



Community Drug Summit

June 2001

**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.**

This is an Issues Paper. The Community Drug Summit Office has formed no conclusion on any issue mentioned in this paper. The purpose of the Issues Papers are to encourage discussion in the lead up to the Community Drug Summit and to encourage persons or organisations to make submissions to the Community Drug Summit Office. The Issues Papers are not meant to restrict persons or organisations in any way. Respondents should feel free to raise other relevant issues.

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Issues Paper Number 7

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1.0 Introduction

Law enforcement has a crucial role to play in reducing drug related harm in the community. While police could be said to have a role in reducing drug related problems simply by limiting the supply of illicit drugs, more recent developments in drug policy and law enforcement recognise that there are other ways that law enforcement can contribute. It is not possible in a paper of this kind to cover in detail all the aspects of drug laws, law enforcement, crime and the criminal justice system. Rather this paper attempts to address some of the key issues related to drugs and law enforcement, and to raise questions to stimulate public submissions and debate.

This paper is drawn from the perspective that all societies aim to control, or regulate drug use in various ways. While some would argue that each individual should have the right to consume whatever substance they wish, this paper is written from the point of view that society's rights override individual rights. The paper does not address the individual rights debate.

1.1 Drug Use and Crime

The relationship, between drug use and crime is a complex one. The link between problematic drug use and crime has been well documented. Drug related problems can occur due to intoxication, dependence or regular use. Crime may arise as a consequence of drug use, or may be associated with activities to get money to buy drugs. A study of WA drug injectors found that rates of opiate use were high among those arrested for crimes, such as theft, burglary and fraud (Loxley and Bevan, 1999). Urine analysis of people placed in the East Perth lockup in 2000 found approximately 70% were positive for any drug (Australian Institute of Criminology, 2001).

More than 60% of people in the criminal justice system in WA have a history of drug use (Cant, Downie, and Mulholland, 2000).

However, while many people in the criminal justice system may have a drug use problem and be drug dependent, research suggests that most drug injectors do not commit other crimes (Lenton, Kerry, Loxley, Tan-Quigley, and Greig, 2000). Furthermore, the evidence suggests that incarceration does not appear to deter drug offenders (Makkai, 1998). Additionally, about 30% of WA drug offenders with no prior criminal record are likely to be arrested for another drug offence within their lifetime (Select Committee into the Misuse of Drugs Act 1981, 1997).

1.2 Drug law enforcement

Despite the substantial costs associated with drug law enforcement, estimated to be \$450.6 million (Collins and Lapsley, 1996) in Australia during 1992, there is little evidence that these strategies reduce the overall level of illegal drug use and drug related harm (Sutton and James, 1996). Although the stated aims of most law enforcement bodies in Australia are to target the 'Mister Bigs' involved in the importation, production, financing, and/or distribution of illicit drugs, the most tangible outcome of supply reduction strategies is that large numbers of drug users, as opposed to drug suppliers, get arrested (Australian Bureau of Criminal Intelligence, 2001; Sutton and James, 1996). In 1999 there were 9,657 drug charges made in WA, which comprised 12% of all charges (Hargreaves and Lenton, 2001). Tables 1 and 2 show that in WA, as elsewhere, the vast majority of drug offenders are charged with simple possession, and the greater proportion of these for the possession of cannabis. The largest number of drug seizures are also for cannabis.

Table 1 WA Drug Arrests 1999/2000 by Consumer / Provider

Drug Type	Consumer		Provider		Total*	
	n	%	n	%	n	%
Cannabis	5409	79.8	1373	20.2	6782	76.8
Heroin and other opioids	360	74.5	123	25.5	483	5.5
Amphetamine type stimulants	810	73.5	292	26.5	1102	12.5
Cocaine	3	50.0	3	50.0	6	0.1
Hallucinogens	51	70.8	21	29.2	72	0.8
Steroids	0	0.0	0	0.0	0	0.0
Unknown / other	281	73.4	102	26.6	383	4.3
All Drugs	6914	78.3	1914	21.7	8828	100.0

Adapted from Australian Bureau of Criminal Intelligence, 2001.

* Totals may differ from ABCI report as they exclude missing data.

Table 2 Annual Seizures by Type of Drug, WA, 1998-2000

Drug Type	1998		1999		2000	
	n	%	n	%	n	%
Cannabis	16798	84.1	17467	82.7	16746	72.6
Amphetamine	1019	5.1	1360	6.4	2016	8.7
Ecstasy	190	1.0	214	1.0	337	1.5
Methamphetamine	41	0.2	88	0.4	156	0.7
Dexamphetamine	52	0.3	88	0.4	111	0.5
Cocaine	79	0.4	12	0.1	31	0.1
Heroin	852	4.3	808	3.8	661	2.9
Morphine	27	0.1	40	0.2	25	0.1
Opium	11	0.1	43	0.2	14	0.1
LSD	91	0.5	77	0.4	104	0.5
Other Specified	251	1.3	255	1.2	379	1.6
Unknown Powder	551	2.8	660	3.1	2474	10.7
Total	19962	100.0	21112	100.0	23054	100.0

Adapted from WA Drug Abuse Strategy Office and WA Police Service, 2001.

While some members of the community may be deterred from crime by the threat of being caught, the effect is substantially less than many believe (MacCoun, 1993). Unintended harm can occur from drug supply reduction strategies, if some people shift from a lower risk pattern of drug use (eg; cannabis use) to a higher risk pattern of use (eg; injecting heroin). Being caught moves certain users into treatment, but may lead to higher risk patterns of drug use (Weatherburn, Lind, and Forsythe, 1999,) such as hurried and higher risk injecting and a reluctance to seek medical assistance when it is clearly required (Allsop, in press).

Since the mid 1980s the official aim of Australia's national responses to drug use (The National Campaign Against Drug Abuse, and then the National Drug Strategy (NDS)) has been one of 'harm minimisation'. The NDS states that this encompasses a wide range of integrated approaches, including supply reduction, demand reduction and targeted harm reduction strategies.

New approaches to drug law enforcement aim to reshape, rather than totally suppress, illicit drug distribution and consumption, with the overarching objective to ensure that laws are enforced in ways that keep health, welfare and other harms, as well as drug related crime, to a minimum (Hellowell, 1995; Sutton and James, 1996). However, for the most part, law enforcers have been asked to exercise discretion in the name of harm reduction which poses difficulties for many police who have been trained in a 'black and white' approach to law enforcement (Lough, 1998), and also leaves them vulnerable to charges of corruption. Organisational constraints on police public expectations of police and the culture of the police service can impede the adoption of a more community focussed approach to drug law enforcement (Lough, 1998). There are some practical examples of the new approach to drug law enforcement.

For some years WA police have had standard operating procedures which support discretion to not prosecute possession and use offences when they attend drug overdoses, and to avoid carrying out police operations near needle exchanges and drug treatment agencies, unless operational needs dictate otherwise (Select Committee into the Misuse of Drugs Act 1981, 1997). These guidelines are seen as being in the public interest because they minimise the likelihood that drug users will fail to call an ambulance for an overdose, or avoid treatment agencies and needle exchanges, because they are concerned about being charged by police. If police are to be supported in reducing drug related harm in the community they need organisational, procedural, legislative and community support to target law enforcement to this end. Simply leaving the issue to police discretion leaves police vulnerable.

A review of drug law enforcement which surveyed 100 law enforcement officers nationally found that most did not know how police drug operations impacted on drug price, purity and availability (Sutton and James, 1996). Few believed they should be concerned with how law enforcement affected the behaviour of drug users. Most could not see any role for law enforcers in reducing drug related harm other than in supply reduction, and in avoiding high profile policing around needle exchanges and drug treatment services.

The report, endorsed by Police Ministers, made a number of suggestions for structural and organisational change in order to make reducing drug related harm in the community at least as important as targeting major drug suppliers. It appears that efforts have been made to provide better feedback to police regarding drug market impacts of drug operations. However, an externally evaluated trial of four pilot projects (Canty, Acres, Loxley, Sutton, James, Lenton, Midford, & Boots, 2001) showed that while there had been some worthwhile projects

initiated, lack of structural change was a barrier to the kind of fundamental change in drug law enforcement focus recommended by the national review (Sutton and James, 1996).

Important Questions

- What further steps should be taken to support law enforcement agencies in directing their efforts at reducing drug related harm in the community beyond supply reduction?

2.0 Western Australian Context

2.1 Relevant Legislation

Misuse of Drugs Act 1981

The primary legislation regarding drug use in WA is the Misuse of Drugs Act 1981 (MDA). The provisions of the MDA are detailed in Tables 3 and 4 below. It should be noted that the maximum penalty for possessing a used 'bong' (water pipe) (\$3000, and/or three years imprisonment) is greater than the penalties for

possessing the cannabis to smoke in it. Furthermore, WA is unique across Australia in that it is an offence to be found in any place being used for the purpose of the manufacture, preparation, sale, supply or use of a prohibited drug or prohibited plant, or to be an owner of such a property. All of these offences are criminal and like all convictions are recorded on the offender's criminal record. This can stay with an individual for the rest of their life, although after 10 years they may apply to have it expunged.

Table 3 shows that presumption of possession with 'intent to sell or supply' is defined under the MDA in terms of quantity. Table 4 shows that the maximum penalties for supply range up to \$100,000 fine and/or 25 years imprisonment. Police and others have noted that there is inconsistency in the MDA with regards to the amounts presumed as 'intent to sell or supply' for different drugs. Some are likely to be personal use amounts for many users. For example, many regular amphetamine users could be in possession of two grams of amphetamine for their personal use, but few regular heroin users would have as much as two grams of heroin for their personal use.

Table 3 Threshold Quantities for Determination of Place of Trial, Presumption of Intention to Sell, and Declaration as a Drug Trafficker

	Summary trial threshold (Schedules 3 & 4)	Presumption of intention to sell or supply (Schedules 5 & 6)	Drug trafficker (Schedules 7 & 8)
Prohibited drugs			
Amphetamine	4 g	2 g	28 g
Cannabis	500 g	100 g	3 kg
Cannabis resin	40 g	20 g	100 g
Number of cigarettes (containing any amount of cannabis)	400	80	
Cocaine	4 g	2 g	28 g
Diacetylmorphine	*	2 g	28 g
Ephedrine	4 g	4 g	28 g
LSD	0.004 g	0.002 g	0.01 g
Methylamphetamine	6 g	2 g	28 g
MDA	4 g	2 g	28 g
MDMA	4 g	2 g	28 g
Morphine	6 g	2 g	28 g
Opium	40 g	20 g	100 g
Prohibited plants			
Cannabis	100 p	25 p	250 p
Papaver somniferum	100 p	25 p	*
Papaver bracteatum	100 p	25 p	*

*= not specified, p = plants, g = grams, kg = kilograms.

**Table 4 Maximum Penalty Structure, Simple and Indictable Offences
Misuse of Drugs Act 1981**

Offences	Simple offences	Indictable offences			
		Optional summary trial *	Sentenced by District or Supreme Court *	Indictable	Conspiracy
Premises	\$3,000/3 yrs				
Present where drugs being smoked	\$2,000/2 yrs				
Possession of used paraphernalia for smoking drugs	\$3,000/3 yrs				
Possession or use of prohibited drug	\$2,000/2 yrs				
Possession or cultivation of prohibited plant	\$2,000/2 yrs				
Prescriptions	\$3,000/3 yrs				
Possession with intent to sell or supply prohibited drugs				\$100,000/25 yrs	\$75,000/20 years
Sell or supply, or offer to sell or supply prohibited drugs				\$100,000/25 yrs	\$75,000/20 years
Manufacture or prepare prohibited drugs				\$100,000/25 yrs	\$75,000/20 years
Possession with intent to sell or supply prohibited plants		\$5000/4 years	\$20,000/10 years	\$100,000/25 yrs	\$75,000/20 years
Cultivation with intent to sell or supply		\$5000/4 years	\$20,000/10 years	\$100,000/25 yrs	\$75,000/20 years
Sell or supply, or offer to sell or supply prohibited plants		\$5000/4 years	\$20,000/10 yrs	\$100,000/25 yrs	\$75,000/20 years

(Adapted from: Select Committee into the Misuse of Drugs Act 1981)

* relates to cannabis only under MDA 34 (2) (a)

Important Questions

- Should fundamental changes be made to WA drug laws?

Juvenile provisions

A number of reforms to the juvenile system in WA were made during the 1990s, each of which have affected the processing of juveniles charged with drug related offences. These reforms included:

- in 1991 a formal cautioning system for minor offences by juveniles was introduced;
- in 1993, extensions of eligibility for children over 16 years of age to appear before the Children's Panel; and

- in 1995, the Children's Panel was replaced by Juvenile Justice Teams (through the Young Offenders Act 1994), which attempt to resolve matters through family group conferences to divert young offenders away from the criminal justice system.

Under Schedule 1 of the Young Offenders Act 1994 offences relating to juveniles charged with drug selling or supply offences cannot be subject to a caution or a referral to the Juvenile Justice Team. The Juvenile Justice Teams are in principle a court diversionary option designed to ensure that court is the last resort. However, police and judicial discretion to refer young people to the Teams is not always taken up, even when the young person may be clearly eligible. Teams are not an option for young people who do not fully acknowledge guilt for offences, are serious or recidivist offenders, are deemed as 'unworkable' by a Juvenile Justice Team, or whose

parents do not give their consent. Furthermore, referrals to the Teams for drug offences are limited to possession of cannabis, cultivation of cannabis, and possession of a smoking implement.

Important Questions

- Should greater effort be made to ensure consistency in outcomes in sentencing and use of diversionary schemes for young people?
- Should a young person charged with supply offences be precluded from these diversionary options?

Strategies to support law enforcement targeted at large scale drug suppliers

The 'Baker Report' (Select Committee into the Misuse of Drugs Act 1981, 1997) made a number of recommendations aimed at increasing police powers and penalties for persons involved in large scale commercial drug trafficking offences. Some of these recommendations were recently enacted as part of the Criminal Property Confiscation Act 2000, which included the mandatory forfeiture of all property of declared drug traffickers, strong provisions supporting the police powers of search and seizure and rebuttable presumptions which facilitate the forfeiture of crime used property, crime derived property and unexplained wealth.

There are questions as to whether the police and other agencies have been adequately resourced to use these new provisions. Other recommendations of the Baker Report are yet to be enacted. These included provisions regarding:

- further increases in police powers;
- supporting undercover police operations targeted at drug suppliers;
- prohibiting supply of precursor chemicals used in drug manufacture;
- additional protection for undercover police who have to appear in court; and
- greater capacity for sharing intelligence information across jurisdictions.

Important Questions

- In what ways should the powers of police, and of the authorities generally, to combat the activities of people involved in large scale commercial drug trafficking be further supported or changed?

2.2 Current Initiatives

WA has developed a range of programs to divert eligible offenders into drug treatment and supervision at key points in the criminal justice process.

Cautioning

The Cannabis Cautioning and Mandatory Education System has operated statewide since March 2000 after a 12 month trial. By the end of April 2001, a total of 1055 cannabis cautions had been issued under the scheme, 68 offenders had not attended education sessions, and 47 offenders who received a caution had reoffended (illicit drugs offence). The pilot of a diversion scheme for possession and use of drugs other than cannabis is being conducted in Perth, Mirrabooka and Geraldton police districts. It has been operational since March 2001. As of May 2001, 17 diversion notices had been issued, 14 offenders had completed all treatment sessions required under the programme, two had failed to complete the programme and one offender was still in the system (Unpublished data WA Police service).

Court Diversion

A study of offenders referred to the WA Court Diversion Service (CDS) during 1998 (Kraszlan, Ryder, Allen, Chiplin, Dick, Lien, & Petsos, 1999) found most were male, in their mid 20s unemployed, single, with some secondary schooling and non-Aboriginal. Most had entrenched drug using and criminal histories, were primarily heroin users and had been regular users for more than two years. Although the study did not include a control group which limited the extent to which firm conclusions could be drawn, it failed to find that attendance at CDS or completion of a CDS directed program reduced recidivism. Three primary problems with the scheme were identified:

- inadequate program evaluation and monitoring;
- lack of standardised procedures in response to drug positive urine results; and
- inadequate procedural guidelines (Kraszlan et al., 1999).

Drug Court

The WA Drug Court, which is being evaluated as part of a trial, commenced in early 2001 and has therefore only been in operation for less than six months. Drug courts, which have operated in the US since the early 1980s, are specifically established to administer cases referred for judicially supervised drug treatment and rehabilitation within a jurisdiction or court enforced drug treatment program (Inciardi, McBride, and Rivers, 1996). A distinct feature of Drug Courts, as opposed to other diversionary schemes, is that the referral to treatment, the nature of treatment and outcome monitoring are very much under the control and decision making of a judge, not the police, probation officers or treatment

providers (Allsop, in press). A number of ethical and clinical concerns have been raised about the operations of the Drug Court in NSW (Wickes and Anderson, 1999).

Chief among these was the concern that clinical culture had been set by the court deciding that some treatments (especially abstinence oriented ones) were more superior to others, rather than decisions being made based on the advice of health professionals in the context of clinical practice, research, and ethical guidelines.

Since the inception of the Drug Court in WA, the Aboriginal Legal Service of WA (ALSWA) has only had five clients referred to the Drug Court. None of these clients have progressed past the first appearance, as they have been regarded as unsuitable for the programme. As far as the ALSWA is aware, there have only been one to two other Aboriginal defendants who have gone past the first referral stage, but none have completed the programme (Personal Communication, Aboriginal Legal Service of WA).

Important Questions

- Are the resources for community supervision of offenders under WA's existing court diversion schemes adequate?
- Are the community supervision schemes being comprehensively evaluated?
- Should the evaluation of the effectiveness of the WA Drug Court be public and open and encourage involvement from the full range of relevant stakeholders?

Prison Substance Use Programs

The Ministry of Justice drug management strategy aims to:

- reduce the supply of abused substances in prisons;
- reduce the demand for abused substances by offenders; and
- manage and reduce harm caused as a result of substance abuse.

The major focus of established drug programs in prisons has been to prepare prisoners for release by reducing their risk of relapsing into problematic substance use and associated offences. As a consequence, most program input was in the last six to eight months of the designated sentence.

However, this focus is being reviewed and ways of assisting prisoners to address their substance use issues throughout their sentence are currently being implemented. For example, a new assessment process aims to identify and assess substance users at the commencement of the sentence, link them with appropriate treatment responses and monitor their needs and their substance use history as they progress through the justice system.

Additionally, the promotion of drug free units within custodial facilities provides a shift to incentive rather than punitive management techniques. The use of incentives is designed to promote a reduction in the demand for abused substances and support active attempts by offenders to remove themselves from such activity.

There is not a comprehensive methadone maintenance program in WA prisons although current policy supports methadone maintenance and detoxification of newly received prisoners who have entered the system. All substance use programming is currently of a brief intervention nature. There are no comprehensive, intensive substance use programs of the therapeutic community variety, however, the Ministry is actively seeking intensive programming options. Existing programs include:

- a five day program for prisoners with more severe substance use problems and criminal justice consequences;
- a brief intervention of several individual counselling sessions immediately prior to release focused on the most pressing issues underlying the prisoner's substance use; and
- a Prison to Parole Program funded by WA Drug and Alcohol Strategy Office to increase prisoner engagement with treatment agencies upon release.

A number of other specific prison substance abuse programs exist including: the Northern Aboriginal Substance Use Resource Unit Program (NASURU), the Women's Group Program; the Remand Program; the Managing Anger/Substance Use (MASU); and the Indigenous Men Managing Anger and Substance Use (IMMASU) program.

Important Questions

- Are the drug treatment services provided in prisons in WA adequate to prepare prisoners for return to the wider community? Are they adequately resourced?
- Are the drug treatment services provided in prisons in WA adequately resourced?

3.0 Issues for Consideration

3.1 Deemed Supply Offences and Onus of Proof

In most jurisdictions, the possession of a quantity of a prohibited drug which legislatures have declared to be for 'sale or supply', provides grounds for presumption that the accused meant to sell or supply the drug. For WA see Table 3. These quantities are intended to represent those which greatly exceed amounts for personal possession it is extremely unlikely that it is for personal use. However, for many dependent drug users amounts specified in law as sell or supply, may be for personal use only. A committee recommending a national model criminal code has recognised that:

The overwhelming majority of offenders who appear before the courts on a charge of trafficking arising from possession are not caught with kilo quantities...An unjustified conviction for dealing will often impose social and individual harms which far exceed the harms associated with the use of the drug in question (Model Criminal Code Officers Committee of the Standing Committee of Attorney Generals (MCCOC), (1998), p.87). Note: The MCCOC uses the term 'trafficking' to refer to 'sell or supply' offences.

As such, the MCCOC recommended that on proof of possession of a 'trafficable' quantity of a drug, that the onus of proof should be shared. The prosecution should bear the legal burden of proving an intention to sell or supply, and the onus should be on the accused person to bring forward evidence that there was no intention to sell or supply the drug (Model Criminal Code Officers Committee of the Standing Committee of Attorney Generals (1998), p.91).

Important Questions

- Should the onus of proof for deemed supply offences be as recommended by the Model Criminal Code?

3.2 Aboriginal People and Illicit Drug Laws

Relatively little is known about illicit drug use by Indigenous Australians, probably in part because of the larger threat posed by legal drugs like alcohol and tobacco to indigenous communities (Gray, Siggers, Atkinson, and Loxley, unpublished). However, the 1995 National Drug Strategy Household Survey did find that 2.0% of urban Indigenous people acknowledged injecting drug use, compared with 0.5% of the general urban population (Commonwealth Department of Health and Family Services, 1996).

With regards to drugs, Aboriginal Australians and law enforcement, the primary issue is probably that prisons and the juvenile justice system have been implicated in Indigenous injecting drug use in a number of studies (Brady, 1992; Crofts, Webb-Pullman and Dolan, 1996). The disproportionate number of Indigenous people in custody, combined with unsafe injecting and sexual

practices may be a lethal mixture (Gray et al., unpublished). One study of Indigenous injecting drug users found that 84% of the sample had been in prison, and of those 57% had continued to inject whilst incarcerated (Shoobridge, 1998).

Important Questions

- What further steps should be taken to reduce the harms associated with illicit drug use by Indigenous offenders in the criminal justice system?

3.3 Cannabis - Legal Issues

Australian experience of legislative models for cannabis

At least six different legislative models for cannabis have been identified (McDonald, Moore, Norberry, Wardlaw, and Ballenden, 1994). Table 5 shows that in Australia, civil penalty schemes were introduced in three Australian jurisdictions in the 1980s and 1990s. Under these schemes, minor cannabis offences are dealt with by an 'on the spot' fine. No criminal penalties apply if the fine is paid by the due date, and there is no limit to the number of times an infringement notice can be issued to the offender.

Prohibition with (formal) cautioning schemes were implemented more recently by the other State Governments, including WA. Cautions are given for first or second offences but for subsequent offences criminal penalties apply. There are differences between jurisdictions with regards to the specific details of the offences, the nature of the penalties imposed and procedural factors. Recently a hybrid model has been recommended which aims to incorporate features of the cautioning and civil penalty options to move the market away from large commercial suppliers with criminal connections (Lenton, Heale, Erickson, Single, Lang, & Hawks, 2000).

Evidence regarding effectiveness of criminal penalties

Like any drug, cannabis has the capacity to cause harm. However, its major health risks are likely to be among long term, regular users (Swift, Copeland and Lenton, 2000). Research indicates that most people who receive a criminal conviction for a minor cannabis offence are otherwise law abiding (Lenton, Ferrante and Loh, 1996). A cannabis conviction can have significant adverse impacts on employment, further involvement with the criminal justice system, relationships and accommodation. However, conviction fails to deter future cannabis use by many of those apprehended (Erickson, 1980; Lenton and Heale, 2000).

Table 5
Cannabis Legislative and regulatory changes in Australia
Lowest offence categories

<i>Prohibition with civil penalties (Infringement notices)</i>	
SA (1987)	<100 grams ≤ 3 plants, 60 days to expiate. Applies to adults only, Fines: \$50 - \$150. Failure to expiate usually results in conviction
ACT (1992)	Not >25 grams or 5 plants, 1 month to expiate. Adults & juveniles \$100 fine. Failure does not usually lead to conviction
NT (1996)	<50grams ≤ 2 plants, 28 days to expiate. Applies to adults only \$100 fine. Failure to expiate results in debt to state not conviction.
<i>Prohibition with cautioning and diversion to treatment</i>	
Tas (Jul 98)	<50 grams plants excluded. Caution for first offence.
Vic (Sept 98)	<50 grams plants excluded. Up to two formal cautions, over 17.
WA (Mar 00)	<25grams plants excluded. Caution for first offence if attend education session.
NSW (Apr 00)	<15grams. Statewide 12 month trial. Up to two formal cautions
Qld (Jun 01)	<50grams. Mandatory assessment and brief intervention session.

(< less than, > more than, and ≤ less than or equal to)

The social costs of a cannabis conviction are far greater than those under a civil penalties system where infringement penalties apply (Lenton, Hummeniuk, Heale, and Christie, 2000). Research has failed to show that removing criminal penalties for personal use has led to an increase in the number of regular cannabis users in the general community (Donnelly, Hall, and Christie, 2000; Single, Christie, and Ali, 2000).

The cannabis market

It has been estimated that in WA during 1995 up to 217,000 mature cannabis plants were grown, and that 218,600 people used the drug, consuming cannabis with a market value of up to \$440 million (Select Committee into the Misuse of Drugs Act 1981, 1997). There is considerable evidence of organised crime involvement in large scale cannabis production and distribution in

Australia (Australian Bureau of Criminal Intelligence, 1998; Select Committee into the Misuse of Drugs Act 1981, 1997) which brings considerable additional risks to the wider community. This includes the use of 'booby traps', armed guards and large animal traps to protect sizeable outdoor crops, and setting up vacant houses with elaborate indoor hydroponic systems where electrical wiring is diverted around the perimeter to avoid detection (Australian Bureau of Criminal Intelligence, 1998).

It has been reported that law enforcement operations targeted at organised crime groups have not had any noticeable impact on the operation of the cannabis market as a whole, with little evidence of any reduced availability of cannabis (Australian Bureau of Criminal Intelligence, 1998). Australian studies of first time offenders suggest that less than 30 percent grow cannabis as their main source of supply, and most buy from the illicit market (Christie, 1999; Lenton, Bennett, and Heale, 1999). There is some evidence that when cannabis users go to the illicit market to buy their cannabis they are exposed to a range of other illicit drugs (Lenton et al., 1999; Maddox and Williams, 1998).

Important Questions

- What system of laws and regulations will provide the best system for reducing cannabis related harm to individuals, families and the WA community?

3.4 Other Illicit Drugs - Legal Issues

Notification of Drug Addicts

Under the Drugs of Addiction Notification Regulations 1980 of the Health Act 1911, medical practitioners are required to 'notify' the Executive Director Public Health, when they become aware of a person who is 'addicted to drugs'. The Health Department of WA maintains a register of such notifications. The purpose of this system is to control inappropriate access to 'drugs of addiction' (Schedule 8 drugs). As of May 2001 approximately 11,000 persons had been notified as 'drug addicts' under these regulations. These regulations are currently under review by the Health Department. Persons can be removed from the register if after two years, the Executive Director, Public Health has advised that the person referred to in the register has ceased to use drugs; the entry was false or incorrect; or the person has no contact with the Health Department in relation to their use of drugs of addiction.

Anecdotal reports suggest that it is not uncommon for people on the register, who may be past or present drug users, to report that they have been denied adequate pain management and other treatment when presenting to public health services such as Accident and Emergency Departments at public hospitals.

Important Questions

- Should the review of the Drugs of Addiction Notification Regulations 1980 of the Health Act 1911 include broad community input regarding the rationale and operation of the regulations?

Possession of unused needles and syringes or smoking implements

Under the Misuse of Drugs Act 1981, possession of unused drug use implements has never been an offence in WA, although possession of such equipment may be used as evidence of drug use (Australian National Council on AIDS and Related Diseases, 1999).

Important Questions

- Should greater legal protection be provided for people in possession of unused drug injecting equipment in WA?

Possession of used injecting equipment

Research conducted with young drug injectors in the mid 1990s in WA suggested users' perception of the risk of being charged in possession of used needles adversely affected disposal practices and the use of needle exchanges (Loxley, 1997). Another study of 511 WA drug injectors found that although most users disposed of their used needles responsibly, 31% said that they 'got rid of them quickly' (Lenton and Tan-Quigley, 1997). Laws which dissuade users, through fear of arrest, from taking steps to appropriately store and dispose of used needles put the community at increased risk of drug related harm.

There appears to be some lack of clarity regarding whether used needles containing traces of prohibited drugs constitutes an offence under Section 5 (1) (d) of the Misuse of Drugs Act 1981. However, there is some evidence that some drug users and police perceive that possession of needles containing traces of a drug is an offence. An early nation wide review of the legal situation relating to HIV/AIDS and injecting drug use reported that WA police officers said that although traces from used needles could be tested by police for evidence of prior possession, in practice they would only do this as a last resort (Schwartzkoff and Watchirs, 1991). The authors concluded that such uncertainty likely exacerbates user fears about storing or carrying used needles for the purpose of safe disposal. This undermines strategies to reduce the risk to both drug injectors and the wider non-injecting community.

Important Questions

- How should possession of used needles and other drug injecting equipment be dealt with by the law in WA?

The relationship between drug users and drug dealers

Many in the community make a black and white distinction between drug users (usually as victims) and drug dealers (as, by definition, evil exploiters). However, the experience of those who work in the drug field is that such absolutist distinctions are usually inaccurate. Most 'drug dealers' are drug users who sell to support their drug habit. Thus, an analysis of 1996 drug charges in WA (Crime Research Centre submission to the Select Committee into the Misuse of Drugs Act 1981, 1997) revealed that 63% of 'sell or supply' charges were laid in conjunction with possession/use offences against the same offender, suggesting that these were lower level 'user dealers' rather than large scale commercial suppliers. While the figures indicate that many dealers are also classified as 'users', few 'users' (17%) were charged with 'sell or supply' at the same time.

Important Questions

- How should the law and police practice reflect the difference between small time user dealers and large commercial dealers?

3.5 Drugs and the Custodial System

Although during 1999/2000 only 5% of prison sentences commenced in WA were for drug offences (Unpublished: Adult Offender Statistical Reports, Ministry of Justice), most offenders in custody have a history of problematic substance use and in many instances, there is a direct relationship between prisoners' substance use and offending. Research in the New South Wales prison system (Allen, 1996) found:

- 67% of inmates reported being under the influence of a drug at the time of their most serious offence;
- 66% believed there was a relationship between their drug use and subsequent imprisonment; and
- 74% reported drug problems. The WA Ministry of Justice showed that in 1999 over 60% of receivals into the prison system had a history of drug use (Cant, Downie, and Mulholland, 2000).

Drug Use in Prisons

In 1999-2000 the Ministry of Justice conducted 599 random urinalysis tests and 3,811 targeted tests of prisoners in custody. Some 23.5% of the random tests were positive and of these samples 70% were positive for cannabis and 27% for pharmaceuticals (usually benzodiazepines). The penalties for drug use in prisons not only result in loss of remission, punishment regimes and loss of privileges but can also impact on security rating and access to Leave of Absence programs. Prison, by its nature, must maintain an abstinence stance, however, inconsistencies with community responses to drug use are apparent.

Concerns have been raised that many offenders claim to have commenced drug using behaviour or escalated their previous behaviours through exposure to other entrenched drug users during their periods of incarceration. Prison overcrowding restricts the capacity to isolate non-using prisoners from those known to be drug users. The recent overcrowding in WA prisons has seen the need to accommodate drug using offenders in regional facilities. There has been a concern that the proportionately larger indigenous populations in regional prisons may have been exposed to risky drug injecting practices which could permeate into the (non-prison) local communities.

Prison, drugs and transmission of blood borne viruses (BBVs)
At the end of 1999 there were approximately 20,000 people incarcerated in Australian prisons, and another 20,000 had been cycled through the prison system and been released during that year. This movement of people increases likelihood of transmission of BBVs, such as HCV and HIV (Dolan, 2001). There is now strong case evidence of Hepatitis C (Haber, Parsons, Harper, White, Rwalinson, & Lloyd, 1999) and HIV (Dolan and Wodak, 1999) transmission within Australian prisons. There are two frequent modes of transmission in prison: injecting drug use and tattooing. About a quarter of all prisoners inject drugs while incarcerated and almost all injecting is done using equipment shared among numerous other inmates.

The primary prevention measures to reduce drug injecting in prison are:

- reducing the numbers of injectors in prison by expanding drug treatment in the community and by diverting drug users from the prison system where appropriate; and
- providing methadone maintenance in prison.

New South Wales has had prison methadone programs since 1987 and programs have recently been introduced or expanded in all other states except WA and the NT (Dolan, 2001). Prisoners on methadone injected half as often as those who were not, but only if doses were at least 60mg and provided for the entire length of their incarceration (Dolan, Wodak, and Hall, 1998). Drug injecting in prison is also likely to be reduced if prisoners get lighter penalties for using non-injectable drugs (eg; cannabis), rather than injectable drugs (eg; heroin, amphetamines), while in prison.

United Kingdom evidence suggests prisoners switched from smoking cannabis (present in urine for weeks) to injecting heroin (detectable for only a day or two in urine) when prison urine screening was introduced (Gore and Bird, 1995). South Australia and Tasmania have applied lighter penalties for using non-injectable over injectable drugs in prison and Victoria is considering similar changes (Dolan, 2001).

Another controversial strategy is implementing needle exchange in prison. Needle exchanges have been successfully implemented in custodial facilities in Germany, Switzerland and Spain. This experience shows they have reduced sharing, rather than drug use itself, while problems of overdose, poor injecting hygiene and drug dealing in prison may have persisted (Dolan, 2001).

Important Questions

- What further steps should be taken to reduce drug related harm in detention and in prisons in WA?

4.0 Summary

This paper has attempted to raise questions to contribute to community discussion of law enforcement issues at the WA Community Drug Summit. Law enforcement has a crucial role to play in reducing drug related problems. Recent developments in drug policy and law enforcement recognise that there are other ways that law enforcement can contribute to this end, rather than by simple supply reduction. While a number of such steps have recently been made in WA, this paper has identified some of the areas where there is scope for further legislative and procedural change for law enforcement approaches to further reduce drug related harm in the WA community.

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