Fifteen years of cannabis law reform in WA: lessons for future reform

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Abstract

In Western Australia (WA) since the late 1990s minor cannabis offenders have been diverted from court by being issued with either a caution or infringement for a minor cannabis offence.

The first reform was achieved by revisions of police Standing Orders, whereas subsequent reforms involved legislative amendment.

The presentation considers the three approaches which have operated over the period - the Cannabis cautioning mandatory education scheme (CCMES) from 1998 to March 2004, the Cannabis infringement notice (CIN) scheme from March 2004 to July 2011 and the Cannabis infringement requirement (CIR) scheme from August 2011 up to the present.

The paper suggests that over the 15 year period since 1998 the three reforms did not result in liberalisation of cannabis laws in WA, but on the contrary were opportunities for governments to increase the repressive nature of penalties of existing offences and make amendments to the *Misuse of Drugs Act 1981* to extend the scope of drug laws to further criminalise and penalise those who use cannabis.

1 Background

There has been an extensive debate since the 1970s about the legal status of cannabis in Australia as well as in the United States, Canada, the United Kingdom and a number of other countries.[1] However, in spite of this prolonged period of debate about models of law reform, a broad consensus for decriminalisation does not seem to have developed, at least in WA, for in 2013 entrenched policy stances remain which indicate little common ground and limited interest in reform to liberalise cannabis laws in the near future.

Indeed, because of limited opposition and the fractured nature of policy choices about cannabis law reform in WA in late 2010 the Barnett Liberal government was able to swiftly repeal the *Cannabis Control Act 2003*, to dismantle the CIN scheme with conditional cautioning.[2] In a recent opinion piece Professor David Pennington noted there had been a decreasing interest by policy makers in drug law reform, a view incidentally which would be supported by the recent experience in this State.

> 'There is no political appetite for drug law reform in Australia at the moment in either the Commonwealth or the States. Valuable changes have, however, been achieved over the years, such as 'harm reduction' as a guiding principle, 'needle and syringe exchanges' during the AIDS epidemic and the 'diversion scheme' several years following the Victorian review.

[1] MacCoun RJ & Reuter P. Drug war heresies. Cambridge, Cambridge University Press, 2001; Pacula RL, MacCoun R, Reuter P, Chriqui J, Kilmer B, Harris K, Paoli L & Shaefer C. *What does it mean to decriminalise marijuana? A cross national empirical examination.* Working paper 25. Berkley, CA, Center for Study of Law and Society, University of California, 2004.

[2] The re-establishment of a conditional cautioning scheme, is notable as it has a threshold of not more than 10 grams of cannabis involved in the offence of possession, compared to 25 grams which had applied when conditional cautioning scheme had previously been introduced by a Liberal government in 1998.

> These were made possible by unexpected factors influencing public opinion, opening a door for change.'[3]

Professor Pennington referred to how the American experience with the prohibition of alcohol, which was reversed when the community understood the policy, had resulted in extensive organised crime and corruption, could be a paradigm of change in community attitudes is required to support reform on the prohibition of illicit drugs, such as cannabis. However, with respect to cannabis law reform, he observed that

> 'currently the great majority in our community regard drug use as 'morally bad' – or 'evil' – views enhanced by its association with crime and social disruption. Many lay people regard cannabis as 'The Cause' of schizophrenia. Politicians always want to support strongly held social attitudes, particularly if 'moral' overtones are involved.'

Whilst this view indicates limited prospects for law reform involving the recreational use of cannabis, as Professor Pennington noted,

> 'the high level of approval in the Australian National Household Survey for medical use of cannabis for certain classes of serious disease might afford a first step in undoing many of the prejudices against cannabis. I am not suggesting it become a pharmaceutical agent of the normal kind under the PBS, requiring all the usual pharmaceutical safeguards, but rather approval under certain conditions as a natural remedy available for purchase on medical prescription.'

These comments about possible relaxation of the law to facilitate medical use raise the question of whether the use of cannabis for therapeutic purposes could be a vehicle for wider reform of cannabis laws. There could be some prospect for change in policy for the use of cannabis for therapeutic purposes following the release in May 2013 a report from a Standing Committee of the New South Wales (NSW) Parliament which had recommended legislative reforms for its use for therapeutic purposes in that State.[4]

However, it is worth noting that reform has been stymied in spite of support by earlier inquires, such as the NSW Working Party on the Use of Cannabis for Medical Purposes[5] in August 2000, the British House of Lords Science and Technology Committee[6] in 2001 and from a number of inquiries in the United States and Canada.[7]

A recent analysis of American approaches towards the medical use of cannabis shows, whilst there has been some development,[8] as there is not national model legislation, reform has

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[3] Pennington D. *Cannabis policy review – panel discussion Tuesday 8 November.* 24 November 2011. < www.economics.unimelb.edu.au%2FMicroEco%2Fdownloads%2FDAVID%2520Cannabis%2520Policy%2520Review%2520Rvsd.pdf>

[4] General Purpose Standing Committee No. 4. *The use of cannabis for medical purposes*. Sydney, NSW, Legislative Council, New South Wales Parliament, 2013. <www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/fdb7842246a5ab71ca257b6c0002f09b/$FILE/Final%20Report%20-%20The%20use%20of%20cannnabis%20for%20medical%20purposes.pdf>

[5] Working Party on the Use of Cannabis for Medical Purposes. *Report*. Sydney, NSW, Office of Drug and Alcohol Policy, Premier's Department, 2001.

[6] Select Committee on Science and Technology. *Therapeutic uses of cannabis*. London, UK, House of Lords, United Kingdom Parliament, 2001.

[7] Swensen G. *The 2004 cannabis law reforms in Western Australia and the United Kingdom. A case of too much caution?* Saarbrucken, Germany, VDM Verlag Dr Muller, 2008, Chapter 3.

[8] Cohen PJ. 'Medical marijuana: the conflict between scientific evidence and political ideology. Part 1.' (2009) 23(1) *Journal of Pain & Palliative Care Pharmacotherapy*, 4 – 25; Cohen PJ. 'Medical marijuana: the

proceeded on a State by States basis with marked variations between jurisdictions. The hallmark of which is inconsistency and little certainty as the Federal government retains overall power[9] to declare State authorised arrangements illegal.[10]

Clearly in Australia policy shifts involving medical use of cannabis will be contingent on support by the medical profession for its therapeutic use. As one of Australia's pre-eminent physicians with a long-standing involvement with the treatment of problematic drug and alcohol users, Dr Alex Wodak, recently noted on this point:

> 'Reform will only happen when supported by the community and enacted by politicians with the courage to accept the evidence. The medical profession should play a leadership role in this difficult transition. The first stages of reform might involve enabling the medicinal use of cannabis and removing criminal and, later, civil penalties for personal cannabis use.'[11]

Another longer term driver of cannabis law reform could arise from the recent establishment of a bi-partisan Over-Criminalization Task Force by the Judiciary Committee of the United States Congress in May 2013. Whilst this is charged with reviewing some 4,500 offences in Federal laws to determine if the over-criminalization of minor offences has been responsible for the high rates of incarceration in the US, there is an expectation this could lead to some reform of Federal drug legislation.[12]

If reform occurred in US domestic cannabis laws this would conceivably flow on to the United Nations (UN) system of international drug conventions, [13] which could in turn in the longer term impact on domestic laws of signatory countries such as Australia.

2 Law reform and policy context in WA

Three approaches to minor cannabis offenders have operated in WA since 1998: the Cannabis cautioning mandatory education scheme (CCMES) from 1998 to March 2004, the CIN scheme from March 2004 to July 2011 and the CIR scheme from August 2011 up to the present.

As the cannabis law reforms in WA since 1998 have been stimulated and affected by policy developments in other jurisdictions, it is useful to briefly identify some of these influences have impacted on policies in this State.

In 1992 the Commonwealth Government sponsored the National Task Force on Cannabis conducted by the National Drug Strategy Committee to undertake a wide ranging inquiry into cannabis use in Australia, including options for law reform.[14] This research precipitated consideration of the feasibility of law reform in a number of the Australian jurisdictions, such as

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conflict between scientific evidence and political ideology. Part 2.' (2009) 23(2) *Journal of Pain & Palliative Care Pharmacotherapy*, 120 – 140.

[9] Department of Justice, Office of Deputy Attorney General. Memorandum for United States Attorneys: Guidance regarding the Ogden memo in jurisdictions seeking to authorize marijuana for medical use. 29 June 2011. <www.justice.gov/oip/docs/dag-guidance-2011-for-medical-marijuana-use.pdf>

[10] Eddy M. *Medical marijuana: review and analysis of Federal and State policies.* Washington, DC, Congressional Research Service, 2010. < www.fas.org/sgp/crs/misc/RL33211.pdf>; Blank SR. 'Over-criminalisation of marijuana.' Applied Social Psychology blog. <www.personal.psu.edu/brf3/blogs/asp/2013/06/over-criminalization-of-marijuana.html>

[11] Wodak A. 'The need and direction for drug law reform in Australia.' *MJA Online first*, 23 July 2102, 2.

[12] Lennard N. 'Task force to question criminalization of minor offenses.' *Salon.com*. 8 May 2013. <www.salon.com/2013/05/08/task_force_to_question_criminalization_of_minor_offenses>

[13] The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

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

inquiries by the Victorian Premier's Drug Advisory Council in 1996[15] (ie the Pennington inquiry) and commissioned research undertaken for the Victorian Parliament's Drugs and Crime Prevention Committee in 2000, which largely foundered. [16]

The National Task Force report was not favourably received by the incumbent government in WA at the time with limited interest in cannabis law reform as in the early 1990s, which coincided with substantial community concern about the use of illicit drugs, particularly heroin. In 1994 the Court Liberal State government, which had been elected in February 1993, established the Task Force on Drug Abuse (TFDA) to review issues involving alcohol, tobacco and illicit drugs in WA and to develop a reform agenda.

In relation to cannabis the TFDA recommended in its September 1995 report that policy concerning this particular drug should 'reflect unambiguous opposition to the use of cannabis and actively seek to discourage its use and entail continuing focus by law enforcement agencies on higher level traffickers and street dealers.' [17]

The TFDA conducted community consultations which had found strongly polarised views about cannabis law reform, noting that a

> 'forceful case … (had been) mounted by campaigners for the decriminalisation or legalisation of cannabis that there should be a radical change in the State's approach and that such a change was inevitable … (whereas on the other hand there were) a large number of submissions and views put at public hearings vehemently opposed (to) any revision to cannabis' status as an illegal drug.' [18]

There was a suggestion in the TFDA report, in response to seminal research about the adverse social impact of the conviction for a minor cannabis offence, that 'the Police Department should examine the area of formal cautioning for simple cannabis offences, and report back to government on this issue.'[19]

In June 1997 a Parliamentary Select Committee of the Legislative Assembly of Western Australia, which had been established by a Liberal and National Party government, recommended the strengthening of police powers and activity in relation to serious levels of crime through amendment of the *Misuse of Drugs Act 1981* (MDA).[20]

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

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[15] Premier's Drug Advisory Council. *Drugs and our community*. Melbourne, VIC, Drugs and Crime Prevention Committee, 1996.
[16] Lenton S; Heale P; Erickson P; Single E; Lang E & Hawks D. *The regulation of cannabis possession, use and supply: Discussion document prepared for Drugs and Crime Prevention Committee*. Perth, WA, National Drug Research Institute, 2000.
[17] Western Australia, Task Force on Drug Abuse. *Protecting the community. Volume 1: Reviews and recommendations*. Perth, WA, Ministry of Premier & Cabinet, 1995, 244.
[18] Id, 189.
[19] Id, 198.
[20] Western Australia, Parliament, Legislative Assembly, Select Committee Into the Misuse of Drugs Act 1981. *Taking the profit out of drug trafficking. An agenda for legal and administrative reforms in Western Australia to protect the community from illicit drugs*. Perth, Western Australia, Legislative Assembly, 1997.

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

> *"We propose a decriminalised regime which would apply to the possession of 50 grams of cannabis or less and cultivation of no more than two plants per household. A person who admitted to a simple cannabis offence would be issued with a cautioning notice as a first offence, be required to attend an education and counselling session for a second offence or, in lieu of accepting that option, face a fine as a civil offence, and be fined for any subsequent offence."*[21]

Recommendation 39 of the Comnmunity drug summit supported the creation of a scheme for adults who either possessed or cultivated 'small amounts of cannabis' to not be charged with an offence but diverted from the criminal justice system:[22]

> *'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).*
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> *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:*
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> - *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.'*

3 WA reforms

3.1 Legislative framework

The MDA regulates access to drugs in WA by establishing a framework of two categories of substances, prohibited drugs as specified in Schedule 1 of the MDA and prohibited plants as specified in Schedule 2 of the MDA. It should be noted in addition to drugs listed in Schedules 1 and 2 of the MDA, additional classes of substances are covered by the MDA through the *Poisons Act 1964*, substances referred to as drugs of addiction, specified drugs and prohibited plants, defined in Section 5 as:

- a 'drug of addiction' is *"any substance included in Schedule 8 or 9";*

[21] Australian Labor Party, WA Branch. *Drugs and crime direction statement*. 2000.
[22] Working Party on Drug Law Reform. *Implementation of a scheme of prohibition with civil penalties for the personal use of cannabis and other matters*. Perth, Drug and Alcohol Office, 2002, Appendix 1.

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

In July 1995 substances in the schedules to the *Poisons Act 1964* became referenced to a national system of scheduling, the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP). Decisions on listing of specific substances were done by the National Drugs and Poisons Schedules Committee administered by the Therapeutic Goods Administration.

In July 2005 the SUSDP framework was replaced by a new national system for the labelling and regulation of medicines in Australia, the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP) underpinned by the Poisons Standard.[23]

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

As Schedule 2 applies to three groups of plants, two species of opium plants (ie papaver somniferum and papaver bracteatum) and cannabis, this means under the MDA the non viable parts of a cannabis plant, which includes seeds, or any of cannabis derivatives are classified as prohibited drugs, whereas a growing cannabis plant is classified as a prohibited plant.

3.2 Misuse of Drugs Amendment (Cannabis Cautioning Notices) Bill 1999

This amendment to the MDA, which was moved in March 1999 by the Greens (WA), proposed that a person could be issued with a "cautioning notice" if they committed offences under Sections 6(2) or 7(2) of the MDA, concerning the possession of cannabis or cultivation of cannabis, respectively.

It was proposed that a cautioning notice could be served if the person was an adult and did not have any prior convictions for "any drug offence" in either WA or any other Australian jurisdiction, if they possessed not more than 100 grams of cannabis or had cultivated not more than two cannabis plants. A cautioning notice could not be issued to a person more than once.

The Bill also contained a clause to repeal Section 5(d)(1)(d) of the MDA, which was concerned with the possession of a pipe or utensil, on which there were detectable traces of cannabis.

The Bill did not mandate attendance at a rehabilitation or educational program, but as Dr Christine Sharp noted in her Second reading speech, it was expected that information would be available.

> 'This legislation differs slightly from the current cautioning trial taking place in Mirrabooka and Bunbury. An objects clause has been included in the legislation in order to identify exactly what is the intent of the cautioning system. This is important because a proper evaluation of the legislation can be achieved only when one is aware of the actual intent of the legislation. The current cautioning trial has as its stated intent what is called "net-widening".

[23] Available from the Federal Register of Legislative Instruments <http://www.tga.gov.au/>.

I say this because it is aimed at enabling more people to be brought into a forced educational program. The intent of this Bill is different in that it has specifically in mind the reduction of the financial burden on our criminal justice system and also the reduction of the social burden on the community by decreasing the likelihood of making criminals out of otherwise law-abiding citizens. Why waste a counselling organisation's time by forcing people who have no interest in being there to attend for re-education?

We need to move away from a morally judgmental stance on cannabis. I believe that smoking cannabis is a health issue not a moral issue. Hence health and counselling information rather than compulsory re-education will be provided to offenders as an important provision of this Bill.'[24]

As the Bill did not progress past the second reading stage it lapsed due to insufficient support.

3.3 Poisons Amendment (Cannabis for Medical and Commercial Uses) Bill 1999

This Bill was first introduced in the Legislative Council in March 1999 by the Greens (WA) to establish scheme for patients, on the recommendation of their treating doctor, to obtain or cultivate cannabis for medicinal use treat particular health conditions. As the Bill did not progress past the second reading stage it lapsed due to insufficient support.

The Bill also proposed to amend the *Poisons Act 1964* for permits to be given for the commercial production of low tetrahydrocannabinol cannabis for the purpose of making hemp. When debate on the Bill resumed in October 1999 the section in relation to commercial hemp production was withdrawn by the proposer Dr Christine Sharp, as the government announced it would legislate on this area.[25]

3.4 Cannabis Cautioning Mandatory Education Scheme

3.4.1 October 1998 – March 2004

The cannabis cautioning mandatory education scheme (CCMES), was introduced Statewide in WA in March 2000,[26] being preceded by a 12 month trial of a formal cautioning scheme for first time cannabis offenders from October 1998 to September 1999 in two police districts, the Mirrabooka Police District (Perth metropolitan area) and the Bunbury Sub District (the State's major regional city).[27]

The CCMES obviated the need for legislative reform as it was established by an administrative direction by the Commissioner for Police, which set out the circumstances when police could issue a formal caution to first time cannabis offenders who possessed up to 25 grams of cannabis (Section 6(2) of the MDA). It did not apply to other cannabis offences, such as possession of smoking implements or cultivation.

A person issued with a caution under the CCMES was required as a condition of the caution to attend a cannabis education session (CES) of an hour and half's duration at one of the State's 12 specialist treatment service providers or Community Drug Service Teams (CDSTs).

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[24] Dr Christine Sharp, MLC. Second reading speech, Misuse of Drugs Amendment (Cannabis Cautioning Notices) Bill 1999. *Hansard*. Legislative Council, 10 March 1999, 6238.
[25] However, there was some five years between this announcement and when the *Industrial Hemp Act 2004* was passed and proclaimed in May 2004.
[26] The issuing of cautions ceased by 21 March 2004 as the CCMES was replaced by the CIN scheme.
[27] Penter C, Walker N & Devenish-Meares M. *Evaluation of the pilot West Australian Cannabis Cautioning and Mandatory Education System: Final Report*. Perth, WA Drug Abuse Strategy Office, 1999.

The caution in effect suspended prosecution for the offence, contingent on the individual attending and completing the CES. If an individual failed to attend a CES within two weeks of receiving a caution they would be charged for the original offence. The CCMES ceased to operate when the CIN scheme commenced on 22 March 2004.

3.5 Cannabis Control Act 2003

3.5.1 Cannabis infringement notice scheme: March 2004 – July 2011

The CIN scheme was established by the *Cannabis Control Act 2003* (CCA) and was passed by the West Australian Parliament in September 2003 and when it commenced on 22 March 2004, meant a CIN could have been issued for four *expiable* offences:

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

The CCA gave police the option of issuing an infringement if someone had committed a minor cannabis offence involving three sections of the MDA:

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

A key concept of the CIN scheme was that if an individual who has been issued with a CIN either paid the incurred monetary penalty or attended a CES, this expiated his or her guilt and the matter was regarded as finalised without opprobrium and they did not receive a record of a criminal conviction.

On the other hand, if an offender failed to expiate a CIN, this resulted in being dealt with by the Fines Enforcement Registry (FER) which had scaled administrative fees[28] for failure to complete the FER process to recover an unpaid debt owed to the state. It is important to be aware that recovery of unpaid CINs was dealt with under Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (FPINEA), whereas unpaid court fines are dealt with under Part 4, which compared to Part 3, includes the option of imprisonment if a fine remains unpaid after failure to complete a time to pay arrangement or to comply with a Work Development Order.

Section 9 of the CCA provided that if a person had been issued with two or more CINs on separate days, within the past three years, they were not be able to expiate any further CINs by payment of a prescribed penalty, but only by attendance at a CES. This provision, which sought to respond to criticism that the scheme was soft on repeat offenders, stipulated if the person

[28] The fines enforcement process results in administrative fees at each stage of the FER process - a fee of $13.50 incurred at the police enforcement stage if the person fails to respond to the final demand; a fee of $54.50 when the matter is registered with the Fines Enforcement Registry; and if after a notice to intention suspend a person's motor driver's license has been issued and there has not been a satisfactory response, then a further fee of $28.50.

failed to complete a CES within 28 days of it being issued, they would be charged with the original offence of the MDA.

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

As the then Attorney General, Jim McGinty explained,

> 'the amendment is directed at ensuring that repeat offenders take the opportunity for education and access to treatment services available under the CES option. Available evidence indicates that giving up drug dependence will often require more than one attempt, and exposure to treatment is the best option for changing drug using behaviour. Increased exposure to education and treatment therefore increases the probability of behaviour changing among users of any drug.'[29]

A summary of the alternative penalties that applied to minor cannabis offences, depended on whether the person had been charged under the MDA (ie fines or term of imprisonment) or issued with a CIN under the CCA (ie expiable by paying prescribed modified penalty or by completion of a CES), are set out in Table 1 (see Appendix 1).

3.6 Cannabis Law Reform Act 2010

3.6.1 Cannabis intervention requirement scheme: August 2011 - present

The CIR scheme commenced on 1 August 2011 and was established by the passage of the *Cannabis Law Reform Act 2010*. This Act was passed by the WA Parliament in October 2010 by amending the MDA by adding a new section concerned with the CIR scheme: Part IIIA – Cannabis intervention.

The amendment provides that a CIR may be issued to either an adult or a juvenile if they commit two types of cannabis related offences - (a) possession of any drug paraphernalia in or on which there is cannabis (Section 7B(6)) or (b) possession of not more than 10 grams of cannabis (Section 6(2)).

However, Section 8B specifically states that a CIR may not be given for the possession of cannabis under Section 6(2) where the offence involves a cannabis plant under cultivation, cannabis resin or any other cannabis derivative. A CIR may also not be given to an adult if they have previously been convicted of a minor cannabis related offence or previously have received a CIR. With respect to juveniles a CIR cannot be given if the young person had previously been convicted of or been given a CIR for two or more minor cannabis related offences on separate incidents.

Instead of issuing a juvenile with a CIR, Part IIIA of the MDA stipulates that police may resort to the options under Part 5 of the *Young Offenders Act 1994*, of either taking no action or otherwise issuing a caution under. This arrangement also means a cautioned juvenile can be referred to a Juvenile Justice Team for further therapeutic intervention.

When a CIR is issued it requires its recipient to complete a cannabis intervention session (CIS) within the next 28 days by attending and completing an individual CIS delivered an authorised treatment provider. Section 8J of the MDA specifies that the purpose of the CIS is to inform the individual about three specified matters –

[29] McGinty J. Western Australian Parliament. *Hansard*. Legislative Assembly, 23 September 2003, 11666.

- the adverse health and social consequences of cannabis use,
- the laws related to the use, possession and cultivation of cannabis, and
- effective strategies to address cannabis using behaviour.

The *Cannabis Law Reform Act 2010* also amended other parts of the MDA, which were showcased as part of the backdrop for other reforms by the government to 'toughen up' the laws concerning cannabis in WA, by invoking language which described the previous CIN scheme had been "too soft" and that as drug use was "wrecking" young people's lives it was declaring "war on drugs".

> 'After 2 ½ years of promising to get tough on marijuana users, dealers and growers, the Liberal-National Government's "war on drugs" is about to begin. The penalty for possessing less than 30g of cannabis will jump from a $100 fine to a maximum of $2,000 and the possibility of two years in jail. The penalty for growing up to marijuana plants is a $200 fine, but that will jump to a maximum $2,000 fine and prosecution with the prospect of two years behind bars for growing nay number of plants.'[30]

> 'Police Minister Rob Johnson has dismissed suggestions the Government should look into decriminalising some illicit drugs, saying it is a "weak" option that plays into the hands of drug dealers. Responding to a report released yesterday by think tank Australia21, which said the war on drugs had been lost and the tough law and order approach was not working. Mr Johnson said any decriminalisation did more harm than good.'[31]

> 'I believe that the bill will send a clear message to the community that the Barnett Liberal government is serious about addressing the drug problem in our society. The bill, when it becomes an act, will reinforce the message that cannabis is not a soft drug and that soft approaches do not get us where we need to be as a society. The scientific evidence is very clear. Smoking cannabis is extremely damaging to health, even more so than tobacco.'[32]

This muscular approach to policy was echoed in the launch in May 2012 of a $400,000 "anti-cannabis" campaign. This campaign extended the "Cannabis messes with your mind" campaign of August 2011 and included a number of slides formatted as "Flow charts" that sought to represent a number of the identified negative consequences of using cannabis - "Paranoia", "Short term memory loss" and "Depression". It also had a complex diagram "How to get the effects of cannabis".[33] See Appendix 3 for examples.

The May 2012 campaign was described as involving a "Swap for pot component" and included four press advertisements, one of which urged cannabis users to "Smash your bong into pieces with a hammer".[34] See Appendix 3.

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[30] Spagnolo J. 'Dopes to feel the heat under new pot laws.' *Perth Now* 16 July 2011. <www.perthnow.com.au/news/western-australia/wa-government-readies-for-pot-shot/story-e6frg14c-1226095864452>

[31] Sas N. 'Soft laws help dealers: minister.' *The West Australian*, 4 April 2012.

[32] Hon. Peter Abetz, Cannabis Law Reform Bill 2009, Second reading speech debate. *Hansard*. Legislative Assembly, 21 April 2010.

[33] DrugAware. *Cannabis campaign – Cannabis messes with your mind* (August 2011). <http://drugaware.com.au/about-us/campaigns/cannabis-campaign.aspx>

[34] DrugAware. *Cannabis campaign – Cannabis messes with your mind with swap for pot component* (May 2012). <http://drugaware.com.au/about-us/campaigns/cannabis-campaign-with-new-quit-component.aspx>

> 'Mental Health Minister Helen Morton said the campaign was the first quit campaign for cannabis to be launched in WA, and was inspired by the Quit smoking campaign. She defended the messages in the campaign, and said previous testing showed drug users responded positively to being encouraged to look at health alternatives to drug use.'[35]

One area where the Liberal government sought to set out its 'tough on drugs' credentials was to repeal the offence in Section 5(1)(d)(i) in the MDA concerned with cannabis smoking paraphernalia. As the law stood before the reform, it had not been an offence in WA to possess or sell unused cannabis smoking paraphernalia, as the possession of a smoking implement on which there were "detectable traces of cannabis" was required by Section 5(1)(d)(i), which was replaced with a much broader offence that encompassed "drug paraphernalia".

An article in PerthNow on 11 October 2009 outlined the basis for the Government's approach towards the repeal of the *Cannabis Control Act 2003* and

> 'Mr Barnett said the cannabis-related legislation was the first in a series of steps the Government would take to send a clear anti-drugs message to the community and toughen penalties for people who broke the law through drug-related offences.
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> "The Liberal-National Government is committed to tackling both the demand and supply sides of the illicit drug problem through strong law enforcement policies, education and rehabilitation," the Premier said. "Cannabis is not a harmless or soft drug. Research continues to show that cannabis can lead to a host of health and mental health problems including schizophrenia, and can be a gateway to harder drugs.
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> "The Government believes a tougher approach against drugs is necessary to send a clear message not to use drugs, but we also recognise the existence of a criminal record has a serious impact on a person's future employment prospects. At present, once a conviction is recorded, it remains on a person's criminal record for at least 10 years.
>
> Under the Government's proposed laws, a person convicted of minor cannabis possession offences will be able to apply to have a conviction spent after three years, provided they are not convicted of further offences during that period. This approach ensures minor drug offenders who demonstrate they are prepared to take responsibility and rehabilitate themselves are given an opportunity to turn their lives around."
>
> This year, under the soft system the Liberal-National Government inherited from Labor, only five per cent of offenders actually participated in an education session. The Premier said further anti-drug legislation would be introduced in coming months.
>
> "The next steps will be to amend legislation to enable courts to impose a harsher sentence on dealers who sell or supply illicit drugs to children, irrespective of the location of the sale or supply," he said.
>
> "Further amendments to the Misuse of Drugs Act 1981 will provide offences for exposing children to harm or to the danger of serious harm from the manufacture of illegal drugs, such as amphetamines, or the unlawful cultivation of illegal hydroponically-grown plants. The Government will also move to ban the sale of drug paraphernalia, including cocaine kits."

[35] King R. 'Smash your bong to pieces: Government's $400k anti-cannabis campaign.' *WAToday* 23 May 2012. <www.watoday.com.au/wa-news-/smash-your-bong-to-pieces-governments-400k-anticannabis-campaign-20120523-1z49m.html>

> The repeal of the Cannabis Control Act will reinstate the primary responsibility for cannabis cautioning under the Misuse of Drugs Act 1981.'[36]

The broader offence of possession of drug paraphernalia in Section 7B introduced by the *Misuse of Drugs Amendment Act 2011* was proclaimed on 21 November 2011 and replaced the penalty of a fine of up to $3,000 or three years imprisonment, or both of Section 5(1)(d)(i) with a much higher penalty, of a fine of up to $36,000 or imprisonment for 3 years or both.

The new offence in Section 7B(6) referred to the "possession of any drug paraphernalia in or on which there is a prohibited drug or a prohibited plant" This offence has a broad definition of 'drug paraphernalia', as being any thing made or modified to be used in connection with manufacturing or preparing a prohibited drug or prohibited plant or which can be used –

- for the administration to a person,
- for smoking, inhaling or ingesting or
- to be burned or heated so its smoke or fumes can be smoked or inhaled.

The justification for such a broad offence had its origins in an earlier amendment of the MDA in November 2010 that was justified to provide a "deterrent" concerning the use and possession of glass pipes and other paraphernalia for smoking "ice" and inhaling cocaine, which added a new section, Section 19B, concerned with the sale of ice pipes, through the *Misuse of Drugs Amendment Act (No. 2) 1981*.

This amendment had been necessary due to the commencement in January 2011 of a national scheme for regulating the sale of unsafe consumer products by the Australian Competition and Consumer Commission. The national approach meant the method that had been adopted by WA in March 2006 to prohibit of "ice pipes" which had relied on the use of powers available to the Commissioner for Consumer Protection would cease. The November 2010 amendment of the MDA had a penalty of a fine of up to $10,000 for the sale or display of ice pipes, with a penalty of $24,000 or imprisonment or both if the sale was to a child.

The inclusion of cannabis smoking paraphernalia along with the earlier class of paraphernalia concerned with glass pipes etc, in the *Misuse of Drugs Amendment Act 2011* surprisingly was not regarded as contentious by the Government, nor the Opposition, when the legislation was introduced on 18 August 2011.

> 'Drug-use paraphernalia are any products marketed to drug users to assist them in taking illicit drugs, such as cocaine kits, bongs and ice pipes. Generally speaking, a cocaine kit comprises two or more items, such as a razor blade, a tube, a mirror, a scoop or a glass bottle, packaged as a unit apparently for the purposes of preparing for introduction, or for introducing, cocaine into the body.
>
> The selling or supplying of drug-use paraphernalia can be seen to normalise and promote the use of illicit drugs. Under Western Australian law, certain drug-use paraphernalia are already prohibited from being sold, supplied or possessed. For example, under the Misuse of Drugs Act 1981, it is an offence to sell or supply ice pipes or cannabis-smoking paraphernalia.
>
> The penalties for these offences range from up to two years' imprisonment to a fine of up to $24 000. In addition, the Misuse of Drugs Act 1981 makes it an offence for a person to possess any pipes or other utensils for use in connection with the smoking of a prohibited drug or prohibited plant in or on which there are detectable traces of a prohibited drug or prohibited

[36] PerthNow. 'Colin Barnett to introduce tougher marijuana legislation. *PerthNow* 11 October 2009. <www.news.com.au/perthnow/story/0,21598,26194663-948,00.html?>

plant. The penalty for this offence is a fine of up to $3 000, a term of imprisonment not exceeding three years, or both.

....

Additionally, it was identified that the maximum monetary penalty of $3 000 for the current offence in section 5(1)(d) of possessing pipes or other utensils containing traces of prohibited drugs or prohibited plants does not reflect the severity of the offence and is out of step with the penalties that will be available to the courts when sentencing persons for selling drug-use paraphernalia. The monetary penalty for the offence of possessing drug paraphernalia with traces of a prohibited drug or plant on it, as provided for in proposed section 7B(6), will be increased from the $3 000 currently available for offences committed under section 5(1)(d) of the Misuse of Drugs Act 1981 to a maximum of $36 000.

This figure is consistent with the principles of the Sentencing Act 1995, which provides that the monetary equivalent for terms of imprisonment is $1 000 per month of imprisonment. The maximum term of imprisonment for an offence committed under proposed section 7B(6) will remain at three years, which is identical to the maximum term of imprisonment presently available for offences committed under section 5(1)(d).'[37]

Summaries of the offences and penalties for both minor and major cannabis offences which have existed either under the CCA or through the MDA before (up to 31 July 2011) and after the repeal of the CCA (from 1 August 2011) are set out in Tables 1 to 9.

It is not possible to determine whether the amendments to the MDA introduced between October 2010 and August 2011, which increased penalties and expanded the offences concerned with the use and sale of cannabis smoking paraphernalia and narrowed the eligibility for receiving a caution, will result in greater numbers of charges for minor cannabis offences being laid, as might be expected.

As data concerning these offences and the CIR scheme has not been published in WA Police annual reports, information about the impact of reforms can only be gleaned from WA data published in the appendices to the annual Illicit drug data report (IDDR) published by the Australian Crime Commission. The most recent data for WA is contained in the 2011/2012 IDDR, which is included in Tables 10 and 11 and presented in Figures 1 to 3. (See Appendix 2.)

Figures 1 to 3 provide an overview of general trends in annual drug charges in WA, which in realtion to cannabis charges, show these have declined from more than nine out of 10 of all charges in 1995/1996 to about 55% of all charges in 2007/2008. Since 2007/2008 annual cannabis charges have increased to two thirds of all drug charges in WA.

4 Some lessons of cannabis law reform in WA

4.1 Consequences of CIN reform

The most comprehensive information on any of the three schemes was published by statutory review of the *Cannabis Control Act 2003*, in the Technical report of statutory review of the *Cannabis Control Act 2003*, which examined the first three years operation of the CCA reforms from 1 April 2004 to 31 March 2007.[38]

The review of the CCA found in the three year period a total of 9,328 CINs had been issued, of which 36.5% were for the expiable offence of possession of a smoking implement on which there

[37] Second reading speech, Hon Rob Johnson, Minister for Police, *Hansard*, Legislative Assembly, 18 August 2011.

[38] Drug and Alcohol Office. *Statutory review of the Cannabis Control Act 2003. Report to the Minister for Health: Technical report*. Perth, Western Australia, Drug and Alcohol Office, 2007.

were detectable traces of cannabis [ie an offence against the MDA s. 5(1)(d)(i)] and 58.1% were for the expiable offence of possession of 15 grams or less of cannabis [ie MDA s. 6(2)].

The remaining total of 498 CINs (5.3%) involved the two other expiable offences, possession of more than 15 grams and up to 30 grams of cannabis [ie MDA s. 6(2)] and the non-hydroponic cultivation of not more than two cannabis plants [ie MDA s. 7(2)].

In summary, of the 9,328 CINs issued 60.7% involved possession of cannabis and 36.5% involved possession of a smoking implement.

The data presented in Figure 4 separates identifies trends in the two stages for expiating a CIN - as a result of the police enforcement process (ie within 28 days) and as a result of the FER enforcement process, from the March quarter 2004 to the March quarter 2007. [39]

This figure shows over time the proportion of all CINs that were expiated increased through a combination of both stages, by reading the graph in reverse, from 38.6% after the elapse of the first quarter after a CIN was issued (ie within 28 days of being issued by police), to 78.8% by the March quarter 2004. It can be seen the long term outcome for both the first and second stages resulted in between two thirds to three quarters of all CINs being fully expiated.

This meant the FER process was successful in achieving additional level of expiation of about 20% of all CINs issued.

Over the three year period 42.8% of all CINs were expiated at the first stage, with variation in rates of up to 50.0% in some quarters. Out of the 9,328 CINs issued up to 31 March 2007, a total of 3,991 (42.8%) were expiated at the police stage and a further 2,192 (23.5%) were expiated by FER. (See Table 12.)

This means in the three year period a total of 6,183 (66.3%) CINs had been fully expiated and that overall, two thirds of all CINS issued up to 31 March 2007 had been fully expiated. With respect to the total of 5,337 CINs transferred to FER, a total of 2,192 (41.1%) had been expiated and 3,145 (58.9%) remained unexpiated by the end of September 2007.

In summary, of the total of 9,328 CINs that were issued:

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

The review also found there were pronounced differences in the method of expiation according to "ethnic status" (which was contained in a field on the form that police completed when issuing an infringement notices), with rates nearly four times higher for non-Indigenous ethnic groups compared to the Indigenous group (46.2% vs 11.6%).

With respect to the 912 CINs issued to Indigenous persons, 106 (22 CES and 84 paid), nearly one in eight (11.6%) had been expiated, whereas out of the total of 8,415 CINs issued to the remaining ethnic groups, 3,885 (46.2%), nearly half, had been expiated. See Figure 5.

The review also identified very low rates of participation by Indigenous persons in the CES process, as of the 106 CINs expiated by Indigenous persons, only 22 (20.8%) were expiated by attendance at a CES and 84 (79.2%) were expiated by payment. At 31 March 2007 of the total of

[39] In the March quarter 2004 a total of 52 CINs were issued between 22 to 31 March 2004.

912 CINs issued to Indigenous persons, 22 (2.4%) were expiated by attendance at a CES, 84 (9.2%) were expiated by payment and 806 (88.5%) were unexpiated.

4.2 Consequences of CIR reform

The government undertook a review of the first 12 months operation of the CIR scheme. In a media release of 7 December 2012, it was claimed that the CIR achieved a much better rate of expiation compared to that obtained under the CIN scheme.[40]

> 'The Liberal-National Government's tougher cannabis laws have resulted in a 12-fold increase in the number of people attending mandatory cannabis education sessions compared to the rate of attendance under the previous legislation.
>
> Police Minister Liza Harvey said a 12-month review of the laws showed the number and rate of individuals attending a cannabis intervention session (CIS) was about 12 times greater (63 per cent) than the rate of attendance at cannabis education sessions (five per cent) under the previous scheme. In a 12-month period 1,442 individuals were issued with cannabis intervention requirements (CIRs) which mandated their attendance at a CIS. Of those, 903 (63 per cent) successfully completed a CIS; 503 (35 per cent) were not expiated; and the remainder of the CIRs were withdrawn.
>
> "The vast majority of those who attend a CIS are reporting the session helped to increase their knowledge about health, social and legal issues, and about treatment options," Mrs Morton said. "Three-quarters of those surveyed said they were given referrals to other services, and just over half intended to get further treatment which is a great outcome for these people."'

The Minister for Police has released, following a request for a copy of the review, a number of summary tables, which have been consolidated as Table 13.

However, it is submitted that the claim of December 2012 is erroneous and misleading. The overall expiation rate (assuming equivalence between completion of a CIS and expiation under the CIN scheme) of 62.6% under the CIR scheme, appears to be very similar to that under for the combined police and FER enforcement rate at about 12 months after a CIN had been issued, of about two thirds of all issued CINs.

4.3 Cannabis education intervention

The intention of the CES under the CIN scheme, which has been continued under the CIR scheme, with its Cannabis intervention session (CIS), was to provide an avenue for some individuals to acquire additional information about the harms and implications of cannabis use by attending one of the Community Drug Service Teams (CDSTs), who were the only providers authorised to provide a CES.

It is suggested the location of the CES and its rebranded variant the CIS, within mainstream facilities provided by the CDSTs[41] may not be an appropriate intervention for a number of those issued with either an infringement or a caution, if their drug use involved limited use of cannabis.

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[40] Harvey L & Morton H. 'Review shows that cannabis laws working.' *Ministerial media statement*, 7 December 2012. < www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=6917.

[41] Most of the CDSTs are non government organisations largely funded through service agreements with government. In some of the remote regions in the North West of the State, the contract for CDSTs are held by the relevant regional health service.

Specialist service providers were historically established to target persons with serious levels of drug abuse, involving alcohol and illicit drugs such as heroin and more recently amphetamines. As a significant proportion of clients attending CDSTs are coerced because of a pending court appearance or as part of their supervised release under a community based order, this raises some concern about appropriateness of locating the delivery of the education intervention within a specialist drug treatment service delivery model.

> *"There is a common perception that the service needs of substance dependent young people are largely dictated by alcohol and opiate dependence. In our community sample only 9% of those with cannabis dependence were also diagnosed with alcohol dependence. Furthermore, the vast majority (87%) of cannabis dependent individuals had never injected an illicit substance. Indicating that the service needs of this community-based group were probably predicated largely on their cannabis use."*[42]

It could be argued that the approach of 'grafting' the intervention on to the common stock of mainstream specialist service providers was a cost effective approach to implementing this aspect of the CIN scheme and also for the CIR scheme. It may have also delivered substantial additional income to specialist spervice providers from payments for attendance fees from government and funding to employ additional staff under drug diversion retainer and capacity building arrangements.[43]

As there are large numbers of regular cannabis users, there may be a case to differentiate between different groups of cannabis users by establishing a spectrum of services involving different types of providers such as medical practitioners,[44] clinical psychologists and other private practitioners and Indigenous health workers to target a spectrum of problematic cannabis users.

4.4 Policing attitudes and procedures

There were some changes in administrative instructions issued by the Commissioner of Police setting out procedural matters concerning the CIN scheme over the period of its operation. Information gathered by the statutory review indicated that these had an important, but unrecognised, impact on how police interpreted and operationalised the way they decided to whom and how they would issue an infringement.

In the first edition of OP-52.1 (Cannabis infringement notice scheme) in the Commissioner's Orders and Procedures Manual (also referred to as the COPS manual), issued in March 2004, there was a specific reference of the procedure when other offences are involved.

> *"**Drugs must be for personal use***
> *Investigating police must be satisfied prior to issuing a CIN that the drugs are for personal use. If the circumstances indicate something other than personal use, then a CIN cannot be issued and the matter should proceed to prosecution.*
>
> *There must be no other offence involved, detected or under investigation for which a brief of evidence will be submitted.*

[42] Coffey C, Carlin JB, Degenhardt L, Lynskey M, Sanci L & Patton GC. 'Cannabis dependence in young adults: an Australian population study.' (2002) 97 *Addiction*, 192.
[43] Drug and Alcohol Office. *Statutory review of the Cannabis Control Act 2003. Report to the Minister for Health: Supplementary data tables and figures*. Perth, Western Australia, Drug and Alcohol Office, 2007, Part 4: Cost and benefits data tables.
[44] The possible involvement of medical practitioners in providing services was included in a submission provided by the Australian Medical Association to the statutory review, which was not adopted.

The exception will be where an offender is detected committing another offence at the time, which can be dealt with by the issue of a caution or penalty notice (eg Traffic or Liquor Licensing Infringement).”

In the second edition of OP-52.1, issued in October 2006, this section of the COPS manual was revised:

*“**Drugs must be for personal use***
Investigating police must be satisfied prior to issuing a CIN that the drugs are for personal use. If the circumstances indicate something other than personal use, then a CIN cannot be issued and the matter should proceed to prosecution.”

Although the revised text of OP-52.1 did not specifically refer to the circumstance of concurrent serious offences, this appeared to mean that police should actively consider whether or not to exercise their discretion to issue a CIN. Although an officer would probably not have issued a CIN in the case of a concurrent serious offence, there is nothing in the second edition of OP-52.1 or in the training lessons that police received which specifically precluded a CIN being issued. [45]

Whereas the CIN scheme does not refer to what may constitute a serious offence, it is noted the All drug diversion (ADD) scheme precludes diversion if someone has prior convictions for ‘serious violent offences’. The criteria as to what may constitute a serious violent offence is provided to police as part of the training associated with the ADD scheme and refers to offences in the *Criminal Code Act 1913*. It is likely that police used the ADD criteria to assist in determining whether they would exercise discretion to limit issuing a CIN in circumstances involving concurrent serious offences.

4.5 Net widening

The CIN reform appeared to have facilitated WA police issuing a formal consequence by the way of being able to issue a CIN compared to the practice before the introduction of the CIN scheme, when they either issued a caution or informally warned an offender.

This change in police practice, indicated in Figure 6, meant although less people were charged, with resultant court savings (Figure 7), greater numbers of individuals incurred a formal consequence as they were issued with a CIN.

‘Prior to the CIN scheme police may have been more likely to issue an informal warning, as otherwise they would have had to prepare a brief if they proceeded to charge someone with a minor cannabis offence. This can be shown from the preliminary analysis of all consequences over the nine quarters prior to the CIN scheme up to 31 March 2004 compared to the 12 quarters of the CIN scheme up to 31 March 2007, which found an overall net increase of an average of 310 consequences per quarter.

Although there was a net decrease in mean quarterly convictions for all type of offences, decreasing from an average of 1,639 convictions over the nine quarters pre-CIN scheme to an average of 1,420 convictions over the 12 quarters of the CIN scheme, this was more than offset by the increased average number of CINs issued during the CIN scheme. Even though police charged on average fewer people for minor cannabis offences over the 12 quarters of the CIN scheme, it should have been expected that the reduced number of persons who

[45] Drug and Alcohol Office. *Statutory review of the Cannabis Control Act 2003. Report to the Minister for Health: Technical report*. Perth, Western Australia, Drug and Alcohol Office, 2007, Appendix 9.

appeared before the courts should have been offset by a comparable number of persons issued with a CIN for committing an expiable offence.

However, as there was a greater number of individuals issued with CINs compared to the reduction in convictions, this indicates that the CIN scheme may have facilitated the police being more readily able to involve a formal consequence for a minor cannabis offence. It could be argued by some that the net increase in formal consequences as a result of the CIN scheme potentially means that there was not a softening in attitudes by police towards minor cannabis offenders.

The offence where the net widening was most apparent involves Section 5(1)(d)(i) of the MDA, ie possession of a smoking implement, where there was an overall net average increase of 221 consequences per quarter over the 12 quarters of the scheme. Even though there was an average increase of 282 CINs issued for Section 5(1)(d)(i) offences, as there was only a reduction of an average of 60 convictions per quarter, this resulted in an overall net increase of an average of 221.

There was a smaller net widening effect in relation to Section 6(2) offences, ie possession of 30 grams or less of cannabis, with an overall net average increase of 105 consequences over the 12 quarters of the CIN scheme. However, with respect to cultivation, ie Section 7(2) offences, there was an overall net average decrease of 16 consequences over the 12 quarters of the scheme compared to the period before the CIN scheme.'[46]

Net widening refers to three types of situations where reforms like that which occurred in WA over the past 15 years involving minor cannabis offenders, can result in wider nets, ie that the number of people subject to criminal justice proceedings increases, denser nets, ie that the intervention is more intensive than a court imposed sanction alone or different nets, ie that the new service supplements rather than replaces the existing services, 'such that an individual becomes enmeshed in the treatment net in addition to the criminal justice net.' [47]

The possibility of net widening from cannabis law reform has also been flagged in a number of jurisdictions.[48] For instance, it was suggested the proposed amendments to the *Canadian Controlled Drugs and Substances Act* by Bill C-17 (as well as predecessor Bills) would mean that 'enforcement net widening, and other effects, the detection of cannabis possession/use by police may increase substantially'.[49]

These types of outcome occurred in the early 1990s in South Australia as 'police showed less restraint in imposing civil penalties in the form of fines than in pressing charges which could

[46] Drug and Alcohol Office. *Statutory review of the Cannabis Control Act 2003. Report to the Minister for Health: Technical report*. Perth, Western Australia, Drug and Alcohol Office, 2007, 64-65.
[47] Pritchard E, Mugavin J & Swan A. *Compulsory treatment in Australia. A discussion paper on the compulsory treatment of individuals dependent on alcohol and/or other drugs*. ANCD Research Paper No. 14. Canberra, Australian National Council on Drugs, 2007, 23.
[48] Sarre R. 'Destructuring and criminal justice reforms: rescuing diversionary ideas from the waste paper basket,' (1999) 10 *Current Issues in Criminal Justice* 259-272 has a description of 'net widening' as one of the hidden dangers of diversion schemes, which have developed over the last three decades as a consequence of the shift towards a community-based criminal justice model, such as explicated by Stanley Cohen. Cf: Cohen S. 'The punitive city: Notes on the dispersal of social control.' (1979) 3 *Contemporary Crises* 339-363.
[49] Ontario Federation of Community Mental Health & Addiction Programs. *The role of cannabis in demand for substance abuse treatment services in Ontario and a consideration of the potential effects of cannabis decriminalisation. Discussion document*. June 2004, 1.

have led to a criminal conviction.'[50] Indeed, it was found that net widening had occurred to such an extent that by the mid 1990s more than 17,000 CENs were being issued annually. After reaching a peak of 17,170 in 1994/1995 there has been a gradual decrease in the number of notices issued each year, dropping to 5,502 by 2005/2006.

As well as the well occurrence of net widening in the earlier years of the CEN scheme, there is evidence from the UK of a growing use of formal cautions by police throughout the 1990s. Instead of exercising their discretion to informally caution minor cannabis offenders, well before the January 2004 law reforms, formal cautioning is known to have been responsible for a degree of net widening in the UK.[51]

The experience referred to above about cannabis law reforms indicates that programs which are intended to divert offenders from the criminal justice system need to be regarded as also involving risks that offenders may be worse off than had been the case if they had not been diverted. For instance, a recent research paper published by the Australian National Council on Drugs made the following observation.

> *"Diversion programs carry with them the risk of three forms of net widening (examples of these phenomena have been found in programs across Australia): an increase in people who become subject to criminal justice proceedings and are thus introduced to the criminal justice system; penalties for non compliance with a diversion order can lead to greater sanctions than would ordinarily have applied to the offence; and individuals may become enmeshed in the treatment system in addition to the criminal justice system. These raise ethical issues in relation to policy and cost."*[52]

In one of the NDLERF funded sub-studies in June 2004 after the CIN scheme has been operating for just over a year, which involved a small number of operational police officers, it was noted net widening had occurred in WA as a consequence of the CCA reforms.

> 'The research did, however, give rise to some concerns about 'net widening'. Evidence from other jurisdictions has indicted that once the 'softer' option of an infringement notice has been introduced, police will be less likely to apply other sanctions - such as an informal warning or caution - which may help minor cannabis offenders to avoid further contact with the justice system. … (Police) indicated that they would be less likely to caution a minor cannabis offender informally now that infringement notices were available.'[53]

5 Final thoughts

In hindsight we might question the wisdom of the approach adopted by decriminalising three minor cannabis offences and regulating the sale of cannabis smoking paraphernalia by a separate piece of legislation, the *Cannabis Control Act 2003*.

This approach appears to have been presented as a radical attempt by the Labor government, supplemented by some degree of frustration with the Liberal's opposition to reform, to

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[50] Maag V. 'Decriminalisation of cannabis use in Switzerland from an international perspective – European, American and Australian experiences.' (2003) 14 *International Journal of Drug Policy* 280.
[51] Warburton H, May T & Hough M. 'Looking the other way. The impact of reclassifying cannabis on police warnings, arrests and informed action in England and Wales.' (2005) 45 *British Journal of Criminology*, 114.
[52] Pritchard E, Mugavin J & Swan A. *Compulsory treatment in Australia. A discussion paper on the compulsory treatment of individuals dependent on alcohol and/or other drugs*. ANCD Research Paper No. 14. Canberra, Australian National Council on Drugs, 2007, 99.
[53] Sutton A & Hawks D. 'The cannabis infringement notice scheme in Western Australia: a review of policy, police and judicial perspectives.' (2005) 24 *Drug & Alcohol Review*, 334.

repudiate the more modest and constrained approach of the previous Liberal government of a conditional cautioning scheme which was established through operational instructions issued by the Commissioner of Police rather than the complex and uncertain process of legislative reform.

Perhaps a more effective approach to reform of minor cannabis offences by the Labor government could have if they had conceptualised an approach as being to improve and expand the CCMES underpinned by police discretion. This would have been similar to the approach adopted in 2004 in the United Kingdom, when administrative instructions were issued for police to issue cannabis warnings for minor cannabis, which also engendered a wider and more sustained level of community support for cannabis law reform. Even though in the UK from January 2009 a system of escalated consequences was introduced for second-time offenders, the core premise of the UK system that warnings should be delivered at the street level continues.[54]

In WA there were a number of strands of debate surrounding the CIN scheme reform, which involve contested perspectives around the concepts of harm minimisation and whether the reform should be referred to as decriminalisation or by some other descriptor.

The term 'harm minimisation' appears to enjoy substantial public support even though it rests on the premise that only a proportion of drug users at any time will be able or willing to reduce or cease their drug use. This principle does not maintain that abstinence from drug use is the preferred goal for intervention programs, but that interventions should be concerned with public health goals, so that a user's drug use may cause less harm to themself or others.

> 'A public health approach to the problem of illicit drug use and addiction views the problem not as a phenomenon caused by individual psychological (or moral) factors but rather as one causing extensive social problems and threatening public health. Harm reduction reflects this attitude and goes a step further, holding that many of the most destructive consequences and refractory problems of illicit drug use are not the results of the drugs per se, but rather of drug policies, ie the prohibition of drug use and the criminalisation of the drug user.'[55]

Because this definition emphasises the close relationship between public health outcomes and the law reform, it means that reform can be measured by the extent to which it 'shifts drug policies from the criminalised and punitive end to the more decriminalised and openly regulated end of the drug policy continuum.'[56] This approach is reflected in how harm minimisation principles have been adopted by police across a range of areas beyond how minor drug offenders, as outlined ins the review by Professors Eric Single and Timothy Rohl covering the period from the early to late 1990s, where the principle of harm minimisation had become increasingly adopted by front line police.[57]

A difficulty with the WA approach to the CCA reform was that it involved a complex package of legal and administrative reforms which may have created a perception government was engaged in a process to pave the way for more comprehensive reforms involving other drugs.[58] The

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[54] Swensen G & Crofts T. 'Recent developments in cannabis law reform: the rise and fall of the cannabis infringement notice scheme in Western Australia.' (2010) 12 *Flinders Law Journal* 79 – 103.
[55] Drucker E. 'Harm reduction: a public health strategy.' (1995) 1 *Current Issues in Public Health*, 64.
[56] Levine HG. 'The secret of worldwide drug prohibition: the variety and uses of drug prohibition.' (2002) 7 *The Independent Review,* 173.
[57] Single E & Rohl T. *The National Drug Strategy: Mapping the future. An evaluation of the National Drug Strategy 1993-1997. A report commissioned by the Ministerial Council on Drug Strategy*. Canberra, Australian Government Publishing Service, 1997.
[58] In January 2004 a cautioning scheme, based on police discretion, was introduced so that offenders with small amounts of a number of illicit drugs (other than cannabis) could receive a caution if they participated in a brief treatment intervention. However, later newspaper publicity about this scheme

potential for confusion and suspicion about the purpose of WA legislation was further aggravated, it is contended, by using the complex and formalistic description of the reforms as being 'prohibition with civil penalties for the personal use of cannabis'.

The use of the term 'decriminalisation' in the popular press to describe the nature of the proposed reform, during the stage when the legislation was before Parliament and in subsequent public debate about the operation of the CIN scheme lent strong support to the perception that *de jure* decriminalisation had occurred. The term was also used in the ALP's pre-election manifesto, which was not renounced.

It is submitted if the scheme had been referred to, for example, as 'partial decriminalisation,' it would have been a tacit acknowledgement of an important change to a policy which could be placed along the continuum of possibilities to 'reduce some of the societal costs of complete cannabis prohibition while retaining some of the benefits of criminalising cannabis.'[59]

It would appear that another audience of researchers, as well as the wider community, understood the reforms in WA as 'decriminalisation' rather than as 'prohibition with civil penalties'.[60]

> 'Both the government and the Liberal Opposition became aware of the research that many in the community confused the term 'decriminalisation' with 'legalisation'. As a result, while the government subsequently avoided using the term, and emphasised that cannabis use and cultivation would remain illegal under the proposed scheme, the Opposition frequently used the term 'decriminalisation' and said that the government scheme would 'allow' possession and cultivation of cannabis.'[61]

Studies about the CEN scheme also appear to reflect uncertainty about the meaning of the term 'prohibition with civil penalties', describing the SA reform as involving 'partial decriminalisation'.[62] It is submitted 'decriminalisation' gained wider acceptance for the simple reason that it correctly identifies the purpose of this type of reform, as the 'elimination or substantial reduction of penalties for possession of modest quantities of the drug in question … (which) may or may not be punished by a civil fine.' [63]

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implied it was part of a Government approach of going 'soft' on drugs: Pryer W. "Roberts in dark on drugs let off." *The West Australian* 29 October 2004.

[59] Hall W & Pacula RL. *Cannabis use and dependence*. Cambridge, Cambridge University Press, 2003, 191.

[60] Another difficulty in describing the nature of the reforms is that there is also a tendency to confuse the terms decriminalisation, legalisation and harm reduction with one another. Cf: MacCoun R & Reuter P. *Testimony before the House Government Reform and Oversight Committee*. Washington DC, Subcommittee on Criminal Justice, Drug Policy and Human Resources, House of Representatives, 13 July 1999. For instance, the term 'harm reduction' can refer to a beneficial policy goal of reducing the harm if instead of a minor cannabis offender being convicted he or she be issued with an infringement notice or cautioned. Cf: Ditchfield J & Brewer SL. *Cannabis – proposals for a harm reduction strategy*. UK Cannabis Internet Activists. April 2005.

[61] Lenton S. 'Pot, politics and the press – reflections on cannabis law reform in Western Australia.' (2004) 23 *Drug & Alcohol Review,* 230.

[62] 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; Sarre R. 'The partial 'decriminalisation' of cannabis: the South Australian experience.' (1994) 6 *Current Issues in Criminal Justice* 196-207.

[63] MacCoun R & Reuter P. *Testimony before the House Government Reform and Oversight Committee*. Washington DC, Subcommittee on Criminal Justice, Drug Policy and Human Resources, House of Representatives, 13 July 1999.

Appendices

Appendix 1: Tables

Appendix 2: Figures

Appendix 3: Cannabis messes with your mind slides

Appendix 1: Tables

Table 1: Minor cannabis offences & penalties - expiable offences up to 31 July 2011

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

Source: Misuse of Drugs Act 1981 and Cannabis Control Act 2003

Note: The monetary value of 'modified penalties' for offences which could have been dealt by way of a CIN were not set out in the Misuse of Drugs Act 1981 or the Cannabis Control Act 2003, but in the Cannabis Control Regulations 2004.
The Cannabis Control Act 2003 and its regulations were repealed with the proclamation on 1 August 2011 of the Cannabis Law Reform Act 2010 (Government Gazette 29 July 2011, p. 3127)
Minor offence referred to in both acts as 'simple offences'.

Table 2: Cannabis smoking paraphernalia offences & penalties up to 31 July 2011

Description	Cannabis Control Act 2003	
	Section	Penalty
Failure to display prescribed warning notice by retailer of smoking paraphernalia	22	$1,000 (person) $5,000 (body corporate
Failure by retailer of smoking paraphernalia to make available prescribed education materials	23	$1,000 (person) $5,000 (body corporate
Selling by retailer of smoking paraphernalia to persons under 18 years	24	$5,000 (person) $25,000 (body corporate

Source: Cannabis Control Act 2003

Note: The Cannabis Control Act 2003 was repealed with the proclamation on 1 August 2011 of the Cannabis Law Reform Act 2010 (Government Gazette 29 July 2011, p. 3127)

Table 3: Minor cannabis offences & penalties

Description of offence	Offence	Penalty framework	
	Section	Section	Range
Being in a place where cannabis is smoked	5(1)(e)	34(1)(e)	$2,000, 2 years or both
Occupier of premises permitting premises to be used for the manufacture, preparation, sale, supply or use of cannabis	5(1)(a)	34(1)(d)	$3,000, 3 years or both
Owner or lessee of premises permitting premises to be used for the use of cannabis	5(1)(b)	34(1)(d)	$3,000, 3 years or both
Person concerned in the management of premises for the manufacture, preparation, sale, supply or use of cannabis	5(1)(c)	34(1)(d)	$3,000, 3 years or both
Possession of cannabis	6(2)	34(1)(e)	$2,000, 2 years or both
Cultivation of cannabis	7(2)	34(1)(e)	$2,000, 2 years or both
Contravention of order prohibiting a person from selling or supplying any thing used to hydroponically cultivate cannabis	7A(3)	34(1)(c)(ii)	$2,000, 2 years or both

Source: Misuse of Drugs Act 1981

Table 4: Minor cannabis offences & penalties – hydroponic cultivation

Description of offence	Offence	Penalty framework	
	Section	Section	Range
Contravention of order prohibiting a person from selling or supplying any thing used to hydroponically cultivate cannabis	7A(3)	34(1)(c)(ii)	$2,000, 2 years or both

Source: Misuse of Drugs Act 1981

Table 5: Drug paraphernalia offences & penalties from 1 August 2011

Description of offence	Offence	Penalty framework
	Section	
Display of drug paraphernalia for sale in retail outlet	7B(2)	$10,000
Sale of drug paraphernalia to an adult	7B(3)	$10,000
Sale of drug paraphernalia to a child	7B(4)	$24,000, 2 years or both
Possession of any drug paraphernalia in or on which there is a prohibited drug or prohibited plant	7B(6)	$36,000, 3 years or both

Source: Misuse of Drugs Act 1981

Note: The offence in 7B(6) replaced the previous offence in 5(1)(d)(i) which was repealed by the Misuse of Drugs Amendment Act 2011, which was proclaimed on 21 November 2011.

Table 6: Thresholds for serious cannabis offences

Type of cannabis	Threshold	Section
Leaf	100 g	Schedule 5
Plants	10 plants	Schedule 6
Cigarettes	80 cigarettes	Schedule 5
Resin[64]	20 g	Schedule 5
Tetrahydrocannabinols	2 g	Schedule 5

Source: Misuse of Drugs Act 1981

Note: The penalties for committing a serious offence are contained in Table 7.

Table 7: Serious cannabis offences & penalties

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

Source: Misuse of Drugs Act 1981

Table 8: 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[65]	400 cigarettes	Schedule 3	$5,000, 4 years or both	$20,000, 10 years or both

Source: Misuse of Drugs Act 1981

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

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

Source: Misuse of Drugs Act 1981

[64] Hashish oil is not covered in the legislation.
[65] Containing any portion of cannabis.

Table 10: All drug offences, Western Australia, 1995/1996 – 2011/2012

	Consumers	Providers		Unknown	All offences	Cannabis offences	
		n	%			n	%
1995/1996	9,611	5,357	35.8	-	14,968	13,903	92.9
1996/1997	9,062	5,026	35.7	-	14,088	12,704	90.2
1997/1998	8,309	4,989	37.5	-	13,298	11,487	86.4
1998/1999	5,489	1,753	24.2	-	7,242	6,087	84.1
1999/2000	6,914	1,914	21.6	50	8,878	6,798	76.6
2000/2001	7,956	2,114	20.9	21	10,091	7,371	73.0
2001/2002	7,513	2,016	21.2	-	9,529	7,156	75.1
2002/2003	6,009	1,818	23.1	31	7,858	6,028	76.7
2003/2004	7,385	2,184	22.7	36	9,605	6,108	63.6
2004/2005	10,436	2,364	18.4	80	12,880	8,955	69.5
2005/2006	9,061	1,657	15.4	62	10,780	7,411	68.7
2006/2007	10,330	2,782	21.2	-	13,112	7,652	58.4
2007/2008	10,382	2,083	16.7	-	12,465	6,835	54.8
2008/2009	11,053	2,223	16.7	-	13,276	7,643	57.6
2009/2010	10,268	2,144	17.3	-	12,412	7,665	61.8
2010/2011	8,450	1,547	15.5	-	9,997	6,378	63.8
2011/2012	8,806	2,621	22.9	-	11,427	6,598	57.7

Source: Annual reports of Australian Bureau of Criminal Intelligence, Australian illicit drug report: 1995/1996 – 2001/2002
Australian Crime Commission, Illicit drug data report: 2002/2003 – 2011/2012

Table 11: Cannabis offences by type of offence, Western Australia, 1995/1996 – 2011/2012

	Consumers			Providers		Unknown	Total
	Cautions	CINs	Arrests	n	%		
1995/1996	-	-	8,866	5,037	36.2	-	13,903
1996/1997	-	-	8,102	4,602	36.2	-	12,704
1997/1998	-	-	7,149	4,338	37.8	-	11,487
1998/1999	71	-	4,577	1,510	24.8	-	6,087
1999/2000	272	-	5,409	1,373	20.2	16	6,798
2000/2001	870	-	5,992	1,378	18.7	1	7,371
2001/2002	954	-	5,846	1,310	18.3	-	7,156
2002/2003	901	-	4,766	1,247	20.7	15	6,028
2003/2004	501	1,014	3,795	1,297	21.2	2	6,108
2004/2005	-	3,782	3,827	1,312	14.7	34	8,955
2005/2006	-	3,208	3,218	967	13.0	18	7,411
2006/2007	-	1,878	4,388	1,386	18.1	-	7,652
2007/2008	-	1,464	4,655	716	10.5	-	6,835
2008/2009	-	1,328	5,533	782	10.2	-	7,643
2009/2010	-	1,391	5,433	841	11.0	-	7,665
2010/2011	-	1,331	4,434	613	9.6	-	6,378
2011/2012	1,177	-	4,117	1,304	19.8	-	6,598

Source: Annual reports of Australian Bureau of Criminal Intelligence, Australian illicit drug report: 1995/1996 – 2001/2002
Australian Crime Commission, Illicit drug data report: 2002/2003 – 2011/2012

Note: Cautions refer to CCMES for years 1998/1999 – 2003/2004 & CIR from 2011/2012
CIN scheme ceased 31 July 2011 (Cannabis Law Reform Act 2010 - proclaimed on 28 October 2010)
CIR scheme commenced 1 August 2011

Table 12: Cannabis infringement notice scheme
Outcomes by expiation status & type of offence, April 2004 – March 2007

	Expiated		Unexpiated		Total CINs	
	n	%	n	%	n	%
Possession of implement [s. 5(1)(d)(i)]						
Sub total	*1,424*	*41.8*	*1,984*	*58.2*	*3,408*	*36.5*
Possession of cannabis [s. 6(2)]						
Up to 15 gms	2,341	43.2	3,081	56.8	5,422	58.1
15.1 - 30 gms	108	44.4	135	55.6	243	2.6
Sub total	*2,449*	*43.2*	*3,216*	*56.8*	*5,665*	*60.7*
Cultivation of up to 2 plants (non-hydroponically) [s. 7(2)]						
Sub total	*118*	*46.3*	*137*	*53.7*	*255*	*2.7*
Total	**3,991**	**42.8**	**5,337**	**57.2**	**9,328**	**100.0**

Source: Drug and Alcohol Office. Statutory review of Cannabis Control Act 2003. Technical report. Perth, WA, Drug and Alcohol Office, 2007, Table 2.2 (p. 45)

Table 13: Cannabis intervention requirement scheme Expiation outcomes by ethnic status, August 2011 – July 2012

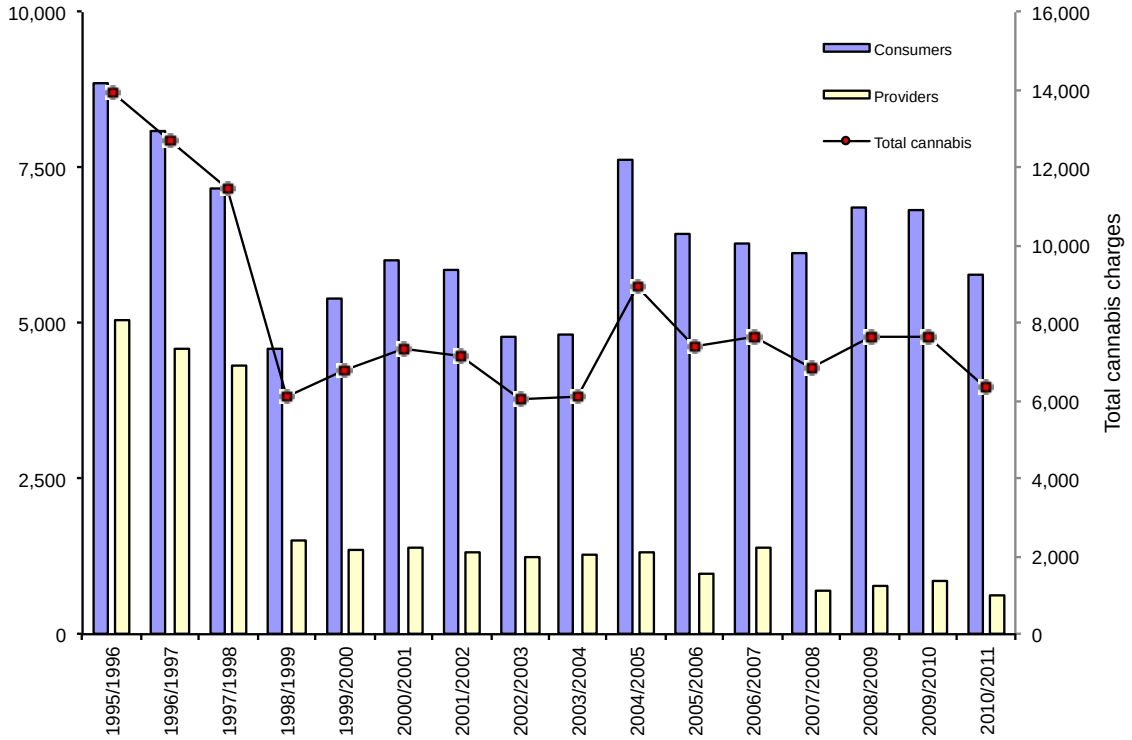
	Cannabis intervention session			Total CIRs
	Completed		Not completed	
	n	%	n	
Non indigenous				
<18 yrs	141	73.1	51	193
18 – 25 yrs	421	31.5	199	631
26 + yrs	266	67.9	114	392
Sub total	*828*	*68.1*	*364*	*1,216*
Indigenous				
<18 yrs	13	35.1	24	37
18 – 25 yrs	26	24.3	78	107
26 + yrs	36	43.9	42	82
Sub total	*75*	*33.2*	*144*	*226*
All persons				
<18 yrs	154	67.0	75	230
18 – 25 yrs	447	60.6	277	738
26 + yrs	302	63.7	156	474
Total	903	62.6	508	1,442

Source: Summary of 12 month review of Cannabis intervention requirement scheme Office of Minister for Police

Note: Includes 31 CIRs – 24 that were withdrawn & 7 where outcome not known

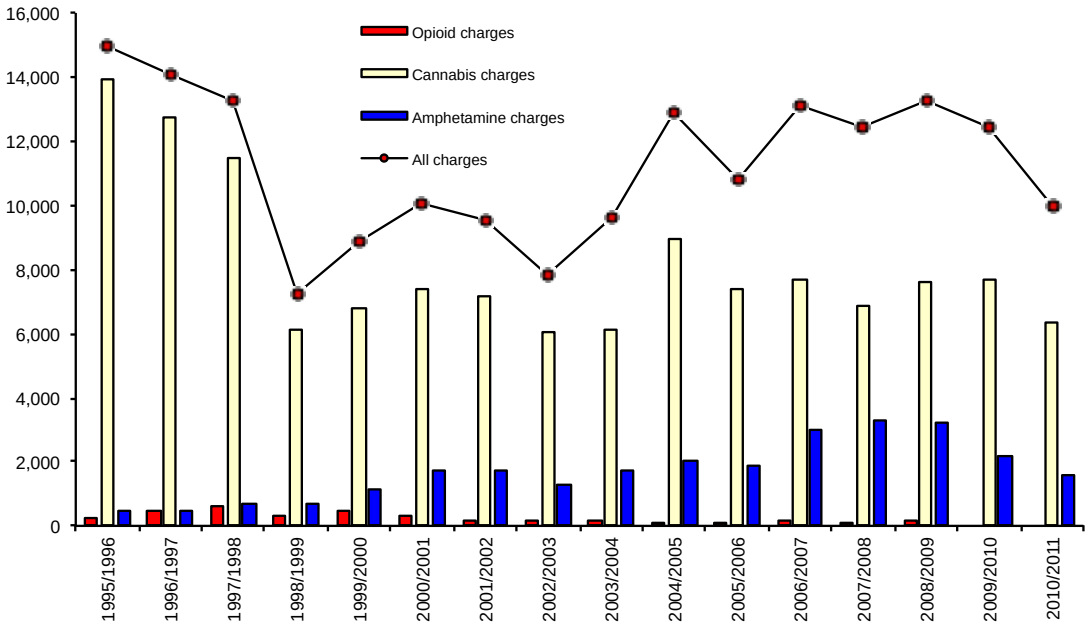
Appendix 2: Figures

Figure 1: Annual cannabis charges – type of offence
WA, 1995/1996 – 2010/2011



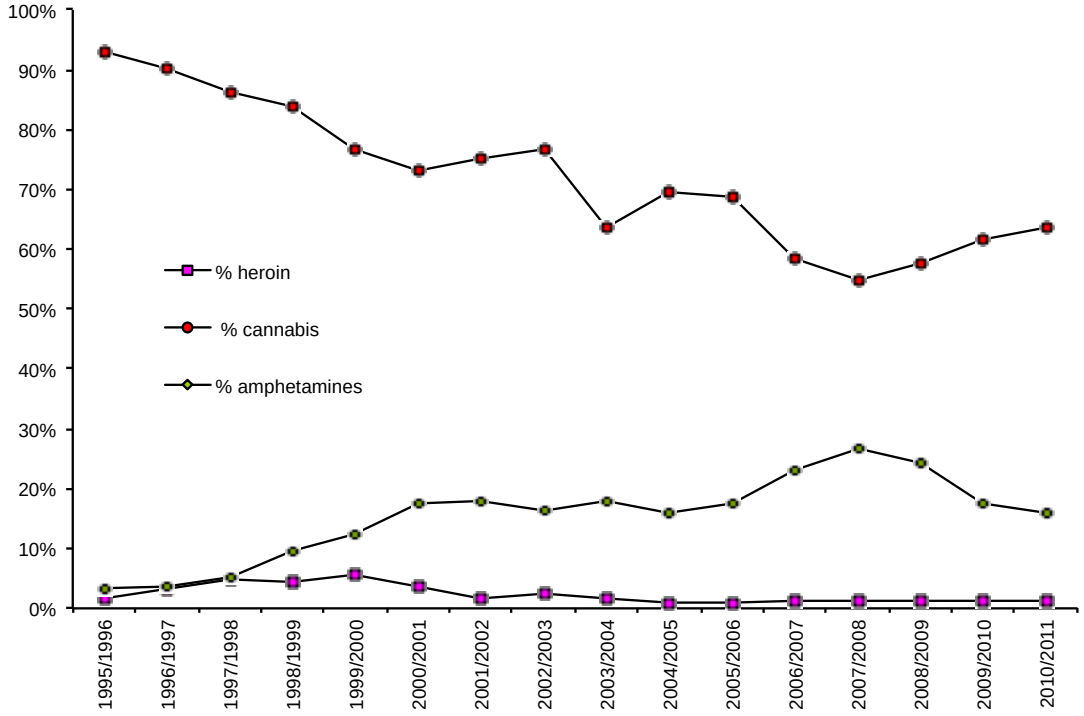
Source: Annual reports of Australian Bureau of Criminal Intelligence, Australian illicit drug report: 1995/1996 – 2001/2002
Australian Crime Commission, Illicit drug data report: 2002/2003 – 2011/2012

Figure 2: Annual drug charges – type of drug
WA, 1995/1996 – 2010/2011



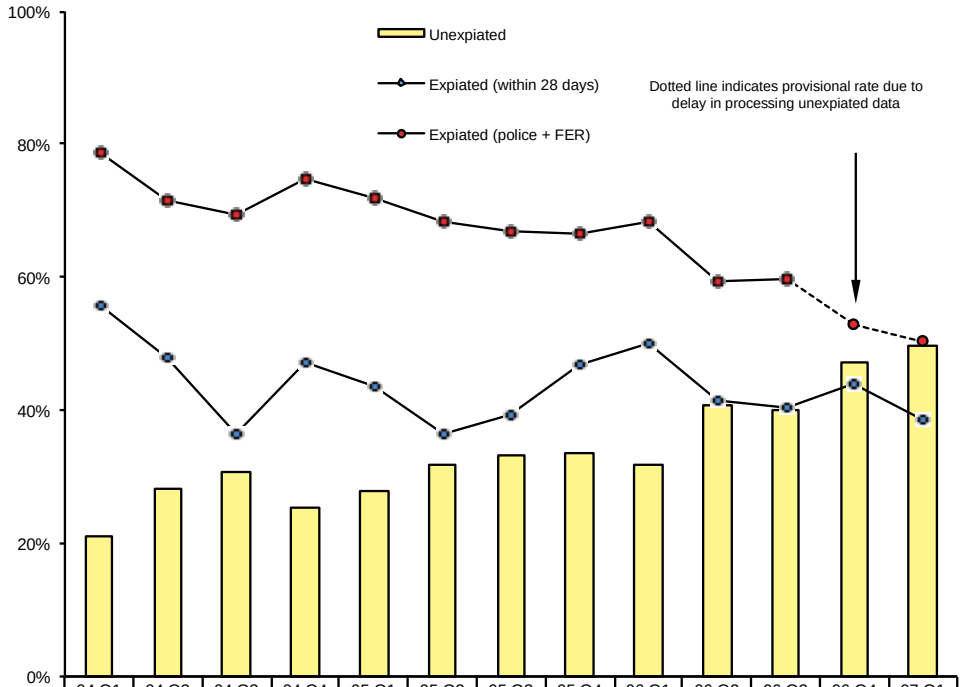
Source: Annual reports of Australian Bureau of Criminal Intelligence, Australian illicit drug report: 1995/1996 – 2001/2002
Australian Crime Commission, Illicit drug data report: 2002/2003 – 2011/2012

Figure 3: Annual drug charges - % type of drug
WA, 1995/1996 – 2010/2011



Source: Annual reports of Australian Bureau of Criminal Intelligence, Australian illicit drug report: 1995/1996 – 2001/2002
Australian Crime Commission, Illicit drug data report: 2002/2003 – 2011/2012

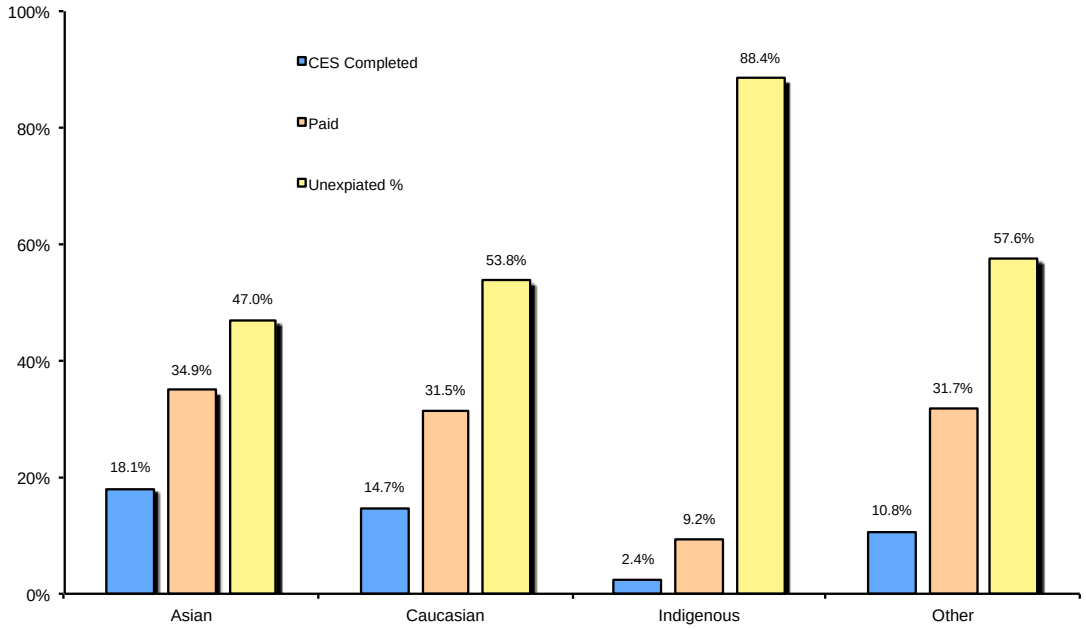
Figure 4: Cannabis infringement notice scheme
March quarter 2004 – March quarter 2007
Quarterly proportion (%) CINs expiated by outcome



	04 Q1	04 Q2	04 Q3	04 Q4	05 Q1	05 Q2	05 Q3	05 Q4	06 Q1	06 Q2	06 Q3	06 Q4	07 Q1
Unexpiated	21.2%	28.3%	30.7%	25.3%	28.0%	31.8%	33.1%	33.5%	31.6%	40.6%	40.1%	47.2%	49.7%
Expiated (within 28 days)	55.8%	47.8%	36.4%	47.3%	43.5%	36.6%	39.2%	46.8%	50.0%	41.5%	40.3%	44.0%	38.6%
Expiated (police + FER)	78.8%	71.7%	69.3%	74.7%	72.0%	68.2%	66.9%	66.5%	68.4%	59.4%	59.9%	52.8%	50.3%

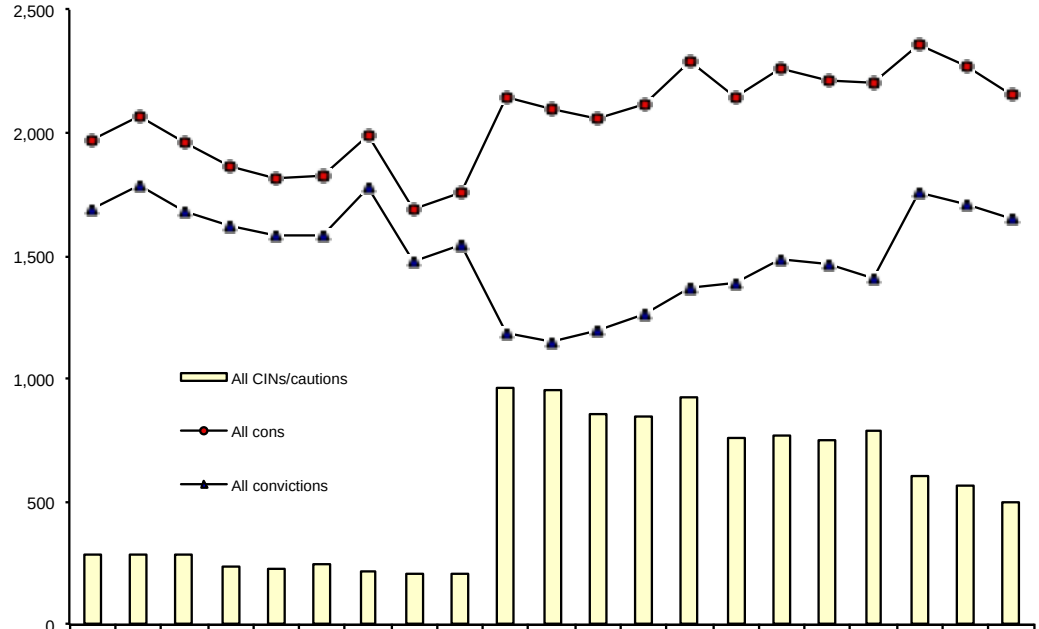
Source: Drug and Alcohol Office. Statutory review of Cannabis Control Act 2003. Technical report. Perth, WA, Drug and Alcohol Office, 2007, Figure 2.2 (p. 40)

Figure 5: Cannabis infringement notice scheme
March 2004 – March 2007
Proportion (%) CINs expiated by ethnic status



Source: Drug and Alcohol Office. Statutory review of Cannabis Control Act 2003. Technical report. Perth, WA, Drug and Alcohol Office, 2007, Figure 2.5 (p. 48)

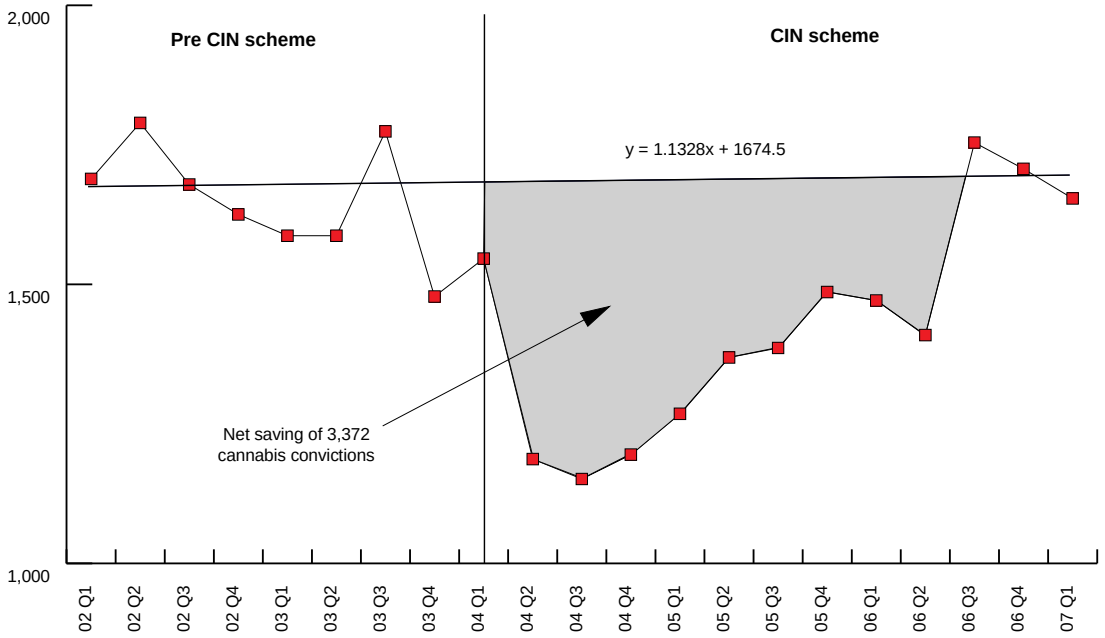
Figure 6: Quarterly cannabis offences
March quarter 2002 – March quarter 2007
Quarterly CINs, cautions, convictions & all consequences



	02 Q1	02 Q2	02 Q3	02 Q4	03 Q1	03 Q2	03 Q3	03 Q4	04 Q1	04 Q2	04 Q3	04 Q4	05 Q1	05 Q2	05 Q3	05 Q4	06 Q1	06 Q2	06 Q3	06 Q4	07 Q1
All CINs/cautions	285	281	283	241	226	243	215	209	208	962	950	859	844	922	762	773	746	791	608	562	497
All cons	1,974	2,070	1,962	1,866	1,813	1,830	1,989	1,687	1,754	2,149	2,101	2,054	2,112	2,291	2,148	2,259	2,217	2,200	2,362	2270	2151
All convictions	1,689	1,789	1,679	1,625	1,587	1,587	1,774	1,478	1,546	1,187	1,151	1,195	1,268	1,369	1,386	1,486	1,471	1,409	1,754	1,708	1,654

Source: Drug and Alcohol Office. Statutory review of Cannabis Control Act 2003. Technical report. Perth, WA, Drug and Alcohol Office, 2007, Figure 2.1 (p. 39)

Figure 7: Quarterly cannabis convictions
March quarter 2002 – March quarter 2007
Estimated net savings of avoided cannabis convictions



Source: Drug and Alcohol Office. Statutory review of Cannabis Control Act 2003. Technical report. Perth, WA, Drug and Alcohol Office, 2007, Figure 7.2 (p. 175)

Note: Long term underlying trend of approx 1,600 quarterly cannabis charges

Appendix 3: Cannabis messes with your mind campaign slides

Source: Cannabis campaign – Cannabis messes with your mind (August 2011)
http://drugaware.com.au/about-us/campaigns/cannabis-campaign.aspx

Source: Cannabis campaign – Cannabis messes with your mind – New swap for pot component (May 2012)

Plate 1: Paranoia

http://drugaware.com.au/Portals/0/media/Pdf/PRESS%20%20%20Flow%20Charts%20paranoia.pdf

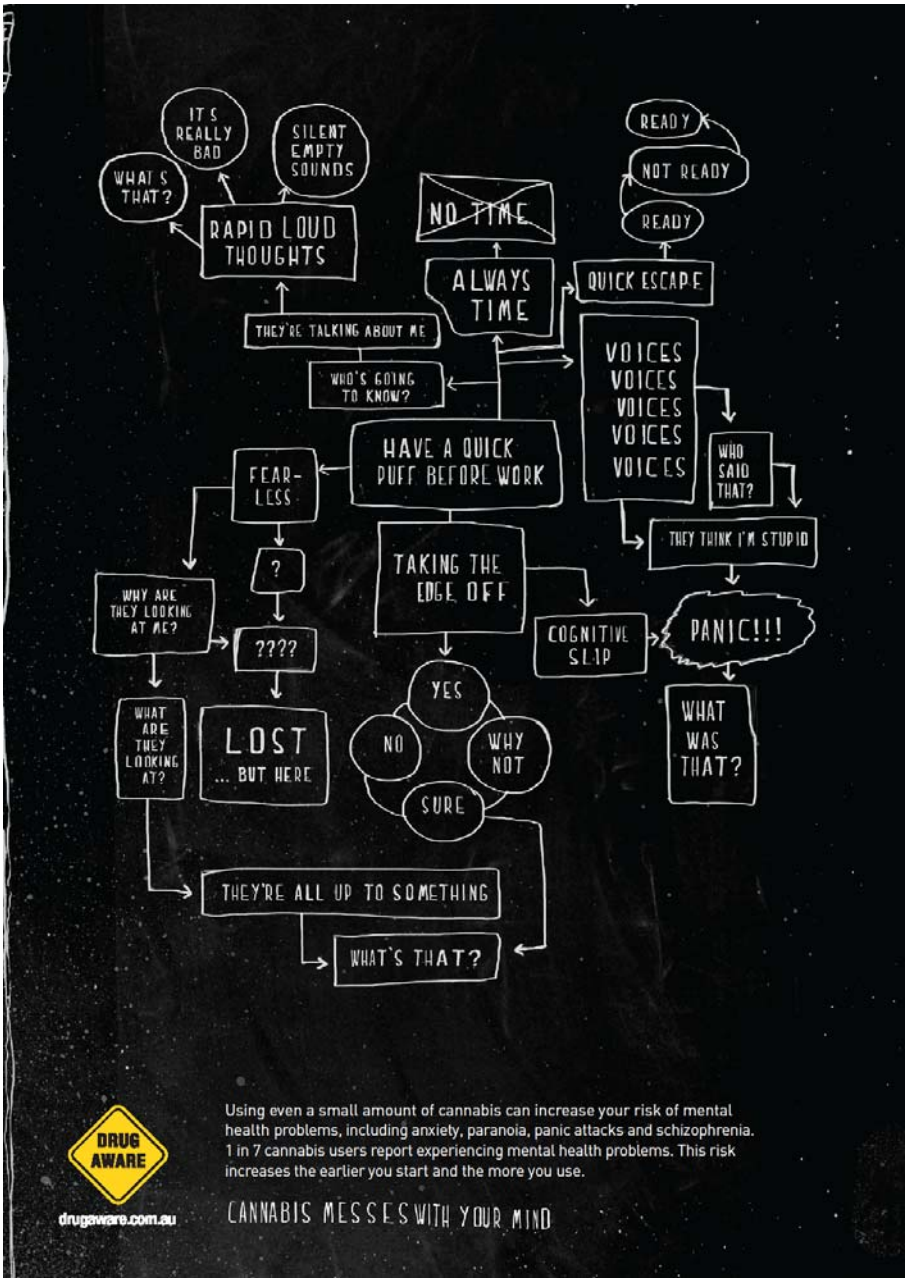


Plate 2: How to get the effects of cannabis

http://drugaware.com.au/Portals/0/media/Pdf/Press%20Long%20Copy.pdf

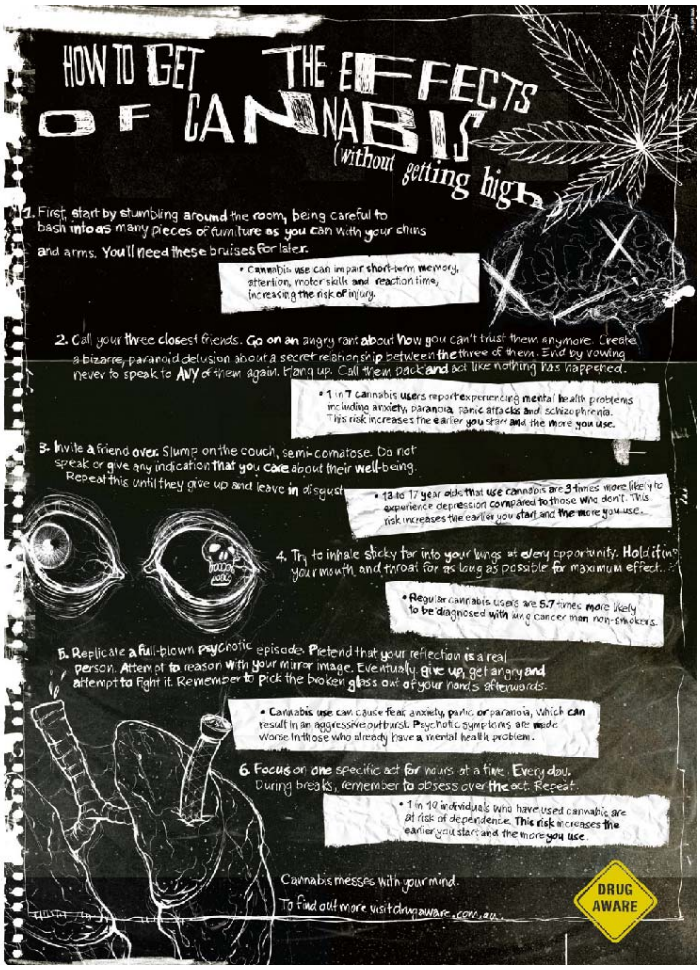


Plate 3: Smash your bong

http://drugaware.com.au/portals/0/media/Pdf/Swap%20for%20Pot%20smash%20bong.pdf