

Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters

**Report of the Working Party on Drug Law Reform
to the Minister for Health**

March 2002



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Terms of reference

Preamble

It is noted that cannabis law reform is a priority for the following Terms of Reference.

1. To examine and make recommendations on the *Misuse of Drugs Act 1981* and the *Young Offenders Act 1994* and other relevant legislation to develop options for reform regarding civil penalties for the personal use of cannabis and a statute based conditional cautioning system for adults and juveniles. Among other things this should include:

- Appropriate amounts deemed for possession and cultivation of cannabis which would be eligible for cautions and civil penalties.

It is noted that in the interim the Government has indicated that the current cautioning system has been extended to the possession of up to 25 grams and the cultivation of no more than two plants.

- Appropriate law reform to allow diversion and referral of persons under the age of 18 years consistent with other changes recommended to legislation.
2. To consider the health and legal aspects of medicinal use of cannabis in consultation with other relevant experts.
 3. To otherwise review the law in relation to the use, supply and possession of illegal drugs consistent with the other terms of reference specified here.
 4. To examine and recommend changes to legislation governing the possession of implements containing traces of illegal drugs consistent with recommended changes to the *Misuse of Drugs Act 1981*.
 5. To consider the implications of drug law reform for relevant sectors, such as law enforcement, education and health.

Chairman's foreword

The Working Party on Drug Law Reform was set up in December 2001 by the Honourable Bob Kucera APM MLA, Minister for Health, to advise the government on options for law reform in relation to the matters contained in Recommendations 39 and 40 from the Community Drug Summit.

The Working Party was also requested to provide the Minister with advice in relation to the issue of the medicinal use of cannabis.

The first term of reference involved the matter of cannabis law reform. As this was the main priority, the Working Party undertook careful consideration of issues and materials to enable it to outline a scheme of prohibition with civil penalties for minor cannabis offences. This proved to be a more complex exercise than initially anticipated, as it was recognised that it was important to avoid the shortcomings and limitations that have been identified in the three cannabis expiation schemes that already operate in Australia.

Under the proposed scheme the possession and cultivation of any amount of cannabis will remain illegal. The proposed scheme provides for the expiation of minor offences where an individual possesses no more than 30 grams of cannabis and/or cultivates no more than two cannabis plants.

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.

The scheme maintains the police powers to seize all hydroponic equipment that has been used to cultivate cannabis. Furthermore, the scheme also proposes that the hydroponic equipment industry be regulated to eliminate those from the industry who are believed to have links with organised criminal organisations.

The Working Party has also recommended that suppliers of smoking paraphernalia, such as water pipes or 'bongs' should be regulated.

These shops should promote information about health risks of cannabis use and adopt minimum standards, including not selling paraphernalia to those aged under 18 years. Overall responsibility to regulate these types of businesses should rest with the Department of Health which has developed considerable experience with introducing a similar approach over a number of years in relation to the sale of tobacco products to minors.

It is expected that in the longer term the scheme will impact on the underlying consumption patterns thereby reducing the value of the cannabis market and lowering the profits and returns for organised criminal groups who may be engaged in the organised supply and distribution of cannabis.

The Working Party was also required under its Terms of Reference to investigate a number of other issues and accordingly a number of recommendations have been made in relation to the medicinal use of cannabis and changes to the *Misuse of Drugs Act 1981* concerning possession of implements containing detectable traces of illegal drugs. Measures are also outlined in the report to take account of the impact of the proposed scheme on relevant sectors.

The Working Party is unanimous in its support of the concept of prohibition with civil penalties for minor cannabis offences and in acknowledging the dangers associated with cannabis use does not support the legalisation of cannabis.

A handwritten signature in blue ink that reads "John Prior". The signature is written in a cursive style with a large, looping initial 'J'.

John Prior
Chairman

28 March 2002

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List of abbreviations

ABCI	Australian Bureau of Criminal Intelligence
ACT	Australian Capital Territory
ADCU	Alcohol and Drug Coordination Unit
ADIS	Alcohol and Drug Information Service
AFP	Australian Federal Police
AIHW	Australian Institute of Health and Welfare
ASSAD	Australian school students' alcohol and drugs national survey
CCMES	Cannabis cautioning and mandatory education system
CEN	Cannabis expiation notice
CIN	Cannabis infringement notice
CIU	Crime Information Unit
CJC	Criminal Justice Commission
CRC	Crime Research Centre
CSAC	Controlled Substances Advisory Council
DIN	Drug infringement notice
JJT	Juvenile justice team
NDSHS	National Drug Strategy Household Survey
NT	Northern Territory
OIS	Offence Information System
SA	South Australia
SCON	Simple cannabis offence notice
SDEP	School Drug Education Project
SOPs	standard operating procedures
THC	tetrahydrocannabinol
WA	Western Australia
WAPS	West Australian Police Service

Terms and definitions

The term 'civil penalties' refers to those penalties which once remedied no longer constitute a conviction nor result in a criminal record.

An expiable offence refers to an offence for which there is a civil penalty, that requires an individual to acknowledge guilt in the offence and to agree to pay a specified amount of money or another type of penalty, after which the penalty will be extinguished and the offence expunged.

The plant *cannabis sativa* usually takes the form of either herbal cannabis (marijuana) consisting of the dried leaves and female flower heads, or cannabis resin (hashish) which is secreted by the leaves and flowers and often compressed into blocks. Cannabis oil (hashish or hemp oil) is a concentrate of cannabinoids obtained by solvent extraction of the crude plant material or of the resin.

The term cannabinoid was originally used to describe the family of naturally occurring chemicals found in cannabis. Of these, the most significant is delta 9-tetrahydrocannabinol (THC) but there are others (eg cannabidiol and cannabinal) which, though not psychoactive, may modify the effects of THC itself. The term cannabinoid also encompasses any substance that activates cannabis receptors including synthetic (eg Nabilone) and endogenous (eg anandamide) compounds.¹

¹ Adapted from Advisory Council on the Misuse of Drugs. *The classification of cannabis under the Misuse of Drugs Act 1971*. London, Advisory Council on the Misuse of Drugs, Home Office 2002, 3.

1. Introduction

The use of cannabis in Western Australia, like all other Australian jurisdictions, has become widespread, with a significant proportion of otherwise law abiding young people and adults having been exposed to the drug and having used it on an occasional basis.

This means that for a significant proportion of the community, especially young adults, the threat of strict criminal penalties has not deterred the use of cannabis and the law has become regarded as out of touch with prevailing community values. This has been reflected in growing public support over a number of years for a change in the way in which minor cannabis offenders are dealt with.

However, it is noted that the majority of the community does not support the legalisation of cannabis. The Community Drug Summit which was held in August 2001 confirmed that there needed to be a less harmful method of legal control of cannabis use whilst still ensuring that cannabis remains illegal.

It has been shown that a conviction for a minor cannabis offence can have a range of adverse effects for the individual including difficulties in obtaining employment, an increased risk of further trouble with the law, relationship problems and restricted travel opportunities.

The Community Drug Summit confirmed that whilst the use of cannabis should still remain an offence in Western Australia, otherwise law abiding citizens should be able to avoid the disproportionate social and legal harms that can arise from a conviction for a minor cannabis offence.

The Summit resolved that legislation should be enacted to introduce a scheme of 'prohibition with civil penalties' for dealing with those who possessed and/or cultivated small quantities of cannabis for their personal use.

This report outlines a scheme of administrative arrangements and legislative direction required to introduce such a scheme, which would bring Western Australia into line with similar provisions that have been followed in a number of other Australian jurisdictions. It is noted that a similar approach has been adopted with respect to minor traffic offences.

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.

The proposed scheme is intended to make a number of improvements on the three established Australian schemes for expiating minor cannabis offences by:

- taking into account the impact of hydroponic cannabis cultivation;
- incorporating features which aim to improve the proportion of offenders who expiate their infringement notice by the due date;
- giving police explicit power to charge people who they believe are trying to flout the intention of the scheme, for example by being involved in commercial cannabis supply, even if they are only in possession of amounts under the expiable limit;
- aiming to shift cannabis supply away from large scale suppliers with criminal associations who often also supply more dangerous drugs; and
- incorporating comprehensive education for the general public, school children and cannabis users about the health effects of cannabis and the relevant laws, emphasising the point that cannabis possession and use remains illegal.

The recommended changes in the manner in which those who transgress the law in relation to minor cannabis offences are dealt with will also mean that there will be an incentive for those who do experience social and health problems from the excessive use of cannabis to seek assistance without fear of being charged with a criminal offence.

The scheme is an acknowledgement that with regards to drugs, police resources should be primarily directed towards apprehending and bringing before the courts those who are involved in all levels of drug trafficking and other drug related crime. The primary aim of law enforcement and the criminal justice system with regards to cannabis supply should be to heavily penalise those activities.

2. Cannabis law reform reference

2.1 Underlying principles and goals

2.1.1 Underlying principles

The recommended model rests on the following six underlying principles.

2.1.1.1 Minor cannabis offences should remain illegal but civil rather than criminal penalties should apply

The WA government has endorsed a model of *prohibition with civil penalties* for minor cannabis offences. This is set out in the Government's response to recommendation 39 of the Community Drug Summit (see Appendix 1). The following excerpt from the Government's response to the recommendations of the Community Drug Summit, **Putting people first**, provides the context for this reform.

“Notwithstanding the Government's tough stance on drug trafficking, it is recognised that the personal use of cannabis requires review and reform. Accordingly, the Government commits to the reform of the law for the possession of cannabis through the introduction of civil penalties and related measures and meanwhile extends the current cautioning system statewide.”

Under such a scheme minor cannabis offences remain against the law, but under certain conditions offenders will receive a civil penalty, such as a fine, rather than a criminal conviction. In this respect minor cannabis offences will be treated much like speeding in a motor vehicle, still unlawful, not condoned and resulting in a penalty.

Activities relating to possession of amounts beyond a defined small quantity, commercially oriented, organised or large scale cultivation of cannabis would remain subject to strict criminal penalties.

It is a fundamental principle of the scheme that the implementation of *prohibition with civil penalties* for minor cannabis offences is not to be considered as a first step toward legalisation of cannabis. The scheme also enshrines the principle that the police will always have the power to charge those who they have reasonable suspicion of engaging in supply, even though they possess cannabis or have growing plants within the expiable limits.

2.1.1.2 Cannabis, like other drugs has the capacity to cause harm

Cannabis, like other drugs, both legal and illegal, has the capacity to cause legal, social and health harms.

However, as the application of strict criminal penalties has not eliminated the drug from society, we need a legislative system to minimise these various forms of harm to individuals, families and the community generally.

2.1.1.3 The legislative model for cannabis should not encourage use, nor patterns of use which may increase harm

While the deterrent impact of legislative systems are difficult to demonstrate, research suggests that applying civil rather than criminal penalties for the personal use of cannabis has not affected the proportion of the general community who have recently used the drug. A legislative system for cannabis should not encourage use (in the sense of leading to more widespread use, more intensive use or more harmful use), lead to use of other more harmful drugs nor should it increase crime.

2.1.1.4 Laws should aim to move cannabis supply away from large scale criminal elements

It is clearly desirable that any option seeks, as far as is possible, to separate the supply of cannabis from the supply of other more harmful illicit drugs. The majority of cannabis users do not grow their own cannabis.

Consequently any legislative system which does not criminalise personal use of cannabis needs to recognise that demand cannot be met entirely by users growing their own cannabis. Accordingly the preferred model recognises the need for flexibility to be followed in the enforcement of the law regarding activities in relation to those who obtain small quantities of cannabis for personal use.

2.1.1.5 The model should be practical and coherent

The model should ideally be judged by all segments of society to be justifiable, workable and coherent. It is particularly important that it is supported by the bulk of the police service appointed to enforce the system, the judiciary appointed to arbitrate it, and the users who will be dealt with by it, even if they disagree that cannabis use should remain illegal. The preferred model should incorporate adequate education for professionals and the community about the detail of the law.

2.1.1.6 The preferred option should be evaluated and a legislative review process should be put in place

The most meaningful test for any legislative system is how it works in practice in the setting in which it is applied. Therefore the preferred legislative option should be subject to a comprehensive independent evaluation. A legislative review mechanism should be in place so that the scheme can be adjusted over time to ensure that it continues to meet its goals.

2.1.2 Goals

The outcomes of the recommended model can be determined through the realisation of four goals as follows.

2.1.2.1 Reduce cannabis related harm

To reduce the harms resulting from cannabis use by:

- not increasing the prevalence of recent regular use of cannabis by adults and young people in comparison with the rates for other Australian jurisdictions;
- removing legal and administrative barriers that would deter those with cannabis related problems from seeking help;
- being consistent with the provisions of public education campaigns about the harmful aspects of cannabis use and the laws that apply to the drug; and
- formally regulating businesses which provide or sell smoking paraphernalia from a health perspective by mandating that such businesses meet minimum standards, such as the provision of health information regarding risks associated with cannabis use and not selling or providing paraphernalia to persons aged less than 18 years.

2.1.2.2 Reduce the adverse social cost of a cannabis offence

To reduce the adverse social costs to individuals of being apprehended for a minor cannabis offence by:

- structuring a penalty system for minor offences for the possession and cultivation of cannabis;
- providing a range of strategies to minimise the proportion of persons who fail to expiate;
- ensuring that failure to expiate does not result in automatic conviction for the cannabis offence; and
- ensuring that the introduction of a civil penalties scheme does not undermine police discretion.

2.1.2.3 Move cannabis supply away from large scale commercial suppliers with criminal affiliations

To reduce the proportion of the total amount of cannabis consumed which is supplied by higher level commercial sources compared to that which has been grown by the user by:

- providing flexibility in the structure of offences and penalties to enhance police effectiveness in identifying and prosecuting those engaged in commercial cannabis production;
- outlining in the preamble to the legislation the goal of being to shift supply away from large scale criminal suppliers; and
- mandating a system of licensing for those who sell or provide hydroponics equipment.

2.1.2.4 Reduce the costs of enforcement of minor cannabis offences

Reduce the adverse costs to society as a whole from the enforcement of the criminal law against minor cannabis offenders by reducing the amount of police, court and law enforcement resources devoted to enforcing minor cannabis offences so that police target more serious types of drug offences.

2.2 Recommended model: The Cannabis Infringement Notice (CIN) scheme

2.2.1 Introduction

The model follows a similar approach as has been adopted in dealing with offences under the *Road Traffic Act 1974*, which provides a police officer, when dealing with an offender who has committed an offence under the *Road Traffic Act 1974*, to have the option to serve a ‘traffic infringement notice’ on that person.

The notice provides the offender with the option at that point of paying a prescribed penalty instead of having the matter dealt with by a court. If the offender wishes to contest the charge within the specified deadline then the matter will be dealt with before a Court of Petty Sessions.

Under the model the possession or cultivation of cannabis for personal use in Western Australia would remain illegal, but would attract civil rather than criminal penalties. The reference to ‘civil penalties’ is similar to the system that is used for dealing with minor traffic offences for which an infringement notice is issued.

2.2.2 Preamble

The Working Party believes that the purpose of the scheme when enacted will be strengthened if it contains a preamble that provides guidance to legislators, law enforcement officers and those who interpret the law. The following draft version of a preamble is offered.

Reasons for enacting this Act/amendment

The use of cannabis in Western Australia, like all other Australian jurisdictions, has become widespread, with a significant proportion of otherwise law abiding young people and adults having been exposed to the drug and having used it on an occasional basis. Furthermore, a conviction for a minor cannabis offence can adversely affect employment, result in increased risk of trouble with the law, contribute to relationship problems and restrict travel opportunities.

The Parliament recognises that a less harmful method of legal control of cannabis use should be followed and wishes to ensure that whereas the use of cannabis should still remain an offence, members of the community should be able to avoid the disproportionate social and legal harms that can arise from a conviction for a minor cannabis offence. It is noted that a similar approach has been adopted with respect to minor traffic offences in Western Australia.

The Parliament believes that with a change in the manner in which a transgression of the law is dealt with there will be an incentive for those who do experience social and health problems from

the excessive use of cannabis to seek assistance without fear of being charged with a criminal offence.

The Parliament recognises that for a significant proportion of the community, especially young adults, the threat of strict criminal penalties has not deterred the use of cannabis. This has meant that the law has become regarded as out of touch with prevailing community values.

The Parliament acknowledges that with regards to drugs, police resources should be primarily directed towards apprehending and bringing before the courts those who are involved in serious levels of drug trafficking and other drug related crime and that the primary aim of law enforcement and the criminal justice system with regards to cannabis supply should be to heavily penalise the most harmful activities that can be associated with cannabis markets. These include: those who supply other more dangerous drugs in addition to cannabis; those connected to, or involved in the business of large scale cannabis supply; those involved in other criminal activities; and those engaging in violence or standover tactics.

2.2.3 Background to the model

It is a scheme which is designed to differentiate between those who have small quantities of cannabis which are clearly for their own personal use and those who have large amounts of cannabis or who intend to supply cannabis. The scheme seeks to ensure that individuals possessing small amounts of cannabis for personal use will be subject to civil penalties rather than for them to be charged by the police, be brought before a court and following conviction receive a criminal record.

Similar approaches towards cannabis offences have been followed in a number of other Australian and overseas jurisdictions and are usually referred to as a system of *'prohibition with civil penalties.'* In addition to the significant advantages of removing the stigma and significant social costs of having a conviction, these schemes are intended to save the unnecessary costs incurred by the criminal justice system in dealing with minor cannabis offenders and to enable the savings in police resources to be directed to more serious levels of drug related crime.

The model recommended here is based on a body of research, including Australian research, on the social impacts of different legislative models for prohibiting the use of cannabis, which shows that most people who receive a criminal conviction for a minor cannabis offence are otherwise law abiding citizens. This research shows that a conviction for minor cannabis offences can result in employment problems, difficulty in obtaining accommodation, loss of social relationships and increased likelihood of adverse future contact with the criminal justice system. Neither criminal nor civil penalties have been found to have much impact on cannabis use by the majority of those apprehended.

This evidence shows that the social costs of a cannabis conviction under a system of prohibition are far greater than those of receiving an infringement notice under a system of civil penalties. There has not been evidence that the introduction of civil penalties has led to an increase in the number of regular cannabis users.

It was found that in one study, the South Australian civil penalty system was estimated to have saved \$1.4 million for the 1995/1996 year compared to the estimated cost if a criminal penalty system had been in place.²

Surveys of public opinion in Australia have shown that although less than 30% of the Australian public believe cannabis should be legal, more than 70% believe that *civil* rather than criminal penalties

² Ali R, Christie P, Lenton S, Hawks E, Sutton A, Hall W, Allsop S. *The social impacts of the cannabis expiation notice scheme in South Australia. Summary report presented to the Ministerial Council on Drug Strategy.* Canberra, Commonwealth Department of Health and Aged Care, 1999, 36; Brooks A, Stathard C, Moss J, Christie P, Ali R. *Costs associated with the operation of the cannabis expiation notice scheme in South Australia.* Adelaide, Drug and Alcohol Services Council. 1999.

should be applied to those using small amounts of cannabis.³ (See Appendix 5 for information about public opinion on the legal status of the use and possession of cannabis.)

The key features of the scheme and related definitional and administrative issues are discussed below after an explanation of key definitions.

2.2.4 Details of the Cannabis Infringement Notice scheme

2.2.4.1 Small amount of cannabis

The key feature of the cannabis infringement notice (CIN) scheme is that the possession of a small amount of cannabis determines the threshold at which an individual may avoid being formally charged and be issued instead with a CIN.

It should be emphasised that possession of cannabis under these levels continues to remain illegal in Western Australia.

Possession of any quantities of cannabis resin (hash), hash oil, or other cannabis derivatives will not be expiable offences under the CIN scheme. Hash and hash oil were excluded as they are far more potent forms of cannabis.

Offenders will be eligible to receive a CIN if they possess a ‘small amount of cannabis’, which is defined as being one or more of the following:

- two growing plants; and/or
- a total of up to 30 grams of cannabis

A two plant limit has been chosen, as it is towards the lower end of similar schemes in other states (Australian Capital Territory 5 plants, Northern Territory 2 plants, South Australia 1 plant) and is a viable number for people growing their own cannabis for personal use.

Central to this issue is the intent that the scheme shift the cannabis market away from criminal cannabis suppliers who often sell other drugs and are also prepared to take big risks for big profit. It should be noted that, under a provision described below, police will be given the power to charge those people who they believe are trying to flout the intention of the scheme, for example by being involved in commercial cannabis supply under the expiable limit.

A limit of 30 grams of cannabis has been chosen as it is towards the low end of similar schemes in other states (Australian Capital Territory 50g, Northern Territory 25g, South Australia 100g,) and is consistent with the reality of the market that many people buy cannabis in ounces (approximately 28g) for their personal use.

If the expiable limit was set at below an ounce, for example at 25g, it would unnecessarily criminalise significant numbers of users for no societal benefit. Drug market units such as ounces are unlikely to be affected by legal limits set.

2.2.4.2 The Cannabis Infringement Notice

Offenders found in possession of a ‘small amount of cannabis’ may be issued with a CIN. When an individual expiates a CIN, he or she is in effect accepting their guilt in having committed an expiable offence involving a small amount of cannabis.

It should be noted that, alternatively, the individual may contest the matter in court within a specified time period, as is the case in traffic infringement notices.

³ Adhikari P & Summerill A. *National Drug Strategy Household Survey 1998: detailed findings*. Canberra, Australian Institute of Health & Welfare, 2000; Bowman J & Sanson-Fisher R. *Public perceptions of cannabis legislation*. Canberra, Australian Government Publishing Service, 1994; Lenton S & Ovenden C. “Community attitudes to cannabis use in Western Australia.” (1996) 16 *Journal of Drug Issues*, 783-804.

The CIN needs to be designed to include a number of pieces of information, including:

- it is an offence to give false information to a police officer;
- that this notice does not constitute a criminal record and may not be cited in any court proceedings;
- that the weight of cannabis and/or number of plants seized and associated evidence bag numbers will be recorded; and
- the provision of information about cannabis and the law, the harms associated with cannabis and details of counselling and support services.

2.2.4.3 Method of expiation

In order that legislation regarding possession of a small quantity of cannabis does not discriminate against those with limited income it is important that the CIN scheme should permit flexible methods for payment or other means of satisfaction of the expiable amount.

Options to make it easier for expiation notices to be paid should also be considered, such as payment at Australia Post, online methods of funds transfer, etc. It is noted that flexible payment options are available in the interstate expiation schemes.

The CIN would give options to the person that they may dispose of this fine within 28 days by paying the expiation amount in full or completing a specified cannabis education session. The notice would also indicate that failure to pay the expiation fee will result in the matter being transferred for enforcement by the Fines Enforcement Registry.

The form of the CIN should resemble the approach adopted with traffic infringement notices, namely that payment on the notice is an admission of guilt.

Details of the administrative steps to be followed for expiation to be made and for enforcement in situations of non payment are outlined in Section 2.5, Administrative procedures (page 15).

2.2.4.4 Penalties

Financial penalties recommended in the proposed scheme take into account those that apply in other Australian jurisdictions where similar schemes are in place.

In South Australia there is a scale of penalties in relation to the quantities of cannabis, with a penalty of \$50 for possession of less than 25 grams of cannabis and a penalty of \$150 for possession of a quantity between 25 grams and 100 grams. There is a penalty of \$150 in South Australia for the cultivation of one plant.

In the Australian Capital Territory there is a fixed penalty of \$100 for possession of not more than 25 grams of cannabis or the cultivation of not more than five plants.

In the Northern Territory there is a fixed penalty of \$200 for possession of not more than 50 grams of cannabis or the cultivation of not more than two plants.

Table 1: Recommended penalties and thresholds for expiable cannabis offences

Quantity of cannabis	Penalty
Possession of not more than 15 grams of cannabis	\$100
Possession of between 15 grams and not more than 30 grams of cannabis	\$150
Cultivation of not more than two growing plants	\$200

It should be noted that these penalties are at the upper end of the range of those considered appropriate by the Working Party, and higher than the other jurisdictions with similar systems. Higher penalties

were supported by the Working Party as giving the message that possession of cannabis was not condoned.

2.2.4.5 Household limit

The CIN scheme extends the meaning of a ‘small amount’ of cannabis by applying the individual plant limit to the whole household or dwelling when more than one individual resides in a household or dwelling.

It is to be noted that in this circumstance when police issue a CIN they will also be required to seize and ultimately destroy the plants and any cannabis which is the subject of the notice.

The expiable limits for a household distinguish between the cultivation of small numbers of plants and the possession of small amounts of cannabis by providing that:

- there can be a maximum of two plants for a household regardless of how many adults usually live in that household; and
- each adult member of the household can possess up to 30 grams of cannabis.

Without the limit of two plants per household it would be possible for relatively large quantities of cannabis plants to be cultivated by groups of individuals in a household and ultimately for the law to be flouted.

2.2.4.6 Proof of ID

For individuals to take advantage of the CIN scheme it is essential that they provide adequate evidence as to their identity. Proof of identity reinforces payment of the expiation notice. As motor vehicle offences are usually dealt with on the basis of proof of identity by production of a motor driver’s license and/or the vehicle registration details, this would ordinarily be the first level of proof of identity sought by police when issuing a CIN.

If not satisfied as to adequacy of proof of identity police would seek additional confirmation. It is noted that an individual will commit an offence if he or she provides a false name or address, as provided in Section 50 of the *Police Act 1892*.

It is to be noted that in the course of interstate consultations by the Working Party with police, prosecutors and others it was stated that this proof of ID provision in the proposed West Australian scheme would substantially improve the rate of expiation for cannabis infringement notices.

It is acknowledged that this provision could bring with it a risk that marginalised individuals who do not have sufficient proof of ID may be disadvantaged. This may mean that they would be charged with a criminal (cannabis possession) offence when otherwise they would have received a CIN. However, as police already use their judgement in similar instances when dealing with those with inadequate proof of ID, it is suggested that this would be an issue that would be resolved by taking into account other considerations, such as the circumstances of the offence.

2.2.4.7 Concurrent charges

There is some evidence from interstate that a factor in the non payment of expiation notices occurs when an individual is concurrently charged with one or more serious offences, in addition to receiving an expiation notice. In these situations there is little advantage for the individual to settle the expiation notice as he or she is facing much greater penalties for the other offences.

It is arguable that in this situation it is inappropriate and administratively complex for an individual to receive a separate expiation notice for an eligible minor cannabis offence. Accordingly it is proposed that in these situations the charging police officer should have the option to include the minor cannabis offence on the same brief as is used for the other offences.

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.

2.2.4.8 Juveniles

The recommended model recognises that different provisions may need to be considered for those under the age of 18 years at the time of the expiable offence. It is important to ensure that those under the age of 18 are not dealt with more harshly than their adult counterparts.

Under existing provisions for juveniles in the *Young Offenders Act 1994*, juveniles, defined as persons aged 10 to 18 years inclusive, who are found in possession of non traffickable quantities of drugs as defined in the *Misuse of Drugs Act 1981* can be given a caution by the police (Division 1) or referred to a juvenile justice team (JJT) (Division 2).

The *Young Offenders Act 1994* stipulates that police must first consider whether when dealing with a young offender there are alternatives to the matter being dealt with in a court.⁴ The Act provides as follows.

“A police officer, before starting a proceeding against a young person for an offence, must first consider whether in all the circumstances it would be more appropriate (a) to take no action; or (b) administer a caution to the young person.”⁵

The Act further provides that a police officer may issue a caution instead of charging a young person.

“Where circumstances arise in which a member of the police force could charge a young person with the commission of an offence, the member of the police force may, having regard to the circumstances, caution the person instead of laying a charge.”⁶

The option of caution is not available if a young person has been charged with a Schedule 1 or Schedule 2 offence. The *Young Offenders Act 1994* presently prohibits cautions being granted to juveniles for charges under the *Misuse of Drugs Act 1981* involving the following offences:

Section 6(1)(a)	possession of a prohibited drug with intent to sell or supply;
Section 6(1)(c)	sells or supplies a prohibited drug;
Section 7(1)(a)	possession or cultivation of a prohibited plant with intent to sell or supply;
Section 7(1)(b)	sells or supplies a prohibited plant.

The option of a young person being referred to a JJT or given a caution means that a criminal conviction will not be recorded against the young person. This outcome is consistent with the intention of the recommended model for adults to not receive criminal convictions for minor cannabis offences.

At present there is consideration of amendments to the *Young Offenders Act 1994* as a result of an independent review conducted in 1999. Of relevance to this report is a proposal for conditional cautioning, in which a juvenile offender, providing that he or she agrees to attend a relevant program, being given a caution on successful completion of the program.

⁴ Young Offenders Act 1994 Part 5.

⁵ Young Offenders Act 1994 s 22B.

⁶ Young Offenders Act 1994 s 22(1).

It is recommended 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.

It needs to be understood that whether a juvenile is found in possession of a non traffickable quantity of cannabis is dealt with by way of caution or by referral to a JJT they and their families will receive appropriate support.

The Killara Unit of the Department of Justice undertakes some counselling as well as being a referral agent to specialist services. If a young offender is referred to a JJT, the *Young Offenders Act 1994*⁷ makes provision for the coordinator to appoint any person as a member of the JJT. This could be staff from a Community Drug Service Team, a general practitioner etc.

2.3 Other issues

2.3.1.1 Simple possession of cannabis (non expiable)

Possession of an amount of cannabis greater than a ‘small quantity’ but less than possession of an amount which constitutes possession with intent to sell or supply would be a non expiable cannabis possession offence and therefore be an offence under the *Misuse of Drugs Act 1981*.

2.3.1.2 Monitoring, review and administrative change

The Working Party sought information about administrative and operational aspects of the expiation schemes in South Australia and the Australian Capital Territory. It was indicated that some of the difficulties that had occurred in the past, for instance, review of plant limits, had been affected by the lack of mechanisms to periodically review and monitor the overall operation of the schemes.

There is a need, therefore, for a mechanism to ensure periodic review and provide a process of consultation about changes in operational aspects of the proposed scheme.

It is recommended that the proposed legislative model include a provision, similar to the South Australian scheme,⁸ to establish a consultative and advisory body, to be named the Controlled Substances Advisory Council (CSAC), to determine by Regulations matters such as plant limits, penalties and weights. This approach is consistent with other legislation, such as the *Misuse of Drugs Act 1981* and the *Poisons Act 1964*, which determine amounts and quantities of drugs by Regulations.

It is recommended that before any alteration could be made to the Regulations with respect to amounts of cannabis, numbers of plants or penalties, it should be a specific requirement that a proposal to change the Regulations must be referred to the CSAC.⁹ A similar provision is provided in the South Australian legislation.¹⁰

The CSAC would have a key role to advise the Minister on matters of concern as may arise from time to time. The CSAC would have a wider role to be able to undertake reviews and investigations of matters involving other substances (for example, the scheduling of precursors) and other issues impacting on a number of sectors. It should therefore have a membership that included those with experience in research, treatment, law enforcement, pharmacology etc.

The CSAC would also coordinate the production of statistics for annual reports etc, to enable Government to regularly monitor the scheme.

See Appendix 4 for extracts of the South Australian legislation.

⁷ Young Offenders Act 1994 s (37)3.

⁸ Known as the Controlled Substances Advisory Council: Controlled Substances Act 1984 s 63(3).

⁹ The Controlled Substances Act 1984 provides that the Minister must consult with the Advisory Council in relation to any regulation proposed to be made under the Act: s 63(2).

¹⁰ The Controlled Substances Act 1984 provides that no regulation may be made prescribing an amount relating to a drug of dependence or prohibited substance except upon the recommendation of the Advisory Council: s 32, s 45A.

2.3.1.3 Regulation of hydroponic equipment industry

The rationale for regulation of hydroponic equipment suppliers is that ideally people of good repute (eg without prior convictions) should be permitted to operate in the industry. This would minimise the possibility of relationships developing between organised crime groups and those who are personal users.

Concerns have been raised in other jurisdictions, principally South Australia, that some hydroponic equipment retailers may be involved in coordinating large scale cannabis supply collectives in that state.

The hydroponic issue was recently considered in South Australia in an issues paper, *National competition policy legislation review: licensing of hydroponic retailers*, released in November 2001. As a submission to this inquiry the South Australian Police proposed a draft legislative model that would take account of the impact of national competition policy guidelines on the regulation of specific industries.

The form of regulation that was proposed in South Australia would be a form of negative licensing, the effect of which would be that where police deem it appropriate, a specific hydroponic supplier could be served with a notice to justify why they should not be prevented from conducting a business. The criteria police would utilise to make this declaration would include proof of connections with organised crime etc.

The effect of the draft proposal would enable the South Australian police to make a declaration that an individual or business is a hydroponic equipment supplier. It would also require that those operating hydroponics businesses, so declared, are to maintain records of their transactions and other details of their business activity. The legislation also gives police the power to restrict those who have prior drug convictions from selling hydroponic equipment. A copy of this is contained in Appendix 6.

The scope of this legislation could be extended to restrict those with other types of serious convictions and those who maybe associated with organised crime groups.

2.3.1.4 Regulation of sale of smoking paraphernalia

Those who sell smoking paraphernalia, such as water pipes or bongs, should also observe minimum standards, eg display health warnings, provide literature for those seeking help, not sell to persons under 18 years of age, etc.

In order to deal with the problem of defining a business as one which sells products which are for the purpose of smoking cannabis, it may be possible to utilise features of the model outlined previously with relation to sellers of hydroponic equipment.

It is recommended that the overall responsibility for the enforcement of regulation of these types of businesses would rest with the Department of Health and may be appropriately dealt with by the same section that is responsible for the *Tobacco Control Act 1990*.

2.3.1.5 Presumption of intention to sell or supply cannabis

In Western Australia, as in other jurisdictions, the possession of greater than a specified quantity of a drug is grounds for an inference that the accused intended to sell or supply the drug. In the *Misuse of Drugs Act 1981* possession of such an amount is deemed possession with intent to sell or supply, thus putting the onus on the accused to rebut the deeming provision.

The proposed model would adopt this approach, of possession with intent to sell or supply, if the offence involved:

- the cultivation of 10 or more growing cannabis plants; or
- the possession of 100 grams or more of cannabis

It is to be noted that at present under the *Misuse of Drugs Act 1981* the presumption of intent to sell or supply does not occur until there are 25 or more cannabis plants.

2.3.1.6 Policing issues

There is a concern that whatever limits are set for expiable offences, with regards to weight limits or numbers of plants, there will be some individuals who will deliberately flout the intention of the proposed scheme. For instance, this could occur when an individual remains within the expiable plant limit, but is involved in an organised commercial cannabis supply.

It may be difficult at times to prosecute such individuals. However, there is the real likelihood that if the expiable limits on the number of plants and weight of cannabis were to be set too low, this would have the highly undesirable effect of shifting supply to more organised criminally oriented groups.

It is recommended that police have the power to charge those who they have reasonable suspicion of engaging in supply, even though they possess cannabis or have growing plants that are within the expiable limits. This option would permit the courts to determine the requisite elements for this type of charge to be sustained by the police.

It is important that the police have a mechanism to prosecute those who flout or attempt to flout the intention of the scheme by exploiting opportunities. It should be noted that this option reflects the power that police will always be able to ultimately charge an individual with a more serious offence whenever there is sufficient evidence of organised commercial growing.

A fundamental principle of the scheme is that on all occasions police should have an overriding discretion to be able to charge an individual with a more serious cannabis offence where it appeared to them that the individual had been engaged in supply or other serious levels of offending. The ACT scheme, for instance, confirms this power by including the following provision in its legislation.

“Where a police officer reasonably believes that a person has committed a simple cannabis offence, he or she may serve an offence notice on that person.”¹¹

There are occasions when cases are brought before the courts involving matters which concern amounts of cannabis or numbers of plants which could have otherwise been dealt with as expiable offences.

It is recommended that the legislation to establish the expiation scheme include the option for such cases to be dealt with by the court hearing the matter as an expiable offence and accordingly be able to give a penalty that would be the same as would have been available under a CIN.

The issue here is the discrepancy between the amount of cannabis which it is possible to harvest from two mature plants and the amount specified under the CIN provisions (30 grams). The Working Party considered a number of possible ways to resolve this discrepancy within the provisions of the scheme itself, but rather than risk making the scheme overly complex and difficult to administer, decided to leave it to the police and the courts to interpret the law. Consideration of this issue should have regard to the goals and underlying principles of the scheme and the proposed preamble of the Act/amendment.

2.3.1.7 Driving whilst impaired by cannabis

The offence of driving whilst impaired by alcohol or any other drugs is already covered in Section 63(1) of the *Road Traffic Act 1974* as follows,

¹¹ Drugs of Dependence Act 1987 s 171A (1).

“A person who drives or attempts to drive a motor vehicle while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle commits an offence, and the offender may be arrested without warrant.”

As this provision clearly covers driving under the influence of cannabis a specific recommendation has not been made in relation to this issue.

2.3.1.8 Seizure of hydroponic equipment

As cultivation is still an offence it is recommended that police retain their power to seize any hydroponic equipment which has been used to cultivate cannabis plants.

2.3.1.9 Expungement

Under the *Spent Convictions Act 1988* if someone in this State has a previous record for a conviction for the type of offence dealt with under the recommended model, their only option to avoid discrimination against them would be to make application to the Commissioner of Police for such a conviction to be spent pursuant to the provisions of this Act. Generally, offences of this nature can only be the subject of a spent conviction order if the relevant offender has not offended for a period of 10 years since their conviction.

A person who appears before a court for an offence of the nature covered by the recommended model could also make an application pursuant to Section 45 of the *Sentencing Act 1995* for an order that an immediate spent conviction order be made. This would mean the benefits of the *Spent Convictions Act 1988* come into effect immediately rather than make an application after 10 years according to the criteria of the Act. An order under Section 45 of the *Sentencing Act 1995* is discretionary for the court.

It is to be noted that in interpreting the criteria under Section 45(1) for making a spent conviction order the Supreme Court of Western Australia has taken a strict interpretation of the power of the court to make a spent conviction order.¹² Experience in the WA criminal court system suggests a successful application for a spent conviction order is significantly dictated by the antecedents of the offender and the attitude of the presiding magistrate.

The Working Party has considered whether persons who have a previous record of conviction for possession of up to 30 grams of cannabis or cultivation of not more than two cannabis plant should receive the benefits that would come into effect through the recommended model by expungement of their previous record of criminal convictions for those types of previous offences.

It is recommended that there not be an expungement of these types of prior cannabis convictions for the following reasons.

Firstly, police and court records of offences are general in nature and describe the date the offence was committed, the date of conviction, the court of conviction and the penalty imposed. This means that it is not possible to ascertain whether the facts related to a previous conviction which appear in an individual's record of conviction would constitute an offence which involved the possession of 30 grams or less of cannabis or the cultivation of two or less cannabis plants. It is highly unlikely that administrative records could be obtained which adequately meet the criteria of the proposed model.

Secondly, if expungement of previous records was permissible through the proposed model, it would be regarded as contrary to an accepted principle that criminal laws should not have a retrospective effect.

Thirdly, the issue of whether the duration of a 10 year period before an application can be made is an appropriate period of time for the expungement of all minor offences should be the subject of a

¹² R v Tognini & McGuire (2000) 109 A Crim R 411; Game v Whitehead. Unreported; WA Supreme Court [2000] WASCA 50; 23 February 2000.

separate inquiry. The group of minor expiable cannabis offences dealt with in this report should be included in the current review of the *Spent Convictions Act 1988*.

2.4 Options for reform

There are a number of options for introducing reform in the law in WA in relation to cannabis.

2.4.1 Option 1: Amendment of the Misuse of Drug Act 1981

The first option would be to amend the *Misuse of Drugs Act 1981* in different sections and in its schedules. In addition a number of new sections be added to define the expiation of offences involving the possession of less than a specified amount of cannabis and the cultivation of less than a specified number of cannabis plants.

There would be the need to distinguish opium plants from cannabis plants, which are at present included in the definition of “prohibited plants”. Under the *Misuse of Drugs Act 1981* there are two broad groups of plants covered by this definition, cannabis plants (which includes any part of the plant) and opium poppies (*papaver somniferum* and *papaver bracteatum*).¹³

However, the *Misuse of Drugs Act 1981* also gives an expanded meaning to a ‘prohibited plant’ by reference to the definition of ‘prohibited plant’ in the *Poisons Act 1964*.¹⁴ The *Poisons Act 1964* defines a ‘prohibited plant’ as being

“any plant from which a drug of addiction may be obtained, derived or manufactured, or such other plant as the Governor declares and is hereby authorized to declare from time to time to be a prohibited plant for the purposes of this Act; and includes any part of such a plant, except in the case of the plant *papaver somniferum*, the non-viable seed of that plant.”¹⁵

2.4.2 Option 2: Enactment of legislation specific to cannabis

The second option would be to enact a new piece of legislation, the *Cannabis Control Act 2002*, to contain all provisions in relation to minor cannabis offences involving the personal use of cannabis. The approach of having a single subject of legislation operates in relation to alcohol (*Liquor Licensing Act 1988*) and tobacco (*Tobacco Control Act 1990*). Cannabis would be defined as a “controlled plant”¹⁶ in the new act.

Amendment would also be required to the *Misuse of Drugs Act 1981* to the extent of removing provisions that are specific to the personal use of cannabis. The *Cannabis Control Act 2002* would cross reference to other pieces of legislation, such as the *Misuse of Drugs Act 1981*,¹⁷ the *Criminal Property Confiscation Act 2000*, the *Criminal Code* (eg money laundering) and the *Poisons Act 1964* (eg medicinal use).

This approach would create a three tiered scheme of offences related to illicit drugs primarily contained in two pieces of legislation:

- controlled plants (defined as cannabis) - *Cannabis Control Act 2002*;
- prohibited plants - *Misuse of Drugs Act 1981*; and
- prohibited drugs - *Misuse of Drugs Act 1981*.

One of the most important advantages of a single discrete piece of legislation is that the community will be able to identify and obtain all information about relevant offences, penalties and other provisions in a single statute.

¹³ s 4(2) & Schedule 2.

¹⁴ s 4(2)(a)

¹⁵ Poisons Act 1964 s 5.

¹⁶ By specific reference to cannabis sativa.

¹⁷ Eg declaration of a person as drug trafficker: s 32A.

This is a significant consideration given that in the three other Australian jurisdictions which have introduced cannabis expiation schemes there was little if any accompanying public education on the provisions and goals of the schemes. This meant that the community has found it difficult to comprehend the details and objects of the schemes.

There are other advantages of having a separate piece of legislation, as in the future it could be progressively expanded to deal specifically with other areas concerned with the use of cannabis as follows.

Firstly, it could incorporate ancillary matters such as the regulation of those who sell hydroponic supplies and smoking paraphernalia.

Secondly, that future developments for trials for the medical use of cannabis could be incorporated into such a piece of legislation to regulate the access to and use of cannabis for therapeutic purposes.

Thirdly, at a future date other offences involving more serious cannabis offences could be incorporated into the legislation.

2.4.3 Option 3: Enactment of omnibus legislation

The third option would be for the enactment of an entirely new piece of legislation, for instance titled as the *Controlled Substances Act*.

This would be a form of omnibus legislation to revise and update the *Misuse of Drugs Act 1981*, to implement a scheme of civil penalties for minor cannabis offences and bring together in one statute other provisions presently found in various acts, such as the *Poisons Act 1964* (which deals with precursors) and the *Health Act 1911* (which has provisions for notification of drug addicts).

This approach would require a significant commitment by Government to large scale legislative reform.

2.5 Administrative procedures

2.5.1 Western Australia

The recommended model should outline options to address the following issues of those who:

- elect to contest the matter in court;
- satisfactorily complete payment within the time period;
- satisfactorily complete a specified education session within the time period; or
- fail to expiate.

An individual would be handed a CIN which would specify that the matter must be paid within 28 days for him or her to have the offence expiated.

The CIN would also have a provision for an individual to expiate by attending and satisfactorily completing a specified education session within the 28 day period in lieu of payment of the expiation fee.

2.5.1.1 Contest the offence

If the individual intends to contest the alleged offence then he or she needs to indicate this *before* the expiration of 28 days when the notice was given. This is to enable the police to otherwise destroy any cannabis material that was seized at the time of the offence.

If the police received a notice to contest the matter then the cannabis material needs to be retained as evidence at the forthcoming trial at a Court of Petty Sessions.

2.5.1.2 Education

An option would be available for an individual, as an alternative to payment, by undertaking and completing attendance at a specified cannabis education session. This would require that an appointment is made for the person to attend an education session at an appropriate agency (eg Community Drug Service Team) or other specialist alcohol and drug service provider.

The agency would be required to provide formal advice to the police which would confirm that the person had attended and completed the education session. If this notification was not provided to the police in 28 days the person would be regarded as having failed to expiate the CIN.

2.5.1.3 Enforcement process

If an individual fails to pay the CIN or fails to attend and complete an education session by the end of the 28 day period the expiation fine becomes a debt to the state. As there will not be a final demand, the matter would accordingly be referred directly to the Fines Enforcement Registry.

At present, infringement notices involve a 28 day period for payment, if payment has not occurred a final demand is issued and at the end of a further 28 days the matter is passed on to the Fines Enforcement Registry (see Chart 1, page 17).

The standard procedures for enforcement of infringement notices are contained in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* and are outlined in Chart 1. These would apply to unexpiated CINs after the expiration of the 28 day period.

It should be noted that at any stage in the processes outlined in Chart 1 for the recovery of either unpaid infringement notices or unpaid court fines, a case may be paid in full, withdrawn, referred to court, listed for write off, listed for non enforcement, referred to the Children's Court or have a warrant of commitment issued.

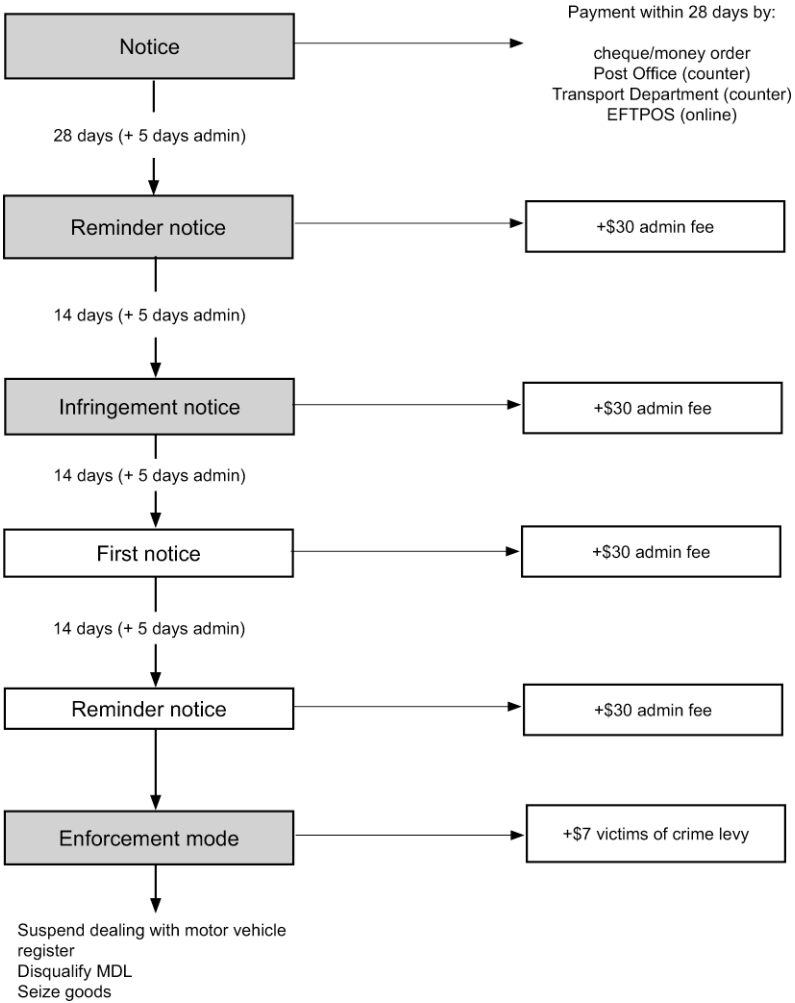
2.5.2 South Australia

As the South Australian scheme has operated since April 1987 there have been a number of refinements to improve the efficiency of the administrative arrangements to enforce payment of expiation notices. Prior to February 1997 unpaid notices were forwarded for prosecution. The offender would receive a summons for the failure to pay and face court proceedings and the possibility of a conviction.

However, from 3 February 1997, CENs were electronically enforced and a special expiation unit was set up within the South Australian police to handle the expiation notices. Under the new system once the Registrar makes an order against a fine defaulter for ‘enforcement’ of an expiation notice a conviction is automatically recorded and the offender has a fine imposed equivalent to the unpaid expiation fee. The costs of making an order are included in the amount payable.

Other reforms introduced at the same time provided the option for offenders to apply to the Registrar of the Magistrates Court for ‘relief’ who, if satisfied that the individual or his or her dependents would suffer hardship if the fee was paid in full could make an order to pay the fee by instalment or by undertaking community service. However, recent research suggests that such procedures have failed to increase the expiation rate in South Australia.¹⁸ The steps of the enforcement process followed in South Australia are shown in Chart 2.

Chart 2: South Australian cannabis expiation notice scheme - enforcement process



¹⁸ Hunter N. *Cannabis expiation notices (CENs) in South Australia, 1997 to 2000*. Office of Crime Statistics, Attorney General’s Department, Information Bulletin No. 27, November 2001.

3. Medicinal use of cannabis reference

A review in 1997 by the United States National Institutes of Health found that there were promising uses for cannabis.¹⁹ This led the NIH to recommend there be controlled studies in the use of cannabis for treating a number of symptoms including appetite stimulation and wasting, chemotherapy-induced nausea and vomiting, neurological and movement disorders, analgesia, glaucoma.

The British Medical Association in 1997 released a report *Therapeutic uses of cannabis*, which recommended further research to establish suitable methods of administration, optimal dosage regimens and routes of administration.

In 1998 in the United Kingdom a report by the House of Lords Science and Technology Committee recommended 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 supports a review by the British Medical Association on the possible medicinal uses of cannabis which found that there were likely medicinal applications for the use of cannabinoids. It was concluded that:

“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 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.”²⁰

A major review in 1999 of the medical uses of marijuana was undertaken by the Institute of Medicine (US), which reviewed research based on an evidence based approach to the medical uses of cannabis. There were a number of recommendations from this report including that there be clinical trials and further research into the efficacy of the medical uses of cannabis. It is stated in this report 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.”²¹

The submission by the Law Society of New South Wales to the New South Wales Parliamentary Drug Summit held in May 1999 includes a joint protocol between the Australian Medical Association (New South Wales) and the Law Society of New South Wales. This outlines a variety of measures to improve responses to the problem of illicit drugs.²²

¹⁹ National Institutes of Health, AdHoc Group of Experts. *Workshop on the medical utility of marijuana*. 1997.

²⁰ Robson P. “Cannabis as medicine: time for the phoenix to rise?” (1998) 316 *British Medical Journal*, 1035.

²¹ Joy JE, Watson SJ, Benson JA (eds). *Marijuana and medicine: assessing the science base*. Washington DC, National Academy Press, 1999, 3.

²² Recommendation 6 is for the introduction of a civil based approach to the personal use, possession and cultivation of small quantities of cannabis.

Recommendation 8 of this joint protocol states that the two organisations

“Endorse clinical trials of the provision of cannabis for medical purposes for people with terminal illnesses where conventional treatments have failed to provide relief.”

In the report *Drugs: Meeting the challenge*, published in 2000, the Victorian Drug Policy Expert Committee, 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 cannabis for its therapeutic effects.

A report in August 2000 by the New South Wales Working Party on the Use of Cannabis for Medical Purposes recommended introduction in that State of a compassionate regime to assist those suffering from a specified range of illnesses. For this scheme to work it would be necessary for these patients to be exempted from prosecution. The NSW Working Party made a number of recommendations for there to be 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)

In March 2001 in a further report by the House of Lords Science and Technology Committee it was recommended that genuine therapeutic users of cannabis who possess and cultivate cannabis for their own use should not be prosecuted.

In June 2001 at its annual general meeting the American Medical Association amended its policy on medical cannabis which broadly supports there be further evaluation of the compassionate use of medical cannabis for treating certain conditions. The resolution includes the following statement.

“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.”²³

A 2001 review of evidence has identified a number of beneficial therapeutic uses of cannabis:²⁴

- suppression of nausea and vomiting, especially in cancer patients;
- as a muscle relaxant to control muscle spasms and spasticity associated with multiple sclerosis;
- as an appetite stimulant for cancer and AIDS patients by slowing weight loss;
- pain relief;
- glaucoma treatment by reducing intraocular pressure symptoms;
- treatment of insomnia, anxiety and depression; and
- anti convulsant by reducing the rate of seizures associated with epilepsy.

The Working Party recognises that there is a growing body of medical opinion which indicates there are some grounds to believe that cannabis has medical applications in relation to certain conditions.

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.

²³ American Medical Association. *Report 10 of the council on scientific affairs: medical marijuana*.

²⁴ Robson P, “Therapeutic aspects of cannabis and cannabinoids”. (2001) 178 *British Journal of Psychiatry*, 107-115.

4. Reform of related legislation reference

4.1 Introduction

This section briefly addresses the issues contained in terms of reference 3 (the use, supply and possession of illegal drugs) and terms of reference 4 (the possession of implements with detectable traces of illegal drugs).

It also identifies other areas of legislative reform which could be undertaken to improve the effectiveness of laws dealing with illegal drugs and of measures that impact on those who appear before the courts where their drug use is a factor in their offending.

Due to the complexity of the issues the Working Party was unable, because of insufficient time, to undertake a sufficiently thorough review of these matters encompassed in this term of reference.

The following recommendations should therefore be considered preliminary in nature and require further consideration for all issues to be discussed.

4.2 Misuse of Drugs Act

Possession of any quantities of cannabis resin or hash oil or other derivatives are not expiable offences under the expiation scheme. The term ‘cannabis derivative’ should be defined to encompass hashish, hash oil and other forms of cannabis, in both liquid and solid form, whether fully or partly synthesised. It is noted that the *Misuse of Drugs Act 1981* does not define ‘cannabis derivative’.²⁵

As a number of the provisions of the *Misuse of Drugs Act 1981* are no longer regarded as appropriate or relevant to the current circumstances, it is recommended two sections of this Act be amended to *remove* references in relation to cannabis (through the definition of a prohibited plant) in the following sections, 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).

4.3 Poisons Act

As the Department of Health is at present reviewing the *Poisons Act 1964*, the Working Party considers it more appropriate for matters relating to the illicit drugs, such as the scheduling of precursor chemicals, are more appropriately dealt with by that review.²⁶

4.4 Drug Court

The Working Party believes that the Drug Court plays a significant role in assisting drug users who have social and legal problems involving the use of illegal drugs. The Drug Court commenced as a two year pilot court in the Perth Court of Petty Sessions on 4 December 2000.

The court has been well received by the legal profession and treatment agencies. However, significant changes are needed to legislation and support services in order to give Drug Court participants a better chance to make long term lifestyle changes that include abstinence from illicit drug use and offending. However, it is recognised that the present limitation of six months does not offer any long term therapeutic benefit. It also should be noted that the Drug Court has a limited involvement and impact on cannabis offenders as it has focussed on drugs associated with significantly greater levels of harm, such as opiates and amphetamines.

²⁵ s 34(2)(a)(ii)

²⁶ Department of Health. *A review of the Poisons Act 1964: A discussion paper*. January 2002.

Legislation that was proposed before the commencement of the Drug Court and on which evaluation has been based has not been enacted. Without legislation the Drug Court cannot operate as a collaborative team approach as it is bound to follow the adversarial rules.

The Drug Court team is only comprised of traditional justice officers (magistrate, lawyer, police prosecutor and community justice services officer). It is vital that a clinician with expertise in health is funded to be part of the Drug Court team.

A limit has been placed on the number of participants, based on the number of community justice services officers available to the court. All other services including treatment services are operating below capacity. More community justice service officers would enable the court to operate at full capacity.

It is recommended that amendments be made to existing legislation, primarily s16(2) *Sentencing Act 1995* to enable participants on Drug Court programs to be on the program for a minimum of 12 months.

It is recommended specific enabling Drug Court legislation be enacted to allow the court to operate on the basis of being a therapeutic post-sentence health model.

5. Impact on other sectors reference

5.1 Introduction

The Working Party believes that it is critical 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. It is also important that agencies which have responsibility for the education, training and the provision of support services have a clear understanding of the objects of the proposed scheme.

In addition to a public education campaign, there also needs to be a commitment of additional resources to ensure that those who work in the law enforcement sector, correctional services, those involved with those who have contact with the criminal justice system such as the legal profession, the magistracy and judiciary and in the health and community services sectors are able to understand the scheme.

5.2 Public education

It is essential that the implementation of the recommended model is accompanied by a comprehensive public education campaign which informs the community about the details of the new scheme. This will ensure that the changes to the law will be understood and supported by the wider public.

Without the supporting campaign a change of this magnitude, whilst involving a well defined issue concerning minor cannabis offences, there could be confusion about the status of illicit drugs in general. It is also important to maintain confidence in the law enforcement processes that will be adopted for issuing an expiable cannabis offence notice.

5.2.1 Aims of the campaign

The campaign should aim to educate the community about the legal status of cannabis and address other issues as follows:

- that the possession and cultivation of cannabis is still illegal and will attract penalties;
- the new law, including the implications of and penalties for minor and major infringements;
- distinguishing between the processes involving adults and juveniles who have committed a minor cannabis offence;
- the risks and harms associated with cannabis use;

- treatment and other support options and how to access these; and
- other penalties under the *Misuse of Drugs Act 1981* that would still apply to those involved in trafficking and other serious offences.

5.2.2 Target groups

As the campaign would aim to educate the broader community, it is important to ensure that not only current users and those at risk of using are informed, but that parents, carers and others are also reached. Therefore the target groups would include:

- Western Australian adults across the state;
- young people;
- cannabis users;
- the media; and
- key professional groups such as medical practitioners, lawyers, health care providers, police and educators.

5.2.3 Factors impacting on the campaign

A campaign of this type would need to be:

- statewide;
- short and intensive;
- reach the majority of the community, including young people and regular cannabis users;
- combine attracting attention with providing sufficient information to ensure key concepts and changes are understood without the need to access further information (ie don't depend on people calling in for a brochure); and
- take an 'authoritative' tone for credibility on legal issues.

The topic is likely to be of intrinsic interest to a significant proportion of the population, given cannabis usage rates and the need to educate parents about the implications for young people. For this reason, the media may not need to be as intrusive as is needed for say youth alcohol education campaigns.

The campaign should not be branded under the Drug Aware banner given that it is targeted at the whole community and involves issues of law enforcement. Overall responsibility for the campaign would rest with the Department of Health with the Prevention Branch of the Drug and Alcohol Office being responsible for the management of the project.

5.2.4 Possible strategies

A number of strategies are appropriate for this type of campaign, involving primarily the press and radio. Although the use of television would also be a useful strategy because of the high reach of television, this approach is probably not necessary due to the high intrinsic interest in the topic.

Press based ads are an effective method to advise people of the issue and provide detailed information. It is envisaged that there would be both paid and unpaid media involving both youth and mainstream press.

Radio would also be targeted at both youth and mainstream and as well as advising people of the issue would promote access to information in the press or via other sources such as printed materials.

The broad strategies of the campaign would be to:

- inform about the changes in the law in relation to minor cannabis offences;
- explain the procedures involved in the expiation of a minor cannabis offence;
- understand the principles of the scheme, eg it does not legalise cannabis;
- identify sources of additional information about the scheme;
- direct people how to access treatment and support services; and
- educate and reinforce the risks and harms associated with cannabis use.

The overall campaign will involve a combination of the following strategies:

- a short, intense mass media advertising campaign via ads in the press and on the radio;
- unpaid media in both mainstream and youth press and in radio editorials;
- information about the harms and risks of cannabis, new law, penalties, access to treatment etc placed on relevant websites such as Drug Aware;
- production of a publication which outlines the key changes and implications to be distributed to the wider community through the Alcohol and Drug Information Service (ADIS) and HealthInfo and made widely available to police, medical practitioners, other health care providers, specialist alcohol and drug providers, etc;
- updating self help materials for stopping or cutting down cannabis use targeted at those who may be cannabis dependent or concerned about the extent of their use;
- updating student and teacher resources and curriculum materials used in the School Drug Education Program (SDEP) in relation to the scheme; and
- evaluating the campaign by pre and post measures involving a number of topics, such as changes in awareness and understanding of the new law, knowledge that the possession and cultivation of cannabis is still illegal, knowledge of the harms and risks associated with the use of cannabis and of how to access treatment and support services.

5.2.5 Costs and resources

An intensive campaign of four weeks’ duration would cost a total of \$292,440. Whereas, if an eight week campaign was conducted this would cost a total of \$427,880. The additional cost involves the extra four weeks of radio and press ads which would cost an additional \$135,440. A breakdown of the components of the campaign are presented in Table 2.

Table 2: Breakdown of major costs for public education campaign

Activity	Cost (\$)
Self help materials for stopping or cutting down cannabis use	20,000
Production of new brochure outlining new law	10,000
Creative development for radio and press advertising	60,000
Radio and press advertising	
Youth press	40,000
Parents	44,400
Radio	51,040
Sub total	135,440
Updating websites	2,000
SDEP (student and teacher resources)	10,000
Total	292,440

Note: Based on four week campaign.

5.3 Police Service

It is important that the Commissioner’s Orders and Procedures Manual for the WA Police contain provisions relating to the CIN scheme are consistent with the general intent and specific goals of the scheme.

The police have estimated that it would cost a total of \$133,250 to set up the CIN scheme. Details of these costs are outlined in Table 3.

Table 3: Breakdown of police costs for the introduction of the CIN scheme

Item	Cost (\$)
IT costs	7,000
Stationery	1,250
FTE Level 1 (including superannuation etc) and shift penalties	45,000
Reconfiguration of TINS System	60,000
Printing of infringement notice books	20,000
Total	133,250

5.4 School Drug Education Project

The School Drug Education Project (SDEP) aims to ensure that effective drug education is provided in all WA schools. The SDEP is a joint initiative of the Association of Independent Schools of WA, the Catholic Education Office and the Department of Education.

The SDEP is a K-12 program, providing clear drug prevention messages via the delivery of effective classroom strategies, development of school policy and inclusion of the parent community. It enables young people to identify different areas of their life such as recreation, employment, health and legal consequences which can be affected by their use of drugs.

The SDEP is based on the understanding that drug education is best taught in the context of an ongoing, developmentally appropriate school health curriculum. It is important therefore that cannabis education is not isolated as a “silver bullet” approach but inculcated and supported by a comprehensive, developmentally appropriate K-12 school drug education program.

In 2003 the SDEP will disseminate the new cannabis law reform legislation and support public education campaigns via the training of school based drug education personnel throughout both metropolitan and regional areas in Western Australia. As part of this process the SDEP will also update training materials, where appropriate, to reflect cannabis law reform changes, including the:

- professional development of teachers;
- development and updating of teacher support curriculum materials;
- dissemination policy protocols and procedures; and
- inclusion of parents and community.

Specific and detailed training of teachers and counselling staff with regards to the cannabis law reform changes, will occur through the statewide implementation of the program known as In Touch: Managing drug use issues in schools.

The Working Party had discussions with the SDEP which has indicated there are opportunities for revising and updating curriculum materials and of providing schools with a framework for being able to deal with cannabis use involving school students.

There are, therefore, no additional specific costs in relation to the SDEP that would be associated with the proposed CIN scheme, as revision is planned for the first quarter of 2003 of SDEP curriculum materials. This will enable the change in the way minor cannabis offences are dealt with to be incorporated into the overall SDEP framework.

5.5 Specialist service providers

Specialist service providers as well as mainstream health and welfare providers will need to develop programs which encourage attendance by those who are concerned about their level of use and/or dependence involving cannabis.

The Working Party recommends that a scheme which targets those whose cannabis use is of concern to themselves or their families be established.

6. List of appendices

- Appendix 1: Recommendations from Community Drug Summit**
- Appendix 2: Arrangements concerning cannabis offences in Australian jurisdictions**
- Appendix 3: Misuse of Drugs Act 1981 – cannabis related provisions**
- Appendix 4: Legislation & penalties – personal use of cannabis**
- Appendix 5: Statistical overview**
- Appendix 6: Draft legislative model for the sale and supply of hydroponic equipment**
- Appendix 7: Bibliography**

Appendix 1: Recommendations from Community Drug Summit

Recommendation 39

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 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.

Recommendation 40

Law enforcement measures need to be taken to address both supply and demand reduction priorities arising out of the summit. This should take into account, the fact that the wellbeing and safety of the broad community should be assured, including matters related to victims of crime. In addition, drug use should be reviewed primarily as a health and social issue.

An extensive and urgent review of existing laws and consideration of new legislation relating to the misuse of illicit drugs be carried out to include, but not exclusively the:

- *Misuse of Drugs Act 1981*;
- *Sentencing Act 1995*;
- mental health laws;
- *Road Traffic Act 1974*;
- confiscation of profits and assets legislation; and
- juvenile justice legislation.

New legislation needs to address issues such as the increasingly highly organised, mobile and professional drug suppliers.

Increased training in harm reduction methods, availability of treatment and rehabilitation services, and responding to drug users for police and other human service workers is recommended.

Appendix 2: Arrangements concerning cannabis offences in Australian jurisdictions

Western Australia

Offences

In Western Australia the possession of up to 100 grams of cannabis plant materials, 20 grams of resin and the cultivation of up to 25 plants are simple offences. The maximum penalty is two years imprisonment, a \$2,000 fine or both. The possession of implements for use of cannabis is also a simple offence, with a maximum penalty of \$3,000, three years imprisonment or both.

See Appendix 3 for details of other offences and for court of trial as determined in the *Misuse of Drugs Act 1981*.

WA cannabis cautioning scheme

In March 2000 the cannabis cautioning mandatory education system (CCMES), was introduced as a statewide scheme in Western Australia. The formal cautioning scheme was preceded by a 12 month pilot in the Mirrabooka Police District and the Bunbury Sub District from October 1998 until September 1999. The purpose of the pilot was to trial a more effective way of dealing with people caught in the criminal justice system for first time cannabis offences. The objectives of the pilot were:

- to improve knowledge and attitudes regarding marijuana use by offenders; and
- to achieve viable police procedures including a streamlined process and effective interaction with offenders.

The CCMES enables police to issue a formal caution for first time adult offenders in possession or use of up to 25 grams of cannabis. The caution mandates attendance at an educational intervention in lieu of prosecution. There is not a legislative basis for this scheme, rather it is based on police discretion.

Where a caution is issued the individual is required to attend a mandatory education session within two weeks of receiving the caution. Failure to attend a session results in a summons being issued for the offence with the matter being dealt with by a court of petty sessions.

There is a separate scheme, which is part of the national approach to diversion of drug offenders, which is targeted at repeat cannabis offenders. In this case the courts are able to refer a repeat offender to a multi session education and treatment program consisting of three sessions in a group format.

The program addresses key issues such as motivation, relapse and goal setting. After the offender's participation in the program the courts will consider a sentence in the light of the person's participation.

There have been a total of 1,678 cautions to both the pilot and the fully established CCMES up to 5 February 2002 (Table A2-1, page A6). Overall a total of 208 (12.5%) individuals have failed to attend the mandated education session.

A breakdown of the weight of cannabis seized indicates that the majority of cautions have involved people with relatively small quantities of cannabis, as follows:

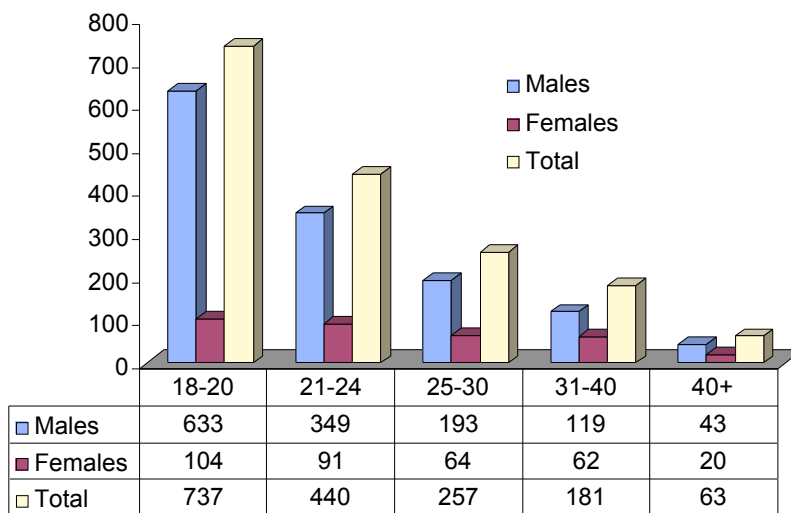
- 1,225 (73%) cautions involved weights of less than 5 grams;
- 134 (8%) cautions involved weights of between 5 and 10 grams; and
- 157 (9%) cautions involved weights over 10 grams.

Table A2-1: Number of diversions by age group and sex cannabis caution mandatory education system 1998/1999 - February 2002

	Age group					Total
	18-20	21-24	25-30	31-40	40+	
1998/1999						
Males	28	38	12	12	3	93
Females	5	10	5	6	2	28
Total	33	48	17	18	5	121
1999/2000						
Males	258	124	73	40	11	506
Females	53	27	27	21	5	133
Total	311	151	100	61	16	639
2000/2001						
Males	318	175	102	64	28	687
Females	41	52	27	34	12	166
Total	359	227	129	98	40	853
2001/2002						
Males	29	12	6	3	1	51
Females	5	2	5	1	1	14
Total	34	14	11	4	2	65

Source: WA Police Service (unpublished).
 Note: Has data up to 5 February 2002.

Figure A2-1: Number of diversions by age group and sex cannabis caution mandatory education system 1998/1999 - February 2002



South Australia

Cannabis expiation notice scheme

The cannabis expiation notice (CEN) scheme came into effect in South Australia on 30 April 1987, following amendment to the South Australian *Controlled Substances Act 1984*. See Appendix 4 for extracts from the relevant legislation and regulations.

The legislation did not initially specify the actual number of plants that were deemed to be cultivated for personal use and thus an expiable offence, the number of plants being a “small number for non commercial purposes”. The legislation was changed in 1990 to define an expiable offence as being cultivation of up to 10 plants.

In 1999 the limit of plants was reduced by regulation to three in response to concerns that the shift to hydroponic cultivation had increased plant yields and that commercial syndication had become involved. However, on 12 July 2000 by resolution of the Legislative Council, this regulation was disallowed and the limit returned to the former limit of 10 plants.

Subsequently in August 2000 the limit was again reduced by regulation to a maximum of three plants for the expiable offence of cultivation of cannabis.²⁷ In November 2001 an amendment to the regulations decreased the limit to one plant.²⁸

It is to be noted that a Bill²⁹ to amend the *Controlled Substances Act 1984* was introduced in the South Australian Parliament on 30 October 2001.³⁰ If this had been passed it would have had the effect of treating the cultivation of cannabis plants as an expiable offence, depending on the number of plants prescribed by the regulations, so long as these plants were not hydroponically grown. The Bill proposed an amendment to Section 45A of the Act, by defining a ‘simple cannabis offence’ as not being ‘artificially enhanced cultivation’, by inserting the following definition.

Artificially enhanced cultivation means –
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.

The CEN provides that where adults come to the attention of the police for a “simple cannabis offence”, they have the option of issuing the offender with an expiation notice. It should be noted that the use of cannabis is still illegal.

There has been a number of studies of the South Australian scheme which have noted some of its difficulties. One of these has been a relatively low rate of expiation (ie payment) of CENs and that the impact of the scheme has been affected by policing practises.

“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.”³¹

²⁷ Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987. Amended Reg 4(3), South Australian Gazette, 24 August, p. 833.

²⁸ Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987. Amended Reg 4(3), South Australian Gazette, 29 November, p. 5250.

²⁹ Controlled Substances (Cannabis) Amendment Bill 2001, House of Assembly Bill No. 167.

³⁰ This Bill lapsed with the proroguing of the Parliament prior to the election that was held in February 2002.

³¹ Atkinson L & McDonald D. *Cannabis, the law and social impacts in Australia*. Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice, No. 48, 1995.

Fees for the expiation of simple cannabis offences vary according to the seriousness of the offence as follows.

Possession of cannabis

where the amount is less than 25 grams (\$50 penalty)

where the amount is 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)

where the amount is 5 grams or more but less than 20 grams (\$150)

Smoking cannabis

Smoking or consumption of cannabis or cannabis resin³² (\$50 penalty)

Possession of smoking paraphernalia (\$50 penalty)³³

Cultivation

Cultivation of 1 cannabis plant (\$150 penalty).

Trends

Recent studies of the expiation scheme have noted that there was a marked increase in the number of CENs issued from the inception of the scheme in 1987, with just over 18,000 CENs issued in the 1996/1997 year. The expiation rate stabilised at around 45% until 1997 after which there have been smaller increases in the expiation rate believed to be due to the introduction of alternative payment options in 1996 for expiable offences (eg instalment payments and community service).³⁴

Drug offences in South Australia increased from 1988 (2,619 offences) to 4,708 offences in 1994, then has remained relatively static up to the end of 2000, with about 4,500 drug offences per year. From 1988 to 1992 cannabis offences made up about 80% of all drug offences in South Australia. Since 1992 there has been a steady decline in the proportion of offences involving cannabis compared to other types of illicit drugs and by the year 2000 made up 62.6% of all offences (Figure A2-2, page A11).

A recent analysis of the cannabis expiation notice scheme has pinpointed shifts in the type of offences involving cannabis from 1998 to 2000 (see Figure A2-3, page A11). As indicated above the proportion of all drug offences that involve cannabis has steadily declined. This study notes that

“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.”³⁵

The study by Hunter 2001 also examined trends in the number of cannabis related offences broken down by three major types of offence (ie possess/use, produce/manufacture and possess for sale/sell). It can be seen in Figure A2-4 (page A12) that the number of possess/use offences increased from 774 offences in 1998 and peaked in the mid 1990s (with over 1,300 offences per year from 1992 to 1994). There has been a steady decline in the number of possess/use offences each year with 864 possess/use offences recorded in 2000.

³² Not being an offence committed in a public place or other prescribed place

³³ 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.

³⁴ Christie P & Ali R. “Offences under the cannabis expiation notice scheme in South Australia”. (2000) 19 *Drug and Alcohol Review*, 251-256; Hunter N. *Cannabis expiation notices (CENs) in South Australia, 1997 to 2000*. Office of Crime Statistics, Attorney General’s Department, Information Bulletin No. 27, November 2001.

³⁵ Hunter N (2001), 3.

Sell/supply offences increased from 1988 to 1997 (617 offences) and then have decreased by just over 25% to 453 in 2000.

In contrast to the other types of offences the number of produce/manufacture offences increased from 1988 to 1993 (601 offences), then dropped somewhat with 447 offences recorded in 1998. There has been an increase from 65% in the number of produce/manufacture offences since 1997 with a total of 821 offences recorded in 2000.

Over the period from 1991/1992 to 1995/1996 almost all CENs involved single offences. By the mid 1990s more than 17,000 CENs were being issued in South Australia. Since 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 in 1999/2000 (Figure A2-5, page A12).

It is believed that some changes in the way CENs were issued by South Australian police may have been a factor in the increase that occurred in the number of CENs from 1987. One of the practices that may have affected the number of CENs was that from August 1988 to February 1997 police were instructed to issue a separate CEN for each cannabis offence. However after the amendments introduced in the *Expiation of Offences Act 1996* multiple offences could be included on one notice. This meant that each offence could be dealt with separately and that some notices could be contested and others could be expiated.³⁶

There have also been changes in the method of processing unpaid CENs in South Australia. Prior to February 1997 unpaid CENs were forwarded for prosecution. The offender would receive a summons for the failure to pay and face court proceedings. This meant there was a likelihood of conviction.

Since February 1997 CENs have been electronically enforced in South Australia. This process is made possible through the establishment of a special expiation unit within the South Australian police. Under the new system once the Registrar makes an order against a fine defaulter for 'enforcement' of an expiation notice a conviction is automatically recorded. A fine is imposed that is equivalent to the unpaid expiation fee with additional costs incurred by the issuing of an order for payment.

It can be seen in Table A2-2 (page A10) that in the early years of the CEN scheme, expiation rates above 50% were recorded, with a rate of 53.5% in 1987/1988 and a rate of 54.5% in 1989/1990. However, there has been a steady decline in the rate of expiation since the early 1990s, dropping to just under four out of 10 (38.0%) of CENs being expiated in South Australia in the year 2000 (Table A2-3, page A10).

It has been noted 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).”³⁷

³⁶ Adapted from Hunter N (2001).

³⁷ Hunter N (2001), 18.

Table A2-2: Trends in cannabis expiation notices, South Australia 1987/1988 - 1999/2000

Year	Number of cannabis expiation offences	Number of CENs issued	Number of CENs expiated	Expiation rate (%)
1987/1988	-	4,599	2,460	53.5
1988/1989	-	-	3,773	-
1989/1990	-	10,262	5,591	54.5
1990/1991	-	10,229	4,875	47.7
1991/1992	-	14,356	6,399	44.8
1992/1993	-	15,524	6,921	44.8
1993/1994	-	17,425	7,638	43.8
1994/1995	-	17,170	7,736	45.0
1995/1996	-	16,321	7,045	43.2
1996/1997	18,015	-	-	-
1997/1998	16,007	-	-	-
1998/1999	13,562	-	-	-
1999/2000	-	-	-	-

Source: Christie, 1999 (Table 1); South Australian Police (unpublished).

Note: Figure for 1987/1988 refers to the number of CENs expiated that year, which corresponds to a larger (but unknown) number of actual offences expiated. Figures for other years refer to actual number of offences expiated (which from 1989/1990) onwards should correspond exactly to the number of CENs expiated.

Table A2-3: Trends in cannabis expiation notices, South Australia, 1998 - 2000

Year	Number of cannabis expiation offences	Number of CENs issued	Number of CENs expiated	Expiation rate (%)
1997	17,878	13,238	-	-
1998	15,217	10,635	3,609	33.9
1999	12,861	8,988	3,138	34.9
2000	11,777	8,356	3,175	38.0

Source: Hunter, 2001 (Table 1; Table 5).

Figure A2-2: Offences recorded, total drug offences and proportion involving cannabis, South Australia, 1988-2000

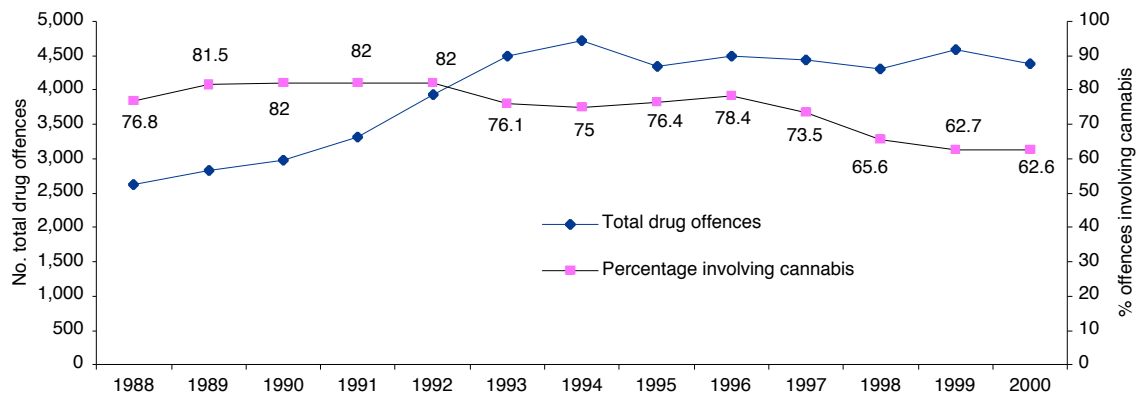


Figure A2-3: Proportion of all recorded offences for possess and/or use, possess for sale/sell, produce/manufacture where the drug involved was cannabis, South Australia, 1988-2000

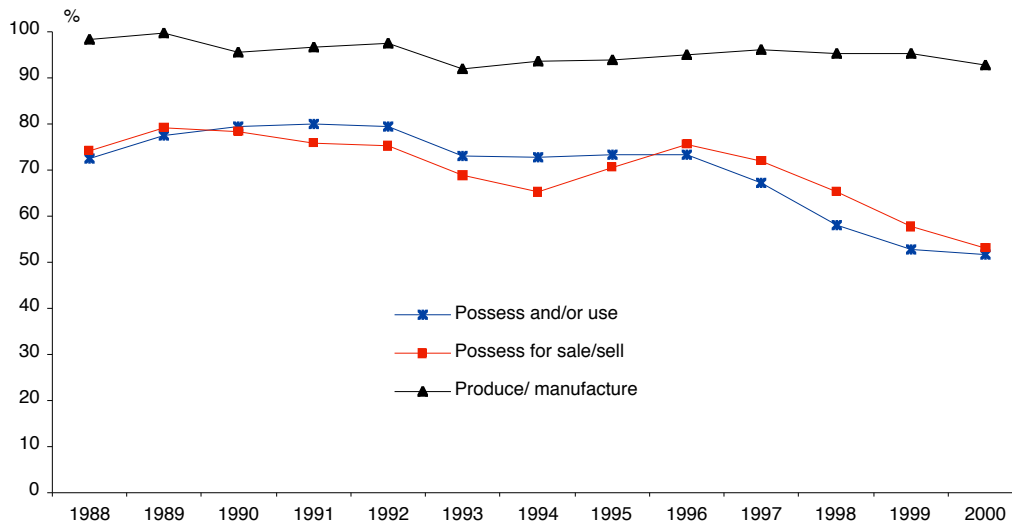


Figure A2-4: Cannabis related drug offences by type of offence, South Australia 1988-2000

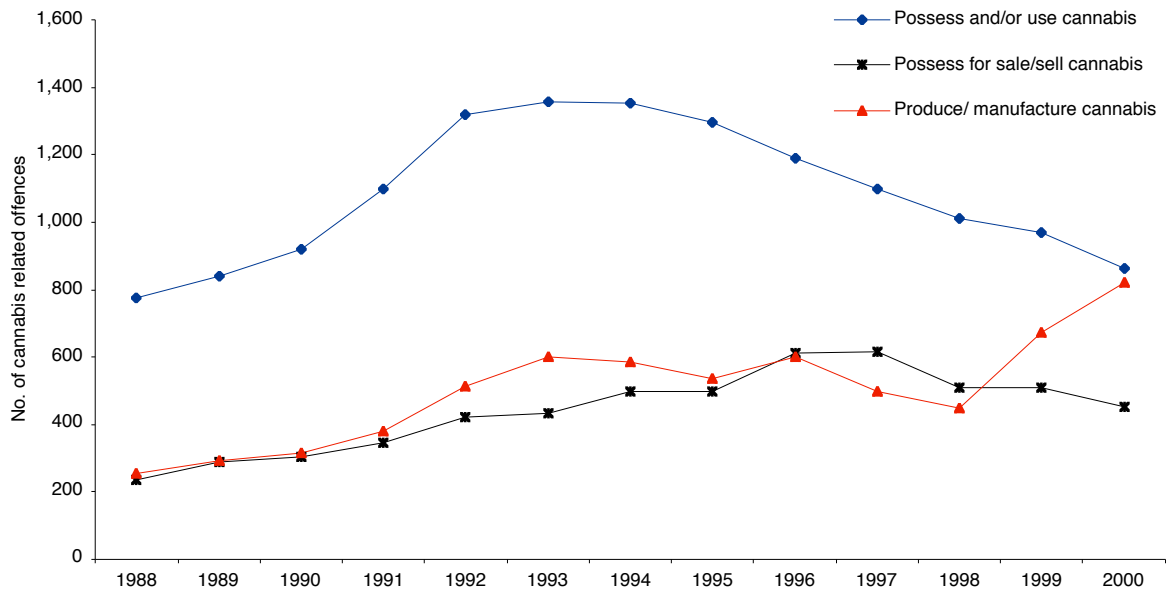
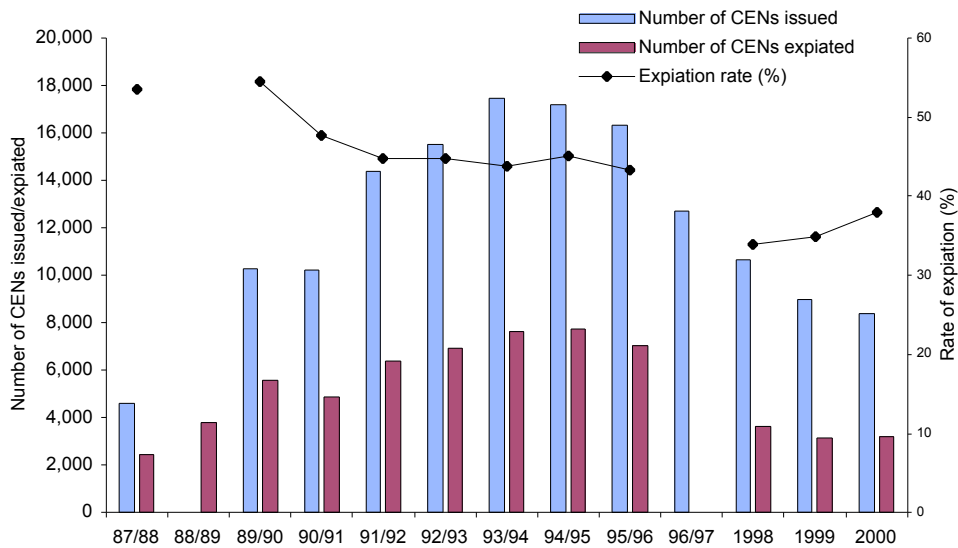


Figure A2-5: Trends in cannabis expiation notices, South Australia 1987/1988 – 1999/2000



Cautioning and diversion

Juveniles cannot be dealt with under the CEN but are subject to formal and informal cautioning.³⁸

Australian Capital Territory

Cannabis expiation notice scheme

The simple cannabis offence notice (SCON) scheme has operated in the Australian Capital Territory since 1993.³⁹ See Appendix 4 for extracts from the relevant legislation.

SCONs are issued to adults or juveniles and have the option of paying the fine within a prescribed time or later appearing in court, with the possibility of a conviction (though a conviction is not inevitable). Fees for the expiation of simple cannabis offences vary according to the seriousness of the offence as follows.

Possession of cannabis

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

Cultivation

Cultivation of up to five plants (\$100 penalty)

Use

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

Trends

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% (Table A2-4). 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 a trend of an upward trend in the annual, with just under half of SCONs being expiated in 2001 (Figure A2-6, Page A14).

Table A2-4: Trends in simple cannabis offence notices, Australian Capital Territory 1994 - 2001

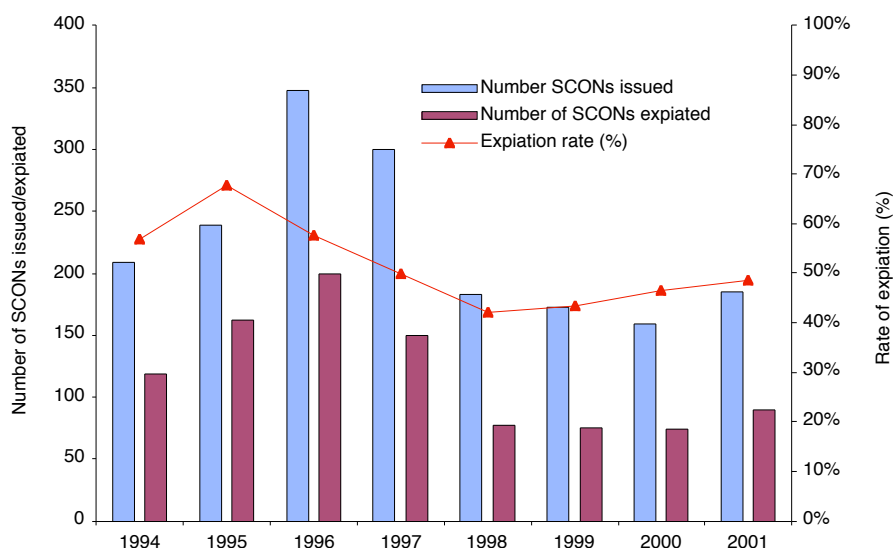
Year	Number of SCONs issued	Number of expiations	Expiation rate (%)
1994	209	119	56.9
1995	239	162	67.8
1996	347	200	57.6
1997	300	150	50.0
1998	183	77	42.1
1999	173	75	43.4
2000	159	74	46.5
2001	185	90	48.6

Source: Lenton, Heale, Erickson, 2000.; Australian Federal Police (unpublished)

³⁸ Young Offenders Act 1993.

³⁹ Drugs of Dependence Act 1989 s 162, s 171.

Figure A2-6: Trends in cannabis expiation notices, Australian Capital Territory 1994 – 2001



Cautioning and diversion

The ACT has developed an early intervention and diversion program based on police discretion. Participants in this program must have committed an offence under the *Drugs of Dependence Act 1989* (ie possession of an illicit drug or illicit possession of pharmaceutical drug). Diversion will not be available where a violent crime has been committed.

The program retains the use of SCONs. From December 2001 police will have the option of issuing a SCON, which involves payment of a fine or diversion of the offender to an education program. The option to divert to education, in preference to payment of a fine will be undertaken in the same manner in which police divert other offenders in possession of small quantities of drugs.

Expiation of the drug diversion caution notice will occur after attendance at one assessment intervention and one education or treatment intervention.

Northern Territory Offences

An infringement notice scheme has operated in the Northern Territory since 1 July 1996. See Appendix 4 for extracts from the relevant legislation and regulations.

The scheme provides that adults in possession of up to 50 grams of cannabis plant material or up to 10 grams of cannabis resin, or cultivating up to two plants are issued with an on the spot fine of \$200, known as a drug infringement notice (DIN).⁴⁰

If the fine is not paid within a specified time, after a reminder, the offender is taken into custody or the amount can be recovered by a warrant of distress. Offenders have the option of contesting their infringement in court, with the consequent possibility of a criminal conviction.

⁴⁰ Misuse of Drugs Act.

The *Misuse of Drugs Act* permits a \$200 infringement to be issued where a person (an adult) is apprehended not more than 2 cannabis plants or is in possession with a specified amount.⁴¹

Trends

Due to unavailability of additional information it is not possible to discuss trends in the Northern Territory scheme.

Table A2-5: Trends in drug infringement notices, Northern Territory 1996/1997 – 2000/2001

Year	Number of DINs issued	Number of expiations	Expiation rate (%)
1996/1997	380	-	-
1997/1998	413	-	-
1998/1999	351	-	-
1999/2000	403	-	-
2000/2001	453	-	-

Source: Northern Territory Police (unpublished)

Victoria Offences

Under Victorian legislation⁴² 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.

Cautioning and diversion

Victoria has statutory procedures for dealing with first and second time possession/use cannabis offenders.⁴³ A system of adjourned bonds has applied for some time in Victoria for minor first time (possession and use) drug offences. First 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.

Victoria also has a police diversion scheme, the cannabis cautioning program (CCP), which has operated since 1998 (although it is not legislatively based). 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 caution notice instead of having the offence proceeded with through the courts (for possession/use of up to 50 grams).

The caution notice includes information about the harms of cannabis use. Whether an offender is offered a caution is at the discretion of the police officer concerned.

⁴¹ Misuse of Drugs Act Schedule 3.

⁴² Drugs, Poisons and Controlled Substances Act 1981.

⁴³ Drugs, Poisons and Controlled Substances Act 1981 s 76.

New South Wales

Offences

In New South Wales possession or use of up to 200 grams of cannabis leaf is a criminal offence⁴⁴, with a maximum penalty of \$2,000 fine and/or two years imprisonment. In 1993, 78 per cent of these 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.

Cautioning and diversion

Following a recommendation of the Drug Summit which was held in May 1999 the cannabis cautioning scheme (CCS) began statewide in April 2000 for a trial period of 12 months. The CCS covered offences of use and possession of dried cannabis leaf stalks, seeds, heads, and equipment for administration. It does not include living plants or derived products such as hash and hash oil.

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 the cautioning criteria are met. Offenders are issued with a caution notice along with legal and health information and a number to call for confidential treatment and referral.

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. No person can be issued with more than two cautions. The offender must admit to the offence and must only possess the cannabis for personal use (15 grams or less).

This scheme does not have any legislative basis, but is dealt with by the New South Wales Police Service policy and procedures on the ‘Cannabis Cautioning Scheme’.

Queensland

Offences

It is an offence in Queensland 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).⁴⁵ 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 Queensland law 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.

Cautioning and diversion

The drug diversion assessment program (DDAP) commenced in June 2001. 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 sativa or a thing for use, or that the person has used, for smoking cannabis sativa, unless such possession involves the supply of or trafficking in cannabis sativa.⁴⁶

⁴⁴ Drug Misuse and Trafficking Act 1985.

⁴⁵ Drug Misuse Act 1986.

⁴⁶ Drug Misuse Act 1986 s 211.

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.

Tasmania

Offences

It is an offence in Tasmania to use or possess cannabis, to cultivate cannabis or possess smoking devices.⁴⁷ The maximum penalty is 50 penalty units or two years imprisonment or both.

Cautioning and diversion

Tasmania has a three staged drug diversion scheme:

- first time adult offenders for possession or use of any drug including cannabis (up to 50 grams) are issued a cautionary notice by police as well as a pamphlet containing educational material;
- second time adult offenders are referred to a one hour counselling/treatment intervention; and
- third time offenders are diverted to a more comprehensive assessment, with referral to counselling, detoxification, or rehabilitation.

The drug diversion program is based on police decision and not legislation. 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.

⁴⁷ Poisons Act 1971 s 49.

Appendix 3: Misuse of Drugs Act 1981 – cannabis related provisions

The *Misuse of Drugs Act 1981* is the basis of the framework in Western Australia for drug offences. This legislation breaks offences into two groups, simple offences (ie minor offences) which are dealt with by the Courts of Petty Sessions and serious offences which are dealt with by the higher courts.. The scope of the Act is augmented by including substances that are listed in the *Poisons Act 1964*.

Simple offences

With respect to cannabis, the Act provides for summary trial of minor offences (‘simple offences’) and for more serious offences (‘indictable offences’) to be tried in the higher courts.

Table A3-1: Simple cannabis offences - penalties

Description of offence	Section	Penalty	
		Range	Section
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 pipes or utensils ⁴⁸ for smoking cannabis	5 (1) (d) (i)	\$3,000, 3 years or both	34 (1) (d)
Possession of utensils ⁴⁹ for manufacture or preparation of cannabis for smoking	5 (1) (d) (ii)	\$3,000, 3 years or both	34 (1) (d)
Possession of cannabis	7 (2)	\$2,000, 2 years or both	34 (1) (e)
Cultivation of cannabis	7 (2)	\$2,000, 2 years or both	34 (1) (e)

Optional summary trial

In WA the place of trial is determined by the quantity of cannabis and/or number of plants involved. The *Misuse of Drugs Act 1981* provides an incentive of lower penalties for defendants who have been charged with an indictable ‘serious offence’ involving cannabis.⁵⁰ The option of having a trial in a summary court instead of in a higher court, is available for the following offences:

- 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.

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.

⁴⁸ On which there are detectable traces of cannabis.

⁴⁹ On which there are detectable traces of cannabis.

⁵⁰ Misuse of Drugs Act 1981 s 9.

The *Misuse of Drugs Act 1981* explicitly restricts the optional summary trial to offences only involving cannabis leaf or plants, but not any derivative of cannabis.⁵¹

Table A3-2: Cannabis offences - place of trial

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 ⁵²	400 cigarettes	Schedule 3	\$5,000, 4 years or both	\$20,000, 10 years or both
Hashish oil	-	-	-	-
Resin	40 g	Schedule 3	-	-
Tetrahydrocannabinols	4 g	Schedule 3	-	-

Serious offences

A key concept in the Act is that possession of greater than a specified number of cannabis plants or greater than a specified quantity of cannabis is a deemed presumption to sell or supply,⁵³ according to the following thresholds.

Table A3-3: Thresholds for serious cannabis offences

Type of cannabis	Threshold	Section
Leaf	100 g	Schedule 5
Plants	25 plants	Schedule 6
Cigarettes	80 cigarettes	Schedule 5
Hashish oil	-	-
Resin	20 g	Schedule 5
Tetrahydrocannabinols	2 g	Schedule 5

The Act distinguishes between two levels of penalties for serious offences, depending on whether the offence involves a conspiracy or not.

Table A3-4: Penalties for serious cannabis offences

Description of offence	Section	Penalty	
		Range	Section
Possession of cannabis plants with intent to sell or supply	7 (1) (a)	\$100,000, 25 years or both	34 (1) (a)
Cultivation 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)

⁵¹ Misuse of Drugs Act 1981 s 34 (2).

⁵² Containing any portion of cannabis.

⁵³ Misuse of Drugs Act s 11 (b).

Table A3-5: Penalties for serious cannabis offences - conspiracy

Description of offence	Section	Penalty	
		Range	Section
Conspiring to possess cannabis plants with intent to sell or supply	7 (1) (a)	\$75,000, 20 years or both	34 (1) (b)
Conspiring to cultivate cannabis plants	7 (1) (a)	\$75,000, 20 years or both	34 (1) (b)
Conspiring to sell, supply or offer to sell or supply cannabis plants	7 (1) (b)	\$75,000, 20 years or both	34 (1) (b)

Declaration as a drug trafficker

The Act requires a court on conviction of a person of a ‘serious drug offence’ to be declared a drug trafficker,⁵⁴ if the offence involves more or greater than the following thresholds of cannabis.

Table A3-6: Thresholds for declaration as a drug trafficker – cannabis offences

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

⁵⁴ Misuse of Drugs Act s 32A (b).

Appendix 4: Excerpts from relevant legislation

Western Australia

In Western Australia infringement notices are given to motorists for non serious offences under the *Road Traffic Act 1974*. It should be noted that when a traffic infringement notice is given to a motorist it is in effect a summons to appear in court which the motorist can avoid if he or she pays the specified penalty.

At the elapse of the specified time the person may go to court and contest the charge. There is an incentive for an individual to pay the notice rather than go to court as additional charges accrue if an individual fails to appear, fails to pay the fee etc. These consequences are specified in the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

Road Traffic Act 1974

Traffic infringement notices

- (1) Where a member of the Police Force or warden has reason to believe that a person has committed any such offence against this Act as is prescribed for the purposes of this section, he may serve on that person a notice, in the prescribed form, (in this section called a “traffic infringement notice”) informing the person that, if he does not wish to have a complaint of the alleged offence heard and determined by a court, he may pay to an officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under this section.
- (2) A traffic infringement notice may be served on an alleged offender personally or by posting it to his address as ascertained from him, at the time of, or immediately following, the occurrence giving rise to the allegation of an offence, or as ascertained pursuant to an inquiry made under section 58; and, where the allegation is of an offence of which the standing, parking or leaving of a vehicle is an element and the identity of the driver or person in charge of the vehicle is not known and cannot immediately be ascertained, the traffic infringement notice may be addressed to the owner of the vehicle, without naming him or stating his address, and be served by leaving it in or upon, or attaching it to, the vehicle.
- (2a) If the offence against section 24(2c) is prescribed for the purposes of this section a traffic infringement notice issued for an alleged offence against that section, in addition to specifying the prescribed penalty for that offence, may specify –
 - (a) the prescribed transfer fee; and
 - (b) the amount payable under the Stamp Act 1921 in respect of the transfer of the licence,and, for the purposes of subsections (1), (4), (5), (6), (7) and (7a) and the Fines, Penalties and Infringement Notices Enforcement Act 1994, a reference to the prescribed penalty is to be taken as being a reference to the sum of the prescribed penalty and those 2 other amounts.
- (2b) A traffic infringement notice issued for an alleged offence against section 24(2c) may be served on the alleged offender personally or by posting it to the alleged offender’s address as ascertained from a person under section 24(1) or otherwise.
- (3) Where, under the provisions of subsection (2), a traffic infringement notice is addressed to the owner of a vehicle and served by leaving it in or upon, or attaching it to the vehicle, then, if –
 - (a) the prescribed penalty is not paid within the period specified in the notice; or

- (b) the owner of the vehicle does not, within the period specified for the payment of the penalty –
 - (i) identify the person who was the driver or person in charge of the vehicle at the relevant time to a prescribed officer; or
 - (ii) satisfy a prescribed officer that, at the relevant time, the vehicle had been stolen or unlawfully taken or used,

the owner is, in the absence of proof to the contrary, deemed to have committed the offence.

(3a) Where –

- (a) the belief referred to in subsection (1) is based on photographic evidence;
- (b) the allegation is of an offence of which the driving or being in charge of a vehicle is an element;
- (c) the identity of the vehicle can be ascertained from the photographic evidence; and
- (d) the name and address of the driver or person in charge of the vehicle are not known and cannot immediately be ascertained,

the traffic infringement notice may be addressed to the owner of the vehicle and may be served by serving it on the owner personally or by post.

(3b) Where a traffic infringement notice is served under subsection (3a), then, unless within the period of 28 days after the day specified in the notice (being the day of the issue of the notice or a subsequent day) –

- (a) the prescribed penalty is paid to an officer specified in the notice; or
- (b) the person on whom the notice was served furnishes a statement in writing to the Commissioner of Police stating that he was not the driver or person in charge of the vehicle at the relevant time,

the person on whom the notice is served, in absence of a claim by that person –

- (c) to the contrary, or
- (d) that notwithstanding proper service of the notice the notice did not actually come to the attention of the person within the time for response or sufficiently within time to allow for response,

shall be presumed to have been the driver or person in charge of the vehicle at the relevant time for the purposes of the offence alleged in the notice.

(3c) A traffic infringement notice served under subsection (3a) shall contain or be accompanied by a statement explaining the effect of subsection (3b).

(3d) A statement in writing for the purposes of subsection (3b)(b) shall be accompanied by the traffic infringement notice to which it relates and shall be posted to the Commissioner of Police or delivered personally to a prescribed officer or the officer in charge of a police station.

(3e) In subsection (3a) “photographic evidence” means –

- (a) a photograph; or
- (b) a cinematographic or other type of film, or video tape, video disc, slide or other form of recording, from which a visual image can be produced.

(4) A person who receives a traffic infringement notice may decline to be dealt with under the provisions of this section and, where he fails to pay the prescribed penalty within the time specified in the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under those provisions.

(5) A traffic infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn by the sending of a notice, in the prescribed form, signed by a prescribed officer, to the alleged offender at his last known place of residence or business, advising the alleged offender that the traffic infringement notice has been withdrawn; and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.

(5a) In subsection (5) “alleged offender”, in relation to a traffic infringement notice that is left in or upon, or attached to, a vehicle under subsection (2) or is served on the owner of a vehicle under subsection (3a), means the owner of the vehicle.

(6) Where a prescribed penalty has been paid pursuant to a traffic infringement notice and the notice has not been withdrawn as provided by subsection (5), proceedings shall not be brought against any person with respect to the offence alleged in the notice.

(7) The payment of the whole or a part of a penalty pursuant to a traffic infringement notice shall, for the purposes of sections 48, 51(1)(a) and 103, constitute a conviction of an offence, but shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the occurrence by reason of which the traffic infringement notice was given.

(7a) Subsection (7) applies even if the payment is made by means of a dishonoured cheque.

(8) The Governor may make regulations for any purpose for which regulations are contemplated or required by this section and, in particular, may make regulations –

- (a) prescribing offences for the purposes of this section, not being offences punishable by imprisonment or offences in respect of which a court is required to disqualify the offender from holding or obtaining a driver’s licence, by setting out the offences or by reference to the provision creating the offence or by reference to all or any offences in any one Part of any regulations made under this Act; and
- (b) prescribing penalties not exceeding 20 PU for any prescribed offence or class of prescribed offence and prescribing different penalties for the one offence, according to the circumstances by which the offence is attended.

South Australia

The key provisions for the South Australian expiation scheme for minor cannabis offences are contained in Sections 45A and 63 of the *Controlled Substances Act 1984*. This act is the major source of legislation for matters concerned with illicit drugs.

Controlled Substances Act 1984

Expiation of simple cannabis offences

45A. (1) A prosecution for a simple cannabis offence cannot be commenced except by—

- (a) the Director of Public Prosecutions; or
- (b) a member of the police force; or
- (c) a person authorised in writing by the Director of Public Prosecutions to commence the prosecution.

(2) Subject to this section, 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.

(3) Expiation fees (which may vary according to any factor) may be fixed by regulation for the purposes of this section.

.....

(7) Non-compliance with subsection (2) does not invalidate a prosecution.

(8) For the purposes of this section -

“child”, in relation to a simple cannabis offence, means a person who was, on the date of the alleged commission of the offence, under the age of 18 years;

“simple cannabis offence” means -

- (a) an offence arising out of the possession of cannabis or cannabis resin, not being an offence involving the possession of quantities of cannabis or cannabis resin in excess of limits fixed by regulation for the purposes of this paragraph;
- (b) an offence arising out of the smoking or consumption of cannabis or cannabis resin except an offence alleged to have been committed in -
 - (i) a public place; or
 - (ii) a place of a kind prescribed by regulation;
- (c) an offence arising out of the possession of equipment for use in connection with -
 - (i) the smoking or consumption of cannabis or cannabis resin; or
 - (ii) the preparation of cannabis or cannabis resin for smoking or consumption,not being an offence involving the possession of such equipment for commercial purposes;
- (d) an offence arising out of the cultivation of not more than the prescribed number of cannabis plants.

Regulations

63. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) The Minister must consult with the Advisory Council in relation to any regulation proposed to be made under this Act.

(3) No regulation may be made prescribing an amount relating to a drug of dependence or prohibited substance for the purposes of section 32 or section 45A except upon the recommendation of the Advisory Council.

(4) Without limiting the generality of subsection (1), the regulations may -

- (a) regulate, restrict or prohibit the manufacture, production, packaging, sale (whether by wholesale or retail), supply, prescribing, possession, use, handling, labelling, storing, transporting, disposal or advertising of any poison, therapeutic substance, therapeutic device or volatile solvent;
- (b) prescribe standards, or provide for the prescription by a person, a committee of persons or an authority, of standards, with which any poison, therapeutic substance or therapeutic device must conform;
- (c) prescribe the form of any notice, application, certificate, warrant or other document to be given, made or granted under this Act;
- (d) prescribe fees in respect of anything to be done under this Act, and provide for the remission of fees in specified circumstances;
- (e) provide for or regulate the application for, grant, refusal, renewal, suspension or revocation of licences and permits under this Act by a person, a committee of persons or an authority;
- (f) require any specified person, or persons of a specified class, to keep records or provide information in relation to any poison, prohibited substance, therapeutic substance, therapeutic device or volatile solvent;
- (g) provide for and regulate the inspection, examination, testing or analysis of any substance or goods;
- (h) exempt, conditionally or unconditionally, any person, poison, therapeutic substance or therapeutic device from any provision of this Act, or provide for all or any of those exemptions to be given by a person or committee of persons or an authority;
- (i) prescribe penalties, not exceeding \$5,000, for breach of, or non-compliance with, any regulation.

(5) The regulations may refer to or, by reference, incorporate (with or without modifications) any code, standard, pharmacopoeia or other document published inside or outside of this State and a code, standard, pharmacopoeia or other document so referred to or incorporated has effect, as amended from time to time by the authority responsible for its publication, as if it were a regulation made under this Act.

(5a) If a code, standard, pharmacopoeia or other document is referred to or incorporated in the regulations (or in a code, standard, pharmacopoeia or other document referred to or incorporated in the regulations) -

- (a) a copy of the code, standard, pharmacopoeia or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

(b) evidence of the contents of the code, standard, pharmacopoeia or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard, pharmacopoeia or other document.

(6) Any regulation under this Act may be of general or limited application according to -

(a) the classes of persons, poisons, therapeutic substances, therapeutic devices or volatile solvents; or

(b) the circumstances; or

(c) any other specified factor,

to which the regulation is expressed to apply.

Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987

1. These regulations may be cited as the Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987.

2. These regulations will come into operation on 30 April 1987.

3. In these regulations:

the “Act” means the Controlled Substances Act 1984.

4. (1) For the purposes of paragraph (a) of the definition of “Simple cannabis offence” in section 45A(8) of the Act, the following limits are fixed in respect of the possession of cannabis and cannabis resin:

(a) cannabis-possession of 100 grams or more is not expiable;

(b) cannabis resin-possession of 20 grams or more is not expiable.

(2) A motor vehicle, horse-drawn vehicle, train, tram or any other vehicle is, while in a public place, a prescribed place for the purposes of paragraph (b)(ii) of the definition of “Simple cannabis offence” in section 45A(8) of the Act.

(3) For the purposes of paragraph (d) of the definition of “Simple cannabis offence” in section 45A(8) of the Act, an offence involving cultivation of more than three cannabis plants is not expiable.

5. For the purposes of section 45A(2) of the Act, the following fees are prescribed as the fees for the expiation of simple cannabis offences –

	\$
(a) For an offence arising out of the possession of cannabis	
(i) where the amount is less than 25 grams	50
(ii) where the amount is 25 grams or more but less than 100 grams	150
(b) For an offence arising out of the possession of cannabis resin	
(i) where the amount is less than 5 grams	50
(ii) where the amount is 5 grams or more but less than 20 grams	150
(c) For an offence arising out of the smoking or consumption of cannabis or cannabis resin (not being an offence committed in a public place or other prescribed place)	50
(d) (i) For an offence arising out of the possession of equipment (one or more pieces) for use in connection with the smoking or consumption of cannabis or cannabis resin (not being an offence involving the possession of such equipment for commercial purposes)	50
but	
(ii) If an offence referred to in subparagraph (i) is accompanied by another simple cannabis offence relating to the possession, smoking or consumption of cannabis or cannabis resin	10
(e) for cultivation of 1 cannabis plant	150

8. (1) If a person wishes to dispute the weight of the cannabis or cannabis resin alleged to have been found in his or her possession, written notice may be given to the Commissioner of Police not later than 14 days after receipt of the expiation notice.

(2) A notice given under sub regulation (1) must contain the information specified in respect of disputed weights on the back of the expiation notice.

Penalties

Substance	Possession (users)	Traffickable quantity (raise presumption)	Indictable quantity	Commercial quantity
Cannabis	< 100 g	100 g		10 kg
Oil	< 2 g	2 g	Greater than 1/5 amount prescribed in next column	300 g
Plant	< 10 plants	10 plants		100 plants
Resin	< 20 g	20 g		2.5 kg
		Less than 1/5 amount prescribed		
	\$500	2 yrs +/\$2,000	10 yrs +/ \$50,000	25 yrs +/ \$500,000

Australian Capital Territory

The relevant legislation for the Australian Capital Territory expiation scheme for minor cannabis offences is contained in the *Drugs of Dependence Act 1987*. This act is also the major source of legislation for matters concerned with illicit drugs.

Drugs of Dependence Act 1987

162. Cultivation of prohibited plants

(1) In this section:

cultivate, in relation to a prohibited plant, includes plant, sow, scatter the seed produced by, grow, nurture, tend or harvest.

prohibited plant means a plant specified in schedule 5.

(2) A person shall not cultivate, or participate in the cultivation of, a prohibited plant.

Maximum penalty:

(a) where not more than 5 cannabis plants are cultivated - \$100; or

(b) in any other case - \$5,000, imprisonment for 2 years or both.

(3) A person shall not cultivate, or participate in the cultivation of, a prohibited plant for the purpose of sale or supply.

Maximum penalty:

(a) where more than 1,000 prohibited plants are cultivated – imprisonment for life; or

(b) where more than 20 but not more than 1,000 prohibited plants are cultivated –

(i) in the case of cannabis plants - \$20,000, imprisonment for 10 years or both; or

(ii) in any other case \$100,000, imprisonment for 25 years or both; or

(c) where more than 5 but not more than 20 prohibited plants are cultivated –

(i) in the case of cannabis plants - \$10,000, imprisonment for 5 years or both; or

(ii) in any other case \$20,000, imprisonment for 10 years or both; or

(d) where not more than 5 prohibited plants are cultivated –

(i) in the case of cannabis plants - \$5,000, imprisonment for 2 years or both; or

(ii) in any other case - \$10,000, imprisonment for 5 years or both.

(4) Without limiting subsection (2) or (3), a person shall, for the purposes of whichever of those subsections is applicable, be taken to participate in the cultivation of a prohibited plant or prohibited plants if the person –

(a) participates in any step or process, or causes or permits any step or process to be undertaken, in the course of that cultivation; or

- (b) provides finance, or arranges for the provision of finance, for such a step or process; or
 - (c) being an owner, lessee or occupier of any premises, or concerned in the management of any premises, causes or permits those premises to be used for such a step or process.
- (5) For the purposes of this section, where a person cultivates, or participates in the cultivation of, more than 5 prohibited plants, it shall be presumed that the cultivation is for the purpose of sale or supply, but that presumption is rebuttable.

165. Sale or supply – cannabis

- (1) A person shall not –
- (a) sell or supply cannabis to any person; or
 - (b) participate in the sale or supply of cannabis to any person; or
 - (c) possess cannabis for the purpose of sale or supply to any person.

Maximum penalty:

- (a) where the quantity of cannabis to which the offence relates is a commercial quantity – imprisonment for life; or
 - (b) where the quantity of cannabis to which the offence relates is a traffickable quantity but not a commercial quantity - \$200,000, imprisonment for 10 years or both; or
 - (c) where the quantity of cannabis to which the offence relates is less than a traffickable quantity, and is sold or supplied to a person who has not attained the age of 18 years - \$10,000, imprisonment for 5 years or both; or
 - (d) in any other case - \$5,000, imprisonment for 2 years or both.
- (2) Subsection (1) does not apply in relation to the supply of a quantity of cannabis by a person who is authorised under division 4.1 to supply that quantity for the purposes of a program of research or education, or the possession of such a quantity for the purpose of such supply.
- (3) Without limiting subsection (1), a person shall, for the purposes of that subsection, be taken to participate in the sale or supply of cannabis to a person if the first mentioned person –
- (a) participates in any aspect of such sale or supply; or
 - (b) being an owner, occupier or lessee of any premises or concerned in the management of any premises, causes or permits those premises to be used for the sale or supply of cannabis to any person.
- (4) Paragraph (a), (b) or (c) of the penalty for an offence against subsection (1) does not apply in relation to a person who has been convicted on indictment of an offence against that subsection unless it is alleged in the indictment, and it is proven beyond reasonable doubt, that the quantity of cannabis to which the offence relates was –
- (a) in the case of paragraph (a) – a commercial quantity; or
 - (b) in the case of paragraph (b) – a traffickable quantity; or

- (c) in the case of paragraph (c) – sold or supplied, or possessed for the purpose of sale or supply, to a person who has not attained the age of 18 years.
- (5) For the purposes of this section, where a person has more than a traffickable quantity of cannabis in his or her possession, it shall be presumed that the possession is for the purpose of sale or supply to another person, but that presumption is rebuttable.

171. Prohibited substances – possession, administration, disposal

- (1) A person shall not possess a prohibited substance.

Penalty:

- (a) where the offence relates to a quantity of cannabis not exceeding 25 grams in mass - \$100; and
 - (b) in any other case - \$5,000 or imprisonment for 2 years, or both.
- (2) A person shall not administer, or cause or permit to be administered, to himself or herself a prohibited substance.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (3) A person shall not administer, or cause to be administered, a prohibited substance to another person.

Penalty: \$5,000 or imprisonment for 2 years, or both.

171A. Offence notices

- (1) Where a police officer reasonably believes that a person has committed a simple cannabis offence, he or she may serve an offence notice on that person.
- (2) Where an offence notice is served on a child and the police officer serving the notice reasonably believes that the child is residing with a person who stands in loco parentis to that child, the police officer shall serve, or cause to be served, a copy of the notice on that person.
- (3) An offence notice shall –
- (a) specify the nature of the alleged simple cannabis offence;
 - (b) specify the date on which and the time and place at which the simple cannabis offence is alleged to have been committed;
 - (c) contain a statement to the effect that, if the alleged offender pays the prescribed penalty for the alleged offence within 60 days after the date of service of the notice, no further action will be taken in respect of that offence;
 - (d) specify the amount of the prescribed penalty;
 - (e) specify the place at which, and the manner in which, the prescribed penalty may be paid; and
 - (f) contain such other particulars (if any) as are prescribed.
- (4) If the prescribed penalty is paid in accordance with the offence notice –

- (a) any liability of the person in respect of the alleged simple cannabis offence shall be deemed to be discharged;
 - (b) no further proceedings shall be taken in respect of the alleged simple cannabis offence; and
 - (c) the person shall not be regarded as having been convicted of the alleged simple cannabis offence.
- (5) Any substance, equipment or object seized under any Act in connection with the alleged simple cannabis offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the prescribed penalty in accordance with the offence notice, be forfeited to the Territory.
- (6) Subject to subsection (4), nothing in this section shall be construed as affecting the institution or prosecution of proceedings for a simple cannabis offence.
- (7) In this section –
- “child” means a person who is under the age of 18 years on the date of the alleged offence;
- “simple cannabis offence” means –
- (a) an offence under subsection 162 (2) of cultivating, or participating in the cultivation of, not more than 5 cannabis plants;
 - (b) an offence under subsection 171 (1) of possession not more than 25 grams of cannabis; or
 - (c) an offence under subsection 171 (2) of administering, or causing or permitting to be administered, to oneself cannabis.
- (8) In relation to a simple cannabis offence, the prescribed penalty is \$100.

Northern Territory

The relevant legislation for the Northern Territory expiation scheme for minor cannabis offences is contained in the *Misuse of Drugs Act*. This act is also the major source of legislation for matters concerned with illicit drugs.

Misuse of Drugs Act

Part 2B Infringement notices

20A. Definitions

In this Part, unless the contrary intention appears –

“offence” means an offence against –

- (a) section 7 where the prohibited plant is a cannabis plant and the number of plants being cultivated is not more than 2; or
- (b) section 9 where the dangerous drug is one specified in column 1 of Schedule 3 and the amount of the drug in the possession of the person is less than the amount specified opposite the drug in column 2;

“offender means a person who a member of the police force reasonably believes has committed an offence;

“infringement notice” means an infringement notice issued under this Part.

20B. Issuing of infringement notices

- (1) Subject to this section, where a member has reason to believe that an offence has been committed, the member may serve on the person who appears to have committed the offence an infringement notice.
- (2) A member of the police force shall not serve an infringement notice on a person under subsection (1) unless the person is, or the member reasonably believes that the person is, an adult.

20C. Particulars to be shown on infringement notice

An infringement notice shall have clearly shown on it –

- (a) the date, time and place of the offence;
- (b) the nature of the offence and the penalty payable;
- (c) the place or places at which a penalty may be paid;
- (d) the date of the infringement notice and a statement that the penalty may be paid within 28 days after that date; and
- (e) a statement to the effect that, if the amount specified in the infringement notice as the penalty for the offence is paid at a place referred to in the notice within the time specified in the notice, no further action will be taken.

20D Penalty for offence

The penalty payable for the purposes of this Part for an offence is \$200.

20E. Payment before expiry date of infringement notice

- (1) Subject to section 20F, where, before the expiration of the period specified in an infringement notice for the payment of a penalty, the amount of the penalty shown on the notice is paid at a place specified in the notice the offender shall be deemed to have expiated the offence by payment of the penalty.

(2) Where the amount of a penalty under this Part is paid by cheque, payment shall be deemed not to be made unless the cheque is cleared on presentation.

20F. General

Nothing in this part –

- (a) prevents the service of more than one infringement notice in relation to the same offence but it is sufficient for the application of section 20E to a person on whom more than one such notice has been served for that person to pay the amount of the penalty in accordance with any one notice so served on that person;
- (b) prejudices or affects (except as provided by section 20E) the institution or prosecution of proceedings, or limits the penalty that may be imposed by a court, in relation to an offence; or
- (c) shall be construed as requiring the serving of an infringement notice or as affecting the liability of a person to be prosecuted in a court in relation to an offence in respect of which an infringement notice has not been served.

Appendix 5: Statistical overview

Introduction

This section contains statistical data and other information concerned with the use of cannabis. It summarises statistical data from a variety of areas including West Australian law enforcement data for arrests and seizures, dispositions of offenders, prevalence surveys of young people and adults and trends in drug related phone calls involving cannabis.

In addition analyses have been undertaken to determine consumption patterns and provide a value of expenditure on cannabis for personal consumption by West Australians. This approach is based on a published study of the West Australian dataset from recent National Drug Strategy (NDS) Household Surveys of consumption patterns broken down by age group, gender and recency of use.⁵⁵

Finally, the financial impacts of the proposed WA scheme have been identified and quantified to provide an understanding of the financial costs and benefits that are likely to arise from having minor cannabis offences dealt with by a system of expiable offences in place of the present system of having such matters dealt with by the courts.

Charges

The Crime Information Unit (CIU) of the WA Police Service is responsible for compiling statistical information about offending in WA. The data used in this section has been extracted from the Offence Information System (OIS) and is a count of the number of *offences* where a person has been processed. Processed persons refers to adults and juveniles who have been arrested, summonsed, formally cautioned or appeared before a Juvenile Justice Team (ie in relation to persons who were aged less than 18 years at the time they were charged).

It is important to understand that this information reflects police activity and accordingly deals with reported crime which has been detected and resulted in the apprehension of an offender. The OIS does not provide a count of the number of distinct persons due to limitations of the system.

In addition to data provided by the CIU, data from the Crime Research Centre (CRC) has also been utilised. The CRC receives data from the WA Police Service and subjects this to additional analysis and as such is able to count individual *offenders*. This is used to further examine patterns in cannabis charges in Western Australia.

Offences

In the year 2000, based on data provided by the WA Police Service, there was a total of 13,937 charges for drug *offences* in WA, of which 11,397 (81.7%) involved males and 2,540 (18.3%) involved females.⁵⁶

A breakdown of drug offences by age group shows a marked decline with in the proportion of charges for possess of smoking implements, decreasing from nearly 40% of drug offences for the <20 age group to just under 15% of charges for the 55 years and older age group (Table A5-1, page A38).

For the most serious charges, grouped as 'other', the proportion of this group of offences increased about seven fold, from 7% of all drug offences in the 15 to 19 age group to 52% for the 55 years and older age group.

⁵⁵ Australian Institute of Health and Welfare. 1998 National Drug Strategy Household Survey: Western Australia results. <http://www.wa.gov.au/drugwestaus/>

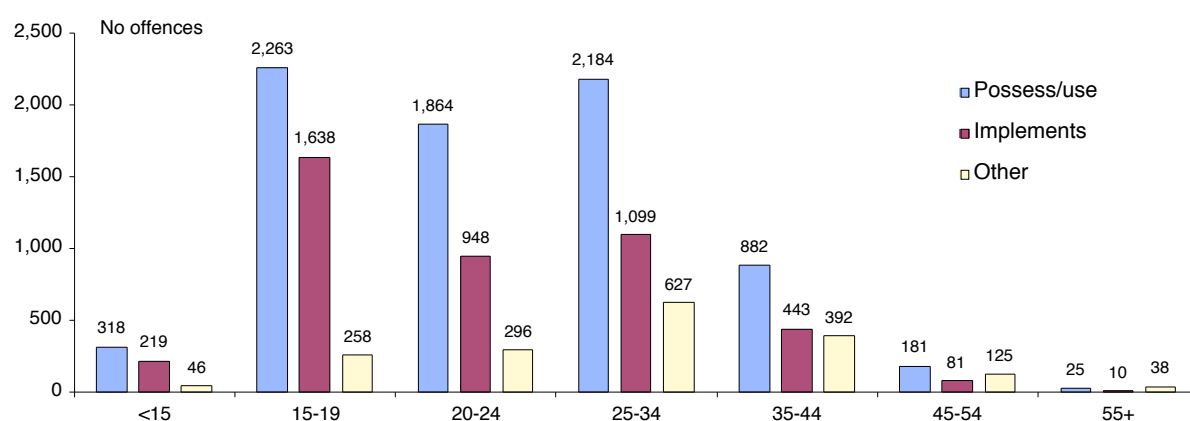
⁵⁶ WA Drug Abuse Strategy Office. *Drug offences in Western Australia: 1998-2000*. Statistical Bulletin No. 10, February 2001.

Table A5-1: Proportion (%) of drug offences by type of offence, WA, 2000

Age group	Possession/use	Implements	Other charges
<15	54.5%	37.6%	7.9%
15-19	54.4%	39.4%	6.2%
20-24	60.0%	30.5%	9.5%
25-34	55.9%	28.1%	16.0%
35-44	51.4%	25.8%	22.8%
45-54	46.8%	20.9%	32.3%
55+	34.2%	13.7%	52.1%

Source: Crime Information Unit, WA Police Service

For all age groups the most frequent offence involved the possession and/or use of drugs. For those aged less than 45 years of age, possession of smoking implements was the second most frequent offence, whereas for those aged 45 years and older, the second most frequent offence involved cultivation charges (Figure A5-1).

Figure A5-1: Number of drug offences by age group and type of offence WA, 2000

Offenders

An analysis by the CRC of crime data for the year 2000 is based on a different measure, the number of *offenders*. This analysis indicates there was a total of 9,273 distinct persons charged with drug offences in WA (11% of all charges), of whom 5,197 were distinct persons charged with cannabis offences, accounting for 56% of drug charges in this State.

A breakdown of 5,197 distinct persons charged with cannabis offences in the year 2000 shows that 1,975 (36%) involved possession/use, 2,702 (52%) involved possession of smoking implements, 364 (7%) involved cultivation and 260 (5%) involved trafficking (ie possession with intent to sell or supply).

In relation to charges for drugs other than cannabis, 81% were for possession/use, 2% were for manufacture or cultivate, 16% were for trafficking and 1% were for other types of offences. There were 54 implement charges for drugs other than cannabis.

The majority of cannabis possession/use offences in the year 2000 were committed by males (82%), non Aboriginals (88%) and adults (95%). Juveniles comprised a slightly larger proportion (8.2%) of

those arrested for possession of a smoking implement than they were for possession of cannabis (5.4%). Young adults (18 to 21 years of age) comprised 22.8% of all cannabis possession/use charges. In the same year 10.6% of the apprehensions or arrests for possession/use of cannabis, the person was held in custody prior to their court hearing.

In the year 2000 there were 7,277 distinct persons charged with cannabis offences and 2,047 distinct persons charged for offences involving drugs other than cannabis which were heard in the Courts of Petty Sessions. In this year 57% of the cannabis charges were for possession/use, of which 0.3% were for make/grow offences, 6% were for trafficking and a further 37% were for implement offences. Overall in the Courts of Petty Sessions:

- 99% of all cannabis charges and 91% of all 'other drug' charges resulted in a guilty verdict;
- 86% of the cannabis possession/use offences resulted in a fine compared to 79% of charges for possession and use of other drugs; and
- 4% of cannabis possession/use charges against persons found guilty in the lower court resulted in a custodial sentence, compared to 6% of such charges for drugs other than cannabis.

For drugs other than cannabis, 81% were for possession use, 0.3% were for manufacture and 19% were for trafficking.

Recidivism (1989 to 1999)

A recent study by the CRC, based on re-arrest statistics for the period 1989 to 1999, found that 46% of the first offenders charged with cannabis possession/use as their most serious offence had not been re-arrested up to 11 years later.⁵⁷

When these individuals were re-arrested this was mostly for other minor offences, 10% being charged for driving a vehicle under the influence of alcohol or drugs, 7% for another possess/use cannabis offence, 4% for other minor drug offences, 3% resist/hinder police and 2% for make/grow cannabis. Other charges included break/enter and theft (10%) and offences against persons (4%).

Seizures

The following information has been provided by the CIU and published by the WA Drug Abuse Strategy Office in a Statistical Bulletin.⁵⁸ From 1998 to 2000 the total number of seizures for all types of drugs in WA increased by 15.5%, from a total of 19,962 in 1998 to a total of 23,054 in 2000.

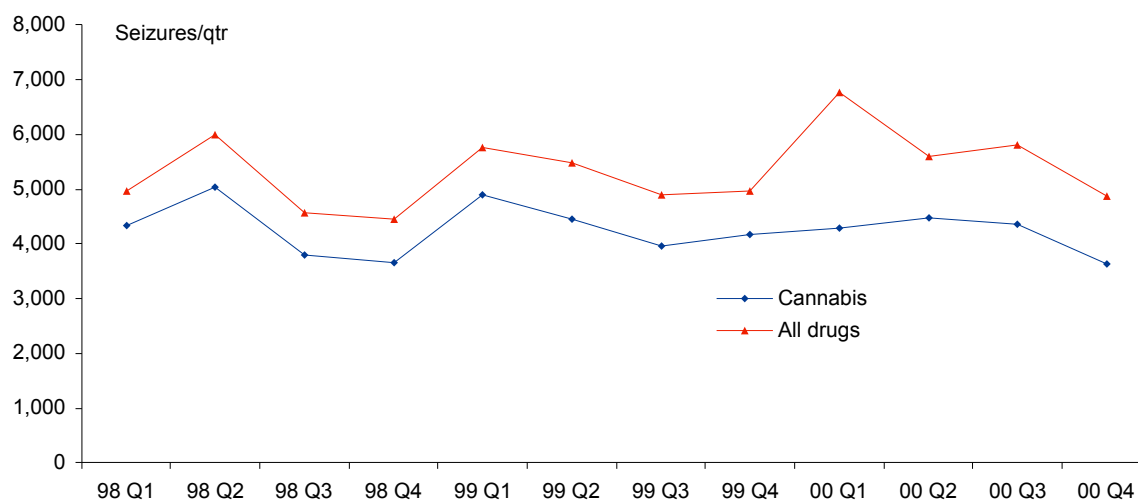
There was a decline of 0.3% in the number of cannabis seizures over this period, whereas there were marked increases in the number of seizures for psychostimulants (eg amphetamines, dexamphetamines, methylamphetamine) and designer drugs (eg ecstasy). There was a decline of 22.4% in the number of heroin seizures.

From 1998 to 2000 there was a change in the proportion of cannabis seizures, dropping from 84% of total seizures in 1998 to 73% of all seizures in 2000. Trends in quarterly seizures for the period 1998 to 2000 are shown in Figure A5-2 (page A40).

⁵⁷ Valuri GM, Indermaur D, Ferrante AM. *The criminal careers of drug offenders in Western Australia: A study of the recidivism and criminal history of those arrested for a drug offence in Western Australia between 1989 and 1999*. Nedlands, University of WA, Crime Research Centre, 2002.

⁵⁸ WA Drug Abuse Strategy Office and WA Police Service. *Seizures of illicit drugs in Western Australia: 1998-2000*. Statistical Bulletin No. 12, May 2001. (Note in November 2001 the WA Drug Abuse Strategy Office was incorporated into a new interim organisation named the Drug and Alcohol Office.)

Figure A5-2: Quarterly seizures of cannabis and all types of drugs WA, 1998-2000



The size of the cannabis market in WA

Introduction

An analysis of the size of the cannabis market in Western Australia and the estimated value of expenditure represented from personal consumption was published in a November 1997 report.⁵⁹ The methodology that was followed in the 1997 study has been updated to take account of more recent data from the 1995 and 1998 NDS household surveys of estimates of the number of cannabis users aged 14 years and older in this State.

Unfortunately, as consumption data for cannabis or other illicit drugs has not been collected by the NDS household surveys, it is necessary to estimate average consumption. Another limitation is that it is very difficult to estimate the actual dose of tetrahydrocannabinol (THC) that users may obtain, 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)”.⁶⁰

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

The Australian Bureau of Criminal Intelligence (ABCI) collates quarterly data on trends in pricing, purity and other indicators of police activity for each jurisdiction. This information is supplied to the ABCI by each jurisdiction’s police service and is published in an annual report known as the Australian Illicit Drug Report.

⁵⁹ Select Committee Into the Misuse of Drugs Act 1981. *Interim report. 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, Legislative Assembly, Western Australian Parliament, 1997, 103-108.

⁶⁰ Hall W, Solowij N, Lemon J. *The health and psychological consequences of cannabis use*. Canberra, Australian Government Publishing Service, 1995, 32.

Expenditure

If the definition of regular use (ie once a week or more often) developed by the CJC inquiry is adopted it is estimated there were 99,976 persons in Western Australia who regularly/frequently used cannabis in 1998 (Table A5-2, page A44).

Based on the 1998 NDS Household Survey (NDSHS) dataset, it was estimated in 1998 that a total of 319,115 persons had used cannabis within the last 12 months, of whom 144,579 (45.3%) had used in the last four weeks and 99,976 (31.3%) had used in the last seven days.

For comparison purposes data for both 1995 and 1998 are presented. It should also be noted that the breakdown of frequency used for the 1997 study under the auspices of the Select Committee was not repeated for the data analysis of the 1995 and 1998 data undertaken by the Australian Institute of Health and Welfare (AIHW).

To estimate the dollar value of all cannabis used in this State, all consumption has been represented as the number of 'joint equivalents' regardless of type of cannabis or method of use. This approach could mean consumption by occasional users may be over estimated, as they are more likely to share than heavy users. Estimation of consumption is also difficult, as it is likely that occasional users may also share more than a single joint on a cannabis using occasion. The shift to hydroponic cultivation means that as a greater amount of cannabis is smoked with bongs compared to joints, this would tend to underestimate the total value of cannabis consumption as hydro is more valuable (see below).

This approach is based on information from the WA police that a joint typically contained about \$5 worth of cannabis. The police data suggests that prices of cannabis in 1998 varied according to quantity and type, as follows:⁶¹

- \$20: leaf (ie non hydroponic) deal (one gram approx);
- \$200-\$300: leaf (ie non hydroponic) 'ounce' bag (28 grams approx);
- \$400-\$500: hydro 'ounce' bag;
- \$2,000-\$3,000: leaf 'pound'; and
- \$3,000-\$5,000: hydro 'pound'.

The analysis of the value that represented personal consumption of cannabis by West Australians in the year 1998 is based on an estimate that there was a total of 319,115 persons who had used cannabis within the last 12 months (Table A5-2, page A44). This consumption was broken down into three sub groups based on recency within this time frame of use for those who had used:

- in the last seven days;
- in the last four weeks; and
- within the past year (ie had not used within the last week or in the last four weeks).

Three scenarios that were developed to represent different frequencies of use assume that the value of a joint equivalent was \$5 per joint in both 1995 and 1998 and the value of an ounce of cannabis was \$240 in 1995 and \$250 in 1998, based on WA law enforcement data collated by the ABCI.

Scenario 1

- used within the last seven days – consumed two joint equivalents 2 times per week;
- used within the last four weeks – consumed two joint equivalents 12 times per year;
- used within the last 12 months – consumed two joint equivalents 6 times per year.

⁶¹ Australian Bureau of Criminal Intelligence. *Australian Illicit Drug Report 1998-1999*. Canberra, Australian Bureau of Criminal Intelligence, 2000, Table 11.17.

Scenario 2

- used within the last seven days – consumed two joint equivalents 5 times per week;
- used within the last four weeks – consumed two joint equivalents 12 times per year;
- used within the last 12 months – consumed two joint equivalents 6 times per year.

Scenario 3

- used within the last seven days – consumed 17.3 ounces per year;
- used within the last four weeks – consumed two joint equivalents 12 times per year;
- used within the last 12 months – consumed two joint equivalents 6 times per year.

The three scenarios provided a range of estimated aggregate expenditures by West Australians (in round figures) on cannabis consumed in both 1995 (Table A5-3, page A41) and 1998 (Table A5-4, page A41), as follows.

Expenditure in 1995

- \$137 million (scenario 1);
- \$301 million (scenario 2); and
- \$464 million (scenario 3).

Expenditure in 1998

- \$140 million (scenario 1);
- \$296 million (scenario 2); and
- \$469 million (scenario 3).

Although all cannabis consumed in both 1995 and 1998 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.

It is to be noted that in both 1995 and 1998 the changes in aggregate expenditure are attributable to the consumption by those who use cannabis within the last 7 days, ie regular/frequent users.

This analysis would suggest that the major influence on demands and price in the cannabis market is determined by the consumption patterns of regular users, ie those who use within the past week, as this group is responsible for between 74% and 92% of total expenditure. One implication of this finding, for instance, is that interventions which targeted this group of users would have a major impact on the structure of the cannabis market compared to interventions which targeted those who used infrequently.

In scenario 1 in 1998 (which assumes that regular/frequent users consumed cannabis twice per week), it is estimated that those who used in the past week accounted for \$104m (74%) of a total expenditure of \$140m (Table A5-4, page A45).

In scenario 2 in 1998 (which assumes that regular/frequent users consumed cannabis five times per week), it is estimated that those who used in the past week accounted for \$260m (87%) of a total expenditure of \$296m (Table A5-4, page A45).

In scenario 3 in 1998 (which assumes that regular/frequent users consumed a total of 17.3 ounces of cannabis in a year), it is estimated that those who used in the past week accounted for \$432m (92%) of a total expenditure of \$469m (Table A5-4, page A45).

In 1998 the value of cannabis consumption in this State ranged between \$140 million and \$469 million. It is suggested that the result from scenario 3 may provide the best estimate of the total value of cannabis used by West Australians, as it combines the CJC's estimate of consumption of regular/frequent users (ie those who used weekly or more often) and the estimate of consumption by

less frequent users (ie those who used about once per month, every few months and 1-2 times per year).

If cannabis consumption of West Australians in 1998 had a value of \$469 million as indicated in scenario 3, when broken down by age group, there was a total expenditure of:

- \$108 million by 14-19 year olds;
- \$211 million by 20-29 year olds;
- \$76 million by 30-39 year olds;
- \$73 million by those aged 40 years and older.

Value of seizures of plants

An alternative methodology to estimate expenditure on cannabis by consumers, is to estimate the market value of the cannabis cultivated in Western Australia each year. One approach is to estimate the total value of the cannabis crop from police seizure data. It is not known what proportion of all mature cannabis plants are seized by the State police each year, 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 record seizures, data is only available for the period 1984/1985 to 1993/1994 (Table A5-5, page A46). 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. As reliable police annual seizure data is not available after 1993/1994 the mean of 48,290 plants has been extrapolated to the years 1995 and 1998.

Two methodologies are suggested for estimating the number of mature producing cannabis plants cultivated per year. 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'.

Method 1

If the seizure of a mean of 48,290 plants per year represented only 20% of all mature cannabis plants, an average of 193,160 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 96,580 mature producing plants in this State.

Method 2

If the seizure of 48,290 plants represented only 10% of all mature cannabis plants, 434,610 viable producing plants still remained.⁶² 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.

Detailed information published from 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 \$2,000.⁶³ Therefore, if each remaining mature producing plant was assumed to have produced at least \$2,000 worth of viable cannabis, 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.

⁶² The Williams Royal Commission adopted a 10 per cent rule of thumb for seizures. Cf Australia, Parliament, Parliamentary Joint Committee on the National Crime Authority. *Drugs crime and society*. Canberra, Australian Government Publishing Service, 1989, 37.

⁶³ de Launey C. "The real value of a cannabis plant". (1996) 21 *Alternative Law Journal* 127.

In 1995 there was a surplus of \$29 million between the estimated total value of the cannabis crop of \$435 million, and the aggregate value of cannabis consumption of \$464 million (as estimated in scenario 3).

In 1998 there was a surplus of \$34 million between the estimated total value of the cannabis crop of \$435 million, and the aggregate value of cannabis consumption of \$469 million (as estimated in scenario 3).

Summary

This analysis of the cannabis use in this State highlights the limited knowledge we have about the patterns, frequency and value of cannabis consumption. The data from the 1995 and 1998 NDS Household Surveys, while subject to qualification because of sampling errors, have been used as the basis for the calculations that were made.

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, which it is concluded indicates that in the year 1998:

- 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 319,115 persons used cannabis in the last 12 months; and
- the aggregate value of the WA cannabis was \$469 million.

Table A5-2: Estimated prevalence of cannabis use by sex, age group and frequency of use, WA, 1998

	Lifetime		Last 12 months		Last 4 weeks		Last 7 days	
	n	%	n	%	n	%	n	%
Males								
14-19	31,551	38.1	26,748	32.3	18,549	22.4	17,970	21.7
20-29	114,276	78.3	97,784	67.0	56,335	38.6	38,822	26.6
30-39	89,557	61.6	29,513	20.3	17,010	11.7	11,631	8.0
40+	105,942	29.6	39,728	11.1	14,674	4.1	8,232	2.3
All ages	341,325	47.5	193,773	27.3	106,569	15.0	76,654	10.8
Females								
14-19	37,678	48.1	28,200	36.0	9,792	12.5	5,718	7.3
20-29	92,849	66.9	43,440	31.3	10,409	7.5	6,523	4.7
30-39	86,793	60.4	29,027	20.2	6,179	4.3	4,598	3.2
40+	85,325	23.1	22,901	6.2	11,820	3.2	7,018	1.9
All ages	302,644	42.2	123,568	17.2	38,199	5.3	23,858	3.3
Persons								
14-19	69,130	42.9	54,949	34.1	28,200	17.5	23,527	14.6
20-29	207,001	72.7	142,936	50.2	66,343	23.3	44,988	15.8
30-39	176,340	61.0	58,684	20.3	23,127	8.0	16,189	5.6
40+	190,548	26.2	62,546	8.6	26,909	3.7	15,273	2.1
All ages	643,019	44.8	319,115	22.3	144,579	10.1	99,976	7.0

Source: Australian Institute of Health and Welfare. 1998 National Drug Strategy Household Survey: Western Australia results. Canberra, Australian Institute of Health and Welfare, 2000, Table 3.8.

Table A5-3: Estimated expenditure (\$) on cannabis by persons, WA, 1995

	Last 12 months	Last 4 weeks	Last 7 days	Total
Scenario 1				
14-19	\$2,168,522	\$1,848,276	\$16,018,390	\$20,035,187
20-29	\$6,416,014	\$8,500,405	\$54,758,673	\$69,675,092
30-39	\$3,825,752	\$3,468,681	\$26,525,210	\$33,819,643
40+	\$1,312,134	\$1,351,896	\$11,716,430	\$14,380,460
All ages	\$13,722,421	\$15,169,257	\$109,018,703	\$137,910,382
Scenario 2				
14-19	\$2,168,522	\$1,848,276	\$40,045,975	\$44,062,772
20-29	\$6,416,014	\$8,500,405	\$136,896,682	\$151,813,101
30-39	\$3,825,752	\$3,468,681	\$66,313,026	\$73,607,459
40+	\$1,312,134	\$1,351,896	\$29,291,075	\$31,955,105
All ages	\$13,722,421	\$15,169,257	\$272,546,758	\$301,438,436
Scenario 3				
14-19	\$2,168,522	\$1,848,276	\$63,950,341	\$67,967,139
20-29	\$6,416,014	\$8,500,405	\$218,613,471	\$233,529,889
30-39	\$3,825,752	\$3,468,681	\$105,896,802	\$113,191,234
40+	\$1,312,134	\$1,351,896	\$46,775,593	\$49,439,623
All ages	\$13,722,421	\$15,169,257	\$435,236,207	\$464,127,886

Table A5-4: Estimated expenditure (\$) on cannabis by persons, WA, 1998

	Last 12 months	Last 4 weeks	Last 7 days	Total
Scenario 1				
14-19	\$3,296,965	\$3,383,982	\$24,467,801	\$31,148,749
20-29	\$8,576,158	\$7,961,135	\$46,787,327	\$63,324,619
30-39	\$3,521,019	\$2,775,187	\$16,836,136	\$23,132,342
40+	\$3,752,780	\$3,229,137	\$15,883,861	\$22,865,778
All ages	\$19,146,922	\$17,349,440	\$103,975,124	\$140,471,487
Scenario 2				
14-19	\$3,296,965	\$3,383,982	\$61,169,503	\$67,850,451
20-29	\$8,576,158	\$7,961,135	\$116,968,316	\$133,505,609
30-39	\$3,521,019	\$2,775,187	\$42,090,339	\$48,386,545
40+	\$3,752,780	\$3,229,137	\$39,709,652	\$46,691,569
All ages	\$19,146,922	\$17,349,440	\$259,937,811	\$296,434,173
Scenario 3				
14-19	\$3,296,965	\$3,383,982	\$101,753,116	\$108,434,063
20-29	\$8,576,158	\$7,961,135	\$194,572,296	\$211,109,588
30-39	\$3,521,019	\$2,775,187	\$70,015,660	\$76,311,866
40+	\$3,752,780	\$3,229,137	\$66,055,478	\$73,037,395
All ages	\$19,146,922	\$17,349,440	\$432,396,550	\$468,892,913

Table A5-5: Quantities of cannabis seized, WA, 1984/85 - 1993/94

Year	Plants	Leaf (kgs)	Resin (kgs)
1984/85	33,297	362.829	188.498
1985/86	37,704	300.924	3.648
1986/87	63,353	234.392	3.964
1987/88	44,843	270.25	0.664
1988/89	40,498	271.171	2.565
1989/90	36,155	376.500	0.804
1990/91	60,675	603.3	0.067
1991/92	53,213	490.39	0.647
1992/93	74,656	658.303	0.671
1993/94	38,503	805.47	0.358
Total	482,897	4,373.5	201.9

Source: WA Police Department, Annual Reports.

Prevalence

Adults and young people

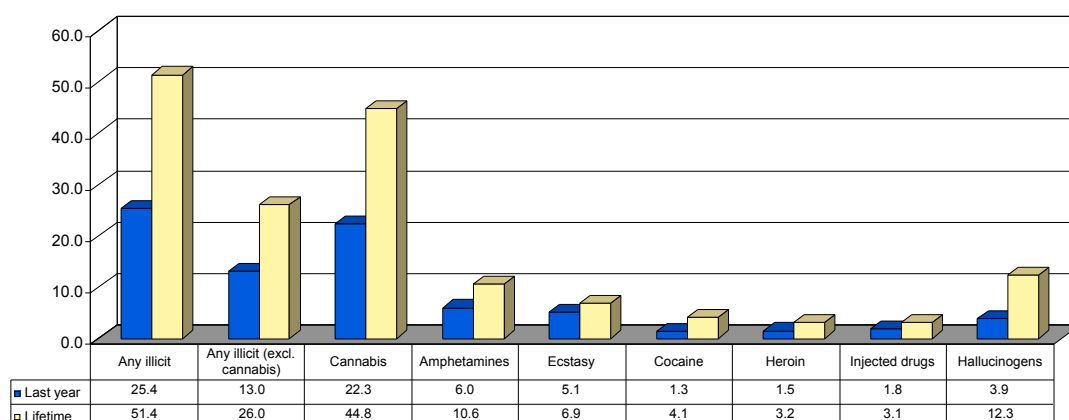
The 1998 NDSHS is the most recent general population survey on the use of illicit drugs in Australia.

The survey showed 51.4% of West Australian adults and young people (ie all persons aged 14 years and older), had used any illicit drug in their lifetime. If cannabis is excluded then 26.0% had used any other illicit drug in their lifetime (Figure A5-3, page A47). (Illicit drugs were defined as illegal drugs, drugs and volatile substances used illicitly, and pharmaceuticals used for non medical purposes.)

It was estimated that 741,565 West Australian adults and young people had used any illicit drug in their lifetime. Of these, a total of 373,225 (50.3%) had used any illicit drug other than cannabis in their lifetime (Table A5-6).

Table A5-6: Estimated number of persons aged 14 years and over who have used illicit drugs, WA, 1998

	Lifetime	Last year
Cannabis	643,020	319,115
Steroids	9,810	2,295
Inhalants	62,080	18,805
Heroin	45,435	20,780
Amphetamines	149,870	84,125
Cocaine	59,030	18,395
Hallucinogens	175,510	55,050
Ecstasy/designer drugs	95,970	71,825
Any illicit drug	741,565	364,175
Any illicit drug excluding cannabis	373,225	184,685

Figure A5-3: Recent use (%) of illicit drugs by persons aged 14 years and over, WA, 1998

The survey also estimated that there was a total of 364,175 adults and young people who had recently used (ie last 12 months) any illicit drug. Of these, a total of 184,685 (50.7%) had used any illicit drug other than cannabis in the last year (Table A5-6, page A46).

The most prevalent drug ever used by West Australian adults and young people is cannabis with 44.8%, followed by hallucinogens (12.3%), amphetamines (10.6%), ecstasy (6.9%), cocaine (4.1%) and heroin (3.2%). Overall, 3.1% of West Australian adults and young people report having ever injected an illicit drug.

The pattern of recent use indicates that just over one in five West Australian adults and young people (22.3%) have used cannabis, followed by amphetamines (6.0%), ecstasy (5.1%) and hallucinogens (3.9%). Cocaine and heroin are used by only a small number of individuals, with about 1% reporting use of either of these drugs.

School students

The 1999 Australian School Students Alcohol and Drugs (ASSAD) national survey has the most recent prevalence data for WA school students aged 12 to 17. (Illicit drugs were defined in the survey as cannabis, tranquillisers, steroids, inhalants, amphetamines, ecstasy, cocaine, heroin and LSD/hallucinogens.)

Nearly four in 10 (38.3%) of West Australian school students had ever used cannabis, with one third (33.2%) having used in the last year and one in five (20.4%) having used in the last month (Table A5-7, page A48).

Table A5-7: Use of illicit drugs by school students 12-17 years, WA, 1999

	Lifetime	Last year	Last month	Last week
Cannabis	38.3	33.2	20.4	12.7
Tranquillisers	20.8	13.2	5.7	3.3
Inhalants	20.3	14.9	8.0	5.0
Amphetamines	14.3	11.9	6.3	3.8
Steroids	3.5	2.3	1.3	0.9
Cocaine	4.0	3.1	1.5	0.9
Ecstasy	6.4	5.3	2.6	1.4
Heroin	4.1	3.1	1.7	1.1
LSD/hallucinogens	10.1	7.6	3.1	1.5
Injected drugs	5.9	4.6	2.8	1.5

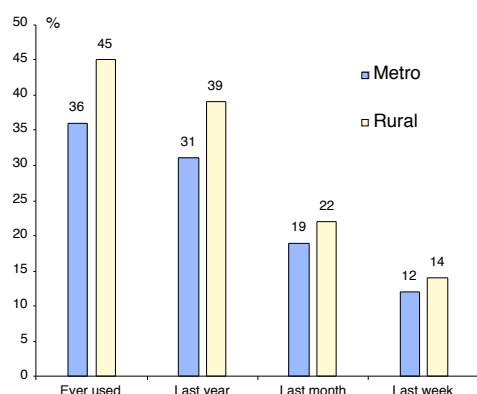
Source: Health Department of WA. Drug use among 12 to 17 year old Western Australian school students in 1999, Table 9.

Amphetamines was the second most prevalent illicit drug having been ever used by 14.3% of WA school students, with 11.9% having used in the last year and 6.3% used in the last month. The third most prevalent illicit drug used by WA school students was LSD/hallucinogens with one in 10 having ever used, 7.6% having used in the last year and 3.1% used in the last month.

The 1999 ASSAD survey also compared the prevalences of commonly used drugs of metropolitan compared to rural school students. No differences were recorded for the majority of illicit drugs.

However, it was found that students living in rural areas were more likely than metropolitan students to have used cannabis. Just under half of rural students (45%) compared to just over a third of metropolitan students (36%) had ever used cannabis with nearly four out of ten (39%) rural students vs just over three out of 10 (31%) metropolitan students having used in the last year (Figure A5-4).

There was little overall change between the 1996 and 1999 ASSAD surveys of students who had used at least one illicit drug. The changes that had occurred in 1999 are shifts in preferences for particular drugs rather than increases or decreases in the use of illicit drugs overall. For 12 to 17 year olds significant increases occurred in the lifetime use of amphetamines ($p \leq .01$), ecstasy ($p \leq .01$) and steroids ($p \leq .01$). Significant decreases occurred in the lifetime use of cannabis ($p \leq .01$), inhalants ($p \leq .01$) and LSD/hallucinogens ($p \leq .05$).

Figure A5-4: Use of cannabis by metro vs rural school students 12-17 years, WA, 1999

WA vs other Australian jurisdictions

Comparative prevalence data from the 1998 NDSHS has been compiled by the AIHW.⁶⁴ This data indicates variations by age group within and between jurisdictions. However, it is difficult to draw conclusions about effects of recent changes in the law without also taking into account other factors, such as policing practices, education, community services, socio demographic factors etc which impact on the availability of drugs and opportunities for drug use within specific jurisdictions.

As drug use is also a function of age, shifts in prevalence need to be interpreted by overall patterns of drugs across all age groups within a jurisdiction as well as in other jurisdictions. It should also be noted that prevalence information involves self report data, collected by a separate sealed section at the time the survey is undertaken.

For instance, with respect to recent use (ie in the past 12 months) for all age groups, New South Wales (16.7%), Victoria (17.8%), Queensland (17.5%), South Australia (17.6%) and Tasmania (15.9%) had rates below the national mean rate of 17.9%. Above national rates were recorded in Western Australia (22.3%), the ACT (20.3%) and the Northern Territory (36.5%) (Table A5-8, page A51).

However, with respect to lifetime rates of cannabis use for all age groups, New South Wales (38.9%), Victoria (35.3%) and Tasmania (37.6%) had rates below the national mean rate of 39.1%. Above national rates were recorded in Queensland (40.2%), Western Australia (44.8%), South Australia (38.3%), ACT (46.1%) and Northern Territory (59.1%) (Table A5-8, page A51).

A study was undertaken of data from the five National Drug Strategy Household Surveys covering the period 1985 to 1995 to determine whether there were greater increases in lifetime and weekly rates of cannabis use in South Australia compared to the rest of Australia.

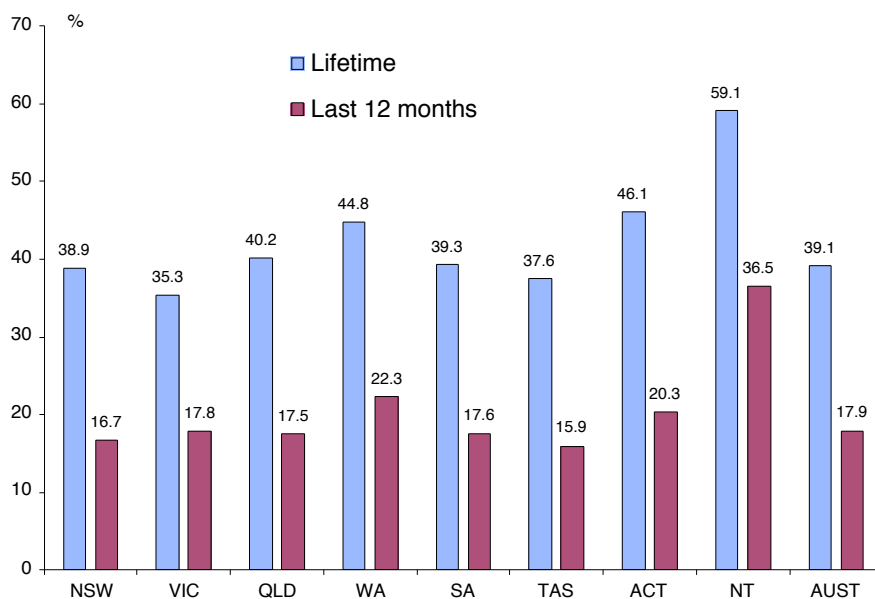
This study found that there was a significantly greater than average increase in lifetime use of cannabis in South Australia than occurred in the rest of Australia. However, it was also noted that similar rates of increase occurred in a number of states which had prohibition policies in regard to the personal use of cannabis compared to South Australia. It was concluded that

“There has been a greater increase in self reported lifetime cannabis use in South Australia between 1985 and 1995 than in the average of the other Australian states and territories. However, it seems unlikely that this increase is due to the CEN system because similar increases occurred in Tasmania and Victoria (where there was no change in the legal status of cannabis use), the rate of increase in cannabis use among young adults aged 14 to 20 years was not significantly greater in South Australia than the other jurisdictions, and there was no increase in the rate of weekly cannabis use in South Australia between 1985 and 1995.”⁶⁵

⁶⁴ Fitzsimmons G & Cooper-Stanbury M. 1998 *National Drug Strategy Household Survey: State and Territory results*. Canberra, Australian Institute of Health and Welfare, 2000 (Table 5.2, Table 5.6).

⁶⁵ Donnelly N, Hall W, Christie P. *Effects of the cannabis expiation notice scheme on levels and patterns of cannabis use in South Australia: evidence from the National Drug Strategy Household Surveys 1985-1995*. Canberra, Department of Health & Aged Care, 1998,1.

Figure A5-5: Recency (%) of cannabis use, persons aged 14 years and over by jurisdiction, 1998



To provide a wider context of the use of cannabis, additional information is presented about the use of all illicit drugs, and the use of illicit drugs excluding cannabis. Western Australia has the second highest overall rate of recent use (ie last 12 months) of any illicit drug. Recent use of all illicit drugs is greater by males than females in WA and in all jurisdictions.

Male rates above the national average (of 26.2%) were reported in the Northern Territory (51.9%), WA (31.3%), Victoria (28.0%), Tasmania (26.9%), ACT (26.8%) and SA (26.4%).

Female rates above the national average (19.5%) were reported in the Northern Territory (27.1%), WA (22.7%) and the ACT (22.6%), SA (21.5%) and Queensland (20.4%).

Cannabis is the most widely used illicit drugs, as indicated in the lower portion of Table A5-9. Overall there was a national average of 11.0% of recent use of any illicit drug excluding cannabis, with higher than national rates reported in the Northern Territory (14.6%), WA (13.6%), SA (12.8%) and Victoria (12.5%) (Table A5-9, page A51).

Table A5-8: Recency (%) of cannabis use, persons aged 14 years and over by jurisdiction, 1998

Age group	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUS
Lifetime									
14-19	44.1	46.9	42.6	42.9	54.5	43.4	45.1	45.0	45.2
20-29	60.0	60.7	67.5	72.7	66.9	71.8	64.7	69.8	63.9
30-39	58.4	51.1	59.0	61.0	53.1	53.1	63.4	80.6	56.8
40+	22.6	17.2	21.4	26.2	21.6	19.6	29.5	41.3	21.4
Males	43.5	41.2	44.2	47.5	42.5	44.1	51.6	66.5	43.8
Females	34.4	29.7	36.2	42.2	36.2	31.2	40.6	50.9	34.6
Persons	38.9	35.3	40.2	44.8	39.3	37.6	46.1	59.1	39.1
Last 12 months									
14-19	35.5	36.7	29.3	34.1	45.9	30.6	32.1	38.4	35.1
20-29	31.9	36.4	38.3	50.2	37.5	40.6	36.1	47.4	36.9
30-39	20.3	21.4	16.7	20.3	20.1	16.6	24.8	53.5	20.3
40+	6.0	5.5	7.1	8.6	4.3	4.6	7.5	16.6	6.2
Males	19.3	22.2	20.6	27.3	20.1	19.0	23.0	47.5	21.4
Females	14.2	13.5	14.5	17.2	15.1	12.9	17.6	24.6	14.5
Persons	16.7	17.8	17.5	22.3	17.6	15.9	20.3	36.5	17.9

Source: Fitzsimmons G & Cooper-Stanbury M. 1998 National Drug Strategy Household Survey: State and Territory results. Canberra, Australian Institute of Health and Welfare, 2000, Table 5.2; Table 5.6.

Table A5-9: Recent drug use (last 12 months) (%) of persons aged 14 years and over by jurisdiction, 1998

Age group	NSW	VIC	QLD	WA	SA	TAS	ACT	NT	AUS
Any illicit drug									
14-19	39.4	41.1	33.2	35.8	47.8	39.2	36.9	41.1	38.9
20-29	37.5	42.3	43.7	52.9	43.1	43.9	40.0	49.4	42.1
30-39	22.8	27.8	23.0	26.7	23.9	21.9	29.2	59.2	25.1
40+	9.5	10.8	11.5	13.5	12.3	12.3	11.8	19.1	11.0
Males	23.5	28.0	24.7	31.3	26.4	26.9	26.8	51.9	26.2
Females	17.6	19.2	20.4	22.7	21.5	18.4	22.6	27.1	19.5
Persons	20.5	23.5	22.5	26.9	23.9	22.6	24.7	39.9	22.8
Any illicit drug excluding cannabis									
14-19	17.0	15.5	15.2	17.3	18.9	15.1	17.0	16.5	16.4
20-29	20.9	25.0	19.6	32.5	24.0	13.8	21.0	23.0	23.0
30-39	7.4	11.4	9.9	10.3	8.3	6.5	7.8	16.3	9.3
40+	4.1	7.6	5.0	5.7	9.4	9.1	5.8	5.8	5.9
Males	11.2	14.3	9.8	17.6	14.1	12.1	12.7	21.1	12.7
Females	7.4	10.9	10.2	9.7	11.6	8.2	9.3	7.7	9.4
Persons	9.3	12.5	10.0	13.6	12.8	10.1	11.0	14.6	11.0

Source: Fitzsimmons G & Cooper-Stanbury M. 1998 National Drug Strategy Household Survey: State and Territory results. Canberra, Australian Institute of Health and Welfare, 2000, Table 5.7.

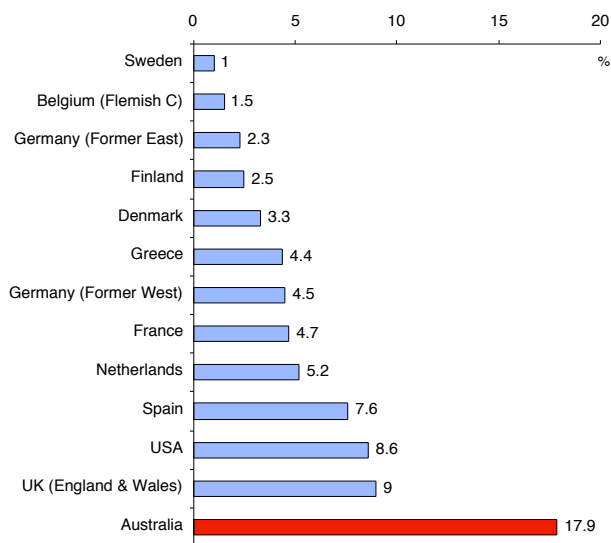
Australia vs other countries

Adults

As variations in methodology, sample size, age groups and year of survey will affect comparability of results between different countries, caution should be exercised in interpretation of cross national data.

A study by the WA Drug Abuse Strategy Office in December 2000 of a number of surveys showed Australia may have the highest adult rates of annual use of cannabis, amphetamines and ecstasy compared to other Western countries. The Australian rate (17.9%) for cannabis is about twice the rate of the UK (9.0%), the United States (8.6%) and Spain (7.6%) (Figure A5-6).

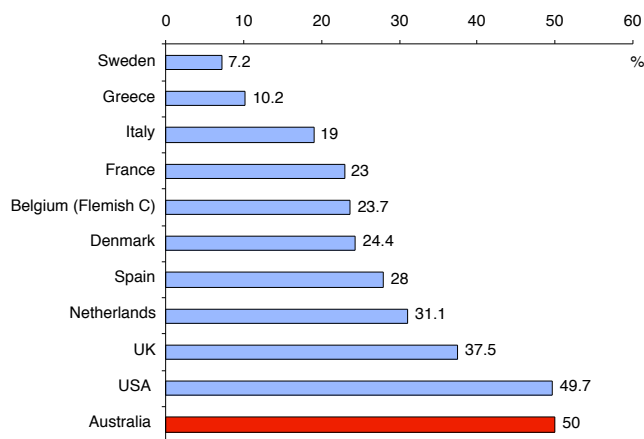
Figure A5-6: Annual adult prevalence (%) of cannabis use by country



Youth

The United States and Australia share the highest rate of lifetime use of cannabis, used by half of young people (Figure A5-7, page A53).

The relatively high prevalence of cannabis use by young people in different nations is also shown by the results in the UK, Netherlands, Spain and Denmark, with between a quarter and a third having ever used.

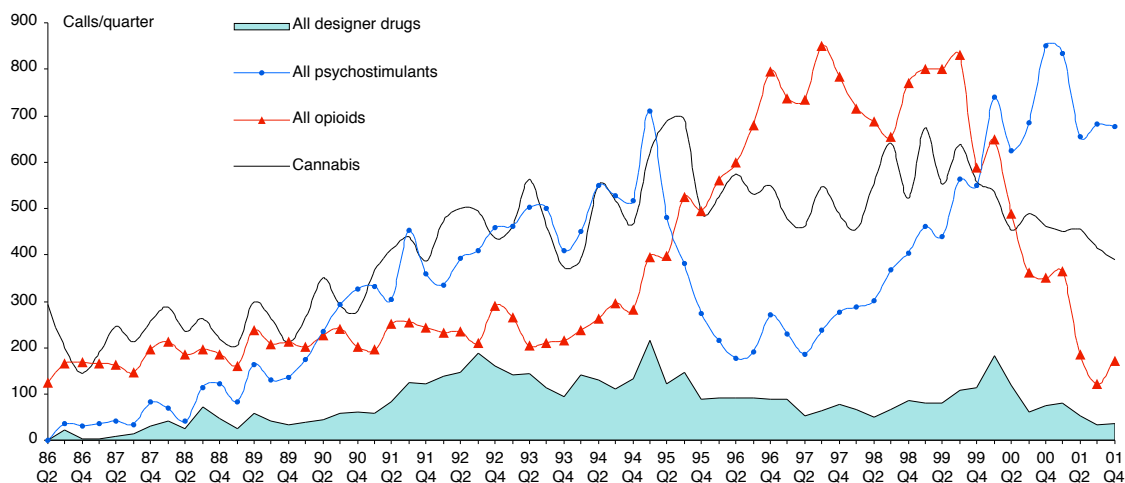
Figure A5-7: Lifetime youth prevalence (%) of cannabis use by country

Drug related telephone calls

Calls received by the Alcohol and Drug Information Service (ADIS) are sensitive indicators of shifts in problems caused by the abuse of different drugs in the community.

An overview of trends in the number of calls concerned with major illicit drug groups, cannabis, opioids, psychostimulants and designer drugs shows that from early 1986 indicate that until the end of 1990 most calls were concerned with cannabis (Figure A5-8).

However, over the 10 year period from 1991 to 2000 there have been a number of pronounced cyclical variations in calls related to psychostimulants (eg amphetamines) and opioids (eg heroin) compared to cannabis.

Figure A5-8: Trends in major illicit drug related calls received by ADIS 1986 quarter 2 – 2001 quarter 4

The number of cannabis related calls increased from the June quarter 1986 to the September quarter 1995 (nearly 700 calls), then dropped slightly to between about 500 to 600 calls per quarter. After

peaking with 673 calls in the March quarter 1999, cannabis related calls have steadily declined, with 390 calls received in the December quarter 2001 (Table A5-10).

Table A5-10: Quarterly ADIS cannabis related telephone calls, 1986 qtr 2 – 2001 qtr 4

Year	Quarter	No. calls	Year	Quarter	No. calls
1986	March	na	1994	March	392
	June	293		June	549
	September	200		September	518
	December	145		December	466
	Total	638		Total	1,925
1987	March	190	1995	March	619
	June	246		June	688
	September	212		September	692
	December	257		December	490
	Total	905		Total	2,489
1988	March	289	1996	March	526
	June	236		June	574
	September	264		September	530
	December	219		December	550
	Total	1,008		Total	2,180
1989	March	206	1997	March	477
	June	298		June	463
	September	263		September	547
	December	211		December	488
	Total	978		Total	1,975
1990	March	265	1998	March	455
	June	350		June	553
	September	290		September	642
	December	279		December	522
	Total	1,184		Total	2,172
1991	March	369	1999	March	673
	June	411		June	554
	September	439		September	638
	December	386		December	558
	Total	1,605		Total	2,423
1992	March	474	2000	March	536
	June	500		June	454
	September	496		September	488
	December	436		December	463
	Total	1,906		Total	1,941
1993	March	463	2001	March	451
	June	563		June	456
	September	463		September	415
	December	374		December	390
	Total	1,863		Total	1,712

Source: Alcohol and Drug Information Service.

Community attitudes

National surveys

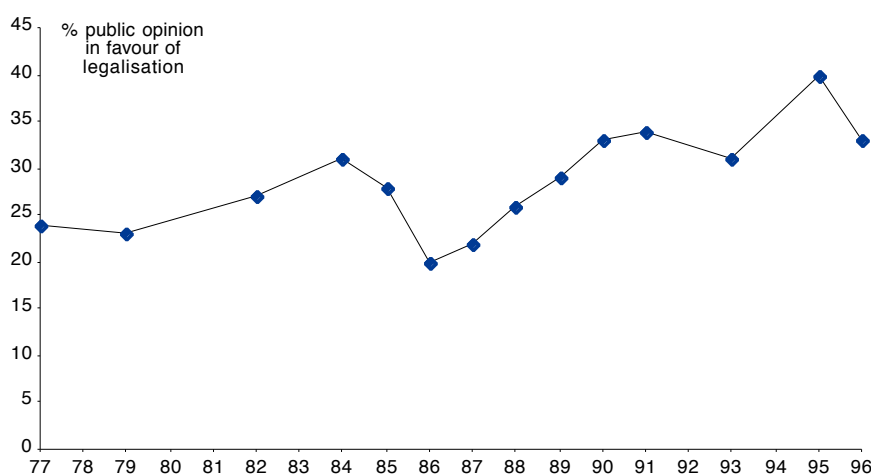
A series of public opinion polls in Australia since 1977 have asked questions about the legal status of cannabis. The Morgan Gallup polls have been the source of the most consistent data, as they have sampled this issue on a number of occasions over the past two decades.

The results of the Morgan Gallup poll plus the results from the NDS Household Surveys, the National Social Science Surveys (in 1984-85 and 1986-87), and the 1987, 1990 and 1993 Australian Election Study surveys were published in 1997.⁶⁶ A major study was published in 1998 which reviewed trends in public opinion, based on results from the five NDS Household Surveys in 1985, 1988, 1991, 1993 and 1995, which provides a helpful summary of the major factors which research has identified as determining community attitude on drug related issues. It was 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 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.”⁶⁷

These data are reproduced in Figure A5-9⁶⁸ and suggest two broad peaks of support for legalisation of cannabis. The first peak occurred in the mid 1980s, when about three out of every 10 supported change, and again in the mid 1990s, when one in three were in favour. There was a major decline in support in the mid 1980s. The recent relative decline in support (from 40% in 1995 to 33% in 1996) does not enable conclusions to be made at this stage as to whether this drop was a temporary fluctuation in an upward trend, or the commencement of another decline in support.

Figure A5-9: Trends in public opinion towards legalising cannabis in Australia, 1977 - 1996



⁶⁶ Makkai T & McAllister I. *Marijuana in Australia: patterns and attitudes*. Canberra, Commonwealth Department of Health and Family Services, 1997, 83.

⁶⁷ Makkai T, McAllister I. *Public opinion towards drug policies in Australia 1985-95*. Canberra, Commonwealth Department of Health and Family Services, 1998, 30.

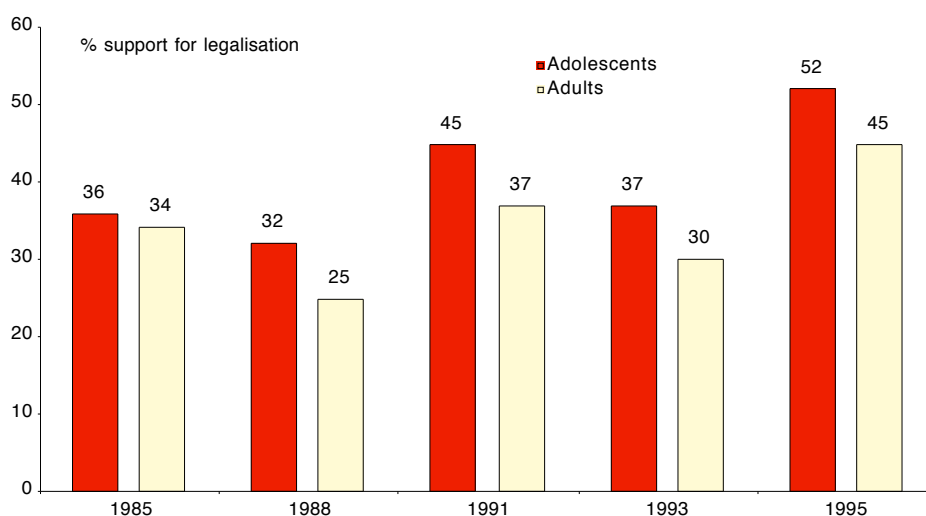
⁶⁸ Originally published in Select Committee Into the Misuse of Drugs Act 1981. *Final report. Finding the right balance Working together as a community to prevent harm from illicit drugs and to help individuals and families in need*. Perth, Legislative Assembly, Western Australian Parliament, 1998, 245.

Legalisation

Given the NDS household surveys collect demographic data, it is possible to identify factors which determine public opinion on the legal status of cannabis.⁶⁹ One area of interest is generational differences towards decriminalisation of cannabis laws.

There is a similar pattern of support among adolescents (as with adults) in support of decriminalisation of the law on cannabis use. Based on the five NDS surveys from 1985 to 1995, about 40% of adolescents and 34% of adults support decriminalisation. The gap between adolescent and adult support on this issue has been between 7 and 8% (except for the 1985 survey, when there was only a 2% difference) (Figure A5-10).

Figure A5-10: Trends in public opinion towards legalising cannabis in NDS Household Surveys, Australia, 1985 - 1995



The most recent Australian data from the 1998 NDSHS shows that more than one in four (29%) Australians aged 14 years and over supported legalising cannabis for personal use, down from 42% in 1995.⁷⁰ In 1995 survey, support was greatest among those aged 20-34 (52%) compared to those 55 or older (27%), and among those who had tried cannabis (70%).

Significant differences in public opinion have often been found between the various Australian states and territories.⁷¹ For example, in the 1998 NDSHS support for the legalisation of cannabis was highest in the Northern Territory (44%) and WA (32%). Except for the WA case, the states and territories with prohibition with civil penalties in place for minor cannabis offences had higher rates of support for legalisation of cannabis for personal use (SA 32%, ACT 34%, NT 44%) than other jurisdictions which maintained criminal penalties.

⁶⁹ The information in this and the following two sections are based on work by Lenton (unpublished) prepared for the literature review for his PhD thesis.

⁷⁰ Adhikari P & Summerill A (2000).

⁷¹ Bowman J & Sanson-Fisher R. *Public perceptions of cannabis legislation*. Canberra, Australian Government Publishing Service, 1994; Fitzsimmons G & Cooper-Stanbury M. *1998 National Drug Strategy Household Survey: State and Territory results*. Canberra, Australian Institute of Health and Welfare, 2000; Makkai T & McAllister I. *Public opinion towards drug policies in Australia 1985-95*. Canberra, Commonwealth Department of Health and Family Services, 1998; Roy Morgan Research Centre Pty. Ltd. *Majority of Australians believe marijuana should remain illegal, Finding no. 3139*. 20 October 1998.

Roy Morgan Research polls suggest that the proportion of the adult Australian community who believes that smoking of cannabis should be made legal increased from about 24% in the late 1970's to 31% in 1984, after which it decreased to 25% in 1987 and has it steadily increased to 33% in 1993 where it remained until 2001 when it reduced to 31%.⁷²

According to Makkai and McAllister (1997) the decline in support for legalisation in the mid 1980's is similar to that observed in the USA where the decline began in the late 1970's and was probably due to a more conservative economic situation, increasing youth unemployment and a general weakening of interest in illicit drug use generally. They speculate that the increase in support for cannabis law reform in the 1990's may be due to generational change.

Data from the 1998 Morgan poll suggest the highest levels of support for legalising cannabis among the Australian community come from those aged 18 to 24 years (42%) and 25 to 34 years (41%), followed by those aged 35 to 49 years (36%). Lowest levels of support come from Australians aged 14 to 17 years (28%) and Australians aged 50 or over (24%). Among those looking for work, nearly half (48%) support the legalisation of marijuana. In comparison, 37% of those who are employed and 27% of those who are not looking for work support the legalisation of marijuana. There was no difference in opinions regarding legalisation of marijuana between white collar (37%) or blue collar (37%) workers.

However, support for legalisation of marijuana was highest among more educated Australians and gradually declined with lower levels of education. Among those who had completed at least some tertiary education, support for the legalisation of marijuana was 39%. Support for the legalisation of marijuana fell to 34% for those who had only completed years 11 or 12 (ie had not completed tertiary education), 32% for those who had completed year 10 and 28% for those who had some secondary education. Only 18% of those who had only completed primary school believed marijuana should be legalised.

Civil penalties

In Australia, attitudes to civil penalties for cannabis have been measured Roy Morgan Research polls and recently through the National Drug Strategy Household Surveys. Data from Morgan polls indicate that support for the application of civil penalties to minor cannabis offences has remained at between 45% and 49% over the five surveys conducted from 1979 to 1987.⁷³

A national survey conducted for the National Task force on Cannabis, found that approximately 75% of the sample in their 1993 Australian survey believed that 'growing or possessing cannabis for personal use' and 'using cannabis' should not be criminal offences.⁷⁴ In this survey, unlike others, considerable effort was taken to explain the terms used including 'criminal' vs. 'non-criminal' in order to reduce definitional confusion and the authors believed that the high level of support they found for civil penalties compared to other surveys was largely a function of the terms having being explained to respondents.⁷⁵

There were no significant differences between males and females in terms of support for cannabis use not being a criminal offence (51% vs 47%, $p=0.219$), but younger respondents (aged 18-34) were more likely than those older to support non criminal penalties for cannabis possession and use ($p=0.000$).

⁷² Roy Morgan Research Centre Pty. Ltd. *Majority of Australians believe marijuana should remain illegal*, Finding no. 3139. 20 October 1998; Canberra Times. "Majority want marijuana to stay illegal." Canberra Times, 27 January 2002.

⁷³ Advisory Committee on Illicit Drugs. *Cannabis and the law in Queensland. A discussion paper prepared for the Queensland Criminal Justice Commission*. Brisbane, Criminal Justice Commission, 1993; Roy Morgan Research Centre Pty. Ltd. *Majority of Australians believe marijuana should remain illegal*, Finding no. 3139. 20 October 1998.

⁷⁴ Bowman J & Sanson-Fisher R. *Public perceptions of cannabis legislation*. Canberra, Australian Government Publishing Service, 1994.

⁷⁵ Bowman J & Sanson-Fisher R. *Public perceptions of cannabis legislation*. Canberra, Australian Government Publishing Service, 1994, 55-56.

Interestingly, when asked what sort of penalties should apply if the offences were illegal, males were significantly more likely to say that they should be criminal as opposed to non criminal. For example if possession of cannabis for personal use were illegal, 33.9% of males as compared to 47.6% of females thought it should be a non criminal offence ($p=0.000$).

In the 1995 NDSHS respondents were asked “*Do you think that the possession of small amounts of marijuana for personal use should be a criminal offence, that is, should offenders get a criminal record?*” Some 26% said that it should be illegal, but not a criminal offence, and 26% said it should be illegal and a criminal offence.

In the 1998 NDSHS respondents were asked what should happen to anyone found in possession of small amounts of cannabis for personal use. Compulsory drug education was the preferred penalty option in all states and territories (36%), followed by in order: a fine similar to a parking fine up to \$200 (21%); a substantial fine of about \$1000 (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.⁷⁶ However, this forced choice question on what should happen to people found in possession of small quantities of cannabis for personal use did not include options consistent with ‘legalisation’ such as ‘no penalty’, although elsewhere in the survey 29% of respondents thought that personal use of cannabis should be ‘made legal’.

Knowledge about cannabis law

There is considerable evidence that many members of the public are unaware of the laws which apply to cannabis use in their jurisdiction and that there is a great deal of confusion among the general public as to the meaning of terms such as ‘decriminalisation’ and ‘legalisation’ when applied to cannabis.⁷⁷ Furthermore, where civil rather than criminal penalties apply, respondents are more likely to incorrectly state that cannabis possession and use is legal.⁷⁸

Thus, in their 1993 national survey, Bowman and Sanson-Fisher (1994) found that, in those jurisdictions which had civil penalties for possession and use, some 34% of those in SA and 43% of those in the NT incorrectly believed it was legal to possess cannabis for personal use. This occurred despite the concepts of legality and civil penalties being previously 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 civil penalty jurisdictions (SA and the ACT) incorrectly believed this was the case, as opposed to only 9% in states where criminal penalties applied.⁷⁹

Similarly, in the 1998 NDSHS, between 46% and 55% of respondents in SA and the ACT wrongly suggested that personal use, grow small quantities for personal use, possess small quantities for personal use were legal under civil penalty schemes in place in those jurisdictions. In the NT, which also had a civil penalty scheme in place when the survey was conducted fewer respondents (23-28%) incorrectly said cannabis possession and use offences were legal.⁸⁰

In their 1997 telephone survey of SA residents Heale, Hawks and Lenton (2000) found only 32% of respondents knew it was illegal to possess less than 100 grams of cannabis, 24% incorrectly believed it

⁷⁶ Fitzsimmons G & Cooper-Stanbury M. (2000), 30.

⁷⁷ Single E W. “The impact of marijuana decriminalisation: an update.” 1989 *Journal of Public Health Policy*, 456-466.

⁷⁸ Bowman J & Sanson-Fisher R (1994), 55-56; Commonwealth Department of Health and Family Services. National Drug Strategy Household Survey: Survey report 1995. Canberra, Australian Government Printing Service, 1996; Fitzsimmons G & Cooper-Stanbury M. (2000), 30.

⁷⁹ Commonwealth Department of Health and Family Services. National Drug Strategy Household Survey: Survey report 1995. Canberra, Australian Government Printing Service, 1996.

⁸⁰ Fitzsimmons G & Cooper-Stanbury M. 1998 *National Drug Strategy Household Survey: State and Territory results*. Canberra, Australian Institute of Health and Welfare, 2000, 29.

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.⁸¹

Together these results suggest, as Bowman and Sanson-Fisher (1994) have concluded, low levels of knowledge about the legal status of personal use offences may be a function of some respondents being confused about the distinction between illegality and criminality, and that this was particularly the case in jurisdictions where civil penalties applied. In the 1998 NDSHS this confusion of terms was measured directly as respondents were asked 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 applies’, only 36% said correctly that it was ‘illegal and only a caution or a small fine applies’, and 11% were unsure. Interestingly 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.⁸²

WA surveys

A telephone survey was undertaken in this State in December 1993, canvassing the knowledge and attitudes of 400 West Australians aged 17 years and older.⁸³ The survey dealt with two possible strategies to reduce the harm associated with illicit drug use, (a) the provision of needles and syringes; and (b) the possibility of changing the laws in relation to cannabis.

A total of 244 (61%) respondents were from the metropolitan area, with 156 (39%) from Geraldton and Bunbury. There were a number of findings in relation to the issue of cannabis decriminalisation. Over a third (36.7%) believed cannabis should be made as legal as alcohol whereas 53.2% believed it should not. The survey found attitudes to decriminalisation were not affected by right or left wing affiliation and that majority support for cannabis decriminalisation existed across the political spectrum. The survey posed two scenarios about decriminalisation of possession and use of small amounts of cannabis for personal use.

In the first scenario, respondents were asked:

“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?”

In the second scenario, respondents were asked:

“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. Females were significantly more in favour of decriminalisation than males when the term was explained (Figure A5-11, page A60).

In relation to age, the highest level of support for decriminalisation whether the term was explained or not was recorded for the 20 to 29 age group (Figure A5-12, page A61). Of interest it was also noted that the majority of respondents believed that most cannabis users did not experience problems.

⁸¹ Heale P, Hawks D, Lenton S. “Public awareness, knowledge and attitudes regarding the CEN system in South Australia.” (2000) 19, *Drug and Alcohol Review*, 271-280.

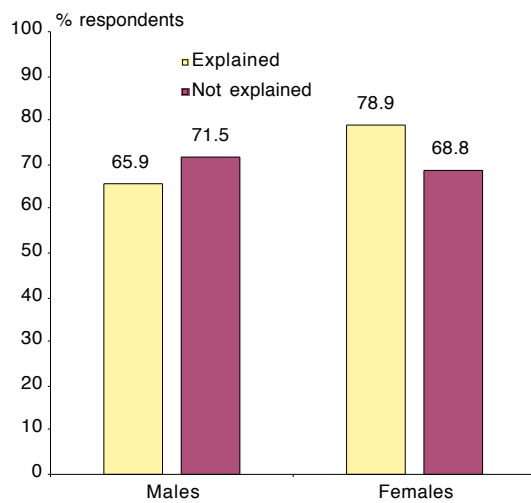
⁸² Fitzsimmons G & Cooper-Stanbury M (2000), 31.

⁸³ Lenton S. *Illicit drug use, harm reduction and the community: attitudes to cannabis law and needle and syringe provision in Western Australia*. Perth, National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology, 1994; Lenton S & Ovenden C. “Community attitudes to cannabis use in Western Australia.” (1996) 26 *Journal of Drug Issues*, 783-804.

“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 four 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.”⁸⁴

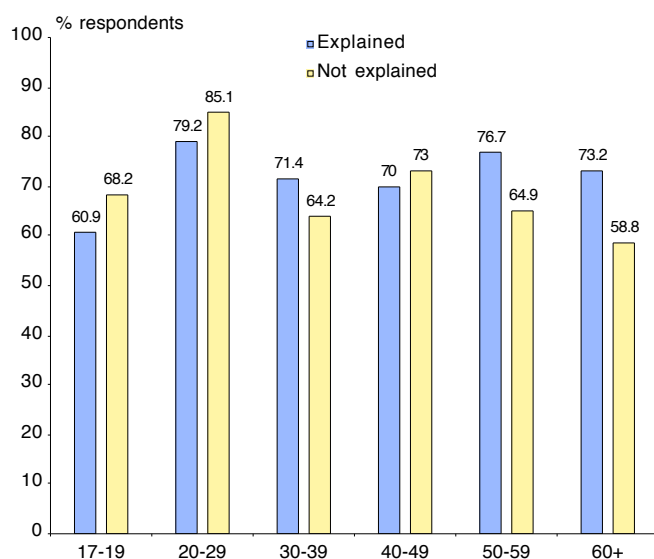
It is to be noted that the national data referred to above would indicate that about 35% of the Australian public favoured legalisation, a similar level of support to the 36.7% found in the Lenton survey.

Figure A5-11: Respondents (%) in favour of cannabis decriminalisation by gender and whether decriminalisation explained, WA, December 1993



⁸⁴ Lenton S. (1994), vii.

Figure A5-12: Respondents (%) in favour of cannabis decriminalisation by age group and whether decriminalisation explained, WA, December 1993



Costs and benefits associated with the WA expiation scheme

Introduction

The following analysis of the costs and benefits of the proposed expiable cannabis offence notice system is based on data for the year 2000. This estimates obtained are subject to limitations due to shortcomings in data systems and difficulties in accessing information on the costs of law enforcement, the processing of charges through the courts and various sentencing outcomes.

The WA Police Service seizure database is separate from the OIS. This limitation plus other issues such as unstructured data files, lack of uniform definitions and unreliable coding in some instances, means that it is not possible to readily identify the type of drug involved in a charge. Accordingly it has been necessary to estimate the different types for offences involving cannabis, by applying factors derived from the CRC analysis of crime data which is based on offender characteristics.

A thorough and detailed 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.⁸⁵ The cost base year for the South Australian study was the year 1995/1996. The modelling has adopted the various costings for different levels of enforcement and adjudication in South Australia, which have been adjusted to take account of an increase in inflation of 10%, based on the difference in the weighted average of eight capital cities from the June quarter 1995 to the June quarter 2000⁸⁶

As comparable West Australian data is not available it has been assumed that the WA cost structure will be similar to that determined by the 1999 study by Brooks, Stothard, Moss et al. Therefore it is likely that the approach that is followed below will produce an underestimate of the West Australian costs, as there are higher policing and judicial costs in this State because police and magistrates must operate over a much larger geographical area with more dispersed regional centres than is the case in South Australia.

⁸⁵ Brooks A, Stathard C, Moss J, Christie P, Ali R. *Costs associated with the operation of the cannabis expiation notice scheme in South Australia*. Adelaide, Drug and Alcohol Services Council. 1999.

⁸⁶ Australian Bureau of Statistics. Consumer price index, Cat No. 6401.0.

Number of cannabis offences

In the year 2000 there was a total of 13,937 drug offences processed by police in Western Australia. As the CRC analysis (earlier in this section) found that 56% of drug offences were cannabis related, it is estimated that there was a total of 7,805 cannabis offences (5,197 offenders) in the year 2000.

Based on a total of 7,805 cannabis offences, when broken down by type of offence it is estimated that in the year 2000 there was a total of:

- 2,810 possession and/use offences (36% of cannabis offences);
- 4,060 possession of smoking implements offences (52% of cannabis offences);
- 545 cultivation offences (7% of cannabis offences); and
- 390 trafficking type offences (ie possession with intent to sell and/or supply) (5% of cannabis offences).

It should be noted that the approach followed by the ABCI of classifying offences into ‘consumer’ type offences (ie possession or administering drugs for personal use) and ‘provider’ type offences (ie importation, trafficking, selling, cultivation and manufacture) has not been followed as this methodology distorts the seriousness of offending by classifying cultivation of any number of plants as being a ‘provider’ (ie more serious offence).

As this analysis is only concerned with minor cannabis offences, it is necessary to remove from the total of 7,805 cannabis those offences involving trafficking (390 offences) and those concerning cultivation of more than two plants. As a breakdown is not available of the number of plants involved for each cultivation offence, it has been estimated that 245 offences (45%) involved more than two plants.

This means that there was a total of 7,170 minor cannabis offences in WA in the year 2000.

Costs without expiation

South Australia

The South Australian study found that it cost a total of \$2,014,000 to prosecute a total of 7,5000 minor cannabis offences in 1995/1996 in that state, if a CEN scheme had not been operating.⁸⁷

After CPI adjustment this would be equivalent to a total of \$2,215,400 (in 2000 dollars), a mean cost of \$295 per offence.

The SA analysis contains a distribution of costs depending on whether an offender paid a fine or not, with 77% of charges being resolved at court due to guilty pleas and the fine paid or the charge withdrawn, with the remainder of offences involving additional costs distributed according to whether the matter proceeded to trial, if warrants were issued for non payment of fines, etc.

The value of the revenue obtained from fines in South Australia was \$995,000.⁸⁸ After CPI adjustment this would be equivalent to a total of \$1,094,500 (in 2000 dollars), a mean fine of \$145 per offence.

This results in a net cost of \$1,120,900 (in 2000 dollars) (ie \$2,215,400-\$1,094,500) for processing of minor cannabis offences through the court system in South Australia in the year 2000.

Western Australia

Applying the mean cost of \$295 per minor cannabis offence (based on 7,170 offences), it is estimated that it cost \$2,115,150 to process minor offenders through the court system in WA in the year 2000.

⁸⁷ Brooks A, Stathard C, Moss J, Christie P, Ali R, 1999, Table 5.5.

⁸⁸ Brooks A, Stathard C, Moss J, Christie P, Ali R, 1999, Table 5.6.

It is estimated that in the year 2000 the revenue from fines in WA was \$1,039,650, based on a mean fine of \$145 per offence.

This results in a net cost of \$1,075,500 (in 2000 dollars) (ie \$2,115,150-\$1,039,650) for processing of minor cannabis offences through the court system in Western Australia in the year 2000.

Costs with expiation

South Australia

Costs

The South Australian study found that it cost a total of \$1,240,000 to process a total of 16,231 CENs issued in that state in 1995/1996.⁸⁹ This figure includes all costs, such as arrest costs, hearing costs and the various levels of adjudication costs, etc. This modelling is based on an expiation rate of 43.9% (7,165 CENs expiated), with 8,995 CENs (55.1%) not expiated and 161 CENs (1.0%) withdrawn at prosecution or no conviction recorded.

After CPI adjustment this would be equivalent to a total of \$1,364,000 (in 2000 dollars), a mean cost of \$84 per CEN issued (based on 16,231 CENs).

When broken down according to process, it cost a total of \$236,000, ie \$259,600 (in 2000 dollars) to administer and process the 7,165 expiated CENs, a mean cost of \$36 per expiated CEN. It cost a total of \$1,004,000 (in 2000 dollars) to administer and process the remaining 9,156 unexpiated CENs, a mean cost of \$121 per unexpiated CEN.

Revenue

The value of the revenue obtained from the CEN scheme in South Australia was \$1,679,000.⁹⁰ This figure consists 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. After CPI adjustment this would be equivalent to a total of \$1,846,900 (in 2000 dollars).

The mean revenue per expiated CEN, based on a total of 7,165 expiated CENs and a revenue of \$559,000, was \$78, which after CPI adjustment would be \$86 per expiated CEN (in 2000 dollars).

The mean revenue per unexpiated CEN, based on a total of 9,156 unexpiated CENs (ie 8,995 + 161 CENs) and a total of \$1,120,000 from court imposed fines and costs and fees from warrants was \$122, which after CPI adjustment would be \$134 per unexpiated CEN (in 2000 dollars).

Western Australia

As outlined above, there was a total of 7,085 cannabis related offences in WA in the year 2000, which after exclusion of the estimate of 635 serious offences, results in a total of 7,170 minor cannabis offences in WA. (The total of 7,170 offences consists of 2,810 possession/use offences, 4,060 possession of smoking implements offences and 300 cultivation offences.)

The methodology to determine the cost of the expiation scheme in WA is based on two categories of minor cannabis offences, possession of 30 grams or less of cannabis and cultivation of two or fewer cannabis plants. As possession of smoking implements would no longer an offence in Western Australia it is necessary to exclude this category of offence.

This means that there would have been a total of 3,110 expiable minor cannabis offences in Western Australia in the year 2000 (ie 2,810 possession and/or use offences and 300 cultivation offences). It is assumed that the prior minor offence of use of cannabis would be captured by the offence of possession of an expiable amount of cannabis.

⁸⁹ Brooks A, Stathard C, Moss J, Christie P, Ali R, 1999, Table 5.1.

⁹⁰ Brooks A, Stathard C, Moss J, Christie P, Ali R, 1999, Table 5.2.

If it is assumed that there is an expiation rate of 65%, then it is estimated that a total of 2,020 minor cannabis offences were expiated and a total of 1,090 minor cannabis offences were not expiated in the year 2000.

The total of 2,020 offences consisted of 1,825 offences for possession and 195 offences involving cultivation.

Revenue

Because there were two penalties for possession of cannabis according to weight, with a fee of \$100 for possession of less than 15 grams and a fee of \$150 for possession of between 15 and 30 grams, it is necessary to take account of the frequency distribution of the weight of seizures.

Data from the CCMES (see Appendix 2) indicates that 90% of the cannabis seized weighed 10 grams or less. This means that of the total of 1,825 expiated possession offences, 1,640 (90%) involved an amount of less than 15 grams and 185 involved an amount of between 15 and 30 grams.

Applying the respective fees of \$100 and \$150 for possession of these two ranges of weights, it is estimated there was a total revenue of \$186,500 from the expiation of the possession of an expiable quantity of cannabis in the year 2000.

It is also estimated that there was a total revenue of \$39,000 from the expiation of 195 offences (fee of \$200 per offence) involving an expiable number of cannabis plants in the year 2000.

There was a total revenue of \$225,500 with respect to fees paid for expiable cannabis offences, a mean of \$124 per expiated CIN.

Due to insufficient data, the South Australian estimate of \$134 per unexpiated offence from revenue obtained by court enforced fines, costs etc has been used to determine additional revenue that would be generated through the enforcement of unexpiated CINs. This means there was a total of \$146,060 from the enforcement of the payment of a total of 1,090 unexpiated cannabis offences (at a mean revenue of \$134 per offence).

This analysis indicates that in Western Australia there was a total revenue of \$371,560 (ie \$225,500 + \$146,060) from the payment of all expiable minor cannabis in the year 2000.

Costs

The cost of administering and enforcing the CIN scheme has been based on South Australian data, which as indicated above, in 2000 dollars was a mean of \$36 per expiated offence and a mean of \$121 per unexpiated offence.

In the year 2000 it was estimated that it cost \$72,720 to administer expiated CINs (2,020 expiated offences x \$36) and that it cost \$131,890 to administer unexpiated CINs (1,090 x \$121). This means that it cost a total of \$204,610 to administer the CIN scheme in this state.

Conclusion

The preceding analysis suggests that there was a net benefit of \$166,950 from the operation of the CIN expiation scheme in this state, based on a total revenue of \$371,560 and a total operating cost of \$204,610.

It can be seen there is an overall substantial net benefit in a year, of about \$1.1 million, when the cost of processing minor cannabis offenders via the courts is compared to the expiation of minor cannabis offences. In the year 2000 it was estimated that the net cost of processing minor cannabis offenders was \$1,075,000, whereas if these offences had been dealt with according to the CIN scheme, there was a net benefit of \$166,900.

As shifts in the expiation rate have a significant impact on the overall cost of the expiation scheme, it is essential that reasonable expiation fees and effective administrative procedures be developed to achieve a rate above the 65% expiation rate assumed in the preceding analysis.

There would also be other tangible and intangible benefits from the scheme, such as the release of police resources presently directed towards apprehending minor cannabis offenders.

It is acknowledged that a number of initial one off set up costs would be involved with the implementation of the CIN scheme. This will involve set up costs by the police, such as the printing of forms, creation of a database for the police to register and process CINs, etc. It is estimated that this will cost a total of \$133,250 including one FTE, as outlined in more detail earlier in the report.

There are also other additional one off costs, such as the implementation of a four week community education campaign to outline the details of the CIN scheme. The cost of this is estimated to be a total of \$292,440 and has been outlined in more detail earlier in the report.

Whilst these initial set up costs would need to be explicitly funded, they would in effect be more than offset by the net benefit of \$1.1 million if minor cannabis offenders had been processed through the court system.

Appendix 6: Draft regulations for the sale and supply of hydroponic equipment

South Australia Police submission to the national competition policy legislation review

Part 1: Definitions

- 1) In this Regulation, unless the contrary intention appears
 - a) **"Commissioner of Police"** means the Commissioner of Police or the person for the time being acting in the office of Commissioner of Police;
 - b) **"equipment"** means any article listed in Schedule B.
 - c) **"hydroponics dealer"** means a person or body corporate who has been served a notice as a declared hydroponics dealer or has applied to be a hydroponics dealer
 - d) **"dealing in hydroponics equipment"** means any person or body corporate who sells any new or second hand equipment as per Schedule B.
 - e) **"sell"** includes
 - i trade, barter or exchange; or
 - ii offer, or expose, for sale, trade, barter or exchange; or
 - iii cause or permit to be offered, or exposed, for sale, trade, barter or exchange, and "sale" has a corresponding meaning;
 - iv supply
 - f) **"records"** includes: business records, accounts, invoices, stock lists, staff lists, sales accounts, end user declarations including any electronic records.
 - g) **"drug conviction"** means any conviction for an offence under the Controlled Substances Act or any interstate conviction which would have been an offence under the Controlled Substances Act if committed in this State including any offence where a Cannabis Expiation Notice was issued and any offence against this Regulation.

Part 2: Declaration of hydroponics dealer

Dealer application

- 2) A person or persons who proposes to commence to carry on business in the dealing of hydroponics equipment must, at least one month before so commencing, give the Commissioner of Police written notice in accordance with this section to be a hydroponics dealer.
 - a) A person or persons who, carries on a business as a hydroponics dealer must, within six months of that commencement of this regulation, give the Commissioner of Police written notice in accordance with this section.

Maximum penalty: \$X,000.

- b) A notice under this section must

- i) in the case of a natural person who is a hydroponics dealer or proposed hydroponics dealer-the full name and residential address of the person (and, if the business is to be carried on in partnership, of each partner);
 - ii) in the case of a body corporate that is a hydroponics dealer or proposed hydroponics dealer-
 - (1) the name and residential address of each director; and
 - (2) the address of the registered corporate office of the body corporate;
 - (3) the name under which the business or proposed business is to be carried on;
 - (4) each address at which the business or proposed business is to be carried on;
 - (5) each address at which records required to be kept under the Regulations are or will be kept;
 - (6) each address at which equipment will be sold in the course of or for the purposes of the business or proposed business are or will be kept;
 - (7) a brief description of the nature of the business or proposed business, including a description of equipment that is or is proposed to be sold in the course of or for the purposes of the business or proposed business;
 - (8) an address for service
- 3) For the purposes of Regulation 3(b), notice must be given to the Commissioner of Police as follows:
- a) if there is any change in-
 - i) the residential address of a hydroponics dealer; or
 - ii) the name in which a hydroponics dealer carries on business; or
 - iii) the address of the registered corporate office of a hydroponics dealer that is a body corporate; or
 - iv) the address at which the business of a hydroponics dealer is carried on; or
 - v) the address at which records required to be kept under the Regulations by a hydroponics dealer or former hydroponics dealer are kept; or
 - vi) the address at which equipment is sold in the course of or for the purposes of the business of a hydroponics dealer are kept; or
 - vii) the address for service of a hydroponics dealer or, unless the person is no longer required to keep records under the Act, the address for service of a former hydroponics dealer,
 - b) if a hydroponics dealer ceases to carry on business as a hydroponics dealer, the person must, within 14 days, give written notice to the Commissioner of that fact
 - c) if a person enters into a partnership to carry on business as a hydroponics dealer or ceases to be in such a partnership, the person must, within 14 days, give written notice to the Commissioner of that fact, together with the names and addresses of the members of the new or former partnership;
 - d) if a person becomes a director of a body corporate that is a hydroponics dealer, the body corporate must, within 14 days, give written notice to the Commissioner of the name and residential address of the new director;

Dealer declaration

- 4) Commissioner of Police may declare a person or body corporate a hydroponics dealer if he believes on reasonable grounds that the person or body corporate is dealing in hydroponics equipment by service of a notice, as per Schedule A, upon that person or body corporate.
 - a) A notice given by the Commissioner of Police:
 - i) must set out details of the grounds on which the notice is given; and

- ii) has effect from a date specified in the notice being not less than 28 days after the date of service.
 - iii) a person who is served a notice under this section may apply to the Commissioner of Police for review of the notice.
- b) A notice continues to have effect despite the making of an application under this section
- c) When considering declarations under this section, the Commissioner Of Police must hold a reasonable cause to suspect, through whatever means, that a premises, business or person, has, is or is likely to be a place where a person or persons taking part in the production of cannabis may obtain equipment.
- 5) A person may after determination of an application to the Commissioner of Police for review of the service of a notice under Section 4 apply to the Administrative and Disciplinary Division of the District Court for an order removing the notice.
- 6) The Court may, on the application of the person who has been served a notice, make an order
- a) suspending the notice until the application for an order removing the notice is determined, withdrawn or struck out;
 - b) imposing conditions on the person carrying on business as a hydroponics dealer while the notice is suspended.
- 7) On an application under Regulation 5, the Court may make an order removing the notice if satisfied that there were not proper grounds for giving the notice.
- 8) In proceedings under this Regulation, the Court may make such other orders as to costs or otherwise as the Court thinks fit.

Prohibition notice

- 9) Any hydroponics dealer who has a drug conviction will upon notice of the Commissioner of Police cease to sell hydroponics equipment.
- a) Any person upon receiving a notice as per Regulation 9 may apply to the Administrative and Disciplinary Division of the District Court for an order removing the notice.
 - b) The Court may, on the application of the person who has been served a notice, make an order
 - i) suspending the notice until the application for an order removing the notice is determined, withdrawn or struck out
 - ii) imposing conditions on the person carrying on business as a hydroponics dealer while the notice is suspended
- 10) On an application under Regulation 9(a), the Court may make an order removing the notice if satisfied that there were not proper grounds for giving the notice.
- 11) Any person who upon receiving a notice as per Regulation 9 continues to sell hydroponics equipment commits an offence.

Maximum penalty: \$X,000.

Service of documents

- 12) Subject to this regulation, a notice or document required or authorised by this regulation to be given to or served on a person may:

- a) be served on the person personally; or
- b) be posted in an envelope addressed to the person at the person's last known address; or
- c) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- d) Be transmitted by computer electronic mail to an electronic mail address provided by that person (in which case the notice or document will be taken to have been given or served at the time of transmission).

Part 3: Keeping of records

Records of hydroponics dealer

- 13) A hydroponics dealer must keep records in accordance with this section in relation to each piece of equipment bought, traded, bartered, sold or supplied in the course of or for the purposes of the dealer's business.
- 14) The record will contain the following information:
 - a) accurate descriptions of the equipment including, where applicable, their types, sizes, colours, serial numbers and other distinguishing features;
 - b) descriptions of marks or labels on or attached to the goods identifying any brand or model number
 - c) the dates on which the equipment was sold
 - d) if the equipment was sold at, or to be delivered to a place other than a place of business of the dealer the address of the place at which they are sold or delivered;

Maximum penalty: \$X,000.

End user statement

- 15) A dealer must not sell equipment to which this regulation applies to another person unless:
 - a) the purchaser provides the seller with a duly completed end user statement in the form set out in schedule C of these regulations; and
 - b) the seller duly completes the seller's section of the end user statement, and
 - c) if the sale is transacted as a sale on account pursuant to a duly completed order form supplied by the purchaser; and
 - d) the order form is accompanied by a duly completed end user statement in the form set out in schedule C of these regulations; and
 - e) the seller is satisfied, on the production of a driver's licence, passport or other sufficient evidence, as to the identity of the person collecting the equipment and that the person is the purchaser or is acting on behalf of the purchaser; and
 - f) the seller duly completes the seller's section of the end user statement.

Maximum penalty: \$X,000.

- 16) A seller of hydroponic equipment to which this regulation applies –
 - a) must, in relation to each sale of such equipment, keep a record of -
 - i) the name and address of the purchaser; and
 - ii) the description of the equipment and the quantity; and
 - iii) the date of the sale; and
 - b) must retain an end user statement for at least five years after the date of the sale to which it relates; and
 - c) must make the record referred to in paragraph (a) and the end user statements available for inspection at any time by an authorised officer under the Act; and

- d) must, if at any time he or she forms a suspicion that an order or enquiry for the purchase of such a equipment may be connected to an unlawful production of illicit drugs, inform the Commissioner of Police of the suspicion.

Maximum penalty: \$X,000

Powers of police to enter and inspect records

- 17) A member of the police force, at any hour of the day or night, may enter any business premises of a hydroponics dealer for the purpose of examining business records and the compliance of those records.
- 18) Any person who is found on the premises of a hydroponics dealer if required by a Member of the Police Force must state their full name and address.
 - a) If a Member of the Police force believes the name and address is false may require that person to produce identification.
 - b) It is an offence to state a false name and address or produce false evidence.

Maximum penalty: \$X,000

Hydroponics dealer duties and requirements

- 19) A declared hydroponics dealers who fails to produce and comply with the keeping of business records commit an offence.

Maximum penalty: \$X,000

- 20) Any person who hinders or obstructs a Member of the Police force in executing any authority under this Regulation commits an offence.

Maximum penalty: \$X,000

- 21) It is an offence for a hydroponics dealer to employ any person with a drug conviction.

Maximum penalty: \$X,000

Notice of declaration as a hydroponics dealer

Notice is hereby served on(and or) premises trading as;
.....
of: is taking part in
the sale or supply of hydroponic equipment as defined under the Controlled Substances Act.

Grounds on which the notice is given
.....
.....
.....
.....
.....

As of theday of20....., the above mentioned business is required to lawfully comply with regulations under the Controlled Substances Act.

NOTE: (Following Regulations of the Controlled Substances Act)

- 22) Commissioner of Police may declare a person or body corporate a hydroponics dealer if he believes on reasonable grounds that the person or body corporate is dealing in hydroponics equipment by service of a notice, as per Schedule A, upon that person or body corporate.
 - a) A notice given by the Commissioner of Police:
 - i) must set out details of the grounds on which the notice is given; and
 - ii) has effect from a date specified in the notice being not less than 28 days after the date of service.
 - iii) a person who is served a notice under this section may apply to the Commissioner of Police for review of the notice.
 - b) A notice continues to have effect despite the making of an application under this section
 - c) When considering declarations under this section, the Commissioner of Police must hold a reasonable cause to suspect, through whatever means, that a premises, business or person, has, is or is likely to be a place where a person or persons taking part in the production of cannabis may obtain equipment.
- 23) A person may after determination of an application to the Commissioner of Police for review of the service of a notice under Section 4 apply to the Administrative and Disciplinary Division of the District Court for an order removing the notice.
- 24) The Court may, on the application of the person who has been served a notice, make an order
 - a) suspending the notice until the application for an order removing the notice is determined, withdrawn or struck out;
 - b) imposing conditions on the person carrying on business as a hydroponics dealer while the notice is suspended.
- 25) On an application under Section 5, the Court may make an order removing the notice if satisfied that there were not proper grounds for giving the notice.
- 26) In proceedings under this section, the Court may make such other orders as to costs or otherwise as the Court thinks fit.

Dated this day of 20.....

Signature: Rank: ID:

Stationed at:

for and on behalf of the Commissioner of Police.

Schedule A

Prescribed 'hydroponic equipment' for purposes of regulation XX of the Act

Specialist lighting

Light Shade

Ballast Boxes

Electrical timing devices

Literature related to plant growth through artificial medium

Water Pumps

Plant Nutrients

Artificial Soil Mediums

Carbon Dioxide Gas

Carbon Dioxide Gas regulators

Air movement or extraction equipment

Air filtering devices or odour control systems

Heating devices

Schedule C

End user statement

CLIENT NOTE

The products for which this statement is required may be used in the manufacture of illicit drugs. This statement, with section 'A' filled in, must be provided to the seller.

'A' (THIS SECTION IS TO BE COMPLETED BY THE PURCHASER)

PRODUCT

Product Name/Description:

..... Quantity:
..... Quantity:
..... Quantity:
..... Quantity:
..... Quantity:

Date of Purchase:/...../..... Total Cost of Purchase: \$.....
Method of Payment: Credit Card Number:

INTENDED USE

.....
.....
.....
.....

PURCHASER

Full Name:
Home Address:
Business/Company/Institution Name:
Address:

Signed: Date:/...../.....

'B' (THIS SECTION IS TO BE COMPLETED BY THE SELLER)

COLLECTION AGENT

Name: Date of Birth:/...../.....
Home address: Vehicle Reg. No:
(Vehicle used in collection)

STATUS (tick appropriate box)

Purchaser Contractor
Employee of purchaser Employee of contractor

VERIFICATION

I sighted the following proof of identity produced by the above **COLLECTION AGENT** (tick appropriate box)

Current Driver's Licence No:
 Current Passport No: Issued at:
 Other ID (please specify):

Name of person handling sale:

Signed: Date:/...../.....
(person handling sale)

Appendix 7: Bibliography

Adhikari P & Summerill A.

National Drug Strategy Household Survey 1998: detailed findings. Canberra, Australian Institute of Health & Welfare, 2000.

Advisory Committee on Illicit Drugs.

Cannabis and the law in Queensland. A discussion paper prepared for the Queensland Criminal Justice Commission. Brisbane, Criminal Justice Commission, 1993.

Advisory Council on the Misuse of Drugs.

The classification of cannabis under the Misuse of Drugs Act 1971. London, Advisory Council on the Misuse of Drugs, Home Office 2002.

Alcohol and Other Drugs Council of Australia.

Drug policy 2000: A new agenda for harm reduction. Canberra, Alcohol and Other Drugs Council of Australia, 2000.

Ali R, Christie P, Lenton S, Hawks E, Sutton A, Hall W, Allsop S.

The social impacts of the cannabis expiation notice scheme in South Australia. Summary report presented to the Ministerial Council on Drug Strategy. Canberra, Commonwealth Department of Health and Aged Care, 1999.

American Medical Association.

Report 10 of the Council on Scientific Affairs: medical marijuana.

<<http://www.ama-assn.org/ama/pub/article/2036-4299.html>>

Atkinson L & McDonald D.

Cannabis, the law and social impacts in Australia. (1995) 48 *Trends & Issues*.

Attorney-General's Department

Serious drug offences in Commonwealth jurisdiction – Criminal Code and Customs Act 1901. Discussion paper. Canberra, Commonwealth Attorney General, 1997.

Australian Broadcasting Corporation.

The Law Report. Radio National, 24 November 1998. (transcript).

Australian Broadcasting Corporation.

“Evidence shows heavy marijuana use impacts on mental health.” *7.30 Report*. 6 February 2002 (transcript).

Australian Broadcasting Corporation.

“Adelaide – cannabis capital.” *Background Briefing*. Radio National, 28 November 1999. (transcript).

Australian Capital Territory, Legislative Assembly.

Cannabis use in the ACT. Report No. 7 of the Standing Committee on Health and Community Care. Canberra, Legislative Assembly, 2000.

Australian Institute of Health and Welfare.

1998 National Drug Strategy Household Survey: Western Australia results. Canberra, Australian Institute of Health and Welfare, 2000. <<http://www.wa.gov.au/drugwestaus/>>

Australia New Zealand Food Authority.

Draft assessment. Application A360: use of hemp as a novel food. Canberra, Australia New Zealand Food Authority, December 2001. <www.anzfa.gov.au>

Australian Standing Committee of Attorneys-General, Model Criminal Code Officers Committee
Model Criminal Code, Chapter 6: Serious drug offences. Discussion paper. Canberra, Commonwealth Attorney General, 1997.

Australian Standing Committee of Attorneys-General, Model Criminal Code Officers Committee
Model Criminal Code, Chapter 6: Serious drug offences. Report. Canberra, Commonwealth Attorney General, 1998.

Bowman J & Sanson-Fisher R.
Public perceptions of cannabis legislation. Canberra, Australian Government Publishing Service, 1994.

Brooks A, Stathard C, Moss J, Christie P, Ali R.
Costs associated with the operation of the cannabis expiation notice scheme in South Australia. Adelaide, Drug and Alcohol Services Council. 1999.

Canberra Times.
“Majority want marijuana to stay illegal.” *Canberra Times*, 27 January 2002.

Caulkins JP & Heinz HJ.
“Law enforcement’s role in a harm reduction regime.” (2002) 64 *Contemporary Issues in Crime and Justice*.

Center on Addiction and Substance Abuse.
Non medical marijuana: rite of passage or Russian roulette? Columbia University, Centre on Addiction and Substance Abuse, 1999.

Christie P.
“The cannabis expiation notice system in South Australia: its effects on cannabis use.” In White J (ed) *Drug problems in society: dimensions and perspectives.* Adelaide, Drug and Alcohol Services Council, 1992.

Christie P.
Cannabis offences under the cannabis expiation notice scheme in South Australia. Canberra, Commonwealth Department of Health and Aged Care, 1999.

Christie P & Ali R.
“Offences under the cannabis expiation notice scheme in South Australia.” (2000) 19 *Drug and Alcohol Review*, 251-256.

Commonwealth Department of Health and Family Services.
National Drug Strategy Household Survey: Survey report 1995. Canberra, Australian Government Printing Service, 1996.

Community Drug Summit.
Drugs and law enforcement, including consideration of the most appropriate legal framework for illicit drugs, diverting drug users into treatment and treating the most serious offenders in prisons. Issues Paper No. 7. Perth, Community Drug Summit, Health Department of WA, 2001.
<http://www.wa.gov.au/drugwestaus/>

Criminal Justice Commission.
“Appendix 2: Cost of enforcing minor cannabis related offences.” In Criminal Justice Commission *Report on cannabis and the law in Queensland.* Brisbane, Criminal Justice Commission, 1994.

de Launey C.

“The real value of a cannabis plant.” (1996) 21 *Alternative Law Journal* 127.

Donnelly N & Hall W.

“The effects of partial decriminalisation on cannabis use in South Australia, 1985 to 1993.” (1995) 19 *Australian Journal of Public Health*, 281-287.

Donnelly N, Hall W, Christie P.

Effects of the cannabis expiation notice scheme on levels and patterns of cannabis use in South Australia: evidence from the National Drug Strategy Household Surveys 1985-1995. Canberra, Commonwealth Department of Health and Aged Care, 1999.

Donnelly N, Hall W, Christie P.

“The effects of the cannabis expiation notice system on the prevalence of cannabis use in South Australia: evidence from the National Drug Strategy Household Surveys 1985-95.” (2000) 19 *Drug and Alcohol Review*, 265-269.

Dorn N & Jamieson A.

European drug laws: the room for manoeuvre. The full report of a comparative legal study into national drug laws of France, Germany, Italy, Spain, the Netherlands and Sweden and their relation to three international drugs conventions. London, Drug Scope, 2001.

Drug Policy Forum Trust.

Alternative systems of cannabis control in New Zealand: A discussion paper. Wellington, Drug Policy Forum Trust, 1997.

Drummond C.

“Cannabis control: costs outweigh the benefits - against” (2002) 324 *British Medical Journal* 107-108.

Fergusson DM & Horwood LJ.

“Does cannabis use encourage other forms of illicit drug use?” (2000) 95 *Addiction*, 505-520.

Fitzsimmons G & Cooper-Stanbury M.

1998 National Drug Strategy Household Survey: State and Territory results. Canberra, Australian Institute of Health and Welfare, 2000.

Gowing L, Ali R, Christie P, White J.

Therapeutic uses of cannabis. Adelaide, Drug and Alcohol Services Council, 1999.

Grace RF, Shenfield G, Tennant C.

“Cannabis and psychosis in acute psychiatric admissions.” (2000) 19 *Drug and Alcohol Review*, 287-290.

Hall W.

“The recent Australian debate about the prohibition on cannabis use.” (1997) 92 *Addiction*, 1109-1115.

Hall W, Solowij N, Lemon J.

The health and psychological consequences of cannabis use. Canberra, Australian Government Publishing Service, 1995.

Heale P, Hawks D, Lenton S.

“Public awareness, knowledge and attitudes regarding the CEN system in South Australia.” (2000) 19, *Drug and Alcohol Review*, 271-280.

- Hunter N.
Cannabis expiation notices (CENs) in South Australia, 1997 to 2000. Information Bulletin No. 27. Adelaide, Attorney General's Department, Office of Crime Statistics, November 2001.
- Jackson L.
Response to the report of the working party on the use of cannabis for medical purposes. Sydney, 2001.
- Joy JE, Watson SJ, Benson JA (eds).
Marijuana and medicine: assessing the science base. Washington DC, National Academy Press, 1999.
- Jones C & Weatherburn C.
"Reducing cannabis consumption." (2001) 60 *Contemporary Issues in Crime and Justice*.
- Kitchener J.
Cannabis in Canberra: is it going to pot? A quantitative research project evaluating the decriminalisation of cannabis through the Drugs of Dependence (Amendment) Act 1992. Canberra, Parliament, Office of Michael Moore, 1994.
- Lenton S.
Illicit drug use, harm reduction and the community: attitudes to cannabis law and needle and syringe provision in Western Australia. Perth, National Centre for Research Into the Prevention of Drug Abuse, Curtin University of Technology, 1994.
- Lenton S.
A new model of cannabis law for WA: A submission to the WA Community Drug Summit. Perth, National Drug Research Institute, 2001.
- Lenton S & Ovenden C.
"Community attitudes to cannabis use in Western Australia." (1996) 16 *Journal of Drug Issues*, 783-804.
- Lenton S, Christie P, Humeniuk R, Brooks A, Bennett M, Heale P.
Infringement versus conviction: the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian states. Canberra, Commonwealth Department of Health and Aged Care, 1999.
- Lenton S, Ferrante A, Loh N.
"Dope busts in the West: minor cannabis offences in the Western Australian criminal justice system." (1996) *Drug and Alcohol Review*, 335-341.
- Lenton S, Heale P, Erickson P, Single E, Lang E, Hawks D.
The regulation of cannabis possession, use and supply. A discussion document prepared for the Drugs and Crime Prevention Committee of the Parliament of Victoria. Perth, National Drug Research Institute, 2000.
- Lenton S, Humeniuk R, Heale P, Christie P.
"Infringement versus conviction: the social impact of a minor cannabis offence in South Australia and Western Australia." (2000) 19 *Drug and Alcohol Review*, 257-264.
- Lenton S, McDonald D, Ali R, Moore T.
"Laws applying to minor cannabis offences in Australia and their evaluation." (1999) 10 *International Journal of Drug Policy* 299-303.

- McDonald D, Moore R, Norberry J, Wardlaw G, Ballenden N.
Legislative options for cannabis in Australia. Canberra, Australian Government Publishing Service, 1994.
- Makkai T & McAllister I.
Marijuana in Australia: patterns and attitudes. Canberra, Commonwealth Department of Health and Family Services, 1997.
- Makkai T & McAllister I.
Public opinion towards drug policies in Australia 1985-95. Canberra, Commonwealth Department of Health and Family Services, 1998.
- Marks RE.
“Cannabis laws: an analysis of costs.” (1994) 13 *Drug and Alcohol Review*, 341-346
- Moore M.
“Legislative change in the Australian Capital Territory.” (1994) 6 *Current Issues in Criminal Justice*, 290-295.
- National Institutes of Health, AdHoc Group of Experts.
Workshop on the medical utility of marijuana. 1997.
- New South Wales, Working Party on the Use of Cannabis for Medical Purposes.
Use of cannabis for medical purposes. Vol 1: Executive summary. Sydney, Department of Premier and Cabinet, 2000.
- New South Wales, Working Party on the Use of Cannabis for Medical Purposes.
Use of cannabis for medical purposes. Vol 2: Main report. Sydney, Department of Premier and Cabinet 2000.
- New South Wales, Office of Drug Policy
Inquiry into the use of cannabis for medical purposes. Report on consultation on the findings and recommendations of the working party on the use of cannabis for medical purposes. Sydney, Office of Drug Policy, the Cabinet Office 2001.
- Olsen, J.
Zero cannabis – for hydroponics. 25 July 2001 (press release).
- Police Foundation.
Drugs and the law: report of the independent inquiry into the Misuse of Drugs Act 1971. (Chair Viscountess Runciman). London, Police Foundation, 1999.
- Robson P.
“Cannabis as medicine: time for the phoenix to rise?” (1998) 316 *British Medical Journal* 1034-1035.
- Rosenberg MF & Anthony JC.
“Early clinical manifestations of cannabis dependence in a community sample.” (2001) 64 *Drug and Alcohol Dependence* 123-131.
- Roy Morgan Research Centre Pty. Ltd.
Majority of Australians believe marijuana should remain illegal, Finding no. 3139. 20 October 1998.
<<http://www.roymorgan.com.au/polls/3139/>>

Sarre R.

“The partial ‘decriminalisation’ of cannabis in South Australia: issues in the evaluation of reforms to cannabis legislation.” In White J (ed) *Drug problems in society: dimensions and perspectives*. Adelaide, Drug and Alcohol Services Council, 1992.

Sarre R.

The partial “decriminalisation” of cannabis: the South Australian experience. (1994) 6 *Current Issues in Criminal Justice*, 196-207.

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, Legislative Assembly, Western Australian Parliament, 1997.

Single E W.

“The impact of marijuana decriminalisation: an update.” (1989) *Journal of Public Health Policy*, 456-466.

South Australia, Controlled Substances Advisory Council.

National competition policy legislation review: Licensing of hydroponic retailers. Issues paper. Adelaide, Controlled Substances Advisory Council, November 2001.

Sutton A.

“Cannabis law and the young adult user: reflections on South Australia’s cannabis expiation notice system.” (2000) 28 *International Journal of Sociology and Law* 147-162.

Sutton A.

“Drugs and dangerousness: perception and management of risk in the late modern era”. In Brown M and Pratt J (eds). *Dangerousness, risk and modern society*. London, Routledge, 2000.

Sutton A & McMillan E.

A review of law enforcement and other criminal justice attitudes, policies and practices regarding cannabis and cannabis laws in South Australia. Canberra, Commonwealth Department of Health and Aged Care, 1999.

Sutton A & McMillan E.

“Criminal justice perspectives on South Australia’ cannabis expiation notice procedures.” (2000) 19 *Drug and Alcohol Review*, 281-286.

Sutton A & Sarre R.

“Monitoring the South Australian cannabis expiation notice initiative.” (1992) 22 *Journal of Drug Issues*, 579-590.

Swiss Federal Commission for Drug Issues.

Cannabis report. Berne, Swiss Federal Commission for Drug Issues, May 1999.

Tutt D, Bauer L, Arms J, Perera C.

“Cannabis and road death: an emerging injury prevention concern.” (2001) 12 *Health Promotion Journal of Australia*, 159-162.

United Kingdom, House of Commons, Select Committee on Home Affairs.

The government’s drugs policy: Is it working? Memoranda of evidence. Annex C. Ashton M. Legislative frameworks for cannabis: impact on enforcement and patterns of use.

United Kingdom, House of Lords, Science and Technology Committee.

Ninth report. Cannabis: the scientific and medical evidence. Session 1997-1998.

United Kingdom, House of Lords, Science and Technology Committee.
Second report. Therapeutic uses of cannabis. Session 2000-2001.

Valuri GM, Indermaur D, Ferrante AM.

The criminal careers of drug offenders in Western Australia: A study of the recidivism and criminal history of those arrested for a drug offence in Western Australia between 1989 and 1999. Nedlands, University of WA, Crime Research Centre, 2002.

Wilson C.

Cannabis offences in the Australian Capital Territory. Social impacts of the legislative options for cannabis in Australia. Canberra, Australian Institute of Criminology, 1998.

Wodak A, Reinerman C, Cohen PDA.

“Cannabis control: costs outweigh the benefits - for” (2002) 324 *British Medical Journal* 105-106.

World Health Organisation.

Cannabis: a health perspective and research agenda. Geneva, Division of Mental Health and Prevention of Substance Abuse, World Health Organisation, 1997.