

Legal Framework Involving Cannabis Offences in Western Australia and Recent Developments

by Greg Swensen (September 2009)

1. Introduction

1.1 Misuse of Drugs Act 1981

The *Misuse of Drugs Act 1981* (MDA) sets out the framework of drug offences in Western Australia (WA) and encompasses two categories of substances, being:

- prohibited drugs specified in Schedule 1 of the MDA (regardless of whether they may also be drugs of addiction or specified drugs) plus any drugs defined in the *Poisons Act 1964* (PA) as being either ‘drugs of addiction’ or ‘specified drugs’; and
- prohibited plants specified in Schedule 2 of the MDA (regardless of whether they may also be prohibited plants) plus any plants defined in the PA as ‘prohibited plants’.

As noted, in addition to any of the drugs listed in Schedules 1 and 2, the scope of the MDA is augmented by cross referencing to additional classes of substances covered by the PA, drugs of addiction, specified drugs and prohibited plants. Section 5 of the PA contains definitions of each of these as follows:

- a ‘drug of addiction’ is “*any substance included in Schedule 8 or 9*”;¹
- a ‘specified drug’ is “*any substance that is declared to be a specified drug for the purposes of this Act*” ; and
- a ‘prohibited plant’ is “*any plant from which a drug of addiction may be obtained, derived or manufactured, or such other plant ... (declared) ... to be a prohibited plant ... and includes any part of such a plant, except in the case of the plant *Papaver somniferum*, the non-viable seed of that plant.*”

The MDA lists in Schedule 1 five broad groups of prohibited drugs to which it applies - cocaine, ecgonine, heroin, morphine and their respective salts; opium; any preparation, admixture, extract, or other substance containing not less than 0.2% of morphine or not less than 0.1% of cocaine or ecgonine; any derivative of cocaine; and cannabis or cannabis resin or any other cannabis derivative.

The MDA lists in Schedule 2 three groups of plants to which it applies, being two species of opium plants (ie *papaver somniferum* and *papaver bracteatum*) and cannabis.

2. Cannabis

The approach followed by the MDA means that non viable parts of a cannabis plant or any of its derivatives are classified as prohibited drugs, whereas a growing cannabis plant is classified as a prohibited plant.

The MDA adopts a two tier approach for dealing with those charged with a cannabis related offence (or any other drug) according to the seriousness, with summary trial in a Magistrates Court involving minor offences, referred to as ‘simple offences’ or trial in the higher courts for more serious offences, referred to as ‘indictable offences’.

¹ Since 1995 the contents of the schedules to the Poisons Act 1964 have been determined by a national system of scheduling, the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP). The SUSDP is regularly updated by decisions of the National Drugs and Poisons Schedules Committee, which is administered by the Therapeutic Goods Administration. The SUSDP listing is not available online, but can only be obtained by subscription. <www.tga.gov.au/ndpsc/susdp.htm>

2.1 Minor cannabis offences

2.1.1 CIN scheme

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 and commenced on 22 March 2004. As the CCA is specifically linked to three offences contained in sections 5(1)(d)(i), 6(2) and 7(2) of the MDA, police always have the option of charging someone instead of issuing a CIN.

An offender issued with a CIN under the CCA has the option of contesting the charge in a Magistrates Court or alternatively expiating the charge by either payment of a prescribed ‘modified penalty’ or completion of a cannabis education session (CES) within 28 days of a CIN being issued. The CCA provides that three minor cannabis offences can be expiated by way of a CIN for the MDA offences of:

- possession of smoking implement on which there are detectable traces of cannabis [Section 5(1)(d)(i)];
- possession of up to 30 grams of cannabis (with two levels of penalties depending on amount of cannabis) [Section 6(2)]; and
- non hydroponic cultivation of up to two cannabis plants at a person’s principal place of residence [Section 7(2)].

A summary of the alternative penalties that apply to minor cannabis offences, depending on whether the person has been charged under the MDA or issued with a CIN under the CCA are set out in Table 1.

Table 1: Minor cannabis offences and penalties (Misuse of Drugs Act 1981 and Cannabis Control Act 2003)

Description	Misuse of Drugs Act 1981		Cannabis Control Act 2003		
	Offence	Penalty	Offence	Penalty	
	Section	Section	Section	Regulations	
Possession of pipes or utensils for smoking cannabis on which there are detectable traces of cannabis	5(1)(d)(i)	34(1)(d)	\$3,000, 3 years or both	5(1)	\$100
Possession of cannabis	6(2)	34(1)(e)	\$2,000, 2 years or both	6(1)	\$100: <15 gms \$150: 15-30 gms
Cultivation of cannabis	7(2)	34(1)(e)	\$2,000, 2 years or both	7(1)	\$200: up to 2 non hydroponic plants

2.1.2 Expiable offences

The CIN scheme provides that a CIN may be issued for any of the following four *expiable* offences:

- possession of a smoking implement on which there are detectable traces of cannabis (modified penalty \$100);
- use of or possession of not more than 15 grams of cannabis (modified penalty \$100);
- use of or possession of more than 15 grams and not more than 30 grams of cannabis (modified penalty \$150); and
- cultivation of not more than two non-hydroponically grown cannabis plants at a person’s principal place of residence (modified penalty \$200).

The monetary value of ‘modified penalties’ for offences that can be dealt by way of a CIN are not set out in the CCA but in the *Cannabis Control Regulations 2004*.

A key concept of the CIN scheme is that if an individual who has been issued with a CIN either pays the incurred monetary penalty or attends a CES, this represents an expiation of his or her guilt and the matter is regarded as finalised without opprobrium.

If the offender successfully expiates the offence covered by the CIN he or she will not receive a record of a criminal conviction, whereas if an offender fails to expiate a CIN, this will result in them being dealt with by the Fines Enforcement Registry (FER). Failure to complete the FER recovery process specified in Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (FPINEA) does not result in a conviction, but results in an unpaid debt owing to the State.²

The CCA has a two stage penalty structure, with a provision (the second stage) that if a person has been issued with two or more CINs on separate days, within the past three years, they will not be able to expiate any further CINs by payment of a prescribed penalty, but must attend a CES.

Furthermore, in relation to a second stage CIN, if the person fails to complete a CES within 28 days of it being issued, they will be charged with having committed the particular offence under the MDA. This means they will be dealt with by a Magistrates Court and if convicted, may receive a penalty provided under the MDA and will have a criminal record.

2.1.3 Methods of expiation

Attendance at a CES does not involve the payment of any fees by the person and completion of a CES will expiate all CINs issued any offences that were committed on a single day. A person can be issued with a maximum of three CINs on a single day, ie if they committed expiable offences involving Sections 5(1)(d)(i), 6(2) and 7(2) of the MDA.

If a person fails to attend a CES within the first 28 days, he or she can only expiate by payment of the relevant modified penalty within the next 28 days. If a CIN is not subsequently expiated by payment within the first 28 day period, a final demand will be issued by the police which gives a further 28 days to expiate by payment. This means that expiation may only be made if payment is made in full within 56 days, as expiation by attendance at a CES is confined to the first 28 day period.

If a person fails to respond to the final demand issued by police (ie after 56 days) then enforcement of the debt owing will be transferred to the FER. An administrative fee of \$13.50 will be incurred at this stage.

2.1.4 Recovery through FER process

The FER process involves a series of steps which ultimately can result in suspension of the person's driver's licence and/or refusal of motor vehicle registration.

When a matter is first registered with the FER, an administrative fee of \$54.50 is incurred. Additional administrative fees, per infringement, are associated with various stages of the enforcement process as further demands for payment are not complied with.

If a person fails to respond to a demand 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 (TTP) arrangement. If a TTP cannot be completed with the agreed time then FER has the power to disqualify the person from driving.

The first step is a demand (a first notice) for payment within 14 days of the total amount owing of any outstanding unpaid CIN or CINs which were issued on the same day. Failure to respond to this first notice results in a reminder notice being issued. If the reminder notice does not result in payment, FER

² The FER is also responsible for the enforcement of unpaid traffic infringement notices under Part 3. Part 4 of the FPINEA applies to unpaid court fines, for which imprisonment for non payment is possible.

commences an enforcement mode, where a notice is issued of intention to suspend the person's driver's licence. If payment is not made within 28 days of the intention to suspend a confirmation of suspension of driver's licence is issued, which incurs a further administrative fee of \$28.50.

The effect of the cumulative administrative charges that are levied throughout the various stages of enforcement is that a person may incur a total of \$96.50 administrative charges *per CIN*, in addition to the value of each unpaid CIN.

2.1.5 Repeat offenders

Section 9 of the CCA provides that if a person has been issued with two or more CINs on at least two separate days within the past three years, they cannot expiate any further CINs by payment of the relevant modified penalty but can only expiate by attending a CES.

Furthermore, if a person issued with a CIN under Section 9 circumstances fails to complete the CES, they cannot avail themselves of the procedures in the FPINEA, but will be charged with the relevant offence under the MDA.

An overview of the offences in the MDA concerned with minor cannabis offences and related penalty provisions are contained in Table 2.

**Table 2: Minor cannabis offences and penalties
(Misuse of Drugs Act 1981 and Cannabis Control Act 2003)**

Description	Misuse of Drugs Act 1981		Cannabis Control Act 2003		
	Section	Penalty	Section	Section	Penalty
Being in a place where cannabis is smoked	5(1)(e)	\$2,000, 2 years or both	34(1)(e)		
Occupier of premises permitting premises to be used for the manufacture, preparation, sale, supply or use of cannabis	5(1)(a)	\$3,000, 3 years or both	34(1)(d)		
Owner or lessee of premises permitting premises to be used for the use of cannabis	5(1)(b)	\$3,000, 3 years or both	34(1)(d)		
Person concerned in the management of premises for the manufacture, preparation, sale, supply or use of cannabis	5(1)(c)	\$3,000, 3 years or both	34(1)(d)		
Possession of utensils ³ for manufacture or preparation of cannabis for smoking	5(1)(d)(ii)	\$3,000, 3 years or both	34(1)(d)		
Contravention of order prohibiting a person from selling or supplying any thing used to hydroponically cultivate cannabis	7A(3)	\$2,000, 2 years or both	34(1)(c)(ii)		
Failure to display prescribed warning notice by retailer of smoking paraphernalia				22	\$1,000 (person) \$5,000 (body corporate)
Failure by retailer of smoking paraphernalia to make available prescribed education materials				23	\$1,000 (person) \$5,000 (body corporate)
Selling by retailer of smoking paraphernalia to persons under 18 years				24	\$5,000 (person) \$25,000 (body corporate)

³ On which there are detectable traces of cannabis.

2.2 Serious offences

A key approach followed by the MDA is that possession of greater than a specified number of cannabis plants or possession of greater than a specified quantity of cannabis is deemed as possession with the presumption to sell or supply.

This presumption puts a reverse onus on a defendant to rebut that they did not intend to sell or supply the cannabis or the plants they were cultivating. The thresholds for determining whether a person will be charged with a serious offence (ie intent to sell or supply) are specified in Schedules five and six of the MDA (see Table 3).

Table 3: Thresholds for serious cannabis offences (Misuse of Drugs Act 1981)

Type of cannabis	Threshold	Section
Leaf	100 g	Schedule 5
Plants	10 plants	Schedule 6
Cigarettes	80 cigarettes	Schedule 5
Resin ⁴	20 g	Schedule 5
Tetrahydrocannabinols	2 g	Schedule 5

The penalties for committing a serious offence are contained in Table 4.

Table 4: Serious cannabis offences and penalties (Misuse of Drugs Act 1981)

Description of offence	Section	Penalty	
		Range	Section
Possession of cannabis with intent to sell or supply	6 (1) (a)	\$100,000, 25 years or both	34 (1) (a)
Cultivation or possession of cannabis plants with intent to sell or supply	7 (1) (a)	\$100,000, 25 years or both	34 (1) (a)
Sell, supply or offer to sell or supply cannabis plants	7 (1) (b)	\$100,000, 25 years or both	34 (1) (a)
Sell, supply or offer to sell or supply any thing that is known will be used to hydroponically cultivate cannabis	7A(1)	\$20,000, 5 years or both	34 (1) (c) (i)

2.2.1 Optional summary trial

Section 9 of the MDA sets out a scheme as to the place of trial depending on the quantity of cannabis or the number of plants. This arrangement, which is intended to maximise that defendants will elect to proceed by way of summary trial, means that if a charge is dealt with summarily a defendant faces lower penalties.

The MDA restricts optional summary trial to offences that only involve cannabis leaf or cannabis plants, but not any derivative of cannabis (eg resin or hash). Optional summary trial is also not available if the charge involves a conspiracy. The option of having a trial in a summary court instead of in a higher court is available for the offences of:

- possession of cannabis with intent to sell or supply;
- cultivation of cannabis with intent to sell or supply;
- selling or offering to sell cannabis;
- supplying or offering to supply cannabis; or
- selling or offering to sell or supply any thing which is known will be used to hydroponically cultivate cannabis.

4 Hashish oil is not covered in the legislation.

The scheme of different penalties according to whether a defendant was convicted in a higher court or summary court is determined by the quantity of cannabis or the number of plants involved – see Table 5.

Table 5: Cannabis offences - place of trial (Misuse of Drugs Act 1981)

Type of cannabis	Threshold	Section	Optional summary trial	Trial in higher court
Leaf	500 g	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both
Plants	100 plants	Schedule 4	\$5,000, 4 years or both	\$20,000, 10 years or both
Cigarettes ⁵	400 cigarettes	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both

2.2.2 Hydroponic cultivation

The CCA included an amendment to the MDA, with the insertion of Section 7A of MDA, which since march 2004 made it a serious offence for someone to sell or supply or offer to sell or supply “*any thing*” that the person knew would be used to hydroponically cultivate cannabis.

There is optional summary trial concerning Section 7A offences, which mean a defendant would face a fine of not more than \$2,000, imprisonment of not more than two years or both, as if such a charge was otherwise dealt with by way indictment, a defendant would a fine of up to \$20,000 or imprisonment of up to five years, or both.

2.3 Declaration as a drug trafficker

Section 32A of the MDA requires a court on convicting a person of a ‘serious drug offence’ to declare that person a ‘drug trafficker’ if the offence involves more or greater than specified amounts of cannabis or numbers of plants. (See Table 6). Such a declaration will also be made following conviction if a defendant had over the past 10 years been convicted of two or more serious drug offences or external serious drug offences.

Table 6: Cannabis offences - thresholds for declaration as a drug trafficker (Misuse of Drugs Act 1981)

Type of cannabis	Threshold	Section
Leaf	3 kg	Schedule 7
Plants	250 plants	Schedule 8
Resin	100 g	Schedule 7

The consequences of being declared a ‘drug trafficker’ means that such an individual would come within the ambit of the *Criminal Property Confiscation Act 2000* (CPCA), which will result in the confiscation of all property owned or controlled by the defendant, in addition to the other consequences in the CPCA, such as orders for unexplained wealth, criminal benefits, crime used property or crime derived property. See the following excerpt from the CPCA:

⁵ Containing any portion of cannabis.

8. Drug trafficker's property

(1) *When a person is declared to be a drug trafficker under section 32A(1) of the Misuse of Drugs Act 1981 as a result of being convicted of a confiscation offence that was committed after the commencement of this Act, the following property is confiscated –*

- (a) *all the property that the person owns or effectively controls at the time the declaration is made;*
- (b) *all property that the person gave away at any time before the declaration was made, whether the gift was made before or after the commencement of this Act.*

(2) *When a person is taken to be a declared drug trafficker under section 159(2), the following property is confiscated –*

- (a) *all the property that the person owned or effectively controlled at the time that the person absconded;*
- (b) *all property that the person gave away at any time before the person absconded, whether the gift was made before or after the commencement of this Act.*

3. Some implications of Cannabis Control Act reforms

It is likely that the CCA reforms will have other consequences as the courts may interpret the penalties in the CCA are applicable to other areas of criminal law. Even though the CIN scheme has operated for a comparatively short period of time there is evidence that the courts have already determined that the penalty provisions of the CCA are relevant to dealing with minor cannabis offenders.

This occurred when the Supreme Court of WA considered the case of *Harper v Page*⁶ involving convictions for a number of concurrent minor cannabis offences, offences that occurred just before the CIN scheme had commenced on 22 March 2004. In *Harper v Page* the appellant was convicted on 5 March 2004 for three offences that would have 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 the defendant's 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,⁷ 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.

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 —

⁶ *Harper v Page*. Unreported, Supreme Court of WA, SJA 1018/2004, BC200409165; 19 November 2004.

⁷ Proclaimed in Government Gazette 9 March 2004, 733.

- (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.”⁸

The significance of this appeal to a single Judge in the Supreme Court is that following the CCA reforms, the four expiable offences under the CCA will now ordinarily be regarded by courts when sentencing a defendant as being ‘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 now establishes that the principle in *R v Tognini*⁹ had been so narrowly interpreted by the courts in WA prior to the CCA reforms, such that virtually no one in WA convicted of a minor cannabis offence was granted a spent conviction order.¹⁰

“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.”¹¹

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, that in relation to appropriate penalties, the courts should discriminate between minor offences and those cases which involved the organised supply and production of cannabis.

In the 1998 case of *Bidwee v Robinson*¹² 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 largely denied to defendants in WA.

8 *Harper v Page*. Unreported, Supreme Court of WA, SJA 1018/2004, BC200409165; 19 November 2004, para 41.

9 *R v Tognini* (2000) 22 WAR 291.

10 Cf consideration by Supreme Court of the Northern Territory of the effect of similar reforms of July 1996 in the Northern Territory that provided for drug infringement notices (DINs), which 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.

11 *Harper v Page*. Unreported, Supreme Court of WA, SJA 1018/2004, BC200409165; 19 November 2004. para 26.

12 *Bidwee v Robinson*. Unreported, Supreme Court of WA, SJA 1207/1998, BC9901810; 4 March 1999.

An example of the approach pre *Harper v Page* is the 1997 case of *Riley v Gill*,¹³ 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 the 1997 case of *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 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 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.¹⁴

There is an unresolved issue of whether the CIN database, which is maintained by the police to record 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 that an individual received a CIN could be sought, such as a condition as fitness to hold a motor driver's license, 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 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.

4. Statutory review of Cannabis Control Act

Section 26 of the CCA required that a review of the ‘operation and effectiveness’ of the first three years of the CCA was to be conducted. A review was accordingly undertaken of the first three years of the CIN scheme and other reforms introduced by the CCA, covering the period up to 31 March 2007. Both the Technical report and Executive Summary were tabled in the WA Parliament in November 2007. A total of 15 recommendations were outlined in the Executive Summary dealing with administrative and legislative issues.

The most significant recommendations involved modification of the CCA to entirely exclude the cultivation of plants and reduce the threshold of the amount of expiable cannabis from 30 grams to 15 grams. If implemented this would have meant there would have been two expiable minor cannabis offences – possession of a smoking with detectable traces of cannabis and the possession of not more than 15 grams of cannabis.

¹³ *Riley v Gill*. Unreported, Supreme Court of WA, SJA 1125/1997, BC9707453; 8 December 1997.

¹⁴ 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 justified the 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.

Some of the key findings of the statutory review of the performance of the CIN scheme over the three year period were as follows.

A total of 9,328 CINs were issued, of which 3,408 (36.5%) were for possession of a smoking implement, 5,422 (58.1%) were for possession of 15 grams or less of cannabis, 243 (2.6%) were for possession of more than 15 grams and up to 30 grams of cannabis; and 255 (2.7%) were for non-hydroponic cultivation of not more than two plants.

A total of 6,790 unique individuals were issued with CINs, of whom 6,348 (93.5%) persons were issued with one or more CINs on only a single day, 414 (6.1%) persons were issued with CINs on two separate days, 25 (0.3%) persons were issued with CINs on three separate days and 3 persons were issued with CINs on four or more separate days.

With respect to the total of 6,348 unique individuals who were issued with one or more CINs on a single day, 4,595 (67.7%) persons received only one CIN, 1,687 (24.9%) persons received two CINs and 66 (1.0%) persons received three CINs.

A total of 6,790 unique individuals were issued with CINs, 1,337 (19.7%) were females and 5,453 (80.3%) were males.

The age breakdown of the 6,790 unique individual issued with CINs found that 3,635 (53.5%) were aged 18 to 24, 1,873 (27.6%) were aged 25 to 34, 941 (13.9%) were aged 35 to 44, 294 (4.3%) were aged 45 to 54 and 47 (0.7%) were aged 55 years and older.

A total of 9,328 CINs were issued, of which 1,250 (13.4%) were completed by attendance at a CES, 2,741 (29.4%) were paid in full within the first 28 days, 2,228 (23.9%) were paid in full through the FER system and 2,286 (24.5%) resulted in suspension of motor driver's licence.

The review also identified that a higher proportion of males than females expiated (40.5% vs 34.1%), even though males and females had similar rates of expiation by attendance at a CES (13.3% vs 13.7%), males were 1.6 times more likely to expiate by payment than females (31.7% vs 20.4%).

There were also substantial variations in the rate of expiation according to indigenous status, as about four times as many non-Indigenous persons as Indigenous persons expiated (46.2% vs 11.6%).