample of 100 regular users, who were interviewed between October 2002 and February 2003, were aged between 16 years and 58 years and were selected if they had used cannabis on at least a weekly basis over the preceding three months. Clearly this sample would not be representative of the broader population of cannabis users, as for example, 73% used

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910 Reproduced in Appendix 9.
915 This occurred before the Cannabis Control Bill 2003 had been presented to parliament.
916 The CCA applies only to adults, ie persons aged 18 years and older.
cannabis at least daily, 15% used two to three times per week, 10% used four to six times per week and 1% used once per week.

With respect to those who used at least daily (who made up nearly three quarters of the sample), 12% used more than six times per day, 16% used four to six times per day, 25% used two to three times per day and 20% used once per day. On a typical day subjects consumed an average of 7.9 units of cannabis and overall 69% typically used hydroponically cultivated cannabis. It would appear a smaller than might be expected proportion (39%) of this sample had a score of 4 or more on the Severity of Dependence Scale, indicative of cannabis dependence.

The CIN scheme purports to perpetuate what has been referred to in an earlier study of the CEN scheme as a “simplistic dichotomy between innocent ‘users’ and harmful ‘dealers’.” This dichotomy occurs because the CIN scheme strictly differentiates between those who use cannabis and those who supply or sell regardless of the scale of this activity. However, given the large numbers of West Australians who have used cannabis in the past year as indicated in the 2004 NDSHS data, this means there is a very large potential demand for cannabis which it is submitted because it is unlikely to be met through self supply, constitutes is a very real incentive for the organised large scale production of cannabis to continue.

The reluctance of either the CIN or CEN schemes to countenance expiation for those involved in supply means the majority of users are likely to continue to rely on cannabis sourced from well organised cultivators and distributors rather than cultivate cannabis for their own use. This issue has also been considered in the UK, which has described as the conundrum of how to distinguish between social and commercial cultivation.

“If the government were to treat small scale home cultivation as a variant of possession, there would be two consequences: first, many cannabis users would choose to cultivate in preference to using a distribution system populated by criminal entrepreneurs. Second, the low cost of home growing would destabilise this criminalised distribution system. With a reduced return on investment in cannabis, criminal entrepreneurs might abandon the market.”

Similar sentiments have been expressed in Canada, where it has been suggested that whilst it is reasonable to prohibit the cultivation and distribution of cannabis for commercial gain, a

“different scenario is created, however, by the individual who grows enough for himself, choosing, through this action, to withdraw from the illicit market and its inherent criminality. In this situation, the state would again appear to have no reason to intervene.”

Whereas the CIN scheme sets an upper limit of not more than 30 grams of cannabis, an upper limit is not specified for the UK scheme and instead it is left to the discretion of police as to whether a formal warning may be given or not. It is argued that the setting of the upper limit of cannabis for personal use by either the informal approach in the UK or the formal approach of up to 30 grams of cannabis under the CIN scheme would be a signal to users that a certain degree of supply is permissible.

In WA the setting of the 30 gram limit, which is equivalent to an ‘ounce’, is arguably a tacit recognition of a preferred structure of the market and likely to lead to the perception by cannabis users that they could hold and transport up to an ounce of cannabis with some

917 A unit being defined as either a joint, cone or bong.
921 An ounce equals 25 grams.
confidence as if they were apprehended by the police the would mostly like receive a CIN as this amount would be regarded as being within the bounds of amount that was for ‘personal use’.

The setting of an upper limit on the amount of cannabis for personal use has an important impact on the shape and operation of the cannabis market as it in effect lowers the cost to users. (As indicated earlier, DLE activities shape consumer behaviour by favouring the carrying of smaller amounts to reduce risk, as has been the case with the Cabramatta heroin market.) It might be speculated that some cannabis users would be more inclined to carry larger amounts of cannabis than previously (in WA up to 30 grams and in the UK possibly even larger amounts) because of a perceived reduced risk following decriminalisation that such an amount would ordinarily be regarded as for personal use.

“These legal changes, while they do endorse differential treatment for cannabis relative to other illegal drugs, still support a maximum term of imprisonment for possession that has scarcely (if ever) been used within the past 20 years in Canadian courts; the possibility of six months imprisonment is entirely at odds with the norms that we see today in Canadian courtrooms (fines and discharges).”

The base for setting possession at 30 grams or less of cannabis, which facilitates transactions of up to one ounce, has also been proposed in Canadian reforms. In May 1997 there was a major reform to Canadian federal law, which created a new piece of legislation, the Controlled Drugs and Substances Act, which placed cannabis into Schedule 2 of the Act, whereas other illicit drugs were placed into Schedule 1. Whilst the reforms did not decriminalise cannabis, they represented a shift in the severity of criminal punishment attached to its use, as the new law provided that possession of less than 30 grams of cannabis was punishable with a maximum term of imprisonment of up to six months, whereas for other illicit drugs the maximum term was up to seven years.

There is some concern of how front line police may interpret an ambiguous and complex policy like harm minimisation which underlies both the CIN scheme and reclassification of cannabis reforms. One area of concern is recidivism, of whether or not a police officer will or should continue to issue a CIN or formal warning (in the UK) to repeat offenders. Whilst data is not available at this time about how police have implemented and supported these reforms, there is research from the UK which indicates that varying interpretations by regional administrators and by individual officers determine implementation of reform.

A 2002 report by the Joseph Rowntree Foundation examined the policing of cannabis offences in the UK. The study included an analysis of offence data for the year 1999, which found that out of the 513,000 indictable offences, 69,377 (13.5%) were cautioned or convicted for cannabis possession. There was a marked variation in the rate of increase from 1974 to 1999 in cannabis possession offences compared to indictable offences, as cannabis offences increased ten-fold whereas indictable offences increased by only about one quarter over this period of time. It was suggested that the

“most likely explanation for the rapid growth in possession offences is that the growth in the use of ‘stop and search’ by the police until the late 1990s intersected with an upward trend in use.”

Out of the 69,377 cannabis possession offences in 1999, just over half (58%) resulted in a caution by the police. Several factors appeared to influence the decision by a police officer as to

whether they would caution or charge an offender, including whether the offender had a concurrent drug offence, if the offender had other prior drug convictions and if the offender had a previous conviction of any other sort. This research also detected large differences in cautioning rates due to underlying variation in priorities and policing practices that existed because of the regionalised nature of police services in England and Wales, even though the same legislation is applied. An important aspect of 2002 study was that whilst guidelines were issued to front line police outlining the requirements and options for issuing a caution, in practice these guidelines appeared to have had a limited impact on how the instructions were implemented.

In the UK responsibility for issuing guidelines and applicable rules and procedures rests with the ACPO. The 2002 Rowntree study noted that in relation to cannabis offences,

 "(n)one of the police forces in the study had an explicit policy on cannabis, and none provided specific guidance to its officers about dealing with possession offences. They relied on the guidance issued by the Association of Chief Police Officers. Whilst senior managers were aware of this, the study found little evidence that the guidance had penetrated to front line officers."

It is submitted the CIN scheme also engenders a lack of clarity in a number of areas, including the comparative seriousness of offences, the cultivation of plants and recidivist CIN offenders. The perception of comparative seriousness arises as the fines in WA that apply to the four expiable offences could be interpreted as being a ranking in a continuum of seriousness, from the lowest modified penalty of $100 for possession of a smoking implement, $100 for possession of up to 15 grams of cannabis, $150 for possession of more than 15 and not more than 30 grams of cannabis, up to $200 for the non hydroponic cultivation of two or fewer cannabis plants.

Police may treat this ranking scale of modified penalties as meaning that some expiable offences are more serious and thus could mean CINs should not be as readily given as for offences which have higher modified penalties. Indeed, it is suggested that some of the higher modified penalties might be perceived as quasi fines (eg $200 for non hydroponic cultivation of two or fewer cannabis plants) as they are probably similar to the level of fine that might be imposed by a court for this type of offence for first time offenders.

The relatively small number of CINs issued for cultivation of cannabis within the CIN scheme may indicate that police may regard this offence as not being a minor offence and accordingly a CIN is rarely issued. If this understanding does exist it is logically defensible as the CIN scheme does not differentiate between someone who is cultivating not more than two immature seedlings and someone who may be cultivating two fully grown and productive plants which may potentially yield a significant quantity of cannabis.

7.4 Hydroponic cultivation

As all Australian cannabis infringement schemes now restrict expiation to non-hydroponic methods of cultivation, the narrowed scope of cultivation of cannabis within the Australian schemes requires comment. While it might be speculated that permitting outdoor cultivation may encourage more people to cultivate (up to two plants in WA), this does not seem very plausible because if the plants are detected by the police they will be confiscated. Another disincentive for outdoor cultivation is the possibility that plants will be stolen if they can be seen by neighbours or anyone who can access the backyard at the person’s principal place of residence.

As indicated earlier there has been an evolution over recent years in the mode and degree of sophistication of hydroponic cultivation of cannabis, being a transformation from what was perceived as a benign cottage industry to now being a sophisticated activity conducted and managed by well organised criminal organisations. In conjunction with this transformation there has also been the development of a ‘industry’ which provides specialised services and roles, as demonstrated in recent Canadian research. These include ‘crop sitters’, people who are hired to protect growing facilities and look after the crop, ‘brokers’, people who perform the role of negotiating agents between growers and buyers, ‘harvesters’ (or ‘dial a harvest’), people who specifically cut, dry and package a crop and ‘exporters’ who facilitate shipments to other jurisdictions.  

It is likely that some of these roles would also exist in Australia.

It is unclear what proportion of the total Australian market now involves hydroponic cultivation. Concerns have been raised about the growing popularity of this method because of concerns it could pose a number of health risks to both end users and operators. These risks arise because of the extensive use of chemicals to promote growth of plants and to eradicate and control diseases and insect pests that flourish in the controlled environments in a hydroponic operation. There are also risks to the operators of hydroponic setups because of their exposure to airborne bacteria which readily grow in the high humidity environment, as well other types of risks, such as electrocution due to the bypassing of mains electricity meters and the wiring of fans and other electrical equipment.

An illustration of the spectrum of harms that can arise from hydroponic cultivation is shown in an impact assessment prepared in April 2000 as part of the prosecution of those who conducted a hydroponic operation in a house in a suburb of Vancouver. It was concluded that

“(t)he marihuana grow operation at 5570 Argyle Street was a clear danger to the community given the haphazard electrical wiring and presence of a CO2 generator on the premises. This criminal operation was knowingly established in a stable residential neighbourhood close to schools, parks, a church and several preschool daycare centres in order to add an air of legitimacy.”

It has been noted there are a number of attractions of indoor hydroponic cultivation over outdoors cultivation.

“While the volume of plants is typically lower for hydroponic cultivation, hydroponic cannabis can be grown all year round and produces a high yield of ‘head’ or ‘buds’ in a shorter time period. These factors, and a user perception of greater potency, make hydroponic cannabis more attractive and prices can be double that of bush cannabis. The relatively easy methods of production mean groups involved in cultivation typically show less sophistication than groups involved in other drug production.”

This observation is of importance for another reason as it identifies that as cannabis can be relatively easily cultivated hydroponically and involves a limited outlay, then if in WA less than 10 plants were cultivated this may be an enterprise that appeared superficially attractive to someone who was not otherwise involved in the organised production and sale of cannabis.

928 Ibid.
931 The cultivation of 10 plants or more is regarded as a serious offence in WA, as cultivation of this number or more is deemed cultivation with intent to sell or supply: *Misuse of Drugs Act 1981* 7(1)(a) and Schedule 6.
There are implications from the Victorian research previously discussed in relation to the CIN, CEN and SCON schemes, as each prohibits infringement notices being given to anyone who hydroponically cultivates cannabis. The circumstances of the DIN scheme with respect to hydroponic cultivation is difficult to determine. Victorian research suggests higher levels of THC in hydroponic plants could not be attributed to the conditions of cultivation but from the use of higher yielding plants from cloned stock. This means it would be feasible for those growers who wanted access to higher potency cannabis to use cloned stock and cultivate plants in soil and not under artificial conditions. The rationale for prohibition of hydroponic cultivation on the grounds of higher potency may therefore not be a credible argument because high yields could be obtained by non-hydroponic methods.

The justification as to why hydroponic cultivation might be excluded from expiation schemes may not primarily be because of the higher potency levels, but because this form of cultivation provides higher yields based on short growing cycles, with perhaps three to four months per growing cycle. There must be a real possibility that any individual who cultivates cannabis by hydroponic means ostensibly for self supply will become involved in commercial supply because of the relatively large quantities of cannabis that can be produced on a regular basis.

The scale of hydroponic cultivation, whilst difficult to estimate, would appear to be widespread and efficiently organised. Indeed it has been suggested that the existence of hydroponic cultivation is now the single most common reason for the stealing electricity in Australia, constituting about 20 per cent of all power theft. The chairman of the Electricity Suppliers Association of Australia was quoted in a 2002 article on this issue.

“ESA chairman Keith Orchison says the greatest single use of the stolen electricity is to power hydroponic cultivation of marijuana, a technique that uses large amounts of artificial light and plumping equipment to provide water borne nutrients to the plants. ‘It is the fastest-growing area of electricity theft in Australia,’ he says.”

An article published in the November/December 2003 issue of the newsletter of the Australian Hydroponic and Greenhouse Association shortly after the SA reform had excluded hydroponic cultivation from the CEN scheme, confirms concerns by a number of commentators that hydroponic cultivation had become a significant method of cultivation.

“In the early days, store owners focussed on the home garden market, but as the retail industry grew, it became obvious it was also attracting a large cannabis growing market. To a large extent, early SA and ACT legislation decriminalising cannabis for personal use, and rapidly evolving hydroponics technology worldwide, contributed to the explosion of stores. ... (the) new legislation in SA, which makes it a serious offence to grow cannabis hydroponically, and WA where it will soon become an offence to ‘knowingly’ sell equipment that will be used to grow cannabis, is a serious wake up call for all hydroponic retailers to change their business practices if they want to avoid further restriction.”

The CCA extends the ambit of the law in WA in relation to hydroponically cultivated cannabis, by creating a new offence of selling or supplying, or offering to sell or supply “any thing that the person knows will be used to cultivate a prohibited plant ... by hydroponic means”. When the Cannabis Control Bill 2003 was first introduced on 20 March 2003 it had an offence of

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933 This article also refers to other indicators which substantiate the growth in hydroponic cultivation and the growing use of cannabis, such as large listings of hydroponic equipment suppliers listed in the Yellow Page telephone directories and an increase in the sale of roll your own cigarette papers.
936 Misuse of Drugs Act 1981 s 7A.
someone selling or supplying or offering to sell or supply any thing if that person “knows or reasonably ought to know” that such a thing would be used to hydroponically cultivate cannabis (Clause 28).

However, this provision was amended by the Legislative Council in early September 2003 by the Greens and Liberals by removing the requirement for reasonable knowledge. This meant as the Attorney General observed, that it would “raise the evidentiary requirement for the offence such that knowledge of the intended uses of hydroponic equipment would have to be proven in any prosecution … (which) is likely to lessen the specific deterrent effect of the offence.”

Furthermore, the CCA provides that either the police or the Director of Public Prosecutions upon conviction of someone for this offence may obtain an order prohibiting them for up to two years from selling or supplying, or offering to sell or supply any thing that could be used to hydroponically cultivate cannabis. A rationale for regulating those who sell and supply hydroponic equipment was outlined in a paper prepared for the 2002 South Australian drug summit.

“Police claim that South Australia has a significant number of hydroponic shops compared with other jurisdictions, there are linkages between organised crime groups, cannabis producers and a significant number of hydroponic shops and that a proportion of the hydroponic retail industry is supported by illegal cannabis cultivation.”

A description of the process of hydroponic cultivation is outlined in the 2000 case of Price v Davies which was appealed to the Supreme Court of WA.

It has been asserted that as hydroponic cannabis may be contributing to increased incidence of mental health problems because it facilitates the production of higher potency forms, a specific offence of hydroponic cultivation is demonstrated with an announcement in early February 2006 that the NSW government had introduced legislation targeting hydroponic growers. It has been reported that the reform will provide for a jail term of up to ten years for those who hydroponically cultivate five or more plants.

“NSW Premier Morris Iemma linked the growing popularity of hydroponic cannabis to the prevalence of mental illnesses including depression and schizophrenia. ‘It is not a harmless drug,’ he said. ‘If we are to improve mental health in our community it is essential that we shut down these indoor cannabis factories and punish severely the criminals behind them.’”

The possibility of WA enacting further reforms by amendments to the MDA to target hydroponic cultivation has been flagged in response to the announcement in early February 2006 of the NSW reforms. One area of reform is to create a specific offence of hydroponic cultivation in WA. The February 2006 report of reforms in NSW precipitated a debate in WA about the purported advantages and failings of the CIN scheme. The State Branch of the Australian Medical Association (AMA) claimed the CIN scheme had contributed to an increase

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938 Misuse of Drugs Act 1981 s 7A (2).
939 South Australia, Drugs Summit. Law enforcement in the illicit drug market. Issues paper prepared for South Australian drugs summit 2002.
941 Salusinszky I & Richardson T. ‘10 years jail for growers of hydroponic marijuana.’ Weekend Australian 4-5 February 2006.
in cannabis related psychosis in WA, although evidence on this point is equivocal and the scheme has only operated for a short time.

“Australian Medical Association WA President Paul Skerrit said the impact of high strength cannabis on mental health was frightening and liberal cannabis laws continued to escalate drug induced mental health problems.”  

The growth in hydroponic cultivation has posed a challenge for the courts in a number of ways. One area of difficulty is how to differentiate between those who commit minor offences which involve cultivation of small numbers of plants ostensibly for self supply and non-commercial supply to others from other types of offenders. As the CCA excludes hydroponic cultivation this is likely to be regarded by the courts as more reprehensible than outdoors cultivation. In a 2001 Supreme Court of WA case Steytler J made the following observation.

“Quite clearly, cultivation by hydroponic means has been seen to be a safer enterprise because of the difficulty of detection of cultivation within hydroponic houses. Increasing availability of surveillance technology from the air and otherwise appears to have discouraged plantation cultivation and encouraged the establishment of hydroponic houses. ... In my view, sentences in relation to cultivation of cannabis within hydroponic houses must be firmed up and substantially so.”  

7.5 Net widening

The possibility of net widening occurring as a consequence of decriminalisation has been flagged as distinct outcome in a number of other jurisdictions contemplating law reform. It has been suggested the proposed amendments to the Canadian Controlled Drugs and Substances Act by Bill C-17 (or any predecessor Bills) would mean that “enforcement net widening, and other effects, the detection of cannabis possession/use by police may increase substantially.”

It was contended in a discussion document prepared by the Ontario Federation of Community Health and Addiction Programs that

“correspondence with RCMP drug enforcement experts confirms the likelihood that ‘incidents’ of police detection of cannabis possession that currently do not lead to charges will likely translate nearly one to one into citations under the proposed Cannabis Reform Bill. Based on 2001 data, this would translate into an additional 5,500 citations for cannabis in Ontario alone. Further (there was) ... a potential for further enforcement net widening due to police issuing tickets for cannabis possession in cases where they would not even log it as an ‘incident.”

This means that if it is easier for police to issue infringement notices compared to the options available before reform, when they would have had to either to lay a charge (with attendant costs and time involved in review of evidence and preparing a brief for prosecution) or issue an informal caution, then net widening is likely to occur.

946 Sarre R. ‘Destructuring and criminal justice reforms: rescuing diversionary ideas from the waste paper basket,’ (1999) 10 Current Issues in Criminal Justice 259-272 has a description of ‘net widening’ as one of the hidden dangers of diversion schemes, which have developed over the last three decades as a consequence of the shift towards a community-based criminal justice model, such as explicated by Stanley Cohen. Cf: Cohen S. ‘The punitive city: notes on the dispersal of social control.’ (1979) 3 Contemporary Crises 339-363.
948 Id, 8.
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Such an outcome was confirmed in the early 1990s in SA as “police showed less restraint in imposing civil penalties in the form of fines than in pressing charges which could have led to a criminal conviction.” Implementation failure is found to have occurred by a study of the CEN scheme over the period from 1991/1992 to 1995/1996 which indicated the scheme failed to reduce the number of people appearing in South Australian courts for minor cannabis offences. Indeed, it was found that net widening had occurred to such an extent that by the mid 1990s more than 17,000 CENs were being issued annually in South Australia. After reaching a peak of 17,170 in 1994/1995 there has been a gradual decrease in the number of notices issued each year, dropping to 8,651 by 1999/2000 (the most recent available data).

It is clear therefore that the ease with which police in SA were able to issue a CEN facilitated a greater number of persons facing formal consequences than before the CEN scheme. An example can be seen in an instruction issued by the South Australian police, which applied between August 1988 and February 1997, which required police to issue a separate CEN for each expiable cannabis offence. However, after an amendment in 1997 multiple offences could be included on one CEN, but permitted each offence to be dealt with separately so that some offences on a CEN could be contested whilst others could be expiated.

Because of the administrative framework under which the SA scheme operated up to early 1997 this meant that significant numbers of defaulters were charged, as at least half or more of those issued with a CEN had failed to expiate, resulting in very large numbers of people being convicted for minor cannabis offences because of the failure to pay the relevant penalty on a CEN. This effect is referred to as net widening.

“The introduction of the Cannabis Expiation Notice (CEN) scheme in 1987 appears to have had a substantial net widening effect; that is, there has been a significant increase since the scheme commenced in the total number of cannabis offences detected by police. At the same time, the National Drug Strategy drug use surveys show that use of cannabis in the community has increased only slightly, and at a rate similar to the other States. It is most likely that significantly increased detection of cannabis offences is a result of changes in police behaviour, rather than it being a reflection of greater use of cannabis within the community. Only about 45 per cent of CENs are paid. It is possible that inability to pay is one factor in the expiation rate not being higher.”

As there is a distinct possibility that net widening will occur when there are changes in policing practices due to drug law reform, it would be remarkable if net widening did not also occur in WA. As well as the well documented occurrence of this phenomenon after the inception of the CEN scheme, there is evidence the growing use of formal cautions by police in the UK throughout the 1990s instead of exercising their discretion to informally caution for minor cannabis offences, well before the January 2004 decriminalisation, were responsible for a degree of net widening in the UK.

As a CIN is an alternative to a police officer charging a person with committing any of the four expiable minor cannabis offences, if net widening had not occurred since the commencement of the CIN scheme, there should be a comparable number of quarterly formal consequences before and after the CIN scheme. This should occur as in effect a CIN is a substitute for someone being charged with an offence, there should be a corresponding reduction in convictions.

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matched by a corresponding increase in CINs, meaning that overall there should not be an increase in net formal consequences as a consequence of the CIN scheme.

A preliminary analysis of the CIN scheme, based on data of formal consequences for five quarters from the June quarter 2004, compared to the nine quarters prior to the scheme, indicates that some net widening has probably occurred in WA since the CIN scheme, involving s. 5(1)(d)(i) and s. 6(2) offences.

The analysis of data earlier in the thesis indicates that net widening appears to have mostly involved s. 5(1)(d)(i) offences, as there was a net increase of an average of 171 formal consequences per quarter compared to the period prior to the CIN scheme. Although initially there were fewer quarterly charges concerning possession of a smoking implement with detectable traces of cannabis, with about 410 to 425 convictions per quarter in the June, September and December quarters 2004, police may have resumed charging more people since late 2004 as there were about 475 to 500 convictions per quarter in the March and June quarters 2005.

Further investigation is required concerning s. 5(1)(d)(i) offences as there is a possibility that the number of CINs issued may under enumerate the actual number of potential separate charges detected as it is believed police practice is for only one CIN to be issued regardless of the number of smoking implements involved.

There was a net increase of an average of 94 formal consequences per quarter in relation to s. 6(2) offences after the commencement of the CIN scheme compared to the period prior to the CIN scheme. Although there was a reduction in convictions after the commencement of the CIN scheme with the number of quarterly convictions stabilising from the June quarter 2004 to the March quarter 2005 (with about 610 to 640 convictions for possession per quarter), an increase to 709 convictions occurred in the June quarter 2005.

Formal consequences involving s. 7(2) offences showed the opposite trend compared to the other two offences, with a small net average quarterly decrease since the introduction of the CIN scheme. It should be borne in mind that a total of only 100 CINs were issued in the first 12 months for the non hydroponic of two cannabis plants.

The increase convictions involving s. 5(1)(d)(i) and s. 6(2) offences since early 2005 does not appear to be due to unusual factors, such as delays in processing of data or delays in the courts hearing charges from the previous year. However, data over a longer period is required to determine whether the increase in s. 5(1)(d)(i) and s 6(2) offences is a short term phenomenon or reflects a resumption of established policing approaches regarding minor cannabis offences, such as intensive charging of cannabis offenders or reforms in DLE practices such as rigorously detecting and charging serious cannabis or other types of drug offences or is due to crackdowns on other types of offences like burglaries which resulted in the incidental detection of minor cannabis offences.

It is suggested the increased number of formal consequences in WA after the CIN scheme, which has mostly involved s. 5(1)(d)(i) offences, is likely to be due to a change in police practices. An explanation for this is that prior to the CIN scheme police were more likely to

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953 There is typically a delay of 2 – 3 months between laying of a charge and when the matter is heard by a court.
954 An examination of cannabis conviction data over the duration of the CIN scheme found the vast number of charges were processed within a short period of time between when a cannabis charge was laid and when the matter was disposed of at court, with 83.1% of offences being dealt with within 90 days and 89.7% of offences dealt within 180 days of a charge being laid. This indicates that lag effects concerning conviction data are unlikely to affect interpretation of long term trends.
955 A policy is followed that if a person has been charged with one or more serious offence and at the same time had committed a minor cannabis offence, which would ordinarily if it had occurred on its own would have attracted a CIN, then the minor cannabis offence is dealt concurrently with any other serious offences when the person is dealt with by a court.
informally deal with minor cannabis offences, especially for possession of a smoking implement on which there are detectable traces of cannabis, for which they gave either an informal caution or an informal warning.

It is submitted that prior to the CIN scheme, minor cannabis offences, especially s. 5(1)(d)(i) offences, were regarded as trivial and the time involved in laying a charge would have been on some occasions considered to be out of proportion to the seriousness of the offence. However, since the introduction of the CIN scheme it became considerably easier for police to deal such offences by issuing a CIN and therefore the CIN scheme may have unintentionally facilitated the formal processing of increased numbers of minor cannabis offenders.

Another possible explanation for the increased number of convictions, especially involving s 5(1)(d)(i) offences, could reflect a shift in DLE activity of targeting serious cannabis offenders, thereby increasing the possibility of both serious and minor cannabis offences being detected. Police could have laid more charges for serious drug offences because additional resources were available to pursue this strategy and by targeting more serious offenders more incidental charges were laid for s 5(1)(d)(i) offences, as a number of serious drug offenders also had smoking implements in their possession. However, until additional evidence can be obtained such as disaggregated conviction data to identify whether the increased convictions for minor cannabis offenders were related to concurrent serious offences, this explanation remains conjectural.

Another consideration which could have facilitated the issuing of CINs for what police may have previously regarded as trivial offence, such as possession of a smoking implement, is that the law in WA in relation to identification of suspects has recently been expanded. For instance, s. 34 of the Criminal Investigation (Identifying People) Act 2002 outlines the range of identifying particulars that police may take from uncharged suspects, when a person is suspected of having committed a ‘serious offence’ even though they have not been charged, regardless of whether they are in custody or not.

As this legislation defines a serious offence as being “an offence the statutory penalty for which is strict security life imprisonment, life imprisonment or imprisonment for 12 months or more”, this means that it captures the offences of possession of a smoking implement (maximum of 3 years), possession of cannabis (maximum of 2 years) or cultivation of cannabis (maximum of 2 years) encompassed by the CIN scheme.

It is submitted that this legislation, when read in conjunction with a provision in Part 2 of the Criminal Procedure Act 2004, which includes procedural requirements for issuing infringement notices and for identification has facilitated the implementation of a formalised approach for issuing CINs.

This has meant that a person issued with a CIN will in the first instance be requested to accompany police to a police station to verify their identity and to witness the securing and sealing of tamperproof bags which hold items and cannabis seized from the person. It should be noted this situation closely resembles a quasi arrest as an individual would not be free to decline to ‘assist police with their inquiries’ by refusing to go to a police station. This process raises a number of concerns, such as potential costs which could be minimised if the individual was

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956 There is a recognition that any individual who has been charged with a serious offence involving drugs or other types of offences would be ineligible for a CIN if they concurrently had committed any expiable cannabis offence. The rationale for ineligibility for a CIN is that it is very unlikely that an offender facing serious charges would be in a position to expiate a minor cannabis offence, as he or she will be potentially facing hefty fines and/or imprisonment. Persons in these circumstances would therefore be charged concurrently with any minor cannabis offences at the same time as they are charged with any serious offences and dealt with by the court dealing with the serious charge, where any penalties for the minor cannabis offences would be added to any other penalties received.

957 Criminal Investigation (Identifying People) Act 2002 s 3.

processed at the place where the offence occurred and that there may be an over emphasis on the offence rather than the health and harm minimisation aspects.

7.6 Enforcement of infringement notices

An issue for consideration with respect to the CIN scheme is the option for the FER to deal with non-expatiates. As outlined earlier in this thesis, failure to expiate means that if all other measures fail, then under the FPINEA a non-expiator is likely to have his or her motor driver’s licence disqualified. The inclusion of the CIN scheme under the FER system is consistent with the growing use of this approach for non payment of penalties for a range of offences, including parking fines, non payment of fares on trains and breaches of offences contained in non traffic legislation.

The expanded use of infringement notices, particularly for minor traffic offences has been adopted to reduce the number of prosecutions dealt with by the courts and to mitigate the cost to the police and judicial system in processing and disposing of these types of offences. Whilst commonly this is referred to as an ‘on the spot fine’, this is not the case as the fine is never collected on the spot. “Legally speaking, what occurs is that the alleged offender is being invited to discharge his or her potential criminal liability in relation to the alleged offence by payment of an ‘infringement penalty’.”

While the development of infringement notices was adopted primarily to relieve the lower courts of dealing with a large and ever growing number of traffic offenders, which made up to 70 per cent of the workload of magistrates, this method of dealing with minor traffic offences has become increasingly popular and extended to other types of offences.

The efficiencies of infringement notice schemes, which rely on sophisticated computerised systems to match and track compliance, means that the state can reap significant revenues without the need for the protracted and uncertain nature of court processes. Other characteristics of infringement notices are that they involve fixed monetary penalties which are not calibrated according to culpability and are given for minor offences.

“An offence may properly be regarded as a minor offence for a number of reasons. The relevant law may be designed to prevent conduct that amounts to a public nuisance but does not necessarily cause real harm to other people, for example, laws relating to street trading, noise and the disposal of rubbish. The law may require a person to be licensed to engage in an activity that is not intrinsically offensive, for example fishing, or prohibit an otherwise inoffensive activity in certain circumstances, for example, the lighting of fires in the open on very hot days.”

The previous comments from the 1992 Australian Law Reform Commission report also illustrate one of the dilemmas if a minor offence attracts an infringement notice, as in some instances ostensibly non-serious conduct may have very serious consequences, as in the example of lighting a fire, which could cause a large bushfire and result in immense harm. In addition to contributing towards a perception that potential harmful conduct is not harmful, there are other concerns with offences being dealt with by infringement notices.

One such concern is that since infringement notices rely on administrative rather judicial process, there is limited supervision and maintenance of safeguards inherent in court procedures. Another concern is that those least able to defend themself, such as those with a limited grasp of English or being a member of a minority group, may be over-issued with


[960] Id.

infringement notices and not be able to adequately challenge whether the circumstances of their offending warranted an infringement.

It has also been observed that infringement notice schemes represent a paradigmatic shift which eschews the established legal principle of individuation of penalties. The infringement system has also undermined and blurred other important principles, such as the reliance of owner onus mechanisms to ‘fix’ liability to the owner of a vehicle involving an offence by the driver of a vehicle and to obviate the need to inquire into criminal intent, thereby relegating the mental element of offending as irrelevant to the determination of guilt.

“Though these offences amount to a widening of the area of criminality, high levels of moral or social stigma do not accompany most of them. They are often less concerned with harm as an actual and immediate result of wrongdoing, than with conduct that carries with it the potential for harm or inconvenience to many others. It is characterised by a move away from individualism towards control of groups through manipulation of their behaviour and attitudes with the aim of increasing their compliance with the particular regulatory regime which applies to them.”

A 2003 study by the University of WA’s Crime Research Centre (CRC) into the effectiveness of the growing use of the disqualification of driver licenses over the period 1995 to 2001 in WA identified that 55% of all license disqualifications occurred directly from violations of road traffic offences and the remaining 45% were for reasons unrelated to road traffic legislation. It was noted that a total of 243,011 drivers in WA accounted for over one million license disqualifications, with a disproportionate small number of persons accounting for most disqualifications – just over one quarter (26%) of all disqualified drivers (having five or more disqualifications) accounting for 72% of all disqualifications.

There are implications with respect to the outcomes of CIN non expiaters who are transferred to the FER system, with the likelihood that the description in the 2003 CRC study of repeat offenders having a criminal record and a history of non payment of fines may also apply to non expiaters who have their license suspended for non payment. The CRC study also highlighted an over representation of Indigenous persons who had license suspensions due to non payment of fines and “many disqualified drivers admitted to driving under suspension.”

It would appear in the longer term that up to about two thirds of all CINs will be expiated, by a combination of methods for enforcement of compliance. There is the allowance for payment of the penalty or attendance at a CES in the first two stages of the enforcement process when compliance is the responsibility of the police and subsequently in the third stage when responsibility for recovering of the outstanding debt is transferred to FER. This could suggest it is possible in the longer term that as about one third of CINs issued will not be expiated, ultimately the drivers license of about one quarter of all persons issued with CINs could be cancelled due to failure to expiate. Given the likelihood that some of these people will drive under suspension they will then be exposed to the risk of committing a serious offence of driving without a drivers license, in addition to additional risks for themselves and other persons on the roads.

963 Id. 4.
964 Ferrante A. The disqualified driver study: A study of factors relevant to the use of licence disqualification as an effective legal sanction in Western Australia. Nedlands, Crime Research Centre, University of WA, 2003.
965 Also referred to as the Pareto principle, ie the 80:20 rule.
967 In the 2004/2005 year with respect to the CINs registered with the FER, 22.9% had been finalised (paid in full, referred to a court for hearing, withdrawn or written off) and 77.1% were still be resolved. Overall 10.2% of CINs registered with FER were subject to a time to pay arrangement, 12.6% had been issued
7.7 Cannabis policy and drug law enforcement issues

As prevalence has not been shown to be related to the degree of severity of penalties and punitiveness in a jurisdiction, this raises the question of whether cannabis use prevalence could increase due to the relaxation of penalties after the decriminalisation of cannabis in WA and the UK in early 2004. For example, the use of cannabis could increase, if current and potential cannabis users perceive cannabis use had become tacitly approved or was now regarded as a trivial and non-serious offence after decriminalisation in early 2004.

Such a perception could arise, for example if there had been statements by government and/or the police that a lower priority would be given to prosecuting minor cannabis offenders, as users could conclude there will be a lower risk of detection of offending as police resources will have been reallocated to target those involved in trafficking and other serious offences.968

“Because decriminalising the use of marijuana lowers the legal (and social) costs of its consumption, the prevalence of marijuana is expected to be higher where it has been decriminalised. Similarly, among those who have used marijuana in the past year, decriminalisation is expected to be associated with a decreased likelihood of very infrequent use (less than once or twice a year) and an increase in the likelihood of weekly use.”969

It is contended cannabis law reform imposes a responsibility upon DLE agencies, if they have sufficient resources, to maintain the perception there is still the same or even increased risk of detection and though the individual no longer faces the risk of conviction, it is still nevertheless a serious offence to possess cannabis. As cannabis users who are detected and apprehended would have their cannabis confiscated, this aspect of the consequence of being either issued with a CIN in WA or given a formal warning in the UK could also be emphasised to minimise the possibility of the market adapting to transactions of up to an ounce or possibly larger amounts in the UK.

There is a belief decriminalisation may increase the use of cannabis as the instrumental value of the law has been weakened by the removal of the threat of imprisonment or other court sanctioned consequences. This view, which was expressed during WA parliamentary debates in 2003 and 2004, is reflected in the use of phrases like ‘sending the wrong message.’ Similar comments have been expressed in the 2005 annual report of the INCB with reference to proposed reforms in Canada.

“The Board is concerned that in Canada draft legislation on cannabis (Bill c-17), which would provide for the issuing of a ticket for possession of up to 30 grams of cannabis and the imposing of an administrative penalty instead of imprisonment for cannabis plant cultivation, may send the wrong message, particularly in view of the increase in cannabis abuse in the country.”970

The extent to whether more people will use cannabis after the reforms in WA and the UK depends, therefore, on the implementation of additional measures to delay initiation, to deter

with a notice to suspend a driving license, 44.4% were subject to suspension of a driving license and 9.8% were in other stages of action by FER: Drug and Alcohol Office & WA Police Service. Cannabis infringement notice scheme: Status report, April 2004 – March 2005. Perth, Western Australia, Drug & Alcohol Office, 2005. 968 However, there are substantial risks in police reallocating resources priorities, as demonstrated of a study of targeted and intensive DLE in Florida over the period 1984 to 1989, which resulted in increased non-drug crimes because of reduced deterrent effect from fewer police involved in non-drug crime enforcement: Benson BL & Rasmussen DW. ‘Deterrence and public policy: trade offs in the allocation of police resources.’ (1998) 18 International Review of Law & Economics 77-100. 969 Williams J. ‘The effects of price and policy on marijuana use: What can be learned from the Australian experience?’ (2004) 13 Health Economics, 128. 970 International Narcotics Control Board. 2005 Annual Report. Geneva, International Narcotics Control Board. 2006. 53.
use and to create and sustain attitudes and behaviours that will more effectively prevent use than were extant prior to reform. An additional consideration arises from research into trends in cannabis use by 15 to 19 year olds in the US over the period 1975 to 2000, which identified a negative association between the size of the cohort of young people and the price of cannabis. It was concluded that this resulted in the development of ‘thicker’ drug markets which provide better networks of information concerning where to ‘safely’ buy and sell drugs and require a less than proportionate increase in resources to evade the authorities and deliver drugs. The reduction in the unit cost of distributing translates into lower prices of marijuana, which then feeds back to youth drug use.\(^971\)

This research highlights the strain police are likely to experience following decriminalisation because of insufficient resources if there was a growth in the size of the cohort young people or other age groups. This means following decriminalisation DLE agencies need to ensure that resources previously used to apprehend minor cannabis offenders are redirected towards those engaged in serious offending to address the likelihood of lower cannabis prices due to economies of scale.\(^972\)

Police would also need to able to access and interpret other indicators of change in the cannabis market, such as prices and size of the units by which cannabis is sold (as decriminalisation in the UK did not specify an upper limit it is plausible that changes in size of deals may increase), to determine impacts of the 2004 reform.

Since the release just over a decade ago of the landmark report by Sutton and James\(^973\) DLE agencies in Australia have been challenged to direct resources to more serious levels of drug trafficking, through greater reliance on intelligence and enhanced legislative powers. Consistent with this shift in emphasis the Criminal Property Confiscation Act 2000 was enacted in WA, which came into effect in January 2001, to substantially widen the power of police to confiscate property of anyone on the basis of mere suspicion of wrongdoing without the necessity for a conviction, depending on whether the property was confiscable as unexplained wealth, acquired as a benefit of crime, used to commit crime or was derived from crime.

However, despite these efforts, national data in recent Australian illicit drug reports indicate that the vast majority of arrests for drug offences in Australia continue to involve consumers rather than providers of illicit drugs. For instance, consumer offences made up between 77\% and 80\% of all drug arrests between 2001/2002\(^974\) and 2004/2005.\(^975\) (See Table A2-6 and Figure A2-1.) The trends in cannabis offences in Australia in Table A2-6 show that WA has historically had a higher proportion of cannabis offenders who have committed provider (ie more serious offences) compared to the national rate. For Australia as a whole the proportion of cannabis provider offences fell from 26.1\% of all cannabis offences in 1995/1996 to 15.5\% in 2004/2005, whereas in WA the decline was from 36.2\% in 1995/1996 to 14.7\% in 2004/2005. Figure A2-2 shows that WA had a higher proportion of drug offences that were cannabis offences compared to the national rate until 2001/2001 and since 2003/2004 has dropped to just below the national rate (Figure A2-2).


\(^972\) The concept of economies of scale is that as drug markets have fixed costs of drug distribution over the longer term a growth in the size of the cohort of young people will result in lower per unit costs of drugs, falling prices and increasing use.


Cannabis infringement notices constitute a relatively small proportion of total cannabis offences nationally, making up between 10 and 20% of all offences.\textsuperscript{976} (See Table A2-7.) Nationally there has been a fall in the proportion of the proportion of cannabis offences that have been dealt with by an infringement notice, declining from 21.1% in 1995/1996 up to 2003/2004, then increasing to 16.5% in 2004/2005, due to the inclusion of West Australian data.

The breakdown of cannabis offences by jurisdiction in Table A2-8 (excluding infringement notices) indicates divergent trends, for whereas the annual number of offences has steadily fallen in the two largest jurisdictions of NSW and VIC since 1995/1996, there has been a startling increase in QLD, especially since 2000/2001. It would appear that the introduction of formal cautioning in QLD has been largely responsible in the marked increase in cannabis convictions in that State since 2001/2002. Thus, the observation made in 1996 by Sutton and James that the majority of people caught up in the criminal justice system were ‘users’ rather than ‘providers’ of illicit drugs would appear to be still true.

A preliminary investigation into the potential utility of different methodologies to measure changes in the value of the cannabis market, which could possibly be used to determine the relative effectiveness of DLE activities in disrupting cannabis markets. A consumption approach, which involved a combination of measures of consumption and expenditure by different types of cannabis users, estimated that in the year 2004 the annual value of cannabis consumption in this State was between $118 million and $402 million. If the annual market value of this consumption had an upper value of $402 million, when broken down by frequency of use this would have represented a value of $13 million by those who had used in the last 12 months, a value of $15 million by those who had used in the last four weeks and a value of $373 million by those who had used in the last seven days.

There is some difficulty in measuring the extent to which the reforms in WA and the UK may have achieved their objective of freeing up police resources previously used to apprehend and prosecute minor cannabis offenders, to instead focus on serious cannabis offences. In WA this objective was outlined in the Minister’s second reading speech when introducing the Cannabis Control Bill 2003 on 20 March 2003, as “allowing more active pursuit of those who commercially grow and supply cannabis.”\textsuperscript{977}

The debate in NZ about cannabis law reform has recognised priority needs to be given to creating mechanisms to undermine the activities of criminally organised groups involved in the cultivation and distribution of cannabis.\textsuperscript{978} A recent development in NZ has been the establishment of ‘tinny houses’ which are a type of public market in cannabis. The concern with this development is that they are located in private dwellings operating in suburban areas and attract high levels of traffic and create public nuisance.\textsuperscript{979} There are also concerns that ‘tinny houses’ favour the involvement of criminal gangs and could result in victimisation as transactions do not occur through personal acquaintances usually associated with cannabis procurement.\textsuperscript{980}

There is an economically driven argument that prohibition creates a black market to meet demand for cannabis and that there is a tendency for it to become increasingly criminalised as police force out the most risk averse operators, thereby creating a market dominated by those

\textsuperscript{976} As the WA scheme had only about three months data in the 2003/2004 report, it is not possible at this time to determine whether the WA scheme may increase the national ratio of notices to all cannabis offences.


\textsuperscript{979} Wilkins C, Reilly JL & Casswell S. ‘Cannabis ‘tinny’ houses in New Zealand: Implications for the use and sale of cannabis and other illicit drugs in New Zealand.’ (2005) 100 Addiction 971-980.

\textsuperscript{980} Wilkins C & Casswell. ‘The cannabis black market & the case for legalisation of cannabis in New Zealand.’ (2002) 18 Social Policy of New Zealand, 36.
prepared to engage in violence to maintain their market share. However, a report in 2003 from the RAND Corporation referred to a study which “shows that while this is the case for the cocaine and heroin market, the cannabis market is not associated with violence.”\textsuperscript{981} Whilst the cannabis market may not involve the same levels of violence as in these other drug markets, there is evidence that groups such as OMGs play an important role in facilitating the organised growing and distribution of cannabis.

A particular difficulty associated with cannabis markets is that DLE activity can result in the development of a greater number of dispersed growers who cultivate smaller numbers of plants which are harder to detect compared to the cultivation of larger scale outdoor crops. “The legally risky and insecure nature of cannabis plots creates strong incentives for cannabis cultivators to minimise the number of participants with knowledge of an operation and the location of plots.”\textsuperscript{982} This can mean that a greater number of people become involved in cannabis cultivation, even though the aim of the DLE activity is to increase cannabis prices by denying the productivity gains that might occur by group cultivation.

The outcome is what has been called the sustainability paradox, that is, whereas cannabis cultivation may provide some level of economic support to those living in economically depressed areas it also brings with it attendant harms. This paradox “arises out of the fact that whilst involvement in the growing, processing and distribution of the commodity is helping to sustain livelihoods, it is leading also to social and environmental dislocations.”\textsuperscript{983} In the longer term communities which become reliant on cannabis cultivation are likely to experience deleterious effects from the regular use of cannabis as well as other consequences, such as if family members are convicted and imprisoned.

“(W)e simply do not know how current cannabis users would adjust their consumption in response to arrest, imprisonment or treatment. We also know little about how cannabis users might adjust their consumption in response to other factors which could potentially be manipulated by law enforcement such as changes in the price and availability of cannabis.”\textsuperscript{984}

It is contended the impact of DLE activities on the cannabis market should be an important consideration of proposals to decriminalise minor cannabis offences. However, it is puzzling as to why this issue was not explicitly canvassed by government in either WA or the UK as the significance of DLE strategies on drug markets has been acknowledged by a number of commentators. For instance, one commentator has argued that one of the goals of the CEN scheme was for law enforcement activity to intentionally shape the structure of the cannabis market was to focus on organised suppliers and distributors rather than minor offenders. “One of the principles underlying the expiation notice approach was that distinctions between private consumers of cannabis and large scale operators should be strengthened.”\textsuperscript{985}

If it was such an important object of schemes that decriminalise cannabis to also restructure that market, police might be expected to accord a lower priority to small scale non-commercial cultivation and distribution and a higher priority on harmful criminalised and organised forms of the cannabis market. However, whereas the cannabis market has been described as being fragmented and atomistic, this view appears to contradict the account provided in the 2003/2004 annual report of the New South Wales Crime Commission.


“The cannabis market continues to be controlled by established criminal networks, predominantly Italian organised crime groups as well as other ethnic criminal groups and outlaw motor cycle gangs. ... Despite being vulnerable to law enforcement detection, large scale outdoor cannabis plantations have re-emerged in increasing numbers. Law enforcement initiatives in the past have had limited success in targeting and apprehending the promoters and cultivators of outdoor plantations. Most persons arrested in raids have been crop sitters and pickers who have little financial interest in the large profits yielded from such plantations. ... The indoor hydroponic cultivation of cannabis is considered to pose a lesser risk of detection and crops produced by this method are in higher demand as they contain elevated levels of tetrahydrocannabinol (THC).”

There are however policy and legal issues to be resolved before police may be willing to tacitly regulate and shape the cannabis market through tolerating certain types of non commercial cultivation and social (ie non commercial) supply, whilst actively prosecuting those believed or known to be engaged in criminalised and/or harmful activities.

The preliminary data concerning the first 12 months operation of the CIN scheme would suggest that the majority of the CINs issued for possession of cannabis could be described as being relatively trivial offences, as more than three quarters (77.9%) of cannabis seized weighed less than 2.5 grams. It is possible that prior to the CIN scheme some of these possession offences, which involved very small quantities of cannabis, may have been dealt with by police by way of informal caution on some occasions. However, it is submitted that the emphasis on having two ranges of expiable amounts - an offence in the lower range of up to no more than 15 grams of cannabis having a penalty of $100 and an offence involving an upper range of more than 15 grams and not more than 30 grams of cannabis having a penalty of $150 is a possible impediment to police discretion.

The preponderance of very small amounts of cannabis for most expiable offences may reflect that many of those who came to police attention were more likely to be occasional/recreational users rather than regular/problematic users. As noted elsewhere, out of the total of 3,591 CINs issued in the first 12 months of the CIN scheme, only 104 (2.9%) were for the possession of the upper range expiable offence.

If police preferentially issued CINs to those who possessed cannabis in the lower range of expiable amounts this could reflect the reality that police distinguish between minor and serious offenders, with the former receiving CINs and the latter being charged with s. 6(2) offences. Police could have perceived and found supporting evidence that many of those who possessed amounts in the upper range were involved in some degree of supply and according to the principles contained in the police CIN scheme guidelines were ineligible to receive a CIN. (See Appendix 9 for the text of these guidelines.)

It is possible WA police had adopted a rigorous approach to the question of distinguishing between social and commercial supply by setting a relatively low threshold, such as 2.5 grams, as determinative of a minor offence. The effect of setting a low threshold is that it would continue to be risky for West Australians to either transact cannabis in ‘ounces’ or to carry ‘ounces’ on them, as they would be unlikely to receive a CIN. Further research is warranted to identify the determinants of police discretion and of the factors which they may use, such as amount of cannabis and other circumstances to resolve whether someone is engaged in selling or supply.

Chapter 7: Lessons From Cannabis Law Reform

7.8 Corruption and drug law enforcement activities

One of the principal, if unstated, aims of the Cannabis Control Act 2003 was to minimise the possibility of police being accused or perceived of engaging in corrupt practices by establishing a legalistic system to circumscribe their discretion in relation to minor cannabis offenders. With the benefit of hindsight this approach may be an over-reaction to the findings from the Royal Commission about police corruption concerning drugs, as it is submitted there is some preliminary evidence the legalistic approach of the CIN scheme has been interpreted as limiting the use of police discretion in relation to minor cannabis offences.

Whilst it is not assumed nor implied that police corruption is a common problem or an inevitable consequence of police being required to administer drug laws, nevertheless this is a persistent theme in reviews and research concerning effectiveness of DLE activities in a number of jurisdictions in Australia and elsewhere. This is a matter of some significance as a Royal Commission concerned with police corruption in WA was established in December 2001. The Royal Commission into police corruption and misconduct in WA from 1985 by former Supreme Court Justice Geoffrey Kennedy, which reported to the Government in January 2004, confirmed that corruption involving police in DLE activities had occurred. The existence of corruption had been identified as a significant issue by the NSW Wood Royal Commission into police conduct in the mid 1990s.

“There is no doubt that the majority of the most recent corrupt conduct exposed by the Wood Royal Commission, the Police Integrity Commission in New South Wales and this Royal Commission involves misconduct in the course of executing search warrants. Stealing money from the premises of drug offenders and irregularities in relation to the handling of drugs located, have unfortunately been common.”

The Kennedy Police Royal Commission surprisingly did not outline specific measures that could be implemented to reduce corruption involving DLE activities in WA, even though it identified DLE as an area of concern. It would appear that the Royal Commissioner believed that ultimately the solution was a political one, given observations of how policing in areas such as illicit drugs and prostitution placed police in an invidious position. It was pointed out that the lack of legislative provisions meant police were expected to solve an issue for which there were limited solutions and for which there was not a community consensus on the solution.

“The public creates additional corrupting dynamics by assigning police Sisyphean missions and demanding measurable results. Asked to wage highly politicised and unwinnable wars on drugs, gangs and crime … problems, 90% of which are caused by circumstances the

990 An area of relevance to DLE involves the regulation of prostitution, it being said that both prostitution and drug use share a number of similarities, both being ‘victimless crimes’ and involve issues of free choice by adults. The Royal Commission referred to how police had for many years in WA regulated prostitution through a containment policy which produced, it was claimed a ‘legislative vacuum which left police vulnerable to corruption’.
It is submitted that Royal Commission’s observation on legislative failure in relation to prostitution, where police discretion had been widely used for many years to regulate the sex industry in WA, could have supported a proposition that the CIN scheme was an opportunity for re-invigorated potency by government which had a legislative mandate and was willing to clarify the ambiguities of cannabis policy.

“...Inadequate legislative support diminishes the ability of WAPS to effectively plan and implement corruption prevention strategies. If the legislature determines not to regulate a particular activity that requires control, such as prostitution, but rather leaves the regulation to the discretion of WAPS, it places officers in a difficult position. Senior officers will be required to formulate policies and determine the scope of discretion that must be exercised, but in a legislative vacuum. From a corruption perspective, the lack of precise legislation creates a situation of high risk.”

The conundrum for police is they have been given what might be described as a Sisyphean-like task of enforcing laws to prohibit cannabis when it is perceived and used by a large segment of the population as a safe drug. A 1999 UK study of the difficulties facing police targeting drug selling indicates that DLE has a number of unique characteristics which make policing especially susceptible to development of corrupt practices. These characteristics include that DLE activities are usually secretive and may involve quasi-legal practices by the police, the use of informants is a key aspect of policing, there are substantial difficulties in regulating police working in the area, the rhetoric of the ‘War on Drugs’ puts a lot of pressure on police to demonstrate results, that it is difficult to obtain sufficient evidence to support convictions, that police may be required to purchase or use drugs as part of their work and that police may have access to large sums of money.

This means that without detailed and effective procedures and well developed management structures police involved in DLE will continue to be vulnerable to corrupt practices as the law seems to be markedly at odds with prevailing attitudes and values about cannabis. It has been noted that police face particular difficulties when they attempt to regulate an illicit drug market, such as the cannabis market, as they are at high risk of being at the ‘invitational edges’ of corruption, with the added distinction

“...that sellers in illicit markets have limited opportunities for legitimate ‘political’ influence or for lobbying. Consequently, the focal point for ‘effective control of their market’ is enforcement agents.”

7.9 Summary

While this review of the reforms in WA and the UK has largely focussed on the legislative process, advocates of decriminalisation need to also consider the necessary administrative

993 In WA the 2001 National Drug Strategy Household reports that in relation to 20 to 29 year olds, just over two thirds (68.3%) had ever used cannabis and one in five (20.1%) had used in the past month. See Table A1.2.
reforms that accompany any legislation so that police and health officials can properly implement the reform. Indeed, it is possible to claim from a cursory examination of the UK reforms that administrative measures may be the most important component of a program of reform to decriminalise minor cannabis offences. An over reliance on the legislative process can result in a flawed outcome, for just as the policy response of increasingly punitive laws have consistently failed to stop the use of cannabis, it is argued the converse may be equally true and that relying on legislation alone to decriminalise will have a limited impact on reducing the use of cannabis, the associated health harms or the involvement of organised criminal groups in the cannabis market.

“Legal change is far more fundamental than simply elimination of the risk of arrest and punishment. It affects the price, availability and quality of drugs; marketing and advertising practices; attitudes and norms; social stigmas; and other factors in complex and interrelated ways.”

A distinguishing feature of all four Australian expiation schemes is that they are legislatively based and more expansive than the approach followed recently in the UK and in the 1970s by a number of American States, where reform has been largely confined to the offence of possession. In comparison to the CIN scheme which required the development of a complex legislative structure, the reform in the UK of January 2004 involved a somewhat different approach which was based on limited legislative activity of reclassifying cannabis within the primary drug legislation.

Although future changes to the CIN scheme will be difficult to undertake without legislative amendment, there may be some scope for defining police discretion through the greater use of expanded guidelines issued as administrative instructions. Possible changes to the implementation of the CIN scheme through administrative instructions could include that possession of a smoking implement with detectable traces of cannabis is a trivial offence best dealt with by way of a formal warning, to distinguish between gradations of cannabis related harm according to cannabis potency levels and targeted interventions for young people who consume cannabis by use of bongs with the attendant risk of mental health harms.

While the rationale for issuing CINs in WA (like also in SA, the ACT and the NT) has been largely justified as being a cost effective measure using an administrative rather than judicial process to expiate an infringement notice, suspension of a driver’s license for failure to clear the outstanding debt, does not appear to have been sufficiently well examined. For instance, the use of community-based orders under Parts 7, 9 and 10 of the Sentencing Act 1995 as an alternative non-monetary approach to dealing with unpaid CINs, instead of the sanction of loss of drivers license through the FER, should be considered. Whilst the use of community based orders would have cost implications, it could be argued that there may be better outcomes for this option with respect to those groups such as Indigenous persons in non metropolitan areas, those who have a limited capacity to pay and those who may already be serving out a community based order for another type of offence. Thus a community based order for those otherwise unable to pay an unexpiated CIN through the FER process could involve attendance at a CES or be included with any other orders being served.

Although implementation of the CIN scheme rests primarily with the WA police, it also involves a series of interlocking arrangements which were intended to integrate the reform with other components of government policy concerned with the minimisation of harm from the use of other drugs. A successful outcome of decriminalisation in WA depends on complementary activities spanning government agencies responsible for managing treatment, public health and prevention programs, the cooperation of retailers of smoking paraphernalia, suppliers of hydroponic equipment and the provision of educational focussed intervention by specialist service providers, it is important that the scheme is well managed and coordinated.

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The complexity of the arrangements around the CIN scheme arguably creates a degree of risk due to fragmentation of the purpose and goals of decriminalisation, for whereas police are responsible for charging those who commit offences in the Misuse of Drugs Act 1981, some of the offences in the Cannabis Control Act 2003, such as the provision of educational literature by retailers of smoking paraphernalia and the prohibition on selling smoking paraphernalia to juveniles are public health matters.

Compared to the three other Australian schemes, the CIN scheme has introduced an important innovation of providing a non-monetary option, attendance at a CES, as an alternative method of expiation. However, a preliminary analysis based on data for the first year of operation of the CIN scheme indicated a comparatively low rate of expiation was achieved through attendance at the one and half hour long CES given there is no financial costs involved on the part of the offender. It is possible that this could be partially explained by demographic and regional factors which in effect excluded or deterred attendance by some of those issued with a CIN.

For instance, Indigenous people, those who may have a limited grasp of English or those who have not completed a formal secondary school education may be reluctant to expiate via the CES because of a perception it is targeted at those with adequate language and writing skills as it has a high content of factual health information and harm messages. Other difficulties could include that some people could have experienced difficulty in accessing the CES because of their family responsibilities if they were a sole parent with young children and unable to readily access child care facilities or did not own a motor vehicle.

The intention of the CES was to provide an avenue for some individuals to acquire additional information about the harms and implications of cannabis use to be provided through CDSTs, the major network of independent specialist service providers in WA. However the location of the CES within mainstream facilities provided by established specialist service providers, the CDSTs may not be appropriate for those individuals issued with a CIN whose drug use is limited to cannabis. Specialist service providers were historically established to target persons with serious levels of drug abuse, involving alcohol and illicit drugs such as heroin and more recently amphetamines. A significant proportion of clients attending CDSTs are coerced because of a pending court appearance or as part of their supervised release under a community based order.

The approach of locating the CES component within CDSTs can be contrasted with an approach in the ACT which developed a program called Effective Weed Control, targeted at cannabis users wishing to reduce or completely abstain from cannabis use. This was explicitly located outside specialist service providers in community health centres as it was recognised that “many people see their cannabis use in quite different terms to those people with alcohol and other illicit drug problems.” The limitations of locating programs targeted at cannabis dependent individuals as part of the specialist drug treatment service delivery model has also been noted by other commentators.

“They is a common perception that the service needs of substance dependent young people are largely dictated by alcohol and opiate dependence. In our community sample only 9% of those with cannabis dependence were also diagnosed with alcohol dependence.

997 There is a growing need to develop more effective treatment services for Indigenous people given emerging evidence of extensive social and health problems stemming from high rates of use of cannabis and other illicit drugs. Cf: Delahunty B & Putt J. The policing implications of cannabis, amphetamine and other illicit drug use in Aboriginal and Torres Strait Islander communities. NDLERF Monograph No. 15. Canberra, National Drug Law Enforcement Fund, 2006.
998 Most of the CDSTs are non government organisations, which are largely funded through service agreements with government. In some of the remote regions in the North West of the State, the contract for CDSTs are held by the relevant regional health service.
Furthermore, the vast majority (87%) of cannabis dependent individuals had never injected an illicit substance. Indicating that the service needs of this community-based group were probably predicated largely on their cannabis use.  

It could be argued that the approach of ‘grafting’ the CES on to the common stock of mainstream specialist service providers was a cost effective approach to implementing this aspect of the CIN scheme. However, as has already been shown, as there are very large numbers of regular cannabis users there may be a case to differentiate between different groups of cannabis users by establishing a number of services involving different types of providers such as medical practitioners, clinical psychologists and other private practitioners and Indigenous health workers to target a spectrum of problematic cannabis users, including those who want to expiate a CIN.  

The effectiveness of a separate cannabis specific service would depend on a careful understanding of the needs of cannabis users, which might range from dependent users to recreational users with strong incentives to re-evaluate their use due to familial or employment reasons. Additional measures may be considered, such as providing information specifically for those who were issued with a CIN for possession of a smoking implement (because of the risks of this method being related to dependence as it delivers higher doses of THC), designing a cannabis designated service located within main stream health services rather than via specialist service providers, targeting dependent cannabis users and more detailed mandated informational labelling on smoking implements being sold through retailers of cannabis paraphernalia.  

The CIN scheme might adopt a number of measures to lift the rate for expiation by the CES by shifting away from a ‘one size fits all’ approach to more flexible options designed to address specific needs. Examples of additional measures include consideration of alternative formats for the CES and an expanded profile of providers outside of the established treatment network.  

The preliminary examination of outcomes the CIN scheme over the first year of its operation highlighted the importance of better quality data about cannabis use in the community involving a spectrum of indicators, including larger samples to provide more reliable prevalence data from household surveys, measurement of the consumption and expenditure patterns of users, especially those at risk of harm through regular cannabis use and patterns of and trends in cannabis related mental health disorder.  

The thesis also indicates that the role of the courts is a significant and possibly under recognised dimension in cannabis law reform because of their critical part in determining interactions between cannabis law reforms and other legislation. Indeed there is already some evidence that decriminalisation has resulted in important reforms involving the issue of first time offenders being more readily issued with spent convictions orders because some cannabis offences have been regarded as trivial offences.  

The inherent advantage of the UK scheme over the CIN scheme should not be overlooked, as it is more flexible and able to be changed more readily, as “all that would be required would be to issue guidance to the police about cultivation, in parallel with that relating to possession.” Although at this stage the UK scheme does not encompass cultivation of plants, it is possible this anomaly would be considered in the future and if agreed upon would appear to be readily achieved by the revision of APCO guidelines.

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1001 The Cannabis Control Act 2003 s. 17(2) requires the Director General of the Department of Health to approve providers of cannabis education sessions.
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There are also some attractive features of the UK approach in that whilst it has a narrower ambit than the CIN scheme, it encompasses a wider range of forms including herbal (ie leaf) cannabis, cannabis resin, cannabinoil and cannabinoil derivatives and unlike the Cannabis Control Act 2003 does not specify an upper limit on the amount of cannabis for which a formal warning can be given.

It is suggested the inclusion of a wider variety of forms of cannabis in the UK reforms more accurately reflects a number of forms of cannabis are used which have varying attendant harms. The inclusion of the possession of both leaf and refined forms of cannabis has the potential to create a comprehensive framework of health and preventive measures which could address the spectrum of problems due to cannabis use.

Those contemplating the decriminalisation of minor cannabis offences in other jurisdictions should, therefore, consider the merits of the different approaches followed in WA and the UK described in this thesis, as whilst each demonstrates the relative advantages of reform, it is important that priority should also be given to addressing and monitoring net widening and other unintended consequences of decriminalisation.
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Strategy Unit Drugs Project


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Appendices

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Appendix 3  Department of Justice conviction codes
Appendix 4: Extract from Misuse of Drugs Act 1981
Appendix 5: Extract from Illicit Drug Diversion Initiative
Appendix 6: Cannabis Survey Interview Items
                Extract from New Zealand 2001 National Drug Survey
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Appendix 7: Recommendations from Drug Law Reform Working Party
Appendix 8: CIN Scheme Enforcement Process
Appendix 9: Cannabis Infringement Notice Scheme Guidelines
Appendix 10: CIN Scheme Public Education Materials
                Take in the facts on the new cannabis education session
                There are new laws on cannabis in Western Australia
                Cannabis the health effects
                Drug Aware Website
Appendix 1: Data From NDS Household Surveys

Western Australia

Trends 1995 - 2004

Table A1-1 provides estimates of the number of persons aged 14 years and older in WA over the period from 1995 to 2004 who have used specified illicit drugs in either their lifetime (i.e. ever used) or in the last year (i.e. recent use). These data, which are based on the estimates of prevalence from the 1995, 1998, 2001 and 2004 National Drug Strategy Household Surveys show a consistent pattern across all four surveys of cannabis being by far the most widely used illicit drug, whether measured by lifetime, annual or monthly prevalence. Table A1-2 a similar trend of prevalence increasing from 1995 to 1998 and then falling up to 2004, at least for annual and monthly rates. The exception has been lifetime prevalence, which fell from 1995 (44.8%) to 2001 (38.8%) and then increased in 2004 (39.6%).

Comparative data from the 2001 and 2004 surveys concerning frequency of cannabis use of those who have used cannabis in the past year (referred to as ‘recent use’) is contained in the report of results from the 2004 NDSHS.1003

A recent analysis of the trend in annual prevalence from the four NDSHS from 1995 to 2004 found that overall, use in WA decreased from 16.7% to 13.7%, with a significant fall from 17.5% in 2001 to 13.7% in 2004.1004 This data suggests from 2001 to 2004 there may have been a shift to less frequent cannabis use by both males and females. Table A1-3 shows whereas in 2001 just under half (48.8%) of males used in the past week or more often (i.e use every day and once a week or more often), in 2004 the proportion of this level of male use had fallen to 43.1%. There was a similar, though less pronounced reduction in female use in the past week or more often from the 2001 to 2004 surveys, from 34.5% in 2001 to 33.6% in 2004.

Table A1-1: Estimated number of illicit drug users by persons aged 14 years & older, WA, 1995 - 2004

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cannabis</td>
<td>505,525</td>
<td>655,084</td>
<td>594,247</td>
<td>638,063</td>
<td>228,788</td>
<td>326,080</td>
<td>268,024</td>
<td>220,744</td>
</tr>
<tr>
<td>Inhalants</td>
<td>39,730</td>
<td>46,394</td>
<td>52,500</td>
<td>51,200</td>
<td>2,740</td>
<td>19,009</td>
<td>9,066</td>
<td>8,000</td>
</tr>
<tr>
<td>Heroin</td>
<td>30,140</td>
<td>46,792</td>
<td>37,300</td>
<td>28,000</td>
<td>5,480</td>
<td>21,934</td>
<td>4,433</td>
<td>3,200</td>
</tr>
<tr>
<td>Meth/amphetamine</td>
<td>117,819</td>
<td>154,997</td>
<td>179,700</td>
<td>195,300</td>
<td>39,730</td>
<td>87,734</td>
<td>86,981</td>
<td>72,200</td>
</tr>
<tr>
<td>Cocaine</td>
<td>43,840</td>
<td>59,952</td>
<td>73,400</td>
<td>72,800</td>
<td>8,220</td>
<td>19,009</td>
<td>22,096</td>
<td>19,200</td>
</tr>
<tr>
<td>Hallucinogens</td>
<td>115,079</td>
<td>171,082</td>
<td>157,900</td>
<td>151,800</td>
<td>35,620</td>
<td>54,103</td>
<td>30,038</td>
<td>27,300</td>
</tr>
<tr>
<td>Ecstasy</td>
<td>69,869</td>
<td>100,895</td>
<td>135,400</td>
<td>161,800</td>
<td>36,990</td>
<td>74,574</td>
<td>60,561</td>
<td>65,800</td>
</tr>
<tr>
<td>Any illicit drug</td>
<td>602,794</td>
<td>751,591</td>
<td>650,200</td>
<td>687,600</td>
<td>301,397</td>
<td>371,409</td>
<td>295,592</td>
<td>273,000</td>
</tr>
<tr>
<td>Any illicit drug excl. cannabis</td>
<td>na</td>
<td>na</td>
<td>235,421</td>
<td>271,488</td>
<td>na</td>
<td>127,215</td>
<td>114,581</td>
<td>103,231</td>
</tr>
<tr>
<td>Injecting drug use</td>
<td>31,905</td>
<td>42,473</td>
<td>25,491</td>
<td>273,000</td>
<td>4,986</td>
<td>25,491</td>
<td>18,579</td>
<td>14,500</td>
</tr>
</tbody>
</table>


Note: Data cannot be aggregated as data in each row are based on separate estimates for each drug.


Table A1-2: Estimated prevalence (%) and number of cannabis users by age group & recency of use, WA, 1995 - 2004

<table>
<thead>
<tr>
<th></th>
<th>Lifetime</th>
<th></th>
<th>Last 12 months</th>
<th></th>
<th>Last 4 weeks</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
<td>n</td>
<td>%</td>
</tr>
<tr>
<td>1995</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-19</td>
<td>45,139</td>
<td>29.6</td>
<td>36,142</td>
<td>23.7</td>
<td>15,402</td>
<td>10.1</td>
</tr>
<tr>
<td>20-29</td>
<td>190,526</td>
<td>70.2</td>
<td>106,934</td>
<td>39.4</td>
<td>70,837</td>
<td>26.1</td>
</tr>
<tr>
<td>30-39</td>
<td>171,450</td>
<td>60.5</td>
<td>63,763</td>
<td>22.5</td>
<td>28,906</td>
<td>10.2</td>
</tr>
<tr>
<td>40+</td>
<td>92,114</td>
<td>13.9</td>
<td>21,869</td>
<td>3.3</td>
<td>11,266</td>
<td>1.7</td>
</tr>
<tr>
<td>All ages</td>
<td>499,231</td>
<td>36.9</td>
<td>228,707</td>
<td>16.7</td>
<td>126,410</td>
<td>9.2</td>
</tr>
<tr>
<td>1998</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-19</td>
<td>69,130</td>
<td>42.9</td>
<td>54,949</td>
<td>34.1</td>
<td>28,200</td>
<td>17.5</td>
</tr>
<tr>
<td>20-29</td>
<td>207,001</td>
<td>72.7</td>
<td>142,936</td>
<td>50.2</td>
<td>66,343</td>
<td>23.3</td>
</tr>
<tr>
<td>30-39</td>
<td>176,340</td>
<td>61.0</td>
<td>58,684</td>
<td>20.3</td>
<td>23,127</td>
<td>8.0</td>
</tr>
<tr>
<td>40+</td>
<td>190,548</td>
<td>26.2</td>
<td>62,546</td>
<td>8.6</td>
<td>26,909</td>
<td>3.7</td>
</tr>
<tr>
<td>All ages</td>
<td>643,019</td>
<td>44.8</td>
<td>319,155</td>
<td>22.3</td>
<td>144,579</td>
<td>10.1</td>
</tr>
<tr>
<td>2001</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-19</td>
<td>71,109</td>
<td>42.1</td>
<td>50,503</td>
<td>29.9</td>
<td>28,883</td>
<td>17.1</td>
</tr>
<tr>
<td>20-29</td>
<td>183,404</td>
<td>68.3</td>
<td>91,299</td>
<td>34.0</td>
<td>53,974</td>
<td>20.1</td>
</tr>
<tr>
<td>30-39</td>
<td>166,612</td>
<td>56.5</td>
<td>67,824</td>
<td>23.0</td>
<td>44,528</td>
<td>15.1</td>
</tr>
<tr>
<td>40-49</td>
<td>116,670</td>
<td>40.6</td>
<td>39,369</td>
<td>13.7</td>
<td>26,438</td>
<td>9.2</td>
</tr>
<tr>
<td>50-59</td>
<td>40,955</td>
<td>18.2</td>
<td>12,602</td>
<td>5.6</td>
<td>10,126</td>
<td>4.5</td>
</tr>
<tr>
<td>60+</td>
<td>10,040</td>
<td>3.5</td>
<td>3,729</td>
<td>1.3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>All ages</td>
<td>594,247</td>
<td>38.8</td>
<td>268,024</td>
<td>17.5</td>
<td>165,409</td>
<td>10.8</td>
</tr>
<tr>
<td>2004</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14-19</td>
<td>53,571</td>
<td>30.9</td>
<td>36,581</td>
<td>21.1</td>
<td>21,151</td>
<td>12.2</td>
</tr>
<tr>
<td>20-29</td>
<td>175,063</td>
<td>63.8</td>
<td>86,983</td>
<td>31.7</td>
<td>48,019</td>
<td>17.5</td>
</tr>
<tr>
<td>30-39</td>
<td>186,553</td>
<td>63.4</td>
<td>56,790</td>
<td>19.3</td>
<td>35,016</td>
<td>11.9</td>
</tr>
<tr>
<td>40-49</td>
<td>147,355</td>
<td>48.9</td>
<td>30,737</td>
<td>10.2</td>
<td>18,984</td>
<td>6.3</td>
</tr>
<tr>
<td>50-59</td>
<td>53,330</td>
<td>21.2</td>
<td>6,037</td>
<td>2.4</td>
<td>2,012</td>
<td>0.8</td>
</tr>
<tr>
<td>60+</td>
<td>19,931</td>
<td>6.3</td>
<td>1,582</td>
<td>0.5</td>
<td>1,582</td>
<td>0.5</td>
</tr>
<tr>
<td>All ages</td>
<td>638,063</td>
<td>39.6</td>
<td>220,744</td>
<td>13.7</td>
<td>127,290</td>
<td>7.9</td>
</tr>
</tbody>
</table>


Table A1-3 contains additional detail about the reduction in the proportion of males from the 2001 to the 2004 surveys who used cannabis at the two most frequent levels of use, ‘every day’ and ‘once a week or more often,’ which declined from 18.1% to 15.5% and from 30.7% to 27.6% respectively. Arguably this level of use is potentially the most harmful level.\(^{1005}\) However, with respect to females whilst the proportion using ‘every day’ declined from 15.0% to 11.2% from the 2001 to the 2004 surveys, there was an increase from 19.5% in 2001 to 22.4% in 2004 in the proportion using ‘once a week or more often’.

\(^{1005}\) Swift W, Hall W & Teesson M. ‘Cannabis use and dependence among Australian adults: Results from the National Survey of Mental Health and Wellbeing.’ (2001) 96 Addiction 737-748.
The breakdown for frequency of use by age group for the 2001 and 2004 surveys indicates age may be associated with shifts in frequencies of use. However, there is some complexity of frequency of use by age group which can be illustrated by considering data concerning 14 to 19 year olds. In Table A1-3 there was little change in the frequency of ‘every day’ with rates of 13.9% and 13.3% in the 2001 and 2004 surveys, a small reduction in the frequency of ‘once a week or more often’ from 28.9% to 24.4% in the 2001 and 2004 surveys, a marked increase in the frequency of ‘about once a month’ from 9.4% to 17.8% in the 2001 and 2004 surveys and a modest reduction in the frequency of ‘once a week or more often’ from 47.8% to 44.4% in the 2001 and 2004 surveys.

Interpretation of data from the 2001 and 2004 surveys concerning method of cannabis use presented in Table A1-4 is problematic as the original question (M12 – see Appendix 6) in the 2004 NDSHS does not appear to indicate whether the question refers to an average day, the past year or another measure of when cannabis is used, as was specified in the preceding question (M11). Indeed it is difficult to determine what information is provided by this question, as respondents were told to tick all choices that applied.

9.1.1.2 2004 NDS Household Survey

In the 2004 NDSHS it was estimated in WA that cannabis had been ever used at least once in their lifetime by just over 638,000 persons, by nearly 221,000 persons in the last year and just over 127,000 persons in the last four weeks. (See Table A1-2.)

Figures A1-1, A1-2 and A1-3 show a pattern of higher prevalence rates in 2004 for males compared to females for the 14 to 19, 20 to 29, 30 to 39, 40 to 49, 50 to 59 and 60 years and older age groups. The highest prevalence rate in 2004 for both males and females occurred in the 20 to 29 age group, with lifetime, annual and monthly rates for males of 67.4%, 38.7% and 22.9% and lifetime, annual and monthly rates for females of 60.2%, 24.6% and 12.0% respectively.

Figure A1-1: Lifetime prevalence (%) of cannabis use by sex & age group, WA, 2004
Figure A1-2: Annual prevalence (%) of cannabis use by sex & age group, WA, 2004

![Graph showing annual prevalence of cannabis use by sex and age group.]

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-19</td>
<td>24.0</td>
<td>18.0</td>
</tr>
<tr>
<td>20-29</td>
<td>38.7</td>
<td>24.6</td>
</tr>
<tr>
<td>30-39</td>
<td>25.7</td>
<td>12.8</td>
</tr>
<tr>
<td>40-49</td>
<td>14.7</td>
<td>5.8</td>
</tr>
<tr>
<td>50-59</td>
<td>3.6</td>
<td>1.1</td>
</tr>
<tr>
<td>60+</td>
<td>1.0</td>
<td>0.2</td>
</tr>
</tbody>
</table>

Figure A1-3: Monthly prevalence (%) of cannabis use by sex & age group, WA, 2004

![Graph showing monthly prevalence of cannabis use by sex and age group.]

<table>
<thead>
<tr>
<th>Age Group</th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-19</td>
<td>13.7</td>
<td>10.6</td>
</tr>
<tr>
<td>20-29</td>
<td>22.9</td>
<td>12.0</td>
</tr>
<tr>
<td>30-39</td>
<td>15.5</td>
<td>8.3</td>
</tr>
<tr>
<td>40-49</td>
<td>8.9</td>
<td>3.7</td>
</tr>
<tr>
<td>50-59</td>
<td>1.3</td>
<td>0.2</td>
</tr>
<tr>
<td>60+</td>
<td>1.0</td>
<td></td>
</tr>
</tbody>
</table>
Appendix 1

Table A1-3: Frequency (%) of cannabis used in last year by age group & sex, WA, 2001 - 2004

<table>
<thead>
<tr>
<th>Sex</th>
<th>Age group</th>
<th>14-19</th>
<th>20-29</th>
<th>30-39</th>
<th>40+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males</td>
<td>Females</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Every day</td>
<td>18.1</td>
<td>15.0</td>
<td>13.9</td>
<td>17.9</td>
<td>21.3</td>
</tr>
<tr>
<td></td>
<td>Once a week or more often</td>
<td>30.7</td>
<td>19.5</td>
<td>28.9</td>
<td>21.1</td>
<td>29.3</td>
</tr>
<tr>
<td></td>
<td>About once a month</td>
<td>13.0</td>
<td>13.8</td>
<td>9.4</td>
<td>14.9</td>
<td>12.1</td>
</tr>
<tr>
<td></td>
<td>Less than monthly</td>
<td>38.2</td>
<td>51.7</td>
<td>47.8</td>
<td>46.1</td>
<td>44.6</td>
</tr>
<tr>
<td>2004</td>
<td>Every day</td>
<td>15.5</td>
<td>11.2</td>
<td>13.3</td>
<td>14.0</td>
<td>14.0</td>
</tr>
<tr>
<td></td>
<td>Once a week or more often</td>
<td>27.6</td>
<td>22.4</td>
<td>24.4</td>
<td>21.1</td>
<td>23.1</td>
</tr>
<tr>
<td></td>
<td>About once a month</td>
<td>12.8</td>
<td>10.1</td>
<td>17.8</td>
<td>12.3</td>
<td>10.5</td>
</tr>
<tr>
<td></td>
<td>Less than monthly</td>
<td>44.1</td>
<td>56.4</td>
<td>44.4</td>
<td>51.5</td>
<td>43.9</td>
</tr>
</tbody>
</table>


Note: Base - Those who have used cannabis in last year.

Table A1-4: Method (%) of cannabis use in last year by age group & sex, WA, 2001 - 2004

<table>
<thead>
<tr>
<th>Sex</th>
<th>Age group</th>
<th>14-19</th>
<th>20-29</th>
<th>30-39</th>
<th>40+</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Males</td>
<td>Females</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2001</td>
<td>Smoked joints</td>
<td>81.3</td>
<td>78.6</td>
<td>78.0</td>
<td>79.7</td>
<td>84.8</td>
</tr>
<tr>
<td></td>
<td>Smoked from bong or pipe</td>
<td>86.4</td>
<td>81.4</td>
<td>96.9</td>
<td>92.6</td>
<td>79.6</td>
</tr>
<tr>
<td></td>
<td>Eating (eg hash cookies)</td>
<td>53.3</td>
<td>44.1</td>
<td>46.4</td>
<td>56.6</td>
<td>49.8</td>
</tr>
<tr>
<td></td>
<td>Mixed with tobacco</td>
<td>50.4</td>
<td>45.5</td>
<td>52.7</td>
<td>50.6</td>
<td>45.7</td>
</tr>
<tr>
<td>2004</td>
<td>Smoked joints</td>
<td>84.9</td>
<td>83.8</td>
<td>89.9</td>
<td>81.9</td>
<td>86.7</td>
</tr>
<tr>
<td></td>
<td>Smoked from bong or pipe</td>
<td>88.7</td>
<td>88.5</td>
<td>83.5</td>
<td>91.2</td>
<td>92.0</td>
</tr>
<tr>
<td></td>
<td>Eating (eg hash cookies)</td>
<td>57.1</td>
<td>53.7</td>
<td>53.2</td>
<td>63.6</td>
<td>57.0</td>
</tr>
<tr>
<td></td>
<td>Mixed with tobacco</td>
<td>51.3</td>
<td>51.3</td>
<td>44.9</td>
<td>64.9</td>
<td>46.0</td>
</tr>
</tbody>
</table>


Note: Base - Those who have used cannabis in last year.

9.1.1.3 2001 NDS Household Survey

Table A1-5 provides a breakdown by age group and sex of those who have used cannabis in the last 12 months according to the quantity of cannabis smoked as either cones, bongs or joints (referred to below as cones) on a usual smoking day according to the following levels of use - light users (1-2 cones per day), moderate users (3-5 cones per day), heavy users (6-10 cones per day) or very heavy users (11 or more cones per day).

---

1006 The analysis does not include the 50-59 and 60 years and over age groups because of higher relative standard errors due to the small samples for these ages.

1007 The term ‘usual’ is an interpretation of the intent of Question M11, which asked “… on average how many cones, bongs or joints do you normally have?”


Appendix 1

Level of use by sex

Table A1-5 shows that in relation to the lowest rate of use (one to two cones per day) a lower proportion of males than females (61.2% vs 66.6%) were light users, that similar proportions of males and females (20.1% vs 20.4%) were moderate users (3-5 cones per day), that a somewhat higher proportion of males compared to females (11.1% vs 9.3%) were heavy users (6-10 cones per day) and that a greater proportion of males than females (7.7% vs 3.7%) were very heavy users (11 or more cones per day).

Table A1-5 also shows the highest proportion of very heavy cannabis use for any age group occurred in the 40 to 49 age group, with 13.4% (M 16.8% vs F 7.2%) smoking at this level, followed by the 14 to 19 age group, with 10.0% (M 11.2% vs F 8.7%) smoking at this level.

For heavy cannabis users the highest proportion for any age group occurred in the 20 to 29 age group, with 12.7% (M 16.3% vs F 7.8%) smoking at this level, followed by the 14 to 19 age group, with 10.6% (M 13.2% vs F 7.7%) smoking at this level.

For moderate users the highest proportion for any age group occurred in the 14 to 19 age group, with 37.8% (M 39.1% vs F 36.2%) smoking at this level, followed by the 20 to 29 age group, with 19.7% (M 22.7% vs F 15.7%) smoking at this level.

For light users the highest proportion for any age occurred in the 30 to 39 and 40 to 49 age groups, with a rate of 70% and above smoking at this level, followed by the 20 to 29 age group, with 63.6% (M 56.6% vs F 74.3%) smoking at this level.

Level of use by age group

It can be seen the lowest proportion of light cannabis use occurred in the youngest age group, with 41.6% of 14 to 19 year olds being light users. Also, the proportion of light users increased with age – from 63.6% of the 20 to 29 age group and then stabilising for older age groups with 71.1% of the 30 to 39 and 70.2% of the 40 to 49 age groups.

Another pattern identified in this data is that there is a relatively large proportion of both 14 to 19 and 20 to 29 year olds who on their usual smoking day are either heavy or very heavy users of cannabis. It is plausible that use of cannabis at this level would be indicative of problematic cannabis use, including dependence and/or other consequences. (See generally 6.6.)

As shown earlier in Table A1-2, it was estimated in 2004 there was a total of nearly 58,000 persons aged 14 to 19 and nearly 50,000 persons aged 40 to 49 who had used cannabis in the last year. If the criterion of risk was assumed to be greatest for those who were either heavy or very heavy users, this translates into an estimate of 11,892 persons aged 14 to 19 and 11,187 persons aged 40 to 49 who were using cannabis at this level.

The main features of age related levels of cannabis use on a usual smoking are summarised below.

14-19 year olds

- 41.6% of 14 to 19 year olds were light users (M 36.5% vs F 47.4%).
- 37.8% were moderate users (M 39.1% vs F 36.2%).
- 20.6% were either heavy or very heavy users (M 24.2% vs F 16.4%).

---

[1008] The 2004 NDSHS report does not provide a frequency distribution of level of use by age. Instead the report only provides a breakdown of the mean number of cones, bongs or joints smoked per day by age group for 2001 and 2004. There was an overall mean of 3.3 in 2001 and 3.1 in 2004. See Table 36.
Appendix 1

20-29 year olds
• 63.6% of 20 to 29 year olds were light users (M 55.6% vs F 74.3%).
• 19.7% were moderate users (M 22.7% vs F 15.7%).
• 16.7% were either heavy or very heavy users (M 21.8% vs 9.9%)/

30-39 year olds
• 71.1% of 30 to 39 year olds were light users (M 75.1% vs F 65.7%).
• 17.3% were moderate users (M 15.5% vs 19.8%).
• 11.5% were either heavy or very heavy users (M 9.4% vs 14.5%).

40-49 year olds
• 70.2% of 40 to 49 year olds were light users (M 63.7% vs 62.1%).
• 7.2% were moderate users (9.7% vs 2.7%).
• 22.5% were either heavy or very heavy users (M 26.4% vs 15.1%).

Table A1-5: Frequency (%) of cannabis smoked as cones on usual smoking day by age group & sex, WA, 2001

<table>
<thead>
<tr>
<th></th>
<th>14–19</th>
<th>20–29</th>
<th>30–39</th>
<th>40–49</th>
<th>50–59</th>
<th>60+</th>
<th>All ages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Males</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-2 cones</td>
<td>36.5</td>
<td>55.6</td>
<td>75.1</td>
<td>63.7</td>
<td>97.6</td>
<td>100.0</td>
<td>61.2</td>
</tr>
<tr>
<td>3-5 cones</td>
<td>39.1</td>
<td>22.7</td>
<td>15.5</td>
<td>9.7</td>
<td>2.4</td>
<td>-</td>
<td>20.1</td>
</tr>
<tr>
<td>6-10 cones</td>
<td>13.2</td>
<td>16.3</td>
<td>5.7</td>
<td>9.8</td>
<td>-</td>
<td>-</td>
<td>11.1</td>
</tr>
<tr>
<td>11+ cones</td>
<td>11.2</td>
<td>5.5</td>
<td>3.7</td>
<td>16.8</td>
<td>-</td>
<td>-</td>
<td>7.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Females</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-2 cones</td>
<td>47.4</td>
<td>74.3</td>
<td>65.7</td>
<td>82.1</td>
<td>59.5</td>
<td>-</td>
<td>66.6</td>
</tr>
<tr>
<td>3-5 cones</td>
<td>36.2</td>
<td>15.7</td>
<td>19.8</td>
<td>2.7</td>
<td>40.5</td>
<td>-</td>
<td>20.4</td>
</tr>
<tr>
<td>6-10 cones</td>
<td>7.7</td>
<td>7.8</td>
<td>14.5</td>
<td>7.9</td>
<td>-</td>
<td>-</td>
<td>9.3</td>
</tr>
<tr>
<td>11+ cones</td>
<td>8.7</td>
<td>2.1</td>
<td>-</td>
<td>7.2</td>
<td>-</td>
<td>-</td>
<td>3.7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Persons</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1-2 cones</td>
<td>41.6</td>
<td>63.6</td>
<td>71.1</td>
<td>70.2</td>
<td>88.7</td>
<td>100.0</td>
<td>63.4</td>
</tr>
<tr>
<td>3-5 cones</td>
<td>37.8</td>
<td>19.7</td>
<td>17.3</td>
<td>7.2</td>
<td>9.4</td>
<td>-</td>
<td>20.2</td>
</tr>
<tr>
<td>6-10 cones</td>
<td>10.6</td>
<td>12.7</td>
<td>9.4</td>
<td>9.1</td>
<td>1.9</td>
<td>-</td>
<td>10.3</td>
</tr>
<tr>
<td>11+ cones</td>
<td>10.0</td>
<td>4.0</td>
<td>2.1</td>
<td>13.4</td>
<td>-</td>
<td>-</td>
<td>5.9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Note: Base - Those who have used cannabis in last year.

Wanting to quit or reduce cannabis use
Data is available from the WA 2001 NDSHS concerning those who had used cannabis in the past year and whether they had concerns about wanting to quit or reduce using cannabis, but
had been unable to do so. A breakdown by age group and sex of those who had used cannabis in the last 12 months and who had wanted quit or reduce, but could not, is presented in Figure A1-4. This shows that, of those who had wanted and/or tried to quit in the past year but could not, there were higher proportions of males than females in the 14 to 19 (18.8% vs 10.9%) and 20 to 29 (19.6% vs 15.8%) age groups, whereas there were lower proportions of males than females in the 30 to 39 (11.8% vs 18.7%) and 40 to 49 (11.9% vs 15.1%) age groups who had wanted and/or tried to quit in the past year.

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

<table>
<thead>
<tr>
<th></th>
<th>Males</th>
<th>Females</th>
</tr>
</thead>
<tbody>
<tr>
<td>14-19</td>
<td>18.8</td>
<td>10.9</td>
</tr>
<tr>
<td>20-29</td>
<td>19.6</td>
<td>15.8</td>
</tr>
<tr>
<td>30-39</td>
<td>11.8</td>
<td>18.7</td>
</tr>
<tr>
<td>40-49</td>
<td>11.9</td>
<td>15.1</td>
</tr>
<tr>
<td>50-59</td>
<td>9.8</td>
<td></td>
</tr>
</tbody>
</table>

9.1.2 Australian national picture

9.1.2.1 2004 NDS Household Survey

National data from the 2004 NDSHS shows a substantial level of exposure to cannabis in the community, with just over one in three (33.6%) of all Australians aged 14 years and older who have ever used cannabis in their lifetime. In 2004 it was estimated there was a total of 5.5 million Australians aged 14 years and older who had used cannabis at least once in their lifetime, a total of 1.8 million who had used in the last 12 months, a total of 1.1 million who had used in the last month and a total of 751,700 who had used in the last week. See Table A1-6.

The 2004 NDSHS also confirms higher rates of lifetime use by males compared to females (37.4% vs 29.9%) and that in both the 20 to 29 and 30 to 39 age groups 54.5% of Australians have ever used cannabis at some time in their life. See Table A1-6.

A jurisdictional breakdown of data shows that nationally just over one in ten (11.3%) of all Australians aged 14 years and older had used cannabis in the past year, the annual rate for WA

---

1009 This question (M5) asked “During the last 12 months, did you find that you couldn’t stop or cut down on your use of marijuana/cannabis, even though you wanted to or tried to?” See Appendix 6. (This question was repeated in the 2004 NDSHS but has not analysed.)

being 13.7% and with rates of 11.7% for South Australia, 14.0% for the Australian Capital Territory and 20.9% for the Northern Territory.\textsuperscript{1011}

The annual rates for the other States (specifically who have cautioning schemes rather than expiation schemes for dealing with minor cannabis offenders) were 10.7% for New South Wales, 9.8% for Victoria, 12.1% for Queensland and 10.9% for Tasmania. See Table A1-7.

Table A1-8 provides more detailed information at a national level, of cannabis use according to age group and frequency of use based on those who have used cannabis in the last year. The 2004 NDSHS found that the highest proportion of those who use of cannabis ‘every day’ or ‘once a week or more often’ was in the 30 to 39 age group (45.8%). This would appear to contradict a misconception sometimes expressed that the highest frequency of cannabis use occurs in young people. This data indicates frequency of use increases with age, rising from 30.0% of 14 to 19 year olds to 36.6% of 25 to 29 year olds and then plateauing out, with 45.8% of 30 to 39 year olds and 43.8% of those aged 40 years and older.

Table A1-6: Frequency (%) of cannabis use by age group & sex, Australia, 2004

<table>
<thead>
<tr>
<th>Age group</th>
<th>Sex</th>
<th>Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Males</td>
</tr>
<tr>
<td>In lifetime</td>
<td>25.5</td>
<td>54.5</td>
</tr>
<tr>
<td>In the past 12 months</td>
<td>17.9</td>
<td>26.0</td>
</tr>
<tr>
<td>In the last month</td>
<td>9.1</td>
<td>14.9</td>
</tr>
<tr>
<td>In the last week</td>
<td>4.9</td>
<td>9.9</td>
</tr>
</tbody>
</table>

### Table A1-7: Frequency (%) of drug use in the last year by Australian jurisdiction, 2004

<table>
<thead>
<tr>
<th>Drug</th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>WA</th>
<th>SA</th>
<th>Tas</th>
<th>ACT</th>
<th>NT</th>
<th>Aus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana/cannabis</td>
<td>10.7</td>
<td>9.8</td>
<td>12.1</td>
<td>13.7</td>
<td>11.7</td>
<td>10.9</td>
<td>14.0</td>
<td>20.9</td>
<td>11.3</td>
</tr>
<tr>
<td>Painkillers/analgesics</td>
<td>2.8</td>
<td>3.3</td>
<td>3.4</td>
<td>2.7</td>
<td>2.9</td>
<td>3.9</td>
<td>2.7</td>
<td>5.2</td>
<td>3.1</td>
</tr>
<tr>
<td>Tranquillisers/sleeping pills</td>
<td>1.1</td>
<td>1.0</td>
<td>1.0</td>
<td>1.3</td>
<td>0.7</td>
<td>0.7</td>
<td>0.7</td>
<td>1.3</td>
<td>1.0</td>
</tr>
<tr>
<td>Steroids</td>
<td>*&lt;0.1</td>
<td>*0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*0.4</td>
<td>&lt;0.1</td>
<td></td>
</tr>
<tr>
<td>Barbiturates</td>
<td>*&lt;0.1</td>
<td>0.2</td>
<td>0.2</td>
<td>0.3</td>
<td>*0.3</td>
<td>*0.3</td>
<td>*0.4</td>
<td>0.2</td>
<td></td>
</tr>
<tr>
<td>Inhalants</td>
<td>0.4</td>
<td>0.4</td>
<td>0.5</td>
<td>0.5</td>
<td>0.4</td>
<td>*0.4</td>
<td>0.9</td>
<td>*0.2</td>
<td>0.4</td>
</tr>
<tr>
<td>Heroin</td>
<td>0.1</td>
<td>0.3</td>
<td>*0.1</td>
<td>*0.2</td>
<td>*0.2</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>0.2</td>
</tr>
<tr>
<td>Methadone</td>
<td>*&lt;0.1</td>
<td>*0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*&lt;0.1</td>
<td>*0.2</td>
<td>*0.4</td>
<td>*&lt;0.1</td>
<td>0.1</td>
</tr>
<tr>
<td>Other opiates/opioids</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>0.3</td>
<td>*0.1</td>
<td>*0.6</td>
<td>*0.2</td>
<td>0.8</td>
<td>0.2</td>
</tr>
<tr>
<td>Meth/amphetamine (speed)</td>
<td>3.1</td>
<td>2.8</td>
<td>3.0</td>
<td>4.5</td>
<td>4.1</td>
<td>1.8</td>
<td>4.3</td>
<td>3.9</td>
<td>3.2</td>
</tr>
<tr>
<td>Cocaine</td>
<td>1.2</td>
<td>1.2</td>
<td>0.7</td>
<td>1.2</td>
<td>0.7</td>
<td>*0.2</td>
<td>1.6</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Hallucinogens</td>
<td>0.6</td>
<td>0.7</td>
<td>0.9</td>
<td>0.6</td>
<td>0.7</td>
<td>*0.6</td>
<td>1.0</td>
<td>*0.6</td>
<td>0.7</td>
</tr>
<tr>
<td>Ecstasy</td>
<td>3.5</td>
<td>3.1</td>
<td>3.4</td>
<td>4.1</td>
<td>2.8</td>
<td>1.6</td>
<td>6.0</td>
<td>3.7</td>
<td>3.4</td>
</tr>
<tr>
<td>Ketamine</td>
<td>0.3</td>
<td>0.3</td>
<td>0.3</td>
<td>*&lt;0.1</td>
<td>*0.1</td>
<td>*0.1</td>
<td>*0.2</td>
<td>*0.6</td>
<td>0.3</td>
</tr>
<tr>
<td>GHB</td>
<td>0.1</td>
<td>0.2</td>
<td>0.2</td>
<td>*&lt;0.1</td>
<td>*0.1</td>
<td>*0.1</td>
<td>*0.2</td>
<td>*0.6</td>
<td>0.3</td>
</tr>
<tr>
<td>Injected drugs</td>
<td>0.3</td>
<td>0.4</td>
<td>0.4</td>
<td>0.9</td>
<td>0.6</td>
<td>*0.5</td>
<td>*0.3</td>
<td>*0.6</td>
<td>0.4</td>
</tr>
<tr>
<td>Any illicit</td>
<td>14.6</td>
<td>14.3</td>
<td>15.9</td>
<td>17.3</td>
<td>15.4</td>
<td>15.4</td>
<td>17.6</td>
<td>26.0</td>
<td>15.3</td>
</tr>
</tbody>
</table>

**Note:**
- (a) Used in the past 12 months;
- (b) For non medical purposes;
- (c) Non-maintenance;
- (d) In previous surveys this included ‘designer drugs’.
- * Relative standard error greater than 50%.
- <0.1 non zero result less than 0.1%.


### Table A1-8: Frequency (%) of cannabis use in the last year by age group & sex, Australia, 2004

<table>
<thead>
<tr>
<th>Age group</th>
<th>Sex</th>
<th>Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14-19</td>
<td>20-29</td>
</tr>
<tr>
<td>Every day</td>
<td>8.8</td>
<td>15.7</td>
</tr>
<tr>
<td>Once a week or more often</td>
<td>21.2</td>
<td>20.9</td>
</tr>
<tr>
<td>About once a month</td>
<td>13.5</td>
<td>11.5</td>
</tr>
<tr>
<td>Every few months</td>
<td>21.9</td>
<td>20.3</td>
</tr>
<tr>
<td>Once or twice a year</td>
<td>34.6</td>
<td>31.6</td>
</tr>
</tbody>
</table>

## 9.2 Appendix 2: Law Enforcement Data

### Table A2-1: Mean annual price ($) of cannabis, WA, 1997/1998 – 2004/2005

<table>
<thead>
<tr>
<th>Year</th>
<th>Deal (1 gm)</th>
<th>Ounce bag (28 gms)</th>
<th>Pound (450 gms)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Leaf Hydro/skunk</td>
<td>Leaf Hydro/skunk</td>
<td>Leaf Hydro/skunk</td>
</tr>
<tr>
<td>1997/1998</td>
<td>$20 $30</td>
<td>$200-$300 $400-$500</td>
<td>$2,000-$3,000 $3,000-$5,000</td>
</tr>
<tr>
<td>1998/1999</td>
<td>$20 $50</td>
<td>$200-$300 $400-$500</td>
<td>$2,000-$3,000 $3,000-$5,000</td>
</tr>
<tr>
<td>1999/2000</td>
<td>$20 $50</td>
<td>$200-$300 $350-$400</td>
<td>$2,500 $3,500-$4,200</td>
</tr>
<tr>
<td>2000/2001</td>
<td>na $50</td>
<td>na $350</td>
<td>na $4,000</td>
</tr>
<tr>
<td>2001/2002</td>
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Source: Australian Illicit Drug Reports (annual series). Australian Bureau of Criminal Intelligence & Australian Crime Commission


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Note: AFP data not separately reported prior to 2000/2001. Australian Customs Service data included in AFP and disaggregated by jurisdiction since 2000/2001. Seizure data only includes seizures where weight was recorded.

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Source: WA Police Service, Crime Information Unit
### Table A2-4: Annual drug charges, WA, 1985 - 1989

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<td>-</td>
<td>-</td>
<td>-</td>
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### Table A2-5: Annual drug charges, WA, 1990 - 1994

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<td>n</td>
<td>%</td>
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**Source:** Australian Illicit Drug Reports (annual series). Australian Bureau of Criminal Intelligence & Australian Crime Commission

**Note:** Some totals include data for missing data where type of offence was unknown.

### Table A2-7: Annual cannabis offences – notices & arrests, Australia, 1995/1996 – 2004/2005

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<td>(arrest + notices)</td>
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**Source:** Australian Illicit Drug Reports (annual series). Australian Bureau of Criminal Intelligence & Australian Crime Commission

**Note:** Australian Illicit Drug Report data for WA adjusted to include 1,014 CINs issued from 22 March to 30 June 2004.

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<th>Tas</th>
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Source: Australian Illicit Drug Reports (annual series). Australian Bureau of Criminal Intelligence & Australian Crime Commission

Note: Excludes infringement notices

---

**Figure A2-1: Trends in cannabis offences, Australia, 1995/1996 - 2004/2005**
Figure A2-2: Proportion (%) of cannabis offences of all offences, Australia vs WA, 1995/1996 - 2003/2004

Table A2-9: Quarterly convictions by sex – possession of smoking implement [s. 5(1)(d)(i)], WA, 2002 – 2005

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<td>395</td>
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Source: Department of Attorney General, Magistrates Courts & Tribunals Directorate

Note: A count of individual charges for individual offenders, not individual persons. As an offender may be charged with multiple offences, on more than one occasion, a number of charges may involve the same offender.
### Table A2-10: Quarterly convictions by sex – possession of cannabis [s. 6(2)], WA, 2002 – 2005

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</table>

**Source:** Department of Attorney General, Magistrates Courts & Tribunals Directorate

**Note:** Base – Adults (persons aged 18 years & older)

Is a count of individual charges for individual offenders, not individual persons. As an offender may be charged with multiple offences, on more than one occasion, a number of charges may involve the same offender.

### Table A2-11: Quarterly convictions by sex – cultivation of cannabis [s. 7(2)], WA, 2002 – 2005

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<tr>
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**Source:** Department of Attorney General, Magistrates Courts & Tribunals Directorate

**Note:** Base – Adults (persons aged 18 years & older)

Is a count of individual charges for individual offenders, not individual persons. As an offender may be charged with multiple offences, on more than one occasion, a number of charges may involve the same offender.
Table A2-12: Quarterly convictions by sex – sections 5(1)(d)(i), 6(2) & 7(2), WA, 2002 – 2005

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Source: Department of Attorney General, Magistrates Courts & Tribunals Directorate
Note: Base – Adults (persons aged 18 years & older)
Is a count of individual charges for individual offenders, not individual persons. As an offender may be charged with multiple offences, on more than one occasion, a number of charges may involve the same offender

Table A2-13: Median price ($) per gram of last purchase of cannabis by jurisdiction, 2000 - 2005

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## Appendix 2

### Table A2-14: Median price ($) per ounce of last purchase of cannabis by jurisdiction, 2000 - 2005

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### Table A2-15: Number of cannabis seizures by type & THC (%) content, WA, 1996

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</tr>
<tr>
<td>Total</td>
<td>106</td>
<td>59</td>
<td>168</td>
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</tbody>
</table>

**Source:** Alcohol & Drug Coordination Unit, WA Police Service
# Appendix 3

## 9.3 Appendix 3: Department of Justice conviction codes

### Table A3-1: Cannabis related offences identified by DOJ court data system

<table>
<thead>
<tr>
<th>MDA Section</th>
<th>Additional code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5(1)(d)(i)</td>
<td></td>
<td>Possession of pipes or utensils for smoking prohibited plant</td>
</tr>
<tr>
<td>6(1)(a)</td>
<td>B</td>
<td>Possession of Prohibited Drugs with Intent to Sell or Supply (Cannabis)</td>
</tr>
<tr>
<td>6(1)(a)</td>
<td>C</td>
<td>Possession of Cannabis Oil W/ Sell/Supply</td>
</tr>
<tr>
<td>6(1)(a)</td>
<td>L</td>
<td>Possession of a Prohibited Drug With Intent to Sell or Supply (Cannabis Resin)</td>
</tr>
<tr>
<td>6(1)(a)</td>
<td>M</td>
<td>(Att) Possession of Drugs with Intent to Sell or Supply (Cannabis)</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>AB</td>
<td>Manufactured a Prohibited Drug (Cannabis Oil)</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>CA</td>
<td>(Att) Manufactured a Prohibited Drug (Cannabis Oil)</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>E</td>
<td>Manufacture Cannabis Resin</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>F</td>
<td>Attempted to Manufacture Cannabis Resin</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>G</td>
<td>With Intent To Sell And Supply Manufactured Cannabis Oil</td>
</tr>
<tr>
<td>6(1)(b)</td>
<td>GA</td>
<td>(Att) Prepared a Prohibited Drug for Use (Cannabis)</td>
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<tr>
<td>6(1)(b)</td>
<td>J</td>
<td>Prepared a Prohibited Drug for Use (Cannabis)</td>
</tr>
<tr>
<td>6(1)(c)</td>
<td>A</td>
<td>Sold/Supplied Cannabis</td>
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<tr>
<td>6(1)(c)</td>
<td>AM</td>
<td>Supplied a Prohibited Drug (Cannabis)</td>
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<tr>
<td>6(1)(c)</td>
<td>J</td>
<td>Offered To Sell/Supply Cannabis</td>
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<tr>
<td>6(1)(c)</td>
<td>M</td>
<td>(Att) Supplied a Prohibited Drug (Cannabis)</td>
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<tr>
<td>6(1)(c)</td>
<td>W</td>
<td>Sells/Supplies or offers to sell or supply, to another Cannabis Oil</td>
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<tr>
<td>6(2)</td>
<td>B</td>
<td>Possess a Prohibited Drug (Cannabis)</td>
</tr>
<tr>
<td>6(2)</td>
<td>G</td>
<td>Used a Prohibited Drug (Cannabis)</td>
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<tr>
<td>7(1)(a)</td>
<td>A</td>
<td>Cultivation Of Cannabis With Intent</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>C</td>
<td>(Att) Cultivate a Prohibited Plant with Intent to Sell or Supply</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>D</td>
<td>(Att) Possess Plant with Intent to Sell, or Supply Drug there from</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>E</td>
<td>(Att) Possess a Prohibited Plant with Intent Sell or Supply</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>G</td>
<td>(Att) With Intent to Sell/Supply Drug from Cultivated Plant</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>H</td>
<td>Cultivate a prohibited plant with intent to sell or supply .</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>I</td>
<td>Possess Plant with Intent to Sell, or Supply Drug there from.</td>
</tr>
<tr>
<td>7(1)(a)</td>
<td>J</td>
<td>With Intent to Sell/Supply Drug from Cultivated Plant</td>
</tr>
<tr>
<td>7(1)(b)</td>
<td>A</td>
<td>(Att) Offered to Sell or Supply a Prohibited Plant</td>
</tr>
<tr>
<td>7(1)(b)</td>
<td>B</td>
<td>(Att) Sell Prohibited Plant</td>
</tr>
<tr>
<td>7(1)(b)</td>
<td>C</td>
<td>(Att) Supply a Prohibited Plant</td>
</tr>
<tr>
<td>7(1)(b)</td>
<td>D</td>
<td>Offered to sell or supply a prohibited plant</td>
</tr>
<tr>
<td>7(1)(b)</td>
<td>E</td>
<td>Sell prohibited plant</td>
</tr>
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<td>MDA</td>
<td>Additional code</td>
<td>Description</td>
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<td>-----------</td>
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<td>Section 7(2)</td>
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<tr>
<td>7(2)</td>
<td>A</td>
<td>In possession or cultivates prohibited plant - cannabis</td>
</tr>
<tr>
<td>7(2)</td>
<td>C</td>
<td>(Att) Cultivate a Prohibited Plant</td>
</tr>
<tr>
<td>7(2)</td>
<td>D</td>
<td>(Att) Possess a Prohibited Plant</td>
</tr>
<tr>
<td>7(2)</td>
<td>F</td>
<td>Attempt to Obtain a Prohibited Plant (7(2)).</td>
</tr>
<tr>
<td>7(2)</td>
<td>G</td>
<td>Possess a Prohibited Plant.</td>
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<td>Section 33(1)</td>
<td></td>
<td></td>
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<tr>
<td>33(1)(a)</td>
<td>A</td>
<td>Attempt To Possess Cannabis With Intent</td>
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<tr>
<td>Section 33(2)</td>
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<td></td>
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<tr>
<td>33(2)(a)</td>
<td>E</td>
<td>Conspiracy to possess a prohibited plant with intent to sell/supply</td>
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<tr>
<td>33(2)</td>
<td>A</td>
<td>Conspire to possess cannabis</td>
</tr>
<tr>
<td>33(2)</td>
<td>C</td>
<td>Conspiracy To Cultivate Cannabis</td>
</tr>
<tr>
<td>33(2)</td>
<td>I</td>
<td>Conspired To Cultivate Cannabis With Intent To Sell And Supply</td>
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<tr>
<td>33(2)</td>
<td>K</td>
<td>Conspiracy To Sell/Supply Cannabis</td>
</tr>
</tbody>
</table>
Appendix 4: Extract from Misuse of Drugs Act 1981

Part II — Offences relating to prohibited drugs and prohibited plants

5. Offences concerned with prohibited drugs and prohibited plants in relation to premises and utensils

(1) A person who —

(a) being the occupier of any premises, knowingly permits those premises to be used for the purpose of —

(i) the manufacture or preparation of a prohibited drug or prohibited plant for use; or

(ii) the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant;

(b) being the owner or lessee of any premises, knowingly permits those premises to be used for the purpose of using a prohibited drug or prohibited plant;

(c) is knowingly concerned in the management of any premises used for any of the purposes referred to in paragraphs (a) and (b);

(d) has in his possession —

(i) any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant; or

(ii) any utensils used in connection with the manufacture or preparation of a prohibited drug or prohibited plant for smoking, in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant; or

(e) is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant other than cannabis, except when he is authorised by or under this Act or by or under the Poisons Act 1964 to do so, commits a simple offence.

(2) In subsection (1) —

“owner”, in relation to any premises, includes the person entitled to receive the rent of those premises and the person to whom the rent of those premises is paid.

[Section 5 amended by No. 52 of 2003 s. 28.]

6. Offences concerned with prohibited drugs generally

(1) Subject to subsection (3), a person who —

(a) with intent to sell or supply it to another, has in his possession;

(b) manufactures or prepares; or
(c) sells or supplies, or offers to sell or supply, to another, a prohibited drug commits a crime, except when he is authorised by or under this Act or by or under the Poisons Act 1964 to do so and does so in accordance with that authority.

(2) Subject to subsection (3) and to section 36A of the Poisons Act 1964, a person who has in his possession or uses a prohibited drug commits a simple offence, except when, in the case of a person who has the prohibited drug in his possession —

(a) he is authorised by or under this Act or by or under the Poisons Act 1964 or the Industrial Hemp Act 2004 to do so and does so in accordance with that authority; or

(b) the prohibited drug was sold or supplied, or requested to be sold or supplied, to him —

(i) by a medical practitioner, nurse practitioner or veterinary surgeon in the lawful practice of his profession; or

(ii) on and in accordance with an authorised prescription.

(3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only of his having in his possession or manufacturing or preparing a prohibited drug if he proves that he had possession of or manufactured or prepared the prohibited drug only for the purpose of —

(a) delivering it to a person authorised —

(i) to have possession of the prohibited drug by or under this Act, by or under the Poisons Act 1964 or on and in accordance with an authorised prescription; or

(ii) by or under this Act or by or under the Poisons Act 1964 to manufacture, prepare, sell or supply the prohibited drug, and had possession thereof (except in the case of intended delivery to a person authorised to have possession of the prohibited drug on and in accordance with an authorised prescription) in accordance with the authority in writing of the person so authorised, and that, after taking possession of the prohibited drug, he took all such steps as were reasonably open to him to deliver the prohibited drug into the possession of that person; or

(b) analysing, examining or otherwise dealing with it for the purposes of this Act in his capacity as an analyst, botanist or other expert.

[Section 6 amended by No. 12 of 1994 s. 11; No. 9 of 2003 s. 29; No. 1 of 2004 s. 52; No. 4 of 2004 s. 58.]

7. Offences concerned with prohibited plants generally

(1) Subject to subsection (3), a person who —

(a) with intent to sell or supply a prohibited plant or any prohibited drug obtainable there from to another, has in his possession or cultivates the prohibited plant; or

(b) sells or supplies, or offers to sell or supply, a prohibited plant to another, commits a crime, except when he is authorised by or under this Act or by or under the Poisons Act 1964 to do so and does so in accordance with that authority.
(2) Subject to subsection (3), a person who has in his possession or cultivates a prohibited plant commits a simple offence, except when he is authorised by or under this Act or by or under the Poisons Act 1964 or the Industrial Hemp Act 2004 to do so and does so in accordance with that authority.

(3) A person does not commit a crime under subsection (1) or a simple offence under subsection (2) by reason only of his having in his possession a prohibited plant if he proves that he had possession of the prohibited plant only for the purpose of —

(a) delivering it or any prohibited drug obtainable therefrom to a person authorised —

(i) to have possession of the prohibited plant or that prohibited drug, as the case requires, by or under this Act or by or under the Poisons Act 1964; or

(ii) by or under this Act or by or under the Poisons Act 1964 to sell or supply the prohibited plant or to manufacture, prepare, sell or supply that prohibited drug, as the case requires, and had possession of the prohibited plant in accordance with the authority in writing of the person so authorised, and that, after taking possession of the prohibited plant, he took all such steps as were reasonably open to him to deliver the prohibited plant or that prohibited drug into the possession of that person; or

(b) analysing, examining or otherwise dealing with the prohibited plant or that prohibited drug for the purposes of this Act in his capacity as an analyst, botanist or other expert.

[Section 7 amended by No. 1 of 2004 s. 52; No. 4 of 2004 s. 58.]

7A. Selling or supplying a thing knowing it will be used in the hydroponic cultivation of a prohibited plant

(1) A person who sells or supplies, or offers to sell or supply, to another, any thing that the person knows will be used to cultivate a prohibited plant contrary to section 7(1)(a) or (2) by hydroponic means commits an indictable offence.

(2) A court convicting a person of the offence under subsection (1) may, on the application of the Director of Public Prosecutions or a police prosecutor, in addition order that the person be prohibited for a period set by the court (but not exceeding 2 years) from selling or supplying, or offering for sale or supply, to another, any thing that may be used to cultivate plants by hydroponic means.

(3) A person who contravenes an order under subsection (2) is guilty of a simple offence.

[Section 7A inserted by No. 52 of 2003 s. 29.]

**Part III — Procedure**

9. Summary trial of some indictable offences

(1) If a person is charged before a court of summary jurisdiction with —

(a) an offence under section 6(1) in respect of a quantity of a prohibited drug referred to in Schedule III that is less than the quantity specified in that Schedule in relation to that prohibited drug;
Appendix 4

(b) an offence under section 7(1) in respect of a number of prohibited plants of a particular species or genus referred to in Schedule IV that is less than the number specified in that Schedule in relation to that species or genus, or

(c) an offence under section 7A(1), then, except in a case where the person is charged with conspiring to commit the offence, the summary conviction penalty for the offence is that set out in section 34(2)(b).

(2) A court of summary jurisdiction that tries a person summarily for a charge of an offence referred to in subsection (1) must be constituted by a magistrate sitting alone.

(3) If a person charged before a court of summary jurisdiction with an offence that may be dealt with summarily under subsection (1) is, under section 5 of The Criminal Code, committed for trial or sentence in respect of the offence, the court to which the accused is committed may deal with the charge despite —

(a) the quantity of the prohibited drug to which the charge relates being less than the quantity specified in Schedule III in relation to that prohibited drug; or

(b) the number of prohibited plants of a particular species or genus to which the charge relates being less than the number specified in Schedule IV in relation to that species or genus.

[Section 9 inserted by No. 4 of 2004 s. 58; amended by No. 84 of 2004 s. 82.]

10. Alternative verdicts

A court trying a person charged with having committed a crime under —

(a) section 6(1) may, if the evidence does not establish that that person is guilty of that crime but does establish that he is guilty of a simple offence under section 6(2); or

(b) section 7(1) may, if the evidence does not establish that that person is guilty of that crime but does establish that he is guilty of a simple offence under section 7(2), convict him of having committed that simple offence and, whether that court is a summary court, the District Court or the Supreme Court, impose on him the penalty referred to in section 34(1)(e).

[Section 10 amended by No. 4 of 2004 s. 58.]

11. Presumption of intent to sell or supply

For the purposes of —

(a) section 6(1)(a), a person shall, unless the contrary is proved, be deemed to have in his possession a prohibited drug with intent to sell or supply it to another if he has in his possession a quantity of the prohibited drug which is not less than the quantity specified in Schedule V in relation to the prohibited drug; or

(b) section 7(1)(a), a person shall, unless the contrary is proved, be deemed to have in his possession, or to cultivate, prohibited plants of a particular species or genus with intent to sell or supply those prohibited plants or any prohibited drug obtainable there from to another if he has in his possession, or cultivates, a number of those prohibited plants which is not less than the number specified in Schedule VI in relation to that species or genus.
33. Attempts, conspiracies, incitements and accessories after the fact

(1) A person who attempts to commit an offence (the “principal offence”) commits —

(a) if the principal offence is a crime, the crime; or

(b) if the principal offence is a simple offence, the simple offence, and is liable on conviction to the same penalty to which a person who commits the principal offence is liable.

(2) A person who conspires with another to commit an offence (in this subsection called “the principal offence”) commits —

(a) if the principal offence is a crime under section 6(1) or 7(1) the crime, but is liable on conviction to the penalty referred to in section 34(1)(b); or

(b) if the principal offence is a simple offence or a crime, other than a crime referred to in paragraph (a), the simple offence or that crime, as the case requires, and is liable on conviction to the same penalty to which a person who commits the principal offence is liable.

(3) A person who incites another person to commit, or becomes an accessory after the fact to, an offence (the “principal offence”) commits —

(a) if the principal offence is a crime, the crime; or

(b) if the principal offence is a simple offence, the simple offence, but is liable on conviction —

(c) to a fine not exceeding half of the fine; and

(d) to imprisonment for a term not exceeding half of the term, to which a person who commits the principal offence is liable.

[Section 33 amended by No. 4 of 2004 s. 58; No. 62 of 2004 s. 8.]

34. Penalties

(1) Subject to subsection (2), a person who is convicted of —

(a) a crime under section 6(1) or 7(1) is liable to a fine not exceeding $100 000 or to imprisonment for a term not exceeding 25 years or both;

(b) conspiring with another to commit a crime under section 6(1) or 7(1) is liable to a fine not exceeding $75 000 or to imprisonment for a term not exceeding 20 years or both;

(c) an offence under section 7A(1) is liable —

(i) if convicted on indictment, to a fine not exceeding $20 000 or to imprisonment for a term not exceeding 5 years or both;

(ii) if convicted by a summary court, to a fine not exceeding $2 000 or to imprisonment for a term not exceeding 2 years or both;
(d) a simple offence under section 5(1) (other than a simple offence under section 5(1)(e)), 8, 25(2) or 29 is liable to a fine not exceeding $3 000 or to imprisonment for a term not exceeding 3 years or both;

(e) a simple offence under section 5(1)(e), 6(2), 7(2), 7A(3) or 31(4) is liable to a fine not exceeding $2 000 or to imprisonment for a term not exceeding 2 years or both; or

(f) a simple offence under section 15(1), (2) or (3), 16(1) or (2), 17(1) or (2), or 18(1) or (2) is liable to a fine not exceeding $5 000 for a first offence and to a fine not exceeding $15 000 for any subsequent offence under the same provision.

(2) A person who is convicted of a crime referred to in subsection (1)(a) —

(a) being a crime —

(i) relating only to cannabis; and

(ii) not relating to cannabis resin or any other cannabis derivative or to any prohibited drug or a prohibited plant other than cannabis, is liable, if sentenced by the District Court or the Supreme Court, to a fine not exceeding $20 000 or to imprisonment for a term not exceeding 10 years or both; or

(b) is liable, if sentenced by a summary court, to a fine not exceeding $5 000 or to imprisonment for a term not exceeding 4 years or both.

[Section 34 amended by No. 44 of 1995 s. 12; No. 52 of 2003 s. 31; No. 4 of 2004 s. 58; No. 62 of 2004 s. 6.]
Appendix 5

9.5 Appendix 5: Extract from Illicit Drug Diversion Initiative

Background
In April 1999 the Council of Australian Governments (COAG) agreed to make a new investment in combating drugs by combining strong national action against drug traffickers with early intervention strategies to prevent a new generation of drug users emerging in Australia.

The centrepiece of this early intervention and prevention approach is a nationally consistent diversion initiative. This initiative will target illicit drug users early in their involvement with the criminal justice system. Police will divert targeted offenders to compulsory drug education or assessment, from where they will be referred to a suitable drug education or treatment programme. Some offenders may also be diverted by Courts under this initiative.

The Ministerial Council on Drug Strategy (MCDS) was asked by COAG to develop a national framework for the diversion initiative. Ministers noted that illicit drug use imposes enormous social cost on individuals, families and societies. Helping drug offenders to regain control over their own lives will lead to safer environments for all Australians.

The diversion scheme will result in:

- people being given early incentives to address their drug use problem, in many cases before incurring a criminal record;
- an increase in the number of illicit drug users diverted into drug education, assessment and treatment; and
- a reduction in the number of people appearing before the courts for use or possession of small quantities of illicit drugs.

Ministers have been working co-operatively through the Intergovernmental Committee on Drugs (IGCD), and in consultation with the Australian National Council on Drugs (ANCD) to identify the crucial components of a diversion scheme and the linkages between them.

The resulting national framework provides a basis for implementation of the diversion approach. It will facilitate national action and cooperation whilst providing States with the flexibility to respond to local priorities and conditions.

Summary of the diversion framework

Offenders diverted by police to assessment will be referred to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services. In some jurisdictions police will divert certain offenders directly to drug education. To expiate their offence:

- offenders diverted directly to education will be required to participate fully in the education programme, as defined by the jurisdiction; and
- offenders diverted to assessment will be required to undertake the drug assessment and to participate in the prescribed programme of education or treatment

Assessment, education and treatment services will provide timely advice to police of expiation or failure to comply.

Offenders who satisfy expiation will have no criminal conviction for the offence recorded against them.

Offenders who fail to satisfy expiation requirements will be redirected to the criminal justice process.
Offenders who expiate the offence will also be supported following the treatment episode, with planned follow up and referral to appropriate community services.

**Eligibility for diversion**

The primary target group is individuals who:

- have little or no past contact with the criminal justice system for drug offences; and
- are apprehended for use or possession of small quantities of any illicit drug.

Persistent or violent offenders can expect the criminal justice system to continue to be tough on drug-related crime and will not be eligible for diversion.

**Preferred provider arrangements**

Assessment, education and treatment providers will be required to meet minimum national standards for qualifications and experience, and deliver services in line with accepted best practice.

**Assessment, education and treatment**

The aim of assessment is to develop sufficient understanding of the offender's circumstances and needs to enable a plan of future action, including an individual treatment plan where appropriate, to be determined and, where possible, agreed with the offender.

Offenders diverted under the scheme will have access to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services such as counselling, withdrawal, residential rehabilitation and pharmacotherapies.

- Wherever possible, family involvement in education, assessment and treatment will be encouraged.
- Offenders who are apprehended other than where they live will, wherever possible, be given the option to attend education or assessment and treatment close to their home.
- It is desirable that all young offenders have access to youth-specific assessment, drug education and treatment services.
- It is also desirable that all indigenous offenders have the option of attending an appropriate indigenous agency for drug education or assessment and treatment.

**Ongoing treatment**

While expiation of the offence may occur before the completion of the treatment, offenders will be encouraged to complete the course of treatment agreed with the assessor and Commonwealth funding will be available for this treatment episode.

Diverted offenders may also be called upon to make financial contributions to their treatment where appropriate.

**Evaluation of the diversion initiative**

The diversion approach will be monitored and evaluated nationally with annual reports to MCDS and COAG. This will allow any adjustments to the scheme to be considered and agreed as necessary.
**Training of frontline workers**

Frontline workers involved in the scheme will receive training to ensure they can deliver confidently against their roles and responsibilities as set out under the national framework and their jurisdiction's scheme.

**Roll out of diversion schemes**

The diversion initiative will be implemented in stages in each State and Territory. This will allow the approach to be tested fully in a mix of urban and rural areas, target groups, or areas with special needs. Extensive coverage across all jurisdictions is expected to be achieved within four years.

A reference group will be established in each State/Territory to provide advice to the Commonwealth and State Governments on the implementation of the COAG diversion initiative. At a minimum, these groups will include representatives of:

- the Commonwealth Department of Health and Ageing;
- State and Territory Health Departments (or other appropriate agency);
- State and Territory Police; and
- an appropriate representative of the ANCD (or the non-government sector) as determined bilaterally between each jurisdiction and the Commonwealth.

States and Territories will ensure an appropriate match between the number of people diverted and the number of education and treatment places funded.

Voluntary admissions to treatment will not be displaced as the Commonwealth is providing funding for assessment, treatment and education places and for capacity building and training for the compulsory diversion initiative.

**Support measures**

In addition to the central diversion initiative, COAG considered a range of measures to:

- reduce supply of illicit drugs;
- support families and communities to tackle the drug problem;
- educate children and the broader community about the dangers of drug use; and
- address drug use in prisons.

The Commonwealth has committed approximately $109 million to the first three of these measures.

Appendix 6

9.6 Appendix 6: Cannabis Survey Interview Items

9.6.1 Extract from New Zealand 2001 National Drug Survey

Section Four: Marijuana

Q32. Have you ever tried marijuana?

Q33. What reasons keep you from using marijuana?

Respondents are prompted for up to five reasons.

Q34. In the past twelve months have you had the opportunity to use marijuana?

Q35. How many times in the last twelve months have you used marijuana?

Response options include:
A range from never through to more than 3 times per day.

Q36. How many times have you ever used marijuana?

Response options include:
A range from never through to 350 or more times.

Q37. Comparing the level of marijuana you are currently using with the level you feel is right for you, would you say you are using…

- A lot less than you are happy with
- A little less than you are happy with
- At about the right level
- A little more than you are happy with
- A lot more than you are happy with

Q38. To what extent do you feel you need help to reduce your level of marijuana use?

Do you feel you need…

Response options range from:
A lot of help to no help at all.

Q39. Have you ever received help to reduce your level of marijuana use?

Q40. Have you ever wanted help to reduce your level of marijuana use but not got it?

Q41. Which of the following barriers, if any, have you come across in trying to get help?

- Didn’t know where to go
- Fear of the law/police
- No time/too busy
- Fear of losing friends
- Services too expensive
- Transport problems
- Social pressure to keep using marijuana
- Fear of what might happen once contact made the service
- No local services available
Services weren't ongoing
Other

Q42. Compared to a year ago, were you using more, about the same, less, or have you stopped using marijuana?

Q43. So have you stopped using marijuana entirely?

Q44. Could you please tell me the reasons why you use more now.

Codes include:
Can afford more/earn more
It costs less than it did
Easier to get more/more around
Like the effect/it's fun
Wanted to get a better high
Need more to get the same effect
To forget/escape/cope with problems
New friends
Less fear of the police/law
Social pressure
Religious reasons

Q45. And, what keeps you from using even more marijuana?

Codes include:
Physical health reasons
Mental health reasons
New friends/social scene
Fear of law/police
No longer fun/got boring
Pregnant
Lack of energy/motivation
Job related reasons
Too expensive
Don't earn enough
No time/too busy
Effects wore off
Fear of addiction
Parental pressure
Family responsibilities/kids
Social pressure
Didn't like it
Just experimenting
Alcohol is too expensive?
Availability
Religious reasons
Saw bad effect on others
Rather drink alcohol

Q46. (If respondent has stopped using). Could you please tell me why you stopped using marijuana?
Responses are coded according to codes in Q45.

Q47. How much of the marijuana you used was given to you for free?

Response options include:
Appendix 6

A range from all to none.

Q48. How much did you grow for your own use?

Response options include:
A range from all to none.

Q49. How much was brought from someone?

Response options include:
A range from all to none.

Q50. (If respondent is using less) Could you tell me why you are using less marijuana now?

Q51. How old were you when you first used marijuana?

Q52. What problems, if any, have you had because of using marijuana?

Codes include:
- Cough/chest complaints
- Other physical/health related problems with parents
- Job problems
- In trouble with the law
- Relationship problems
- Needed counselling/clinic treatment
- Loss of motivation/energy
- Feelings of paranoia
- Blackouts
- Memory loss
- Financial
- Wasting time
- Need more to get same effect
- Other.

Q53. How many people would you usually share a joint with not including yourself?

Codes include:
- Smokes alone through to 16 other people.

Q54. How many joints would you (if smoking alone) smoke on a typical occasion? If you know how many grams you smoked or the amount of cannabis you smoked I can also put input that amount.

Q55. How many joints would the group of [number given in Q53.] smoke on a typical occasion?

Q56. How much of your marijuana use takes place in private homes?

Response options include:
A range from all to none

Q57. How much takes place at work?

Response options include:
A range from all to none
Q58. And how much takes place in public places such as music concerts, on the street, at the beach or park, or at dance parties?

Response options include:
A range from all to none

Q59. How much of your driving would you do while under the influence of marijuana?

Response options include:
A range from all to none

Q60. How often do you try to have marijuana on hand for when you want it?

Response options include:
A range from always to never.

Q61. And how much of the marijuana you use is given to you for free?

Response options include:
A range from all to none

Q62. And how much do you grow for your own use?

Response options include:
A range from all to none

Q63. And how much is bought from someone?

Response options include:
A range from all to none

Q64. Approximately how often did you buy marijuana in the last twelve months?

Response options include:
A range from daily through to once a year.

Q65. How much of the marijuana you bought in the last 12 months was from a tinny house or a bullet house?

Q66. In the last 12 months which of the following amounts of marijuana have you bought?

Response options include:
Joint
Foil/tinnie
$50 bag (4 grams)
Quarter ounce
Third ounce
Half ounce
Ounce
Pound
Other quantity

Q67. And approximately how many [amount specified in Q.76] of marijuana would you buy in a twelve month period?
Q68. And how much would you expect to pay for [amount specified in Q.76] of marijuana?

Q69. So what is the least you would expect to pay for [amount specified in Q76] of marijuana?

Q70. What is the most you would expect to pay for [amount specified in Q76.] of marijuana?

Q71. Is the price you would expect to pay for marijuana higher, lower, or the same as a year ago?

Q72. Is getting marijuana easier, harder, or the same as a year ago?

Q73a. [Respondent still using marijuana] Do you get your marijuana from one person or from a number of different people?
Q73b. [Respondent has stopped using marijuana] Did you get your marijuana from one person or a number of different people?

Response options:
One person
Number of different people
No regular suppliers
Don’t know
Refused

Q74. From what you have heard does your supplier/do your suppliers or has your supplier/ have your suppliers of marijuana sell other drugs?

Q75. Has your supplier/suppliers ever encouraged you to buy drugs other than marijuana from them?

Q76. Did you buy drugs other than marijuana as a result of this encouragement?

Q77. Approximately how many times in the last twelve months do you feel you have been sold lower quality marijuana than you paid for?

Q78. Approximately how many times in the last twelve months have you bought marijuana but found you were sold a worthless substance that was not marijuana?

Q79. Approximately how many times in the last twelve months have you been robbed while buying marijuana?

Q80. Approximately how many times in the last twelve months have you been assaulted while trying to buy marijuana?

Q81. Have you ever used hashish?

Q82. In the last twelve months have you had the opportunity to use hashish?

If no to Q82. go to Q86.

Q83. How many times in the last twelve months have you used hashish?

Q84. How many times have you ever used hashish?

Q85. How many times in the last thirty days have you used hashish?
Q86. Have you ever used hash oil?

Q87. In the last 12 months have you had the opportunity to use hash oil?

If no to Q87. go to Q91.

Q88. How many times in the last twelve months have you used hash oil?

Q89. How many times have you ever used hash oil?

Q90. How many times in the last 30 days have you used hash oil?

Q91. Have you ever used skunkweed (hydroponic/indoor cannabis)?

Q92. In the last twelve months have you had the opportunity to use skunkweed?

If no to Q92. go to Q96.

Q93. How many times have you ever used skunkweed?

Q94. How many times in the last thirty days have you used skunkweed?

Q95. How much of your marijuana use is combined with alcohol?

Q96. Now I’d like to know how smoking marijuana has affected you in the last twelve months and I will be asking about different areas of your life. So in the last twelve months has your use of marijuana had any harmful effect on…

The respondent is asked to respond (yes/no/not applicable) to the following statements:

- Your friendships and social life
- Your health
- Your outlook on life
- Your home life
- Your work or work opportunities
- Your financial position
- Your energy and vitality
- Your children’s health or well-being

Q97. How generally acceptable do you think it is to smoke marijuana…

- At a party
- At the beach with friends
- When children are around
- Before driving
- Before work or study

Response options include:
A range from acceptable to everyone through to acceptable to no one.

Q98. How much do you think people risk harming themselves…

- If they smoke marijuana once or twice?
- If they smoke marijuana occasionally?
- If they smoke marijuana regularly?
Response options include:
A range from no risk to great risk.

Q99. And what about the current level of enforcement…

   For people caught with marijuana just for their own use?
   For those who sell marijuana?
   For those who use other illegal drugs?
   For those who sell other illegal drugs?

Do you think that the current level of enforcement is…

Response options include:
A range from too heavy to too light.

Q100. And now community problems. I’d like to know how serious you think the following problems are. Please use a scale from 1 to 10 where 1 is not a problem, and 10 is a serious problem. So on a scale from 1 to 10 how seriously do you think cigarette smoking affects the community?

   And what about alcohol use?
   And what about AIDS (HIV)?
   And what about marijuana use?
   And other illegal drug use?
   And what about solvent abuse (glue sniffing)?

Source: Interview Schedule, National Drug Survey 2001
<www.aphru.ac.nz/projects/drugs/2001/Append.htm>

Section M

M1. About what proportion of your friends and acquaintances use Marijuana/Cannabis? (e.g. Pot, Grass, Weed, Reefer, Joint, Mary Jane, Acapulco gold, Rope, Mull, Cone, Spliff, Dope, Skunk, Bhang, Ganja, Hash, Chronic)
   All □
   Most □
   About half □
   A few □
   None □

M2. Have you ever used Marijuana/Cannabis?
   Yes □ (Continue) No □ (Skip to N1)

M3. About what age were you when you first used Marijuana/Cannabis?
   Age in years: □

M4. Have you used Marijuana/Cannabis in the last 12 months?
   Yes □ (Continue) No □ (Skip to N1)

M5. During the last 12 months, did you find that you couldn't stop or cut down on your use of Marijuana/Cannabis, even though you wanted to or tried to?
   Yes □
   No □

M6. Have you used Marijuana/Cannabis in the last month?
   Yes □ (Continue) No □ (Skip to M8)

M7. Have you used Marijuana/Cannabis in the last week?
   Yes □
   No □

M8. In the last 12 months, how often did you use Marijuana/Cannabis? (Mark one response only)
   Every day □
   Once a week or more □
   About once a month □
   Every few months □
   Once or twice a year □
### Appendix 6

**M9a. Where did you first obtain Marijuana/Cannabis?**
(Mark one response only)

<table>
<thead>
<tr>
<th>Friend or acquaintance</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brother or sister</td>
<td>☐</td>
</tr>
<tr>
<td>Parent</td>
<td>☐</td>
</tr>
<tr>
<td>Spouse or partner</td>
<td>☐</td>
</tr>
<tr>
<td>Other relative</td>
<td>☐</td>
</tr>
<tr>
<td>Dealer on the street</td>
<td>☐</td>
</tr>
<tr>
<td>Dealer delivery to my home</td>
<td>☐</td>
</tr>
<tr>
<td>Visit to the dealer’s house</td>
<td>☐</td>
</tr>
<tr>
<td>Dealer at another location</td>
<td>☐</td>
</tr>
<tr>
<td>Grew/grow my own</td>
<td>☐</td>
</tr>
<tr>
<td>(made/make it myself)</td>
<td>☐</td>
</tr>
<tr>
<td>Stole/steal it</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
</tr>
</tbody>
</table>

**M9b. Where do/did you usually obtain Marijuana/ Cannabis?**
(Mark one response only)

<table>
<thead>
<tr>
<th>Friend or acquaintance</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brother or sister</td>
<td>☐</td>
</tr>
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</tr>
<tr>
<td>Stole/steal it</td>
<td>☐</td>
</tr>
<tr>
<td>Other</td>
<td>☐</td>
</tr>
</tbody>
</table>

**M10. Where do/did you usually use Marijuana/ Cannabis?**
(Mark all that apply)

- In my own home
- At a friend’s house
- At a party at someone’s house
- At raves/dance parties
- At restaurants/cafés
- At licensed premises (e.g. pubs, clubs)
- At school, TAFE, university, etc.
- At my work place
- In public places (e.g. parks)
- In a car or other vehicle
- Somewhere else

**M12. What form of Marijuana/Cannabis do you use?**
(Mark all that apply)

- Leaf
- Heads
- Resin (including Hash)
- Oil (including Hash oil)
- Skunk
- Other

**M13. How have you used Marijuana/Cannabis?**
(Mark all that apply)

- Smoked as joints (e.g. reefers, spliffs)
- Smoked from a bong or pipe
- By eating it (e.g. Hash cookies)
- Marijuana/Cannabis and tobacco mixed

**M14. Which of the following did you use at the same time, on at least one occasion that you used Marijuana/Cannabis?**
(Mark all that apply)

- Alcohol
- Heroin
- Cocaine/Crack
- Tranquillisers/Sleeping pills
- Anti-depressants
- Pain killers/Analgesics
- Barbiturates
- Methamphetamines/Amphetamines (Speed)
- Ecstasy/Designer Drugs
- Other

- Not used any of the above at the same time as Marijuana/Cannabis

**M15. What drug would you mostly use when Marijuana/Cannabis is not available?**
(Mark one response only)

- Alcohol
- Heroin
- Cocaine/Crack
- Tranquillisers/Sleeping pills
- Anti-depressants
- Pain killers/Analgesics
- Barbiturates
- Methamphetamines/Amphetamines (Speed)
- Ecstasy/Designer Drugs
- Other

- No other drug

**M11. On a day you use Marijuana/Cannabis, on average how many cones, bongs or joints do you normally have?**

Number of cones, bongs or joints: ☐

**If less than 1, please indicate to the nearest fraction:**

- ¼
- ½
- ¾
- ¹/₄
- ¹/₂
- ¾

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Appendix 7: Recommendations from Drug Law Reform Working Party

Cannabis infringement notice scheme
That an offender will be eligible to receive a cannabis infringement notice (CIN) if they possess a ‘small amount of cannabis’, which is defined as being two growing plants and/or a total of up to 30 grams of cannabis. [page 6]

Options for payment
That the CIN give options to the person for them to dispose of the matter within 28 days by paying the expiation amount in full or by completing a specified cannabis education session.

That the notice would indicate that failure to pay the expiation fee will result in the matter being enforced by the Fines Enforcement Registry. [page 7]

Penalties
That there be graduated penalties for the possession of cannabis, with a penalty of $100 for the possession of not more than 15 grams of cannabis and a penalty of $150 for the possession of between 15 grams and not more than 30 grams of cannabis.

That there be a penalty of $200 for the cultivation of not more than two cannabis plants. [page 7]

Household limit
That there be a distinction for a household in the expiable limits for the cultivation of small numbers of plants and the possession of small amounts of cannabis.

That there will be a maximum of two plants for a household regardless of how many adults usually live in that household, whereas each adult member of the household will be subject to the expiation penalties that apply for the possession of cannabis up to 30 grams. [page 8]

Proof of ID
That an individual may only be issued with a CIN if they are able to provide adequate evidence as to their identity. Ordinarily the first level of proof of identity sought by police when issuing a CIN would be production of a motor driver’s license and/or the vehicle registration details. [page 8]

Concurrent charges
That a charging police officer should have the option to include an expiable minor cannabis offence on the same brief as will be used when an individual is charged with other concurrent offences.

That the decision on whether a police officer issues a CIN or includes the minor cannabis offence on the brief is a discretionary matter for the police officer to decide when taking into account the seriousness of offences and any other circumstances. [page 8]

Juveniles
That the option of conditional cautioning for minor cannabis offenders be included in the ambit of the current review into the application of conditional cautioning for offences in general involving juveniles. [page 10]
**Controlled Substances Advisory Council**

That the proposed legislative model include a provision to establish a consultative and advisory body, to be named the Controlled Substances Advisory Council (CSAC). The Council would be responsible for coordination of the production of statistics, monitoring and review and to advise the Government of changes to the Regulations in matters such as plant limits, penalties and weights.

That before any alteration could be made to the Regulations with respect to amounts of cannabis, numbers of plants or penalties, there be a specific requirement for a proposal to change the Regulations to be referred to the CSAC. [page 10]

**Hydroponic equipment industry**

That the hydroponic equipment industry be regulated by enacting legislation that enables the police to make a declaration that an individual or business is a hydroponic equipment supplier.

That operators of hydroponic businesses, so declared, are to maintain records of their transactions and other details of their business activity.

That the police have the power to restrict those who have prior drug convictions, those with other types of serious convictions and those associated with organised crime groups from selling hydroponic equipment. [page 11]

**Smoking paraphernalia**

That those who sell smoking paraphernalia, such as water pipes or bongs, should observe minimum standards, for example display health warnings and provide literature for those seeking help and that they not be permitted to sell smoking paraphernalia to persons under 18 years of age.

That the overall responsibility for the enforcement of regulation of these types of businesses would rest with the Department of Health. [page 11]

**Presumption of intention to sell or supply**

That the specified amounts in the Misuse of Drugs Act 1981 be amended for the possession of cannabis with intent to sell or supply, to the cultivation of 10 or more growing cannabis plants, or the possession of 100 grams or more of cannabis. [page 11]

**Flouting the intention of the scheme**

That the police have the power to charge those who they have reasonable suspicion of engaging in supply, even though they possess cannabis or have plants within the expiable limits. [page 12]

**Courts**

That there be the option for matters involving expiable amounts of cannabis or plants to be dealt with by a court, and for the court to give a penalty that would be the same as would have been available if an individual had been issued with an expiation notice. [page 12]

**Seizure of hydroponic equipment**

That police retain their power under the Misuse of Drugs Act 1981 to seize any hydroponic equipment which has been used to cultivate cannabis plants. [page 13]
**Expungement**

That there not be expungement of prior minor cannabis convictions that would be able to be dealt with under the CIN scheme.

That minor expiable cannabis offences covered by the CIN scheme should be included in the current review of the *Spent Convictions Act 1988*. [page 13]

**Medicinal use of cannabis**

That the Government endorse the broad recommendations of the *New South Wales Working Party on the Use of Cannabis for Medical Purposes* as contained in Volume 1 Executive Summary of its report published in August 2000, to adopt a coordinated national approach through the Australian Health Ministers’ Forum to undertake trials of potential medical and therapeutic applications of cannabis. [page 20]

**Reform of the Misuse of Drugs Act**

That Sections 5 (1) (d) and 5 (1) (e) of the *Misuse of Drugs Act 1981* be amended to remove references in relation to cannabis (through the definition of a prohibited plant) where a person is “in possession of pipes or utensils for use in connection with smoking ... of a prohibited plant on which there are detectable traces of a prohibited plant” [s. 5 (1) (d)], and “found in any place being used for smoking a prohibited plant” [s. 5 (1) (e)]. [page 21]

**Drug Court**

That amendments be made to existing legislation, primarily Section 16 (2) of the *Sentencing Act 1995* to enable participants on Drug Court programs to be on the program for a minimum of 12 months.

That specific enabling Drug Court legislation be enacted to allow the court to operate on the basis of being a therapeutic post-sentence health model. [page 22]

**Public education**

That the introduction of the proposed scheme be accompanied by a comprehensive public education campaign which clearly articulates that the scheme does not involve the legalisation of cannabis.

That there be a commitment of additional resources to ensure that those who work in the law enforcement sector, correctional services, the legal profession, the magistracy and the judiciary and the health and community services sectors are able to understand the scheme. [page 22]

**WA Police Service**

That the Commissioner’s Orders and Procedures Manual for the WA Police contain provisions relating to the CIN scheme which are consistent with the general intent and specific goals of the scheme. [page 25]

**School Drug Education Project**

That information about the changes to the law that would occur through the implementation of the CIN scheme be incorporated into the planned revisions and updating of the School Drug Education Project training and curriculum materials for the 2003 year. [page 25]

**Specialist service providers**

That a scheme be developed through specialist service providers to target those whose cannabis use is of concern to themselves or their families. [page 26]
9.8 Appendix 8: CIN Scheme Enforcement Flow Charts

9.8.1 WA Police Flow Chart – Stage 1

CIN scheme applicable

Is person 18 years or older? Yes No

Are there hydroponically cultivated plants, cannabis resin or cannabis derivatives? Yes No

Evidence of flouting the scheme? eg selling, supplying others? Yes No

Are there 2 or fewer cannabis plants? Yes No

At offender’s principal place of residence? Yes No

Implement or utensil has detectable traces of cannabis? Yes No

Any CINs been previously issued? Yes No

2 or more prior CINs issued on separate days? Issued within past 3 years? Yes No

Issue CIN Stage 2 penalty Attend CES within 28 days

Expired within 28 days?

Yes No

Action by Fine Enforcement Registry

No further action

Issue CIN Stage 1 penalty Pay fine or attend CES within 28 days

2 or more prior CINs issued on separate days? Yes No

Charged under Misuse of Drugs Act 1981

Cautioned or referred to Juvenile Justice Team

Charged under Misuse of Drugs Act 1981

No further action

Defendant may elect within 28 days to go to court to contest charge

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9.8.2 FER Enforcement Process Flow Chart – Stage 2

Infringement notice issued by prosecuting authority

→

28 days to pay

Final demand issued by prosecuting authority

→

28 days to pay

Not paid

→

Not paid or time to pay arrangement not made

Registered at Fines Enforcement Registry

Court order (notice) issued

→

28 days to pay + 14 days ‘grace’

Notice of intention to suspend issued

→

28 days to pay

Infringement may be withdrawn or referred to court

Registrar can lift or not impose a license suspension order for ‘medical’ or ‘employment’ hardship. Involves a strict time to pay arrangement. Note: This can only occur between registration and when confirmation of suspension issued.

→

Confirmation of suspension issued + $20 fee

End of process

Court imposes fine on offender

→

28 days to pay or arrange time to pay

Notice of intention to suspend issued

→

28 days to pay

Confirmation of suspension issued + $20 fee

Warrant of apprehension issued if living interstate

No fee

→

End of process

Warrant of execution for seizure & sale of goods or property + $52 fee

→

No payment & no assets

End of process

Work & development order if no assets

→

Does not attend WDO or attends & then breaches order

Community correction advise WDO registered

→

Community Justice Services recommend breach

End of process

WDO is breached & Registrar decides to issue warrant

Time served on warrant of commitment

→

End of process

Warrant of commitment issued for imprisonment
Appendix 9: CIN Scheme Guidelines

Note: Pages 6 to 12 of original document, which contained images of forms and flow charts, have been excluded due to large size of original file. (Version August 2004)
Western Australia Police Service
Cannabis Control Act 2003
Cannabis Infringement Notice Scheme
Procedural Guidelines

1. PURPOSE

The purpose of these guidelines is to provide members of the Western Australia Police Service with sufficient information to enable the effective process of an offender issued with an Cannabis Infringement Notice (CIN).

2. BACKGROUND

In August 2001, the WA Government held a 'Community Drug Summit' which resulted in 49 recommendations being made to reform the way people are offered treatment or dealt with otherwise over their use of drugs. The government has adopted 48 of the recommendations and issued a policy document titled 'The Western Australian Drug and Alcohol Strategy 2002 – 2005 - 'Putting People First' As part of the government commitment to implement the recommendations of the drug summit, legislation has been proclaimed to enable police officers to issue an alleged offender, charged with a simple offence under sections 5, 6, or 7 of the Misuse of Drugs Act, with an infringement notice which may be expiated in a number of ways rather than the offender being charged and appearing before the courts. Police will have up to 21 days in which a CIN may be issued after detection of the alleged offence.

The Cannabis Infringement Notice Scheme only applies to adult offenders. Persons under the age of 18 years (juveniles) are not to be processed or given a notice under this scheme. For juveniles use the existing provisions contained within the Young Offenders Act.

The Cannabis Infringement Notice Scheme will cover the offences of:

a) using or in possession of not more than 30 grams of cannabis; and/or
b) in possession of smoking implement; and/or
c) cultivation not more than 2 cannabis plants (not hydroponically grown).

The scheme does not include Plants/Seeds or any derivative products such as hash, resin and hash oil.
When an offence is detected, police are encouraged to exercise their discretion to issue the person with an infringement notice (CIN), provided all the criteria for its issue are met.

Cannabis and all smoking implements, must be handled in accordance with the policy and procedures for handling drugs as set out under COPs Manual – AD-24.

3. AIM

The Cannabis Infringement Notice Scheme will provide for formal processing of alleged offenders apprehended for simple cannabis offences. The Cannabis Infringement Notice Scheme will allow police to exercise a wider range of enforcement and disposal options to divert offenders away from the court process as well as offer an education aimed at discussing and considering the legal and health ramifications of their cannabis use, in an effort to change future behaviour towards cannabis use.

4. DEFINITIONS

Cannabis – refers only to leaf, stalks and heads of the cannabis plant, (Not seeds).

Offender – refers to an adult person detected using or in possession of small quantities of cannabis (30 grams or less), and/or in possession of smoking implement and/or the cultivation of 2 plants that are not hydroponically grown. *Simple possession of a prohibited plant is not covered.

5. CRITERIA

Verify identity of offender.

The identity of the offender must be confirmed. Normal checks for identity such as licence, vehicle registration and other personal identification provided by the offender must be undertaken in full.

Admissible evidence

There must be sufficient admissible evidence that the offender has used or is in possession of a quantity of cannabis (Up to 30 grams) for personal use and/or in possession of a smoking implement and/or cultivated up to 2 plants (not hydroponically grown).

The evidence must be sufficient to substantiate a prosecution in a court of law, as in current procedures and legislation. * Simple possession of a plant is NOT covered by the legislation.
Drugs must be for personal use.
Investigating police must be satisfied prior to issuing a CIN that the drugs are for personal use. If the circumstances indicate something other than personal use, then a CIN cannot be issued and the matter should proceed to prosecution.

Procedure before issuing an alleged offender with a CIN.
The procedure to be adopted before the issuing of a CIN is as follows:

- Is there evidence to establish a prima facie case?
- Does the evidence support a simple offence only?
- Does the offence fall within the simple offences covered by section 5, 6 or 7 of the 
  Misuse of Drugs Act?
- Verify the identity of the offender.
- Verify through police records the status of the offender in relation to previous CINs being 
  issued.
- Seize the drugs and/or implements.
- Weigh the seized cannabis, ensure weight conforms with legislation.
- Process the evidence in accordance with COPS AD.24
- Ensure that the offender is agreeable to accept an CIN for the offence.
- Advise the offender that you are issuing a CIN in lieu of court proceedings & methods of disposing CIN.

6. DETERMINING APPROPRIATE ACTION

The legislation provides for the issue of a CIN to an alleged offender notwithstanding they have received notices in the past. Where an offender is apprehended on a simple cannabis offence covered by the legislation then they may be issued with a CIN in the following circumstances

- **First offence** for a simple cannabis offence — issue CIN in accordance with procedures.

- **Second offence** for a simple cannabis offence — issue CIN in accordance with 
  procedures

- **Third or subsequent offence** for simple cannabis offence within three years of receiving 
  the first CIN — issue a CIN but the offender can ONLY expiate by way of Cannabis 
  Education Session (CES) or electing to have the matter determined by a Court. 
  Payment of the notice cannot be made, as there is no fine involved.
Procedure for issuing an alleged offender with a CIN.

The procedure to be adopted in issuing a CIN is as follows:

- Complete the CIN.
- Ensure the serial number of the Security/Drug Movement Bag is recorded on the CIN.
- Explain the options and benefits open to the offenders to expiate the CIN.
- Have offender sign the CIN in the appropriate place (signature is not an admission of guilt).
- Where applicable apply for a Holding Order to retain any seized smoking implements (AD-24-12).
- Complete the Incident Report (IR) by entering the details into the Incident Management System (IMS).
- Ensure the IR/Property number is entered on the CIN.
- Give the offender a copy of the CIN (Parts C & D) & inform them on how it may be dealt with.
- Part A of the CIN is to be handed to your supervisor for attachment to an Infringement Security sheet.
- Forward the security sheet with the Part A copy to Infringement Section for processing.

Procedure after CIN is expiated.

After the CIN has been expiated (by what ever means) an email will be sent to the officer to dispose of the drugs and/or paraphernalia. Update the IR on the IMS and advise Police (DRU) Drug Receiptal Unit to destroy the drug concerned, take any smoking implement and the Holding Order before a Justice of the Peace and seek an order for destruction under section 28(3)(a) of the Misuse of Drugs Act.

In some cases an offender may change their mind on disposal of the CIN and elect to defend the matter in court. The offender is required to notify the Infringement Section in writing that they wish to defend the matter. Infringement Section in turn will notify the issuing police officer by email so that the officer can prepare a prosecution brief in relation to that offender and proceed by summons as per normal procedures.
In some cases an offender may do nothing to expiate the notice. This will eventually lead to the matter being forwarded to Fines, Penalties and Enforcement section so that those procedures being taken out. If this is the case the issuing office will receive an email to that effect. Before the drugs and/or paraphernalia may be disposed of, update the IR on the IMS & forward to D.R.U for storage only. PLEASE NOTE - No analysis is required at this time unless the offender has elected to go to Court on the matter. (The IR should be updated advising D.R.U the drug is subject to a “CIN”)

In relation to a person issued with a CIN, where the option of paying a fine is not included, the matter will, (After no action has been taken by the offender to expiate the notice by means of a CES), automatically require the issuing officer to commence a prosecution brief.

7. SUPERVISORY RESPONSIBILITIES.

Supervisors must assist and guide police in the application of the Cannabis Control Legislation and the Cannabis Infringement Notice Scheme.

Supervisor must ensure the cannabis infringement notices Part ‘A’ together with a security sheet are promptly sent to infringement section for processing. To maintain the integrity of the system this should be completed at least once per day.

**Supervisors are responsible for ensuring the correct policy and procedures are strictly complied with in relation to dealing with and handling of drugs**

Supervisors are responsible for ensuring that timely and appropriate follow-up by the issuing officer once the offender expiates the CIN or the matter proceeds to Fines, Penalties and Enforcement. This will be monitored and audited periodically to protect the integrity and accountability of the Cannabis Infringement Notice Scheme.

8. WITHDRAWAL OF CIN

If it is later found that it was not appropriate to administer a CIN, (eg: information supplied was false) the investigating officer is to complete a Notice to Withdraw available on outlook **public folders — all public folders — bulletin board — forms** and forward it to an authorised person for signature. (Authorised person currently is. O/C, Infringement Section, Wellington street, Perth).
Appendix 10: CIN Scheme Public Education Materials

9.10.1 Take in the facts on the new Cannabis Education Session

Produced by the Drug & Alcohol Office. Funded through the COAG Illicit Drug Diversion Initiative, 2004. HP 1482

WHAT IS A CANNABIS EDUCATION SESSION?

A Cannabis Education Session (CES) is a component of the Cannabis Infringement Notice (CIN) program. The CIN is a notice that provides the opportunity for cannabis users to address their drug use and become engaged in treatment.

If a person receives a CIN, he or she has 26 days from the date of the notice to issue a CIN Infringement Notice (CIN) to adults possessing small quantities of cannabis. Alternatively, the person may choose to have the matter heard in court.

Under the Young Offenders Act 1994, young people aged 10 to 17 years (inclusive) who are found growing cannabis in possession of or using cannabis within the limits set by the CIN scheme may be cautioned or referred to a Juvenile Justice Team.
PROCESS

For a person attending a CES the following processes apply:

• The person is responsible for contacting a central booking agency called Heath Info to book a CES with the most convenient approved provider.

• In some remote locations, the person will be required to confirm their CES time directly with the approved provider.

• The person has 28 days to complete a CES from the time a CIN is issued (unless an extension is provided by an authorised person).

• The approved provider will notify the police about whether or not the recipient of a CIN has completed the session.

• If the person does not pay the financial penalty or attend a CES within 28 days, the police may issue a final demand to pay the financial penalty.

• If a person fails to pay the financial penalty, the matter may be registered with the Finns Enforcement Registry or proceedings commenced in court.

PURPOSE

The purpose of a CES is to educate participants about the:

• adverse health and social consequences of cannabis use;

• treatment of cannabis-related harm; and

• laws relating to the use, possession and cultivation of cannabis.

This means that participants will receive information on how cannabis affects their health and personal life, how to treat their cannabis use and on the laws relating to cannabis.

In addition, those participating in a CES may expect to:

• improve personal decision-making skills relating to cannabis use;

• consider the harms associated with their own cannabis use;

• consider changing their drug use; and

• receive information on how to access further support and assistance.

APPROVED PROVIDERS

Cannabis Education Sessions are provided by specialist alcohol and other drug treatment services and other approved providers. The CES takes about one and half hours to complete and is available state-wide. Approved providers have undergone specific training to enable them to deliver the program.
OTHER CONSIDERATIONS

Some other considerations for those attending a CES include:

- The original copy of the CIN should be taken to the CES.

- Special requirements should be mentioned at the time of booking a CES (e.g. interpreter services).

- The person must actively participate in the whole session to complete a CES.

- A person who appears to be under the influence of alcohol or other drugs will not be permitted to undertake the CES.

- The participant will be required to certify that he or she is the person to whom the CIN was issued.

- The participant will be given a certificate to verify that he or she has completed a CES.
FOR MORE INFORMATION AND HELP

If you would like more information about cannabis or how to access support services in Western Australia, contact:

The Alcohol and Drug Information Service (ADIS)
Information, counselling and advice for people concerned about their own or another’s drug use are available from the Alcohol and Drug Information Service (ADIS). This is a 24-hour, Statewide, confidential telephone service.
Telephone: (08) 9442 5000
Toll free (country callers only): 1800 198 024
E-mail: adis@health.wa.gov.au

The Parent Drug Information Service (PDIS)
Confidential telephone support, counselling, information and referral service for parents.
Telephone: (08) 9442 5050
Toll Free: 1800 653 203

Drug Aware Youth Website - www.drugaware.com.au
• Access detailed information about drugs including cannabis and links to services in Western Australia.
• Post questions anonymously and have them answered by professionals.
• Find links to other useful sites.

Drug and Alcohol Office Website - www.dao.health.wa.gov.au
• For information about the Drug and Alcohol Office and its five directorates.
• Access various publications on-line including reports, documents and general information about drugs and alcohol.
• Access the Alcohol and Other Drug Services directory for Western Australia.
CANNABIS CONTROL ACT 2003

It is against the law to cultivate, possess, use, sell or supply cannabis. It is also against the law to possess pipes and other implements on which there are detectable traces of cannabis.

While the possession of small amounts of cannabis is still an offence it can now be dealt with by issuing a Cannabis Infringement Notice (CIN). If a person receives a CIN and pays the financial penalty or attends a Cannabis Education Session (CES) the person will not be required to appear in court and will not incur a criminal record.

WHAT IS THE CANNABIS INFRINGEMENT NOTICE (CIN) SCHEME?

The Cannabis Infringement Notice (CIN) Scheme enables police, at their discretion, to issue an infringement notice for possession of small amounts of cannabis. People who receive a CIN will be required to pay a financial penalty within 28 days, complete a Cannabis Education Session within 28 days or can choose to have the matter heard in court. There is a limit to the number of times within a three-year period that a person who is issued with a CIN may choose to pay a financial penalty rather than complete a CES or go to court. A person who is issued with one or more CINS on each of three separate days within a three-year period will be required on the third and any subsequent occasion to attend a Cannabis Education Session or go to court, and will not be eligible to pay a financial penalty.

If police have relevant evidence, a person found in possession of a small amount of cannabis could still be charged with the more serious offence of possession of cannabis with intent to sell or supply.

The CIN Scheme does not apply to possession by an adult of any quantities of cannabis resin (hash), hash oil, or other cannabis derivatives. The possession of any quantity of these substances will continue to be prosecuted through the courts.
WHAT CAN I DO IF I RECEIVE A CANNABIS INFRINGEMENT NOTICE?

There options are:

- pay the Cannabis Infringement Notice financial penalty within 28 days of the CIN being issued; or
- complete a Cannabis Education Session (CES) within 28 days of the CIN being issued; or
- apply in writing to have the matter heard and determined in court.

Note: A person has 28 days to complete a CES or pay the financial penalty unless an extension is provided by an authorised person.

CAN A YOUNG PERSON BE ISSUED WITH A CANNABIS INFRINGEMENT NOTICE?

No. Under the Young Offenders Act 1994, young people (aged 10 to 17 years inclusive) who are found growing, in possession of, or using cannabis within the limits set by the CIN scheme may be cautioned or referred to a Juvenile Justice Team.

WHEN CAN A CANNABIS INFRINGEMENT NOTICE BE ISSUED?

A CIN can be issued in the following instances:

- possession by an adult of no more than 15 grams of cannabis - (penalty $100);
- possession by an adult of more than 15 grams and no more than 30 grams of cannabis - (penalty $150);
- possession by an adult of no more than two cannabis plants under cultivation at that person’s principal place of residence provided that the plants are not hydroponically grown and that no other person is growing other cannabis plants on the same premises - (penalty $200); and
- possession by an adult of pipes and other implements for use in smoking cannabis on which there are detectable traces of cannabis - (penalty $150).

Under the Misuse of Drugs Act 1971 police have the power to seize and destroy cannabis, cannabis plants and/or pipes or other implements (with detectable traces of cannabis) when a CIN is issued.
IGNORING A CANNABIS INFRINGEMENT NOTICE

If the 28-day period has expired and you have not paid the financial penalty or completed a CES or elected to have the matter heard and determined in court, then a final demand for payment may be served on you. Once a final demand has been issued you will no longer be eligible to attend a CES for the CIN and you will be required to pay the financial penalty as well as additional administration costs.

If you have not paid the amount specified in the final demand by the due date then the matter may be registered with the Fines Enforcement Registry for enforcement. This may result in the payment of additional costs.

The Fines Enforcement Registry may issue an order for you to choose to pay the financial penalty or elect to have the matter heard in court. Under this order you will have 28 days to pay the financial penalty and additional costs or to refer the matter to be heard in court.

If after 28 days you still do not pay the financial penalty and additional costs, or make an election to refer the matter to court, the Fines Enforcement Registry may take steps to suspend your driver’s licence or vehicle licence. Until the financial penalty and additional costs are paid, or you elect to have the matter heard in court, or the licence suspension order is cancelled, you will not be able to regain your driver’s licence or vehicle licence or obtain a new licence.

At any time after a matter is registered with the Fines Enforcement Registry and before any part of the financial penalty and additional costs are paid or the enforcement process suspended, the police may elect to refer the matter to a court.


**TAKING CARE**

It is safer not to use cannabis at all.

However, if someone does, remember:

- Some people have panic attacks when they get ‘stoned’. If this happens, call for help immediately and reassure them it will pass. Because of this, users should not be left alone as they can often find themselves in dangerous situations.

- Cannabis, like alcohol, slows reflexes, affecting reaction time and ability to carry out normal functions such as driving, swimming, and operating machinery.

**WANT MORE INFORMATION**

www.drugaware.com.au

Alcohol and Drug Information Service
Confidential 24-hour information, counselling and referral.
Telephone (08) 9442 5000
Toll-free 1800 198 024 (country callers)

For additional copies of this resource please call 9222 2045.

Remember, many recreational drugs are illegal and serious penalties can apply.

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**CANNABIS**

Cannabis, hashish and hash oil come from the Cannabis Sativa plant. This plant contains the chemical THC, which affects mood.

**APPEARANCE**

Cannabis - dried greenish-brown leaves or flowers of the plant.
Hashish - brown to black resin.
Hashish oil - reddish brown oil.

**HOW IT IS USED**

Cannabis is most commonly smoked as a joint or through a bong, but is occasionally cooked and eaten in foods.

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**EFFECTS**

The immediate effects of low doses of cannabis may include:

- Loss concentration
- Impaired balance
- Slower reflexes
- Increased appetite

The immediate effects of high doses of cannabis may include:

- Confusion and anxiety
- Restlessness
- Detachment from reality

The effects of frequent cannabis use can include:

- Dependence, which means:
  - the drug is central to a person’s life
  - the user has trouble cutting down his/her use
  - the user experiences symptoms of withdrawal when he/she tries to cut down

- Psychological problems - anxiety, depression, paranoia and psychosis in those people who have a vulnerability to mental health problems

- Learning difficulties - decreased concentration, memory and learning abilities

- Respiratory problems - increased risk of cancer and respiratory disorders such as asthma, bronchitis and emphysema.
Cannabis: Forms and Use

Marijuana: dried greenish brown leaves or flowers of the plant
Marijuana is the most widely used form of the drug in Australia. The texture of marijuana can be fine, with the appearance of dried herbs, or coarse, like tea. It is usually smoked in hand-rolled cigarettes called 'joints' or water pipes called 'bongs'.

Hashish: brown to black resin
Hashish is commonly called 'hash' and is the dried, compressed resin extract from the flowering tops of the female plant. It is sold in blocked pieces. Hashish ranges in colour from light-brown to nearly black. It is more potent than marijuana. Hashish is usually smoked through a pipe or cooked and baked in foods and eaten.

Hashish oil: reddish brown oil
Hashish oil is a thick and oily liquid that is an extract of the cannabis plant. It is reddish-brown in colour and the THC is very concentrated and so a very small amount will produce marked effects. Hashish oil is usually added to joints or cooked in foods and eaten.

Cannabis: THC
The cannabis plant contains a chemical called THC (delta-9 tetrahydrocannabinol) which affects the mood and perception of the user and causes the 'stoned' feeling. The amount of THC varies in different parts of the plant. For example, the flowers of the female plant have more THC than the stems or leaves.

When cannabis is smoked, THC is quickly absorbed into the bloodstream through the walls of the lungs. The 'high' effect of the drug is felt when the THC reaches the brain. This can happen within a few minutes and can last up to five hours.

When cannabis is eaten, the absorption of the THC is much slower, taking one to three hours for THC to enter the bloodstream, delaying the onset of the effects. The amount of food in the stomach and other characteristics of the user will also determine how quickly the user feels the effects.

Cannabis: General Effects
The effects of cannabis will vary from person to person depending on characteristics of the:

- Individual (user) - for example: Mood, physical size, weight, health, gender, previous experience with cannabis, expectations of the drug and personality;
- Drug - for example: The amount used, the content of THC and whether the drug is smoked or eaten;
- Setting (environment) - for example: Whether the person is using with friends, on his/her own, in a social setting or at home.

Cannabis: Short-term Effects
The immediate effects of low doses may include:

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1012 Text of individual pages related to cannabis reproduced without images, menus or sub menus.
• Loss of concentration
• Impaired balance
• Slower reflexes
• Increased appetite
• Increased heart rate
• Feeling of wellbeing
• Loss of inhibitions

Higher doses:

• Confusion and anxiety
• Restlessness
• Detachment from reality
• Hallucinations
• Paranoia
• Panic attacks

Cannabis can also affect:

• Short-term memory
• Logical thinking
• Motor skills (movement skills)
• Ability to perform complex tasks

These symptoms usually disappear when the effects of cannabis wear off.

**Cannabis: Long-term Effects**

Some of the long-term health effects for frequent and heavy cannabis users can include:

• respiratory conditions
• motivational changes
• psychological effects
• sex drive and reproduction
• dependence

**Respiratory Conditions:**

• bronchitis
• cancers of the lung, throat, and tongue
• respiratory diseases such as emphysema
• airway obstruction, and associated shortness of breath and wheezing

Users who inhale cannabis smoke increase the likelihood of being affected by respiratory conditions. Cannabis smokers often hold smoke in their lungs for longer periods than do cigarette smokers, this increases the absorption of tar and carcinogenic chemicals in the lungs. When cannabis smoke is inhaled 95% of the available THC is absorbed in seconds. Marijuana cigarettes contain 3 times more tar than a standard filter tipped cigarette

Some users combine cannabis with tobacco which increases the risk of respiratory damage as the lungs are exposed to even more tar and carcinogens. Tobacco is also a very addictive drug. As an alternative to mixing cannabis with tobacco some users mix cannabis with peppermint tea or other herbal preparations. There is no evidence that this combination is better than mixing cannabis with tobacco, and there are also toxic by-products released from these substances when they are smoked

Users that smoke cannabis in bongs or cones often do more damage to their lungs. This occurs as the smoke is often inhaled more deeply which increases the amount of tar and carcinogens absorbed. Bongs or cones made of plastic bottles, rubber hoses, PVC, aluminium or foil release noxious by-products and fumes when they are heated.

Motivational Changes
Some frequent and heavy users of cannabis, especially young users, find that they lose energy and drive. Users also report negative changes in their ability to concentrate, and interact socially.

Psychological Effects
- Cannabis does not cause mental illness, but it can trigger certain feelings or intensify them. For example anxiety or depression
- Cannabis can precipitate schizophrenia in those who have a predisposition to the condition.
- Long-term cannabis use may decrease a person's concentration and memory, which are essential to learning. Most of these problems are reversible when use is stopped. However long-term users may find that these problems with memory, attention and concentration persist.

Sex Drive and Reproduction
Cannabis can interfere with sexual drive and hormone production. Some heavy users of cannabis experience a lowered sex drive, and they may have a lowered sperm count, or irregular menstrual cycles.

Dependence
Cannabis can also cause dependence. Frequent use can lead to dependence for some people; however, there is minimal neuro-adaption to cannabis (neuro-adaption refers to adaptation of nervous tissue cells to the presence of a drug). This means that cannabis dependence is due to the influence of factors other than the presence of THC, such as psychological motivations for use, the amount used, why it is used, and the effect of use.

Cannabis and Other Drugs
If cannabis is used in conjunction with other depressant drugs the depressant action generally increases.

Using cannabis with other drugs increases risks. When cannabis is combined with alcohol it can frequently lead to behaviour that causes injuries. For example, because cannabis interferes with a person's motor and coordination skills, vision and perceptions of time and space, a person's ability to drive safely and complete tasks that require concentration can be impaired. This impairment increases substantially when cannabis is used with alcohol. Users report that intoxication levels increase dramatically when cannabis is combined with alcohol.

Cannabis and Pregnancy
Most drugs can affect an unborn child. It is not wise to use any drugs during pregnancy. It is known that THC does pass through the placenta and reach the baby. It can also pass into the mother's milk after the birth. Some studies link reduced growth of the baby (weight and length) in the uterus and the use of cannabis by pregnant women.

Cannabis: The Law

Cannabis Control Act 2003

It is against the law to cultivate, possess, use, sell or supply cannabis. It is also against the law to possess pipes and other implements on which there are detectable traces of cannabis. While the possession of small amounts of cannabis is still an offence it can now be dealt with by issuing a Cannabis Infringement Notice (CIN). If a person receives a CIN and pays the financial penalty or attends a Cannabis Education Session (CES), the person will not be required to appear in court and will not incur a criminal record.

- What is the cannabis infringement notice (CIN) scheme?
- Can a young person be issued with a cannabis infringement notice?
- When can a cannabis infringement notice be issued?
- What can I do if I receive a cannabis infringement notice?
- Ignoring a cannabis infringement notice

What Is The Cannabis Infringement Notice (CIN) Scheme?

The Cannabis Infringement Notice (CIN) Scheme enables police, at their discretion, to issue an infringement notice for possession of small amounts of cannabis. People who receive a CIN will be required to pay a financial penalty within 28 days, complete a Cannabis Education Session within 28 days or can choose to have the matter heard in court. There is a limit to the number of times within a three-year period that a person who is issued with a CIN may choose to pay a financial penalty rather than complete a CES or go to court. A person who is issued with one or more CINs on each of three separate days within a three-year period will be required on the third and any subsequent occasion to attend a Cannabis Education Session or go to court, and will not be eligible to pay a financial penalty.

If police have relevant evidence, a person found in possession of a small amount of cannabis could still be charged with the more serious offence of possession of cannabis with intent to sell or supply.

The CIN Scheme does not apply to possession by an adult of any quantities of cannabis resin (hash), hash oil, or other cannabis derivatives. The possession of any quantity of these substances will continue to be prosecuted through the courts.

Can A Young Person Be Issued With A Cannabis Infringement Notice?

No. Under the Young Offenders Act 1994, young people (aged 10 to 17 years inclusively) who are found growing, in possession of, or using cannabis within the limits set by the CIN scheme may be cautioned or referred to a Juvenile Justice Team.

When Can A Cannabis Infringement Notice Be Issued?

A CIN can be issued in the following instances:

- Possession by an adult of no more than 15 grams of cannabis - (penalty $100).
- Possession by an adult of more than 15 grams and no more than 30 grams of cannabis - (penalty $150).
- Possession by an adult of no more than two cannabis plants under cultivation at that person’s principal place of residence provided that the plants are not hydroponically grown and that no other person is growing other cannabis plants on the same premises - (penalty $200).
- Possession by an adult of pipes and other implements for use in smoking cannabis on which there are detectable traces of cannabis - (penalty $100).

Under the Misuse of Drugs Act 1981 police have the power to seize and destroy cannabis, cannabis plants and/or pipes or other implements (with detectable traces of cannabis) when a CIN is issued.

**What Can I Do If I Receive A Cannabis Infringement Notice?**

Then options are:

- Pay the Cannabis Infringement Notice financial penalty within 28 days of the CIN being issued. OR
- Complete a Cannabis Education Session (CES) within 28 days of the CIN being issued. OR
- Apply in writing to have the matter heard and determined in court.

Note: A person has 28-days to complete a CES or pay the financial penalty unless an extension is provided by an authorised person.

**Ignoring A Cannabis Infringement Notice**

If the 28-day period has expired and you have not paid the financial penalty or completed a CES or elected to have the matter heard and determined in court, then a final demand for payment may be served on you. Once a final demand has been issued you will no longer be eligible to attend a CES for the CIN and you will be required to pay the financial penalty as well as additional administration costs.

If you have not paid the amount specified in the final demand by the due date then the matter may be registered with the Fines Enforcement Registry for enforcement. This may result in the payment of additional costs.

The Fines Enforcement Registry may issue an order for you to choose to pay the financial penalty or elect to have the matter heard in court. Under this order you will have 28 days to pay the financial penalty and additional costs or to refer the matter to be heard in court.

If after 28 days you still do not pay the financial penalty and additional costs, or make an election to refer the matter to court, the Fines Enforcement Registry may take steps to suspend your driver's licence or vehicle licence. Until the financial penalty and additional costs are paid, or you elect to have the matter heard in court, or the licence suspension order is cancelled, you will not be able to regain your driver's licence or vehicle licence or obtain a new licence.

At any time after a matter is registered with the Fines Enforcement Registry and before any part of the financial penalty and additional costs are paid or the enforcement process suspended, the police may elect to refer the matter to a court.

**Disclaimer**

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