



Drug and Alcohol Office
Government of Western Australia



Delivering a Healthy WA

Statutory Review

Cannabis Control Act 2003

Executive Summary

Report to Minister for Health

November 2007

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Prepared by the Drug and Alcohol Office

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Disclaimer

The Drug and Alcohol Office received invaluable advice, commentary and opinion from the Expert Consultative Group at different stages over the course of the statutory review. The role of the Expert Consultative Group was to provide a measure of independent advice outside of the departmental processes that were also established. The views, interpretations and conclusions contained in the publications produced by the review do not necessarily represent those of the Expert Consultative Group or of any individual member.

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Foreword

This statutory review of the *Cannabis Control Act 2003* (CCA) has analysed a wide range of information to examine the impact of the reforms, which came into force on 22 March 2004. An important part of the review process was the input received from the Expert Consultative Group, all of whom generously gave of their time to attend meetings and provide ongoing comments on various draft chapters.

It is acknowledged that one of the reasons this group was appointed by the Minister was to ensure that the review could be informed as much as possible by a breadth of views. Whilst there was broad support from the Expert Consultative Group for the majority of the recommendations, consensus was not always possible.

The review has necessarily focused on the cannabis infringement notice (CIN) scheme, as this was the most significant consequence of the reform package that was passed by the Western Australian Parliament in October 2003. However, the report also considers law enforcement and health issues concerned with the use of cannabis, as the reforms also created a framework to identify and minimise the harms due to cannabis use in the community.

The review found that the majority of the original objectives of the CIN scheme have been achieved. However, it also provided an opportunity to identify and recommend changes that will considerably improve the system.

One of the goals of the March 2004 reforms was to develop a close relationship between law enforcement and health agencies to facilitate the redirection of minor cannabis offenders away from the courts. The review found that that this goal was achieved, especially in the first five quarters of the CIN scheme from 22 March 2004, when significant numbers of people were issued with cannabis infringement notices (CINs).

However, after mid 2005 the number of CINs issued each quarter declined compared to the earlier period and the number of people charged with minor cannabis offences began to increase. The review identified that aspects of the scheme had contributed to the decline in the issuing of CINs and that new practical measures need to be implemented in the future to encourage the issuing of CINs in preference to laying charges.

Importantly, the review has identified that there has not been an adverse trend in the use of cannabis resulting from the introduction of the CCA reforms. The prevalence of cannabis use has been in decline for the past decade and there is no evidence that the shift to issuing infringements rather than prosecuting minor cannabis offenders has increased the prevalence of cannabis use in the community in Western Australia.

The reduction of harm resulting from not prosecuting minor cannabis offenders and the indication that this has not increased cannabis use in the community provides a sound foundation to recommend continuation of the scheme. Therefore the focus is on improving the scheme and the review has made recommendations in a number of areas including:

- simplification of the offences to which the CIN scheme applies;
- modification of the legislation so that police can implement streamlined processes to assist with implementing the scheme with certainty and cost effectiveness;
- ensuring an effective and appropriate intervention for juvenile offenders that maximises the opportunity to educate and modify the behaviour of young people regarding their cannabis use;
- improving access to and the content of the education and therapeutic intervention for offenders; and
- improving education of the general community about the harms associated with cannabis use, the treatment services available and the cannabis laws that are in place.

The review has identified that there remains broad support in the community for the CCA reforms introduced in March 2004, particularly the CIN scheme and I am confident that implementation of the refinements recommended in this report, will improve effectiveness of the scheme.

A handwritten signature in blue ink, appearing to read "Charles Watson". The signature is written in a cursive style with a large initial 'C'.

Charles Watson, Professor of Health Sciences, Curtin University of Technology
Chair of Expert Consultative Group

Executive Summary

1. Background of Cannabis Control Act 2003 (CCA) Review

The *Cannabis Control Act 2003* (CCA) was proclaimed in March 2004, and included a provision to review the Act after three years.

This review has now been completed by the Drug and Alcohol Office (DAO), with input from an Expert Consultative Group, and consultation with community and stakeholder groups.

The review focused heavily on the cannabis infringement notice (CIN) scheme as this was the most significant change to how cannabis offences were treated, and considered whether the CIN scheme was to continue, and how it might be improved.

Also considered in the review were law enforcement and health issues related to cannabis use.

The review was concerned with investigating nine broad areas agreed upon in consultation with the Minister for Health. These consisted of five areas specifically related to the CIN scheme as follows:

- a) improving help seeking behaviour of those with cannabis related problems;
- b) increasing the knowledge of and awareness about the harms and prohibition associated with cannabis;
- c) preventing the adverse social and economic costs from convictions for minor cannabis offences;
- d) reducing the cost incurred by law enforcement organisations and the courts in prosecuting those charged and convicted for minor cannabis offences; and
- e) enabling police to focus on the detection and prosecution of those engaged in the commercial cultivation and supply of cannabis.

The remaining four broad areas were concerned with additional matters that had been identified as relevant to other aspects of the CCA reforms, as follows:

- f) trends in the prevalence of cannabis use before and after the introduction of the CIN scheme;
- g) compliance by cannabis smoking paraphernalia retailers with the requirements of the CCA;
- h) the feasibility of introducing mandatory cannabis education sessions (CES) for those issued with a CIN; and
- i) whether the CIN scheme or other measures should be implemented to provide education and assistance for juveniles who commit minor cannabis offences.

2. Trends in cannabis use

The 2004 National Drug Strategy Household Survey (NDSHS) is the eighth in a series of surveys comprising questions on drug-related knowledge, awareness, attitudes, use and behaviours, of people 14 years old and over. The NDSHS survey is the source for much of the statistical data relating to cannabis use. The 2004 survey provides most recent data used in this CCA review, and the 2007 survey is underway with the results expected in 2008.

The level of cannabis use in the community increased between 1995 and 1998, for both lifetime use (from 37% to 45%) and annual use (from 17% to 22%). However this trend reversed between 1998 and 2004, with a decrease in both annual use (from 22% to 14%) and monthly use (from 10% to 8%).

According to the NDSHS there were 220,700 Western Australians in 2004 who had used cannabis in the last 12 months - of whom 132,400 had used cannabis more than five times in the last year, and 127,300 in the last month.

The downward trend of a reduction in cannabis use since 1998 (22.3%) is expected to continue with a rate of 11.7% estimated in 2007 (according to unpublished research from National Drug Research Institute). If this is confirmed it will be a reduction on the 2004 NDSHS result of 13.7%. There is no evidence that the CCA reforms have adversely impacted on this downward trend.

3. How the CIN scheme currently works for adult offenders

A CIN can be issued to a person:

- 18 years of age and over;
- found to be in possession of not more than 30 grams of cannabis;
- found to be in possession of smoking implements with detectable traces of cannabis; and
- growing not more than two non-hydroponic cannabis plants at a person's principal place of residence.

A maximum of three CINs can be issued at any one time.

A person issued with a CIN can either attend a cannabis education session (CES) or pay the financial penalty within 28 days. Current financial penalties are:

- \$100 for possessing not more than 15 grams;
- \$150 for more than 15 and up to 30 grams;
- \$200 for cultivation of up to 2 non-hydroponic plants; and
- \$100 for possession of a smoking implement with detectable traces of cannabis.

Where a person does not respond to a final demand notice, the matter is referred to the Fines Enforcement Registry (FER), which continues seeking payment, including administrative charges, and results in suspension of the offender's driver's licence if payment is not made.

Therefore no adult issued with a CIN avoids a penalty.

4. Cannabis offences and juveniles

The CCA currently precludes issuing a CIN to juveniles, or people under 18 years of age. Therefore minor cannabis offences for juveniles are currently dealt with under the *Young Offenders Act 1994* (YOA), or the *Misuse of Drugs Act 1981* (MDA).

There are a number of ways a juvenile found in possession of cannabis can be dealt with by police under the YOA, including issuing either a verbal or a written caution, referral to a Juvenile Justice Team (JJT) or referral to the Children's Court depending on the nature of the offence.

Currently there may be no formal consequences for a juvenile apprehended with a minor cannabis offence, beyond a police caution.

Between January 2005 and May 2007 (2½ years) there were 1,839 juvenile minor drug offences recorded by police. Details of the drug concerned are not recorded but most of these would have been cannabis related. Of these 1,839 minor drug offences, 228 (12%) were referred to a JJT and 1,611 (88%) were issued either a verbal or written caution.

Between 2002 and 2006, 77% of all drug charges dealt with by Children's Courts involved cannabis, which indicates that cannabis is the most prevalent illicit drug for juveniles.

A total of 2,584 juvenile cannabis related charges were dealt with by Children's Courts, and these resulted in:

- 1,208 (48%) interventions, (eg community development orders or referral to the Drug Court for placement on a Drug Court program);
- 1,001 (37%) with no further action; and
- 375 (15%) receiving a fine.

The latest Australian Secondary School Students Alcohol and Drug Survey (ASSAD) in 2005, estimated that annual cannabis use amongst 12 to 17 year olds has steadily declined from 36.2% in 1996 to 19% in 2005. Whilst this is a very favourable trend, the level of use remains a concern. The level of cannabis use and the uncertainty of the current system in delivering a significant early intervention when cannabis use is detected warrants further action.

5. Cannabis Control Act 2003 Review - key changes

The statutory review of the CCA is constituted by two reports, this Executive Summary which sets out the key findings and recommendations and a Technical Report which contains an analysis of each of the nine broad areas as outlined in the terms of reference set by the Government.

The introduction of the CCA in Western Australia (WA) was a major change in the police approach to dealing with those who committed minor cannabis offences in this State. For a period prior to these reforms the police in WA had been able to issue formal written cautions to first time offenders who had in their possession small amounts of cannabis.

The State Government implemented the cannabis law reforms through the CIN scheme on 22 March 2004, aiming to achieve better outcomes by allowing minor offenders to deal with their offence by complying with a CIN. This was based on a number of years of experience dealing with minor cannabis offenders from infringement schemes operating in three other jurisdictions in Australia - South Australia, the Australian Capital Territory and the Northern Territory.

The State Government's action followed the Community Drug Summit in August 2001 which supported an alternative approach to addressing minor cannabis offences. One of the features of the CCA reforms was that they provided for expiation by either payment or attendance at a CES, to specifically address a shortcoming identified in the schemes operating elsewhere in Australia when offenders were unable or failed to pay.

When the CCA reforms were initially considered, an important focus was on mitigating the significant and long lasting harms that occurred when otherwise law abiding members of the community were convicted of minor cannabis offences. This is still considered to be an important element of the CCA.

However, cannabis was also known to be associated with significant health issues. Indeed, recognition of the harms associated with cannabis use has been strengthened by further research since the introduction of the reforms in March 2004. As knowledge about the health effects has increased, so too has community concern about the use of cannabis.

Accordingly, this review has sought to maintain the original principle of avoiding unnecessary harm to individuals due to prosecution for minor cannabis offences, whilst also increasing the incentive for adults to address their cannabis use and extending the scheme for the first time to juvenile offenders with a mandatory and strong focus on providing an early therapeutic intervention for young offenders.

The need for a statutory review of the CCA reforms acknowledges the divergence of views in the community about the best approach for dealing with minor cannabis offenders. Accordingly the CCA included a requirement that the reforms should be evaluated after they had been operating for three years. The statutory review of the CCA was to include not only the operation of the CIN scheme up to

31 March 2007, but also an examination of other measures that were part of the Cannabis Control Bill 2003 when it was passed by the WA Parliament in October 2003.

The Technical Report that accompanies the Executive Summary discusses in some detail the recent history of cannabis drug policies that have developed in WA. This is supported by an examination of current approaches in other Australian and international jurisdictions to provide a comparison for the CCA reforms. The remainder of the Technical Report consists of separate chapters dealing with each of the nine broad areas relevant to the review of the CCA. The Executive Summary outlines the recommendations and related key findings derived from the main report.

6. Summary of recommended changes to the CCA

- Continue with the CIN scheme and enhance its effectiveness by undertaking the proposed reforms (outlined below).
- Remove the offence of cultivation of non-hydroponic cannabis plants from the CCA.
- Reduce the quantity of cannabis to which the CIN scheme applies to not more than 15 grams of cannabis.
- Include juveniles in the CIN scheme, and make it mandatory for juveniles to attend a cannabis intervention.
- For adults, retain the option to comply with a CIN by either attendance at a cannabis education session or payment of a financial penalty, but increase the financial penalties for the offences of:
 - possessing not more than 15 grams of cannabis; and
 - possession of a smoking implement with detectable traces of cannabis.
- Conduct further community education campaigns about health risks associated with cannabis use.
- Implement a range of measures to make the operation of the system more efficient.

7. Continue with the CIN scheme and enhance its effectiveness by undertaking the proposed reforms

The review determined that the CCA had been broadly successful in achieving its objectives, and there is strong evidence to support continuation and improvement of the CIN scheme.

Current evidence shows that approximately 75% of all CINs will be fully complied with through the various methods available under the current scheme. The combined rate of compliance compares well to rates of about 45% and 50% achieved in many other Australian jurisdictions.

The success rate of compliance in WA relates to the extension of the FER system to recover unpaid infringements, whereby failure to pay the outstanding amount results in a motor driver's licence suspension.

Significant formal consequences for minor cannabis offenders have been introduced since the CIN scheme's original implementation in March 2004. A total of 9,328 infringements have been issued and 6,790 unique individuals have received at least one notice as at 31 March 2007.

An overview of the CIN scheme results from April 2004 to March 2007 are as follows:

- 9,328 CINs were issued to 6,790 unique individuals;
- 3,991 (43%) CINs were fully complied with in the police enforcement stage:
 - 2,741 (30%) were complied with by payment of the financial penalty; and
 - 1,250 (13%) were complied with by attending education sessions;
- 2,228 (24%) CINs were subsequently resolved through the FER.
- A total of 6,183 (67%) of CINs were fully resolved, and this figure increases to approximately 75% in time with continuing activity by the FER.
- The remaining 3,145 (33%) were still being resolved within the FER system as at March 2007.

More people have experienced a formal consequence for minor cannabis offences since the introduction of the CIN scheme. When the number of convictions and CINs for minor offences is combined, the overall increase in formal consequences is approximately 16.5%.

The police remain highly supportive of the CIN scheme, as do treatment service providers who deliver the CES. There is also considerable community support for cautioning, or warning, or taking no action against those who possess small amounts of cannabis for personal use.

The scheme has proven to be cost effective, with an estimated net saving of \$2.3 million over three years when compared with the alternative of adult offenders only being dealt with by Magistrates Courts.

Based on available information about trends in cannabis use there is no evidence to indicate that the reforms have resulted in an adverse impact on the decline in prevalence of cannabis use in Western Australia. Further information about the prevalence of cannabis use will be available in 2008 with the release of the 2007 NDSHS.

Approved providers of the CES, the police and community have identified a number of changes to the scheme that aim to improve its operation and effectiveness. These have been considered in the full report and subsequent recommendations.

In the long term, approximately 25% of all CINs issued are unlikely to be complied with. Methods for increasing compliance need to be implemented without increasing the prospect of imprisonment for minor cannabis offences.

It is understood that many of those who fail to comply are already under the management of the FER with respect to outstanding traffic infringements or fines. In addition, a proportion of this group has a history of involvement with the criminal justice system. The problem is not unique to the CIN scheme, but confirms that the recovery of unpaid fines remains an issue.

There are marked variations in the rates and methods of CIN compliance for various demographic groups.

As at 31 March 2007, fewer women than men had complied with their CINs by either payment of a fine or attendances at a CES (33% of women compared to 45% of men). Caucasian persons had a four times higher rate of compliance compared to indigenous persons (46.2% vs 11.6%).

The marked differences in outcomes between indigenous and non-indigenous persons may be as a result of a number of factors including but not limited to; an inability to pay the financial penalty, accessibility to a CES and cost of attending a CES. Access to culturally secure services is discussed under section 'Making the System more Effective'.

There are also regional variations in the number of CINs issued and compliance rates.

The issue of non-compliance by various demographic groups requires additional consideration. The changes recommended by the review are not considered likely to worsen the current compliance rates of specific populations.

Recommendation 1

The Cannabis Control Act 2003 should be continued and its effectiveness enhanced by undertaking the reforms outlined below.

8. Remove the offences of cultivation of non-hydroponic plants and possession of more than 15 grams of cannabis from the CCA

It is the view of the police that the current scheme is unnecessarily complex, particularly in relation to the growing of non-hydroponic plants and that this is a barrier to consistent and streamlined implementation.

The large majority of CINs were issued for two expiable offences - possession of a smoking implement (36.5%) and possession of up to 15 grams of cannabis (58.1%). Only 2.6% of all CINs issued were for possession of more than 15 grams and not more than 30 grams of cannabis, and 2.7% of CINs issued for the cultivation of two non-hydroponically cultivated plants.

Accordingly, it is recommended that the number of offences to which the CCA applies is reduced to simplify the scheme while continuing to target the core group of offenders. If implemented, the only two expiable offences for which a CIN could be issued would include possession of a cannabis smoking implement and/or the possession of 15 grams or less of cannabis.

The review noted that one of the reasons for including the growing of up to two non hydroponic plants in the original scheme was to reduce the risk of minor cannabis offenders obtaining their supply of cannabis from drug dealers who may also seek to escalate the offender's quantity and breadth of drug use. While the proposed exclusion would be a change to one of the scheme's original goals there is little, if any evidence this would have a detrimental effect.

In addition, the review determined that the changes recommended by police would not significantly impact on the number of people to whom the scheme applies and that it may assist police to streamline their implementation of the scheme. Accordingly, the review recommends that the changes proposed by the police should be supported.

Recommendation 2

That the Cannabis Control Act 2003 be amended so that the maximum amount of cannabis for which a CIN can be issued be not more than 15 grams.

Recommendation 3

That the Cannabis Control Act 2003 be amended to remove the offence of cultivation of any number of cannabis plants.

9. Include juveniles in the CIN scheme and make it mandatory for juveniles to attend a cannabis intervention

Expansion of the scheme to include juveniles will ensure young people receive a formal consequence for their minor cannabis offence and have an opportunity to address their drug use.

It is estimated that up to 1,000 juveniles are apprehended for minor cannabis offences each year. In 2006, just under 550 minor cannabis offences were dealt with by the Children's Courts, plus 412 episodes at specialist service providers. This would suggest that there was a total of 962 juveniles in the year 2006 who had been dealt with by the courts, or processed through the police and justice system for minor cannabis offences.

There is a high level of community support for juvenile offenders being required to attend a minimum of one compulsory education session that aims to increase their knowledge and understanding of the harms associated with cannabis use. Currently the majority of juveniles who commit minor cannabis offences receive a verbal caution from police without formal consequences. In some circumstances they are referred to a Juvenile Justice Team (JJT).

It is estimated that in 2004 there was a total of 42,000 persons aged 14 years and older in WA with a cannabis use disorder, of whom 14,200 met the criteria for cannabis abuse and 27,800 were cannabis dependent. Out of these 42,000 individuals, it is estimated 6,970 were aged 14 to 19 years.

Mandatory treatment intervention of juvenile cannabis offenders provides the opportunity to engage young persons early and prevent future problems.

Evidence suggests that individualised, brief intervention is the most effective intervention with juvenile cannabis offenders. The intervention should include an assessment of the young person's cannabis and other drug use, as well as examine the young person's health, family, social and legal issues. Support for families is also important.

The implementation of a mandatory cannabis intervention for juveniles could be achieved through the expansion of current juvenile justice systems whereby inclusion of key stakeholders and parents is adopted. However, this would require additional police and JJT resources and is likely to result in referral to the same intervention made available under the CIN scheme.

The preferred option of the WA Police is to amend the CCA and Young Offenders Act 1994 (YOA) to allow juveniles to receive a CIN requiring mandatory attendance at an individual, therapeutic cannabis intervention comprising at least one session.

Failure of juveniles to comply by attendance at the intervention or upon reoffending could result in the young person receiving an automatic referral to a JJT for further remedial action. This would enable more active and tailored action as appropriate.

The implementation of a juvenile CIN scheme has merit in ensuring young persons receive a formal consequence for their cannabis offences. Mandatory attendance at a specialist treatment service allows the young person the opportunity to address their drug use without engagement in the criminal justice system in the first instance.

Recommendation 4

That:

- (a) *the Cannabis Control Act 2003 and the Young Offenders Act 1994 be amended to enable police to issue juveniles with one or more CINs on a single occasion; and*
- (b) *failure to comply with the requirements of a CIN or the commission by a young person of further offences should result in referral to a Juvenile Justice Team.*

Recommendation 5

That juveniles who commit minor cannabis offences and are eligible under the CIN criteria, are required to attend an individual therapeutic intervention that addresses their cannabis use and that this intervention comprises not less than one session.

10. For adults, retain the option to comply with a CIN by either attendance at a cannabis education session or payment of a financial penalty, but increase the financial penalties

Whilst the review considered that mandatory education was feasible as the only option for complying with a CIN, it was decided that on balance there is not a strong case for making this change for adults.

The current arrangement already achieves a high rate of expiation (up to 75%) and limiting the options for expiation may reduce compliance rates. In addition, mandatory education already applies for offenders who receive CINs on more than two separate days in the past three years.

Accordingly, the review determined that it was appropriate to retain the ability to comply with the CIN either by attending an education session or by payment of a financial penalty. However, the review determined that the financial penalty should be increased to provide a greater incentive to attend a cannabis education session.

Importantly, the review considered that for adults, a valuable mechanism to support the downward trend in cannabis use would be to implement targeted public education campaigns as detailed in Recommendation 7. The review determined that any future evaluation of the CIN scheme should revisit the issue of mandatory education for adults and also assess the impact of the changes that are currently proposed.

Recommendation 6

Retain the option for adults to comply with a CIN by either attendance at a cannabis education session or payment of a financial penalty, but increase the financial penalties for the offences of:

- a) possessing not more than 15 grams of cannabis; and*
- b) possession of a smoking implement with detectable traces of cannabis.*

11. Conduct further community education campaigns about health risks associated with cannabis use and expand support to service providers

The CIN scheme and the CES provides a framework for the provision of information to cannabis users about the harms associated with cannabis and how they can reduce and eliminate their use of this harmful substance.

However, the CES reaches only a small proportion of cannabis users. Therefore, a comprehensive range of strategies in the areas of prevention and early intervention, treatment and support and law enforcement is required to effectively address issues relating to the use of cannabis in WA.

Cannabis use in the community, though declining, remains at significant levels. It is therefore important that general public information campaigns and information targeted at specific groups in the community is delivered in a systematic and programmed way so that there is a concerted and carefully targeted prevention message. A comprehensive education campaign should address issues such as:

- information about the harms of cannabis and discouraging its use;
- where to get help; and
- the legal implications of using cannabis, including that cannabis remains illegal.

As part of the broad strategy to address cannabis use in the community, provision of training and resource materials to key health professionals should be reviewed and extended where necessary. This should assist in delivering information and treatment options more widely within the community.

Recommendation 7

That:

- (a) there should be an ongoing program of general community and targeted education campaigns that are able to contribute to changing behaviours related to cannabis use over time; and*
- (b) the Drug and Alcohol Office review and enhance, where appropriate, training and resource materials for relevant health professionals on cannabis and related risks.*

12. Making the system more efficient

12.1 Definition of cannabis

The CCA needs to be amended to expand the definition of cannabis and enable more minor cannabis offenders to be issued with a CIN.

There is an anomaly in the definition of cannabis in the MDA which means that the possession of some parts of a cannabis plant, such as leaves and flowering tops are encompassed by the scheme, whereas other parts of a cannabis plant are excluded.

As a consequence police have not been able to issue a CIN in those circumstances where a person has committed a minor cannabis offence that involves the possession of small quantities of seeds. This anomaly may also contribute to uncertainty for police in issuing a CIN as there are circumstances where people with small amounts of cannabis will also have mixtures of both seeds and leaf material.

Therefore the review considered that the definition of cannabis should be amended to include seeds.

Recommendation 8

That the definition of the type of cannabis for which a CIN can be issued be amended to include seeds.

12.2 Procedures for issuing CINs

The approach adopted for issuing CINs needs to be amended. Currently the offender is taken by police to a police station for proof of identity and completion of procedures in relation to seized items. This approach results in unnecessary and avoidable administrative costs compared to the alternative practice of issuing CINs on the spot. This will enable police to remain in the field and continue providing front line services.

It is also likely that police could minimise some of the friction between themselves and those apprehended for minor cannabis offences if the process for issuing a CIN was the same as for other types of infringement notices. In all cases the intervention appropriate for an infringement should be no more intrusive than for the process for issuing a summons except where there are serious doubts as to the identity and address of the person apprehended.

Furthermore, transporting those issued with a CIN to a police station to be processed directly conflicts with the intention of the law reforms introduced in March 2004, to reduce the harms that can occur to minor cannabis offenders by minimising their contact with the criminal justice system. It is acknowledged that current practice reflects a desire by police to operate with optimum probity and professionalism. However, it is considered possible to achieve on the spot issuing of CINs without reducing probity of practice, provided that the related measure concerning the seizure and disposal of cannabis is implemented.

Supportive legislation and procedures to allow police to issue on the spot CINs will result in:

- avoiding unnecessary administrative costs;
- encourage an increase in the number of CINs issued; and
- support the original intention of the law reforms to reduce the harms that can occur to minor cannabis offenders by minimising their contact with the criminal justice system.

Recommendation 9

That the WA Police, where practical, issue CINs on the spot rather than detaining an offender and taking them to a police station.

12.3 Destruction of seized items

Amendments to the MDA and CCA will enable police to destroy seized materials thereby reducing storage difficulties and minimising the possible loss of evidence.

The police have experienced significant difficulties with implementing the CIN scheme in relation to the storage of seized materials. The problem arises as police do not have an explicit provision to destroy seized material when people fail to comply with a CIN. Therefore, this requires police to store items on a long term basis. In addition, it is also likely that in some instances the evidentiary value of the seized material will be lost as cannabis plants and leaf material can deteriorate with age.

The rationale for the current policy is that the seized items need to be retained in the unlikely instance that a person who fails to comply could elect to contest the matter in court at a later date. However, the possibility of this occurring is remote, as once a CIN has been transferred to the FER that has not been complied with, there is little incentive for a person to go to court because of the attendant risk of conviction.

There are a number of options to overcome this difficulty by either amendment to the MDA permitting police to destroy seized cannabis after a specified event (eg expiry of 28 day expiation period) or an amendment to the CCA by inclusion of a provision on the infringement notice to be signed by an offender that authorises destruction following the issuing of the CIN.

Any legislative change would require inclusion of a deeming provision that ensures that the offender, having agreed to accept a CIN and having had their cannabis seized, cannot later contest that the material was not cannabis.

Alternatively the review has also considered amending the CCA to adopt a system similar to that which exists for cannabis cautions in Queensland. In that state, if an offender accepts a cannabis caution but then fails to attend the associated education session they are charged with a separate offence of failing to follow the direction of a police officer and not with the original drug offence. The new charge results in a court appearance and may result in a record of conviction and a significant fine.

A risk of implementing the aforementioned is that imprisonment for unpaid fines could increase. An alternative approach would be that, failure to comply with the direction of a police officer could result in a significant financial penalty that, if unpaid through FER, could result in the issuing of an appropriate community order.

The Queensland approach provides a method and rationale for not retaining the cannabis that is seized when the offender is apprehended. In addition, it ensures that any subsequent conviction relating to this issue is not recorded as being for a drug offence and therefore remains consistent with the overall objective of minimising the social harm associated with convictions for minor cannabis offences. This mechanism is favoured by the WA Police. However, it may be less complex to achieve the desired outcome simply by amending the MDA or the CCA.

The review determined that the inclusion of a mechanism enabling police to dispose of seized cannabis as soon as practicable after the issuing of a CIN should be a matter of priority. This reform would need to be supported by police procedures to ensure recording of the seizure of the cannabis and its subsequent destruction. Such a provision would greatly assist police in the administration of the scheme and significantly improve its cost effectiveness.

Recommendation 10

*That the **Misuse of Drugs Act 1981** and/or the **Cannabis Control Act 2003** be amended to enable police to destroy an expiable quantity of cannabis after a CIN has been issued, and that a suitable provision be included so that the material seized is deemed to be cannabis.*

12.4 Cannabis education sessions

The CES had been developed within a broader framework of expanded diversion programs for drug offenders in WA. This has meant that over the first three years of the CIN scheme the CES option for compliance has only been provided by the network of specialist service providers – the State’s 11 Community Drug Service Teams (CDSTs) and the Aboriginal Alcohol and Drug Service.

The review noted that there was community support for an increase in the number of approved providers of the CES to improve accessibility through local availability and choice. It was also suggested that expansion of this aspect of the CIN scheme may assist in overcoming the reluctance to engage in treatment by those who have had no prior contact with the criminal justice system or drug treatment system. Such individuals may be more willing to attend a mainstream health provider to comply with the CIN.

While attendance at generalist health services may be more desirable for some offenders, specialist alcohol and drug treatment services are best placed to provide evidence based education and treatment interventions, and provide further engagement in treatment as required. In addition, there are also operational considerations that need to be accounted for within the timeframe permitted by the CCA. Supporting a multiplicity of service providers would add to complexity and costs, and may deliver an insufficient number of clients to each provider to make their service viable.

Accordingly, the review considered that the CES and other interventions should continue to be delivered through the treatment network provided by the CDSTs and the Aboriginal Alcohol and Drug Service, with the addition of Aboriginal Community Controlled Health Organisations wherever possible in the remote and regional areas, to ensure widespread availability of culturally secure intervention sessions.

These arrangements should be monitored by the DAO and consideration be given to piloting other arrangements for delivery of the CES where access is identified as problematic.

The CCA should be amended to ensure greater flexibility in the types of providers who can provide a CES, enable the development of a transparent and accountable process for the authorisation of providers, and for reviewing and changing authorisations after they have been issued.

Currently the CCA does not include a reference to the duration of the authorisation or the grounds under which an authorisation may be cancelled, or changed after it has been issued by the Director General of Health. Additional flexibility in processes will enable increased accessibility to the CES and ensure they allow ongoing quality assurance in the delivery of services.

Any expansion in the range of those authorised to provide cannabis education sessions would require additional training to enhance the skill of those who provide this and other types of brief interventions to those with cannabis related problems. This will also ensure consistency in program delivery, the opportunity for the promotion of available supporting resources and adherence to the administrative requirements of the CCA.

Training of police officers about the CES to provide a better understanding of the value of the intervention would be useful. This may increase the likelihood of a person attending a CES if they had positive preconceptions about the session through interaction with a police officer at the time the CIN was issued.

In addition, ongoing training of existing approved providers of the CES and police is required to maintain the integrity of programs. The facilitation of stronger links between CES providers and police would also be beneficial.

Recommendation 11

- a) *That in addition to the established Community Drug Service Teams and the Aboriginal Alcohol and Drug Service, Aboriginal Community Controlled Health Organisations be included as CES providers, where they are willing and able to perform this function in regional and remote areas.*
- b) *That consideration be given to including other service providers where there is evidence of a lack of access to the CES.*

Recommendation 12

That additional education programs, resources and referral mechanisms be developed to enable new and existing CES providers to maximise their effectiveness in assisting those who have cannabis related problems.

Recommendation 13

*That the **Cannabis Control Act 2003** be amended to enable the Director General of Health to develop an improved administrative process for approving and managing providers of cannabis education sessions that is more flexible and effective.*

12.5 Compliance with the FER process - Work Development Orders

Under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* those who fail to pay outstanding court fines can be issued with a Work Development Order (WDO) to settle an outstanding debt. A number of CINs that are not complied with, currently managed by FER may be completed if persons who do not comply were offered the option of an appropriate community order.

This may be especially useful for offenders who are unable to pay the financial penalty. However, it is accepted that there are practical issues related to the supervision of such orders.

Therefore, the review recommends that further consideration be given to this issue.

Recommendation 14

That consideration be given to amending the FER process to enable a Work Development Order to be imposed as an alternative to a financial penalty.

12.6 Cannabis paraphernalia retailers

Additional powers to permit entry to premises, take evidence and issue compliance orders to retailers where smoking paraphernalia is sold will ensure more effective monitoring of compliance with the Act.

This aspect of the CCA reforms has been generally well accepted by those who sell cannabis paraphernalia, as they have largely supported the value of educational material being provided at the point of sale. The provision of educational material that can be readily accessed through retailers by cannabis users has much to commend it.

A number of shortcomings of the CCA were identified by DAO, which has overall responsibility for monitoring compliance with this section of the CCA. This requires that further powers be given, similar to those available under the *Tobacco Products Control Act 2006*, to permit entry to premises where cannabis smoking paraphernalia is sold, the taking of evidence and the issuing of compliance orders.

Recommendation 15

- a) *That the regulation of the sale of cannabis smoking paraphernalia and the provision of comprehensive health education material through retailers be maintained.*

- b) *That the **Cannabis Control Act 2003** be amended to improve the ability of the Drug and Alcohol Office to monitor compliance by cannabis paraphernalia retailers to enable entry and inspection of premises similar to the powers available in the **Tobacco Products Control Act 2006**.*