CRIMINAL JUSTICE
COMMISSION

REPORT ON CANNABIS AND THE LAW IN QUEENSLAND

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Dear Sirs

In accordance with section 26 of the *Criminal Justice Act 1989*, the Commission hereby furnishes to each of you its Report on Cannabis and the Law in Queensland.

Yours faithfully

R. S. O'Regan

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FOREWORD

In 1989 in the Report of the Commission of Inquiry, Mr G.E. Fitzgerald QC recommended that the Criminal Justice Commission undertake a general review of the criminal law, including laws relating to illicit drugs. This report has been prepared in response to that recommendation. The report focuses specifically on cannabis because this is the most widely used illicit drug and generates most of the debate about possible changes to the law. Within that general framework the emphasis is on possession and cultivation of cannabis for personal use. For reasons detailed later the report does not address existing legislation or enforcement strategies for dealing with commercial level production and trafficking of cannabis.

This report is the sequel to *Cannabis and the Law in Queensland: A Discussion Paper* published in July 1993. The discussion paper provided an extensive summary of research relating to the effects of cannabis, levels of use, attitudes to use and patterns of law enforcement. In response to the discussion paper the Commission received numerous submissions from interested individuals and organisations. Since then the Commission has also undertaken considerable additional research, particularly with respect to the implications of international treaties, law and practice in other jurisdictions, and the costs to the criminal justice system of processing cannabis offenders.

The issue of cannabis use is one about which many people feel strongly and hold widely divergent views. Inevitably many who read this report will disagree with some of its conclusions and recommendations. However, the Commission hopes that the report will inform debate on a complex and contentious issue and provide a foundation for rational legal reform.

R. S. O'Regan

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Chairman

ACKNOWLEDGEMENTS

The Commission acknowledges the contribution made by members of the Advisory Committee on Illicit Drugs. The Committee is not responsible for the recommendations and conclusions contained in this report, but the Commission is grateful for the advice and assistance provided. The members of the Advisory Committee were: Professor John Western (Chair), Dr Janet Irwin, Dr Mary Sheehan, Dr Peter Nelson, Inspector Tim Fenlon, Detective Inspector Roy Wall, Mr Robert Aldred, Dr Adrian Reynolds, Mr Ivor Shaw, Detective Superintendent Alan Freeman, Mr Trevor Carlyon, Detective Sergeant Steven Tregarthen and Mr Phil Dickie.

The writing of this report has been a painstaking process, in which it has been necessary to address a wide range of complex scientific, policy and legal issues. Much of the credit for the final product must go to Mary Burgess of the Research and Co-ordination Division, who took on primary responsibility for the project in its latter stages. The Commission also wishes to record its appreciation to Phil Dickie, who prepared the discussion paper on cannabis and the law in Queensland and had initial responsibility for this report; Bronwyn Springer, who compiled the comparative legislation tables in Appendix 1; and Christine Bond, who prepared Appendix 2 on costings.

Finally, thanks are due to Denyse Willimott, Megan Atterton, Amanda Carter and Tracey Stenzel, all of whom assisted in the preparation of the report for publication.

David Brereton
Director
Research and Co-ordination Division

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ABBREVIATIONS

Advisory Committee	Advisory Committee on Illicit Drugs
AIDS	Acquired Immuno–deficiency Syndrome
AMA (QLD)	Australian Medical Association (Queensland)
APDFY	Australian Parents for Drug–Free Youth
APSAD	Australian Professional Society on Alcohol and Other Drugs
CALM	Campaign Against the Legalisation of Marijuana
CCRC	Criminal Code Review Committee
CEIDA	Centre for Education and Information on Drugs and Alcohol
Commission	Criminal Justice Commission
FCANs	Field Court Attendance Notices
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct
HEMP	Help End Marijuana Prohibition
HIV	Human Immuno–deficiency Virus
NCADA	National Campaign Against Drug Abuse
QCCL	Queensland Council for Civil Liberties
QPS	Queensland Police Service
QPUE	Queensland Police Union of Employees
SRCU	Social Research Consultancy Unit (University of Queensland)
THC	Tetrahydrocannabinol

EXECUTIVE SUMMARY

CHAPTER ONE: INTRODUCTION

Chapter One outlines and explains the scope of the report.

The report only considers legal options for dealing with possession and/or cultivation of cannabis for personal use. This does not mean that the Commission necessarily considers other aspects of Queensland's drug laws to be satisfactory. However, the Commission does not have the resources at this stage to undertake a comprehensive review of the *Drugs Misuse Act 1986*.

The medical uses of cannabis are also not addressed in this report. The Commission took the view that the complex medical and policy issues involved need to be addressed by those with expertise in this specialist area.

The work of the Advisory Committee on Illicit Drugs established by the Commission to assist in the review is acknowledged and the process of public consultation which was undertaken is outlined.

The chapter also states the general principles which have guided the Commission in developing its recommendations. These are:

- The law in relation to cannabis must be based on a realistic assessment of the harms caused by the drug.
- The law should be consistent with established legal principles and should reflect how other offences of similar levels of seriousness are treated by the legal system.
- The law must conform with the constraints imposed by Australia's international treaty obligations.
- The law must have a basic level of public support. As has frequently been shown, laws which are out of step with community values are rarely respected, or effective.
- The law must be practical. Schemes which appear attractive in principle, but which are overly complex from a procedural point of view, or which require excessive resources to operate, should not be adopted.

CHAPTER TWO: THE USE AND EFFECTS OF CANNABIS

Chapter Two summaries and discusses the available evidence relating to:

- the extent of cannabis use in Queensland
- the short-term, public safety and health effects of cannabis use.

The key points to emerge from this review are that:

- Cannabis is the most widely used illegal drug in Australia. According to the most recent survey data available, some 29 per cent of adult Queenslanders have tried cannabis at least once and around three per cent use it on a weekly basis, or more often.
- The level of cannabis use in Queensland appears to have stabilised in recent years.
- Research into the effects of cannabis has identified some long-term health harms, but the degree and scope of these harms is less than claimed in some submissions. Those who are most likely to experience harmful health effects are heavy and regular users. For occasional, recreational users of cannabis, the health risks appear to be fairly low.
- Cannabis has not been proven to be a significant factor in traffic fatalities. However, cannabis intoxication undoubtedly impairs psychomotor skills, with possible consequential impairment of the ability to perform complex tasks such as driving and using machinery. Analysis of the role of cannabis in traffic accidents has been hampered by the lack of a suitable methodology for measuring cannabis intoxication.
- Exposure to cannabis does not necessarily "cause" people to move on to harder drugs. However, because of the illegal status of cannabis, cannabis users are more likely to come into contact with other illegal drugs than are most other members of the general community.

Overall, on the basis of the research reviewed in this chapter, it cannot be said with certainty that cannabis is more harmful than some legally available substances. However, the inconclusiveness of many of the research findings, and the difficulties of accurately measuring the effects of cannabis use (especially over the longer term) dictate the need for caution. The health and social costs associated with the use of other legal drugs, such as alcohol and tobacco, provide a salutary lesson for governments and health authorities which should not be disregarded in the cannabis debate.

CHAPTER THREE: CURRENT LAW AND PRACTICE IN QUEENSLAND

The key points made in this chapter are:

- In contrast to other Australian jurisdictions, drug legislation in Queensland does not make separate statutory provision for lower-scale offences. As a consequence, much higher maximum statutory penalties apply to small scale cannabis offences in Queensland than is the case in other jurisdictions.

- In practice, the sentences being imposed by Queensland courts for lower-scale cannabis offences bear no relation to the statutory penalties. The vast majority of cannabis offences are prosecuted in the Magistrates Court, where the maximum penalty is two years. Terms of imprisonment are rarely imposed. Moreover, on the basis of precedents set by the Supreme Court in appeal decisions, it is now generally accepted that first offenders found guilty of possession or cultivation of small quantities of cannabis, or possession of things for smoking cannabis, do not have convictions recorded against them.

- The prosecution of cannabis offences generates substantial costs for the criminal justice system. On 1991/92 figures the estimated total costs of processing and prosecuting persons charged with possession of cannabis and cannabis-related utensils as principal offences were:

  - possession of cannabis – $2,132,000

  - possession of cannabis-related utensils – $463,000.

CHAPTER FOUR: THE EFFECTS OF INTERNATIONAL DRUG CONVENTIONS

This chapter identifies the international drug conventions which are relevant to cannabis, the obligations which they impose and the consequent limitations for Australian domestic law. It focuses particularly on the issue of whether cannabis expiation notice schemes, as adopted in South Australia and the Australian Capital Territory, comply with the international drug conventions.

The chapter concludes that:

- There is some divergence of legal opinion about what is required by the international drug conventions.
- All commentators agree that the conventions do not permit the legalisation of possession, cultivation or use of the drugs defined in the schedules to the conventions.
- Any scheme which requires a court appearance, at least when the charge is disputed, and which sets down penalties that are more than "nominal", would be consistent with Australia's treaty obligations.
- It is unnecessary for the Commission to make a final decision on the points of disagreement among the commentators regarding the compliance of the South Australian and Australian Capital Territory expiation notice schemes with the conventions. This issue is not specifically relevant to the Commission's final recommendations, which were reached on the basis of other policy considerations.

CHAPTER FIVE: VIEWS ON THE CURRENT LAW

The purpose of this chapter is to provide an overview of community views about current cannabis laws in Queensland, as these views have been expressed in:

- submissions received by the Commission in response to the discussion paper
- recent public opinion surveys.

There is considerable divergence of opinion within the community about the appropriateness of the present laws. A substantial majority of the submissions received by the Commission argued in favour of some form of legalisation of cannabis, but this may have been at least partly due to effective campaigning by pro-legalisation groups. Public opinion surveys provide another perspective. Depending on the phrasing of the question, and the methodology employed, recent surveys show that:

- Somewhere between one quarter and one half of adult Queenslanders are in favour of legalisation of cannabis for personal use. However, for the most part, opponents of legalisation feel more strongly about the issue than supporters of this option.

- There is still considerable resistance in the community to proposals to legalise cannabis, but there seems to be a fairly widespread acceptance that possession and/or cultivation of cannabis for personal use only should be regarded as a relatively minor offence. According to a public opinion survey undertaken for the Commission, most respondents who were opposed to legalisation considered an "on-the-spot" or court-imposed fine to be a sufficient penalty for such offences; only a small minority supporting imprisonment as an option.

CHAPTER SIX: LEGAL OPTIONS FOR DEALING WITH CANNABIS

This chapter evaluates the three options most frequently addressed in submissions:

- legalisation

- retention of existing laws

- introduction of a cannabis expiation notice scheme.

The chapter also briefly reviews the Victorian model, which provides a statutory sentencing scheme for first offenders.

The legalisation option is rejected on the following grounds:

- Although the available research suggests that the effects of cannabis may not be significantly more harmful than some licit drugs, this is not sufficient reason for adding to the list of available drugs, especially given the national health costs associated with licit drugs.

- Even if a tightly regulated form of legalisation were adopted, the legalisation of cannabis, like the legalisation of tobacco and alcohol, would probably lead to an increase in the use of cannabis in the community. The possibility that usage levels would increase is of concern because of:

  - continuing scientific uncertainty regarding the long-term health effects of cannabis use

  - the effects that short-term impairment caused by cannabis intoxication could have on road and workplace safety.

- Australia's obligations under the Articles of various international drug conventions preclude the legalisation of cannabis.

Retention of existing laws is rejected on the ground that the present legislative scheme in Queensland creates much too wide a gap between the penalties set down in legislation and the penalties actually imposed by courts. This approach:

- is indefensible in principle

- is of questionable deterrent value

- creates the potential for inconsistency in sentencing

- contributes to loss of respect for the law by the community at large.

This chapter also concludes that a cannabis expiation notice scheme should not be adopted in Queensland. This is because:

- The penalties provided for in the existing expiation notice schemes are arguably too low and defined quantities too high, especially where cultivation is concerned.

- These schemes rely on the threat of a criminal conviction as an inducement to people to expiate, and, hence, disadvantage people who exercise their right to contest a matter.

- There is some evidence to suggest that the introduction of the cannabis expiation notice scheme may have had a "net-widening" effect in South Australia.

- The possible impact of the introduction of an expiation notice scheme on use levels needs to be considered. Without further, more detailed, research it is not possible to discount the possibility that the cannabis expiation notice scheme has contributed to some increase in the rates of cannabis use in South Australia.

- A major limitation of expiation notice schemes is that they do not contain a hierarchy of penalties for repeat offenders, thereby permitting people to disregard the law and re-offend with relative impunity if they are in a financial position to pay the fines.

The key conclusions of the chapter are that:

- although an expiation notice scheme should not be adopted in Queensland, there is an overwhelming case for modifying the existing offence and penalty structure for dealing with minor cannabis offences

- the Victorian model provides a useful starting point for developing a statutory scheme for Queensland.

CHAPTER SEVEN: RECOMMENDED APPROACH

This chapter sets out the Commission's recommendations:

7.1 Recommendation – Creation of Simple Offences

The Commission recommends that:

- legislation define separate offences of possession and cultivation of small quantities of cannabis

- the lowest level cannabis possession and cultivation offences be reduced to the status of simple offences, with commensurately adjusted maximum statutory penalties.

7.2 Recommendation – Scope of Simple Possession Offence

The possession of a quantity of cannabis not exceeding 100 grams or of cannabis resin not exceeding 20 grams shall be a simple offence. The maximum penalty shall be six months imprisonment, and, in addition to or instead of imprisonment, a fine not exceeding 25 penalty units (i.e. $1,500).

7.3 Recommendation – Scope of Simple Cultivation Offence

The cultivation of a quantity of cannabis plants, not exceeding 10 plants, shall be a simple offence. The maximum penalty shall be two years imprisonment, and, in addition to or instead of imprisonment, a fine not exceeding 100 penalty units (i.e. $6,000).

7.4 Recommendation – Special Provisions for Minor Cases

Where an offender has been found guilty of a simple cannabis offence, and:

- the offender has not been found guilty of a similar offence in the preceding three year period; and
- has not previously been found guilty of any other drug offence; and
- the quantity of cannabis which is the subject of the charge did not exceed 25 grams, 5 grams of cannabis resin or one cannabis plant;

the Court should:

- not record a conviction against the offender, and
- where it sentences the offender to a fine, impose a fine not exceeding $500

unless, having regard to the matters referred to in Part 2 of the *Penalties and Sentences Act 1992*, it is satisfied that there are special circumstances which justify not proceeding under this provision. Where the court elects not to proceed under this provision, it shall state its reasons for doing so.

7.5 Recommendation – Abolition of Cannabis Paraphernalia Offence

It should not be an offence to possess any thing for use in connexion with the administration, consumption or smoking of cannabis, or that has been used in connexion with such a purpose.

7.6 Recommendation – Use of Powers

The powers contained in the *Drugs Misuse Act* authorising police to:

- seize motor vehicles (s. 14)
- detain a person and require him or her to submit to an internal body cavity search (s. 17)
- enter and search premises without a warrant [s. 18(12)]
- use tracking devices (s. 24)

should be limited to the investigation of indictable drug offences and should not apply to the investigation of the simple offences recommended in this report.

The powers contained in the *Drugs Misuse Act* authorising police to:

- stop and search and remove motor vehicles (excluding the power to seize vehicles) (s. 14)
- detain and search people and anything in their possession (s. 15)
- enter and search premises with a warrant [s. 18(1) – (11)]

should continue to apply to the investigation of the simple cannabis offences recommended in this report.

The Need for Education

The importance of drug education has been emphasised at the federal level through the National Drug Strategy (formerly NCADA) and is beginning to win recognition at state–level as well.[1] Consistent with this approach, the Commission supports the development of more comprehensive education strategies relating to both licit and illicit drugs. Provided that they are properly designed and evaluated, such initiatives should be funded as a matter of priority.

APPENDICES

Appendix 1 contains a set of tables which compare cannabis offences and penalties across all Australian jurisdictions. These tables place Queensland cannabis laws within a national context.

Appendix 2 provides a detailed cost analysis of cannabis prosecutions in Queensland. It also calculates possible savings from the introduction of a cannabis expiation notice scheme (based on the South Australian and Australian Capital Territory schemes) and the abolition of cannabis paraphernalia offences.

Appendix 3 analyses the effect of the introduction of the cannabis expiation notice scheme in South Australia on cannabis use levels in that State.

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1 The Queensland Ministerial Task Force on Drug Strategy has produced a Drug Strategy for the State which complements the National Drug Strategy's National Drug Strategic Plan.

CHAPTER ONE

INTRODUCTION

This introductory chapter:

- outlines and explains the scope of the report
- explains the basis for the Criminal Justice Commission (Commission) researching and producing this report
- summarises the general principles which have guided the Commission in developing its recommendations
- provides an overview of the structure of the report.

THE SCOPE OF THIS REPORT

This report proposes a legal framework for dealing with the possession and/or cultivation of cannabis for personal use. The report advocates several significant changes to existing Queensland legislation. However, its scope is restricted to consideration of minor cannabis-related offences only. It does not recommend any changes to existing legislation or enforcement strategies for dealing with commercial level production and trafficking of cannabis.

The Commission's decision to limit the scope of this review should not be taken as indicating that it considers other aspects of the structure and operation of the drug laws in Queensland to be satisfactory. On the contrary, in the course of researching this report, the Commission has identified a range of problems with these laws. However, a wide-ranging review of the *Drugs Misuse Act 1986* would be a huge task, which would take many months to complete. Consequently, the Commission has decided that this report should address the area of operation of the current drug laws which has created the most controversy, namely, minor cannabis-related offences.

The Commission has also determined that its focus should only be on the legal control of cannabis for "recreational", non-medical use. The Commission is aware of some medical opinion that cannabis can be used to treat, or ameliorate the side effects of some medical conditions, and received a number of submissions to this effect. However, the Commission considers that the complex medical and policy issues involved need to be addressed by those with expertise in this specialist area.

BACKGROUND TO THE REPORT

The Fitzgerald Commission of Inquiry

The Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Fitzgerald Inquiry) was established on 26 May 1987. The Inquiry reported on 3 July 1989. Its report made wide-ranging recommendations for political, criminal justice and police service reform. At the time of its release, the report and its recommendations were accepted and supported by the Queensland Parliament.

One of the recommendations of the Fitzgerald Inquiry was that the Commission undertake a review of Queensland laws where the Inquiry's investigations revealed a connection, or likelihood of a connection, with organised crime and police corruption. Specifically, it was recommended that:

> ... the Criminal Justice Commission, as an essential part of its immediate functions, undertake investigation, review, reform, and consideration of criminal justice matters arising from this report, including:
>
> 2. general review of the criminal law, including laws relating to voluntary sexual or sex-related behaviour, s.p. bookmaking, illegal gambling, and illicit drugs, to determine:
>
> (a) the extent and nature of the involvement of organised crime in these activities
>
> (b) the type, availability and costs of law enforcement resources which would be necessary effectively to police criminal laws against such activities
>
> (c) the extent (if at all) to which any presently criminal activities should be legalised or decriminalised. (Fitzgerald Inquiry 1989, p. 377)

With respect to the matter of illicit drugs, the Inquiry, said:

> . . . it is important that the State Government press the Commonwealth Government and the Governments of other states to join in an urgent search for the most satisfactory solution to the issue.
>
> Such a search must be conducted objectively in the public interest and focus on social need in the use of resources, totally free from political considerations. Various options must be assessed, including the question of whether money should be spent on enforcing the law against a wide variety of drugs which are commonly used, or whether enforcement should focus on some drugs. (Fitzgerald Inquiry 1989, p. 196)

The *Criminal Justice Act 1989* imposes a duty on the Commission to:

> . . . monitor, review, co-ordinate and initiate implementation of the recommendations relating to the administration of criminal justice contained in the Report of a Commission of Inquiry [Fitzgerald Inquiry] . . . [s. 21(4)].

Further, the Act requires the Commission to:

> . . . continually monitor, review, co-ordinate and, if the Commission considers it necessary, initiate reform of the administration of criminal justice . . . [s. 21(1)(a)].

The Advisory Committee on Illicit Drugs

In August 1991 the Commission established the Advisory Committee on Illicit Drugs (Advisory Committee) under the chairmanship of Professor John Western, Professor of Sociology at the University of Queensland and at that time one of the Commission's part-time Commissioners. The Committee included officers and members of the Commission, officers of other relevant agencies such as Queensland Health, the Queensland Police Service, the Medical School of the University of Queensland, the Alcohol and Drug Foundation of Queensland and others with an expertise and interest in drug issues.[1]

The Advisory Committee was formed to assist and advise the Commission in its review of the laws relating to illicit drugs in accordance with the recommendations of the Fitzgerald Report (1989).

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1 A list of Committee members is contained in the discussion paper.

The Advisory Committee decided that initially it would concentrate on cannabis, on the grounds that:

- any document covering all illicit drugs would be complex and unwieldy
- as far as was known cannabis was the most widely used illicit drug
- cannabis was the illicit drug making the greatest demands on the Queensland criminal justice system
- cannabis was produced within the jurisdiction
- cannabis was the main focus of debate with respect to possible changes in drug laws.

In July 1993 the Commission released *Cannabis and the Law in Queensland: A Discussion Paper* which presented the research conducted for the Commission by members of the Advisory Committee. The purpose of the discussion paper was to:

- present information on the nature, supply and use of cannabis, current laws pertaining to its use or production, and the effectiveness, cost and nature of law enforcement
- seek submissions from interested community groups and individuals on preferred legislative, enforcement and social responses to the issues of cannabis use and production.

The research reported in the discussion paper covered a wide range of issues, including:

- the background to cannabis
- the effects of cannabis
- the law relating to cannabis
- cannabis use in Queensland
- attitudes to cannabis use
- the illegal market in cannabis and its organisation
- cannabis law enforcement in Queensland
- enforcement effects on the cannabis market.

The discussion paper should be treated as the companion volume to this report and should be consulted for more detail concerning the research findings summarised in this report.

The Consultation Process

The work of the Commission and the Advisory Committee on the cannabis issue has been accompanied by an extensive process of public consultation.

In November 1992, when preliminary research was well under way, advertisements were placed in newspapers inviting individuals and community groups to notify the Commission of their interest in the review.

Those individuals who indicated their interest, and representatives of organisations with an interest in illicit drug policy, treatment or enforcement, were invited to attend a seminar in March 1993. Members of the media were also invited to attend the seminar. At this seminar the preliminary findings of the Advisory Committee's research on cannabis use, supply and enforcement were released and comment was invited from seminar participants.

In response to some issues raised by seminar participants, the preliminary findings of the Advisory Committee were reviewed, and some additional research undertaken.

Following the release of the discussion paper in July 1993, Advisory Committee members participated in 13 seminars throughout Queensland, at which issues raised in the discussion paper were discussed.

In response to the discussion paper, the Commission received a total of 458 submissions from 548 individuals[2] and 30 organisations. Many submissions received cannot be specifically referred to in the text of this report because of constraints on space. However, many were of an exceptionally high standard and obviously involved the investment of a great deal of time on the part of their authors. The Commission wishes to express its appreciation to those organisations and individuals who participated in the consultation process and who made the effort to write submissions on this issue. The key issues raised in the submissions will be discussed in more detail later in this report.

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2 Four petitions were received, containing a total of 128 signatures.

THE COMMISSION'S APPROACH

The issue of the legal control of cannabis, and of illicit drugs generally, does not lend itself easily to rational discussion. The policy debate on drugs is often characterised by a blend of emotionalism, vested interest pleadings, and scientific, moral and philosophical claims. Discussion is at times further confused by the failure of the representatives of various interest groups to distinguish between these different types of claims.

The Commission, in undertaking this review, has endeavoured to collect as much information as possible about cannabis, and the operation of the present law, and to ensure that this information is analysed in an objective and logical way. This report and the discussion paper that preceded it have been based on extensive research and, as indicated above, widespread consultation.

Moreover, in evaluating various options for dealing with cannabis and in formulating recommendations, the Commission has striven to apply a set of consistent principles. These are as follows:

- The law in relation to cannabis must be based on a realistic assessment of the harms caused by the drug.

- The law should be consistent with established legal principles and should reflect how other offences of similar levels of seriousness are treated by the legal system.

- The law must conform with the constraints imposed by Australia's international treaty obligations.

- The law must have a basic level of public support. As has frequently been shown, laws which are out of step with community values are rarely respected, or effective.

- The law must be practical. Schemes which appear attractive in principle, but which are overly complex from a procedural point of view, or which require excessive resources to operate, should not be adopted.

In the Commission's view, the reform proposals outlined in Chapter Seven of this report satisfy all of these criteria.

STRUCTURE OF THE REPORT

The next three chapters of the report present essential background information for evaluating different options for dealing with cannabis.

- Chapter Two summarises recent data on levels of cannabis use in Queensland and reviews the available research relating to the short-term, public safety and long-term health effects of cannabis use, and the possible role of cannabis as a "gateway" drug.

- Chapter Three provides an overview of relevant legislation in Queensland, compares the structure of offences and penalties with drug laws in other Australian jurisdictions, and presents data on sentencing practices in relation to minor cannabis-related offences.

- Chapter Four outlines Australia's international treaty obligations under various drug conventions, and discusses the constraints which these conventions impose on domestic drug laws.

The remaining three chapters of the report are concerned primarily with describing and evaluating different options for dealing with cannabis, and with presenting the Commission's preferred approach.

- Chapter Five provides an overview of the submissions received by the Commission, summarises the arguments which were presented in favour of various options, and reviews recent survey data on public attitudes towards the present laws relating to cannabis.

- Chapter Six considers in detail the three main options argued for in submissions: legalisation, maintenance or strengthening of the status quo, and adoption of an expiation notice scheme. The chapter rejects each of these options as impractical, or unsuited to Queensland.

- Chapter Seven, the final chapter of the report, presents a number of recommendations. These proposals relate to:

  - the creation of summary offences, and commensurate penalty scales, for lower-scale cannabis-related offences

- adoption of a special sentencing scheme for small-scale offenders who re-offend only infrequently
- abolition of the offence of possession of cannabis-related paraphernalia
- the need to develop drug education strategies.

CHAPTER TWO

THE USE AND EFFECTS OF CANNABIS

INTRODUCTION

The discussion paper (Advisory Committee 1993) and the public seminars conducted by the Commission during the period of public consultation prompted debate about a number of controversial aspects of cannabis use and its effects. The debates in the media on this issue were often characterised by extreme claims based on inconclusive evidence. In a number of instances inaccurate and unsubstantiated claims about the effects of cannabis were made. In those cases the public debate, rather than assisting informed decision making for the community, may well have contributed to confusion about the subject.

Drug use is an important issue for our community. It is therefore important that members of the community have access to accurate information on this issue so that they can make informed judgments about cannabis and the laws which prohibit its use.

To this end, this chapter summarises and discusses available evidence relating to:

- the extent of cannabis use in Queensland
- the short-term, public safety and health effects of cannabis use.

Where necessary, the information presented updates the findings of the discussion paper to take account of more recent research, and relevant material contained in submissions.

CANNABIS USE IN QUEENSLAND

A major section of the discussion paper dealt with cannabis use and attitudes to cannabis use. It was based primarily on unpublished data from the 1991 *National Household Survey* for the National Campaign Against Drug Abuse (NCADA). A further NCADA survey was conducted in 1993 and the Commission was similarly given access to data from that survey.

The 1993 NCADA survey covered 3,500 randomly selected respondents, of whom 500 resided in Queensland. Interviews were conducted face–to–face with respondents aged 14 years or older, in March and April 1993. To protect confidentiality, drug use questions were given to respondents in a self–completion booklet, which was returned to the interviewer in a sealed envelope at the conclusion of the interview.

According to the 1993 survey, 29 per cent of Queensland respondents aged 14 years and over had tried cannabis, compared to the Australia–wide average of 33 per cent. There was no discernible change between the 1991 and 1993 surveys in the proportion of Queensland respondents who admitted to having tried cannabis.

Results from this and previous surveys show that, although a relatively large proportion of the population has tried cannabis, the proportion of regular users is much smaller:

- In the 1993 NCADA survey, 67 per cent of the Queensland respondents who reported having tried cannabis indicated that they had not used the drug in the previous 12 months. In contrast to alcohol, for example, there is a strong tendency for people to cease using cannabis as they grow older (Jones 1993, pp. 50–53).

- Most current cannabis users use the drug on an occasional basis only. According to the 1993 survey, of those Queensland respondents who had used cannabis in the preceding 12 months:

  - 49 per cent used it 'once or twice a year'

  - 22 per cent used it once every one to two months

  - 29 per cent used it on a weekly basis, or more often.

On these figures, around three per cent of Queenslanders aged 14 years and over can be classified as "regular" cannabis users, meaning that they use the drug on a weekly basis or more often. According to the 1991 NCADA survey, about 1.2 per cent of Queensland respondents used cannabis on a daily basis (Advisory Committee 1993, p. 56).[3]

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3 Questions relating to daily use were not included in the 1993 survey.

It is very difficult to accurately measure changes over time in the level of cannabis use in the community. Trends can be distorted by changes in such factors as survey methodology and sampling procedure. In addition, it is possible that the willingness of people to admit to using cannabis may also vary over time. However, on the basis of the data available, it appears that there has been relatively little change in the level of cannabis use in Queensland over the last decade (Appendix 3; Advisory Committee 1993, pp. 32–34).

THE EFFECTS OF CANNABIS

In any discussion about options for dealing with cannabis, it is important to have accurate, up–to–date information about the effects of the drug. One of the main arguments for maintaining or strengthening existing prohibitions is that cannabis is harmful in both the short and long–term. Conversely, proponents of lesser sanctions or legalisation often argue that many drugs which are presently legally available are known to have much more serious health and social consequences. Therefore, from this perspective, arguments in favour of prohibition on public health grounds are inconsistent in principle.

Although there has been a substantial amount of medical and scientific inquiry into the effects of cannabis, there remains a great deal of uncertainty, particularly about long–term effects.

The equivocal or contradictory nature of many research findings in relation to the effects of cannabis can be attributed to a variety of factors (Advisory Committee 1993, p. 20; Nelson 1993, p. 144; Price 1993). These include the following:

- The illegal status of the drug has made it difficult to undertake research in the area.

- Experimental studies have varied considerably in the potency of cannabis samples used, the circumstances under which these samples have been administered, and in the quality of research.

- Studies of cannabis users have been undertaken in a variety of social and cultural contexts. This is significant because the setting in which the drug is used can make a considerable difference to the effects which users experience.

- Inconsistent definitions (e.g. of "heavy use") have been employed.

- It has been difficult to isolate the effects of cannabis because it is commonly used with alcohol and tobacco.

The contradictory and inconclusive results of the research on the effects of cannabis have been used to advantage by lobby groups engaged in public debate on cannabis. It is possible to selectively quote from the research literature to find support for the opposing propositions that cannabis is an extremely beneficial substance, or an extremely harmful substance. However, careful overviews of the literature (Hollister 1988; Nelson 1993) do not support either proposition and emphasise the necessity to heavily qualify any findings in terms of specific patterns or contexts of use.

The following discussion briefly reviews evidence relating to:

- the short-term effects of cannabis

- public safety effects, particularly in relation to driving

- the long-term health effects

- the claim that cannabis is a "gateway drug" leading to the use of more harmful substances.

For the purposes of this discussion, "short-term effects" refer to the immediate intoxicating effects of the drug on a person, i.e. the effects while a person is under the influence of the drug. "Long-term effects" refer to the consequences of cumulative use of the drug.

Short-Term Effects

The intoxicating effects of small doses of cannabis are relatively short-lived. On current knowledge, these include:

- a feeling of well being (euphoria)

- cardiovascular effects, i.e. increased heart rate and blood pressure which can aggravate existing cardiac conditions

- impairment of motor and cognitive skills

- dissociation
- perceptual distortion
- lowered attention span and short-term memory disruption
- drowsiness
- loss of inhibitions.

Larger doses of cannabis make these effects stronger. Depending on the characteristics of the user, and the context in which the drug is taken, one or more of the following short-term effects may result from larger-scale doses:

- confusion
- hallucinations
- anxiety or panic
- feelings of excitement.

All of these effects are considered to be fully or predominantly reversible. However, for some individuals who have particular characteristics, there is a possibility that short-term effects may become long-term. Those most at risk include those with heart conditions or with predispositions to some mental disorders such as schizophrenia (Centre for Education and Information on Drugs and Alcohol 1989; National Drug and Alcohol Statistics Unit 1994).

Public Safety Effects

The principal public health concern arising from the short-term effects of cannabis use is its intoxicating effect, with the consequent impairment of motor skills and of the ability to perform complex tasks, like driving. This concern was raised in a

number of submissions. Most of those submissions focussed on the potential effects of cannabis intoxication on driving and road safety, although the issue of industrial safety was also raised:

> The management of this company is concerned that any changes to current laws aimed at freeing up the use of cannabis would be a retrograde step. This will lead to unnecessarily higher losses from injuries caused by unsafe acts resulting from persons being intoxicated on the job. In addition it will lead to unnecessary and unwarranted financial and productivity loss. (Mt Isa Mines 1993, submission)

A submission from consultant pharmacologist, Dr G. Chesher, a prominent Australian researcher in the field, provided a useful update of research in this area:

> An effect of considerable social importance is that of cannabis on skills performance. There is no doubt that in laboratory based studies cannabis does impair skills performance. What has yet to be proven is the correlation between the use of cannabis and road crashes. Recent discussions and reviews highlight the difficulties in proving a cause–effect relationship of an accident and recent cannabis use of an operator or worker (Burns, 1993) (Simpson, 1986) (Smiley, 1986). One of the difficulties is the finding in road fatalities in which the driver has used cannabis is the high incidence of high concentrations of alcohol (McBay, 1986; Simpson, 1986) . . .
>
> The question is how should we deal with the issue of cannabis and driving. Although it is still unclear whether the involvement of cannabis in crashes is of a high incidence, we should develop a policy to discourage the use of cannabis before driving a motor vehicle. The peculiar and quite different way in which the body handles the cannabinoids will not permit us to undertake the same research as that which led us to the breathalyser for alcohol. (Chesher 1993, submission, pp. 8–9)

In March 1994 Associate Professor Olaf Drummer of the Victorian Institute of Forensic Pathology released a research report entitled *Drugs in Drivers Killed in Australian Road Traffic Accidents*. This study covered 1,045 driver fatalities in New South Wales, Victoria and Western Australia, from 1990 to 1993. Cases were only included in the analysis if a toxicology analysis had been conducted on the driver, and other relevant data relating to the accident were available.

The study used a technique known as "culpability analysis" to assess the contribution which particular drugs made to driver fatalities. In simple terms, this technique involved scoring an accident according to a standard scale, to determine the extent to which the accident was attributable to factors other than driver error (e.g. defective vehicle, bad road conditions, error on the part of the other driver).

The key findings of this study, as they relate to cannabis, are as follows:

- Cannabis was detected in the driver's urine and/or blood in 11 per cent of all fatalities.

- In five per cent of fatalities only cannabis was detected and in six per cent of cases cannabis and alcohol were detected.

- Drivers who had only used cannabis had culpability scores slightly lower than drug–free drivers – i.e. use of cannabis, by itself, did not appear to be associated with increased risk.

- Drivers who had used cannabis and alcohol had culpability scores much higher than drug–free drivers. However, there was little difference between the scores of drivers who had used alcohol and cannabis, and those who had used alcohol only. This finding suggests that alcohol, rather than cannabis, is the key determinant of increased risk.

The major methodological limitation of this study, as the author acknowledges, is that very little information was available on the recency of cannabis use by the deceased driver. Typically, the impairment effects of Tetrahydrocannabinol (THC) last for only two to four hours. However THC, unlike alcohol, can remain in blood and urine for days and even weeks after use. Hence it is probable that some of the drivers in this study who were recorded as cannabis users were not actually under the influence of the drug at the time the fatality occurred. Of the four cases where there was direct evidence of recency of use, the driver was deemed to be culpable in three of the cases. However, the numbers in this sub–sample were too small to draw statistically meaningful conclusions.

Apart from possible risks of injury associated with cannabis use and driving or using machinery, there is little evidence of other public safety risks associated with cannabis intoxication. A range of studies have concluded there is no evidence that cannabis use is implicated in violence (Hollister and Tinklenberg quoted in White and Humeniuk 1993, p. 93).

Long-Term Effects

The discussion paper noted that, in some cases, the claimed longer term health effects of cannabis use were based on merely anecdotal information. In other cases the research findings were inconclusive.

According to the New South Wales Centre for Education and Information on Drugs and Alcohol (CEIDA) there is no evidence that occasional use of small doses of cannabis causes any permanent health damage (CEIDA 1989). This position was broadly supported by the Alcohol and Drug Foundation, Queensland. However, as stated earlier in this report, there is much less certainty about the long-term effects of sustained cannabis use.

The main long-term physical and psychological effects of cannabis use which have been asserted in the literature are as follows:

- respiratory effects similar to the effects of smoking tobacco
- an association between cannabis use during pregnancy and lower birth weights in babies
- psychiatric effects, in particular a claimed connection with schizophrenia
- dependency effects, leading to lack of motivation, social withdrawal etc. (Advisory Committee 1993, pp. 20–26).

The following discussion briefly reviews research findings in relation to each of these effects.

Respiratory Conditions

When cannabis is smoked, it produces carcinogenic "tars" similar to those produced by tobacco (Queensland Cancer Fund 1993, submission, pp. 1–2). While there are difficulties in proving a connection between cannabis use and respiratory conditions and diseases, most researchers agree that there is likely to be an association.

For instance, the Queensland Cancer Fund, in its submission (pp. 1–2), stated:

> While tobacco and cannabis are two different substances, the enormity of the tragedy of our mistake with tobacco demands that we look exceedingly hard at any potential for bringing on a similar tragedy in our response to the substance cannabis. . . . The potential for cannabis smoking (at a level anywhere approaching the level of tobacco smoking) leading to the development of lung cancer is obvious. . . . Should smoking of cannabis be replaced entirely by oral ingestion of the substance, then cancer would not be an issue. However, there is no current evidence to suggest such a total replacement is realistic.

However, as one researcher has observed, it is very difficult to quantify the extent to which cannabis use increases the risk of lung cancer.

> First, nicotine, the tobacco drug, is agreed to be much more addictive than the cannabinoids, the active principals in the marijuana plant. This has two consequences important in the cancer story: first tobacco use tends to be relatively *heavy* (90 percent of cigarette smokers smoke more than 12 cigarettes a day) and, second tobacco tends to be used over a longer period – decades rather than years – so that two factors which account for the strong association between lung cancer and cigarette smoking – heavy use and prolonged use do not generally apply to cannabis. Furthermore the population available for study is much smaller – the percentage of the population who have smoked cigarettes substantially and over long periods is probably about 20–30 percent; with marijuana the figures will be (and I'm guessing now) of the order of less than 3 percent. Just to make things considerably more difficult for the researcher, many who have smoked marijuana occasionally have smoked cigarettes regularly – studying *them* won't help. Quantifying intake is made difficult by wide variations in the content of individual samples of the cannabis plant. Then there are issues of honesty regarding the reporting of use of an illicit drug and so on. What all this adds up to are some very real problems. (Price 1993, p. 5)

Reproductive Effects

There has been conflicting evidence on the effects of high doses of cannabis on the human reproductive system. Some researchers have claimed an association between cannabis use during pregnancy and lower birth weights, but these studies have been criticised for not distinguishing the effects of cannabis use from other commonly used substances, such as tobacco, which have similar effects and could affect the research results (Nelson 1993). Other studies have suggested that lower birth weights may be associated, not so much with the substance, but with its usual method of ingestion through smoking (Solowij 1993, pers. comm., 29 Oct.; Wodak 1993, pers. comm., 26 Oct.). Other claimed correlations with birth irregularities, child development or congenital conditions have not been conclusively established.

Psychopathological Effects

A number of studies have asserted an association between some mental conditions and cannabis use (Nahas 1984; Brill and Nahas 1984). Some researchers have claimed that some users of cannabis may develop a cannabis psychosis which has symptoms similar to schizophrenia, but that these symptoms only persist for the period of the intoxication (about two to three hours) (Imade and Ebie 1991). Other studies have suggested a connection between cannabis use and schizophrenia (Andreasson et al. 1989; Jones 1980; Imade and Ebie 1991). These claims are disputed by a number of researchers who assert that cannabis use may aggravate already existing schizophrenia, even where the condition is not yet evident, but not *cause* schizophrenia or other depressive disorders on its own (Jones 1980; Hollister 1988, based on research by Knudsen and Vilmar 1984; Tunvig 1985). Interpretation of these research findings is complicated by numerous factors, including the prevalence of drug use among people with mental disorders and the tendency of many people with mental disorders to self-medicate (Advisory Committee 1993; Nelson 1993). Care must be taken not to conflate evidence of an *association* between cannabis use and some mental conditions, with the argument that cannabis use is the *cause* of those mental conditions.

Dependency Effects[4]

It is important to distinguish between casual or recreational cannabis use and cannabis dependency. The standard reference used for the diagnosis of psychiatric disorders, the *Diagnostic and Statistical Manual for the American Psychiatric Association* (1987, p. 176), describes cannabis dependency as follows:

> Cannabis Dependency is usually characterised by daily, or almost daily, use of the substance. In Cannabis Abuse, the person uses the substance episodically, but shows evidence of maladaptive behaviour, such as driving while impaired by Cannabis Intoxication.

As noted earlier, only a small proportion of those who use, or have used cannabis, would qualify as "dependent" users under this definition.

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4 For a more complete discussion of the effects of cannabis dependency see the discussion paper (Advisory Committee 1993, pp. 124–125).

The generally described symptoms of dependency include lethargy, and attention and memory problems. The manual claims that the 'occupational and social dysfunction' associated with cannabis dependency is less than that associated with dependency on other drugs such as alcohol, cocaine and heroin and that people who are cannabis dependent rarely seek treatment for their disorders (p. 176). This may explain the low number of recorded cases of cannabis dependency and the lack of information about the symptoms and effects of cannabis dependency (p. 177).

According to a recent summary of research prepared by the National Drug and Alcohol Statistics Unit:

> Users of cannabis do not appear to develop physical dependence to any significant degree however mild tolerance does appear to develop after prolonged use. (National Drug and Alcohol Statistics Unit 1994)

The Health Effects of Cannabis: Competing Perspectives

A large number of the submissions received by the Commission in response to the discussion paper offered or disputed material in relation to the health effects of cannabis. While all were considered, two classes of submissions received more careful scrutiny.

The first class of submissions were those from individuals who claimed to be using cannabis for medical reasons. There was a considerable number of such submissions. It should be noted that there are *no* medical uses of cannabis officially recognised by the medical profession in Australia. Recognised uses for natural or synthetic cannabis compounds in other Western jurisdictions are limited to treatments for glaucoma and some side-effects of cancer treatment. In these cases cannabis compounds are not the only available treatments.

It was clear from some submissions that cannabis is being used in addition to, or instead of, orthodox medical treatment for a range of conditions. Members of the Advisory Committee with whom this matter was raised considered that some of the uses to which cannabis was being put were clearly inappropriate and that some who claimed medicinal benefits from cannabis use were deluding themselves.[5] However, it was considered that there were a number of cases where claims of medicinal benefit and results superior to orthodox treatment could not be so easily dismissed.

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5 Such as in the case of the long distance truck driver who claimed cannabis assisted his driving.

The second class of submissions which warranted particular consideration were those from organisations representing the medical profession. Lengthy submissions were received from major medical organisations, the Queensland Branch of the Australian Medical Association (AMA (QLD)) and the Australian Professional Society on Alcohol and Other Drugs (APSAD, formerly known as the Australian Medical Professional Society on Alcohol and Other Drugs (AMPSAD)).

According to the AMA (QLD) submission, there was 'compelling evidence' that cannabis use caused significant personal and social harm:

> The association believes that the "soft drug" view of cannabis should be reviewed in the light of the growing weight of evidence which confirms the damaging effects of cannabis use. (p. 8)

The APSAD submission specified a number of proven or potential harms that may result from cannabis use and smoking, either generally or in susceptible individuals, but concluded that:

> APSAD has difficulty understanding how cannabis can be classified as a "dangerous drug" under the Drugs Misuse Act when the evidence of harmfulness is still being debated after 4,000 papers, monographs and books published over 30 years. (p. 3)

Due to the significant conflict between these submissions, the Commission circulated them to some members of the research community for comment.[6] Additionally, in light of the considerable publicity given to this issue, the submissions received in response to the AMA (QLD) submission were in turn provided to the AMA (QLD) for its information and comment.

The AMA (QLD) submission mentioned a large number of adverse effects of use or heavy use of cannabis. As indicated in the above discussion, two of the effects identified by the AMA (QLD):

- potential respiratory effects
- cognitive and psychomotor effects

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6 The Queensland AMA submission was provided to Dr G. Chesher, Consultant Pharmacologist (an internationally noted researcher on cannabis, particularly in relation to its psychomotor effects) and to the National Drug and Alcohol Research Centre, for whom Ms N. Solowij, Research Psychologist responded. The submission was also provided to APSAD and Dr A. Wodak, Director of the Alcohol and Drug Service, St Vincent's Hospital, Sydney.

are unanimously acknowledged by the professional medical and research community.

On the other hand, a number of other adverse effects identified by the AMA (QLD) in its submission have been disputed by other members of the medical and research community. For instance, the statement by the AMA (QLD) that there was evidence of an '1100 percent increase in leukemia in offspring of users while pregnant' was strongly challenged. Dr A. Wodak (quoted as an authority elsewhere in the AMA (QLD) submission) wrote that he was unable to verify the original source of this assertion and observed that the AMA (QLD) submission quoted research with a:

> . . . tendency to mix together reports concluding that harmful effects have been proven beyond all doubt, others suggesting the probability of harmful effects and further reports noting laboratory findings of uncertain clinical significance. (Wodak 1993, pers. comm., 26 Oct.)

Some of the disagreement among the professional medical community appeared to result from a difference of opinion over the weight to be given to the various studies reported. The AMA (QLD) submission held that '[t]he acknowledged lack of scientifically based longitudinal research does not negate the weight of this evidence (of cannabis effects)'. APSAD, on the contrary, maintained that this deficiency in research was critical and stated that '[m]uch of the evidence on adverse effects of cannabis comes from poorly controlled studies that do not allow firm conclusions to be made' (APSAD 1993, pers. comm., 10 Nov.).

Pharmacologist Dr Chesher submitted that all other recent reviews of the literature on medical harm came to quite different conclusions from the AMA (QLD):

> No attempt has been made to consider all of the available scientific and medical data, much of which presents views which do not support those expressed by the Q-AMA submission. The literature reviewed as indicated by the list of references has been very cursory and far from comprehensive. (Chesher 1993, pers. comm., 22 Oct.)

Research psychologist Nadia Solowij of the National Drug and Alcohol Research Centre, the author of papers on the cognitive effects of long-term cannabis use, responded to the AMA (QLD) submission in similar terms.

The following table summarises some specific adverse effects of cannabis identified in the AMA (QLD) submission and the comments received by the Commission in response to this submission.

TABLE 2.1: HEALTH EFFECTS OF CANNABIS: COMPETING PERSPECTIVES RESPONSES TO THE AMA (QLD) SUBMISSION

AMA (QLD) Submission	Response
Impairment of male fertility, and female ovulation.	Research cited by the AMA (QLD) does not mention male fertility. Evidence of adverse reproductive system effects not conclusive as studies have inconsistent findings (Solowij 1993).
Well established link between use and low birth weight.	Study cited was of personality factors in drug abuse, not birth weight or reproductive effects. Suggestive link between cannabis use and low birth weight exists, probably associated with smoking per se, not an effect of THC (Solowij 1993; Wodak 1993).
Foetal and milk exposure to cannabis affects infant motor development.	Study cited found no adverse effects of prenatal exposure. Suggestive link with exposure to THC in mothers milk is less than stated in submission and finding is not supported by results of two other studies (Solowij 1993).
1,100 per cent increase in incidence of leukemia in offspring of users.	Findings of original study, not designed to test such a hypothesis. Suggestive finding is of much lesser possible link, but study has not been replicated (Solowij 1993).
Potential lung cancer from cannabis smoking.	Possible increased risk of aerodigestive tract cancers among long-term heavy users. Key studies not cited; risk to most cannabis users less than regular tobacco users (Solowij 1993).
Manifestations of pathophysiology and toxic psychosis are widely reported in the literature.	Acute toxic psychoses and panic reactions are a relatively rare occurrence (Solowij 1993).
600 per cent increase in incidence of schizophrenia; cannabis use can result in relapse of schizophrenia.	Cannabis may exacerbate psychotic symptoms or precipitate psychoses in *predisposed* individuals. Swedish recruit study, source of AMA (QLD) claim, wrongly interpreted (Solowij 1993; APSAD 1993).
Cannabis induces the amotivational syndrome (not yet established as distinct syndrome) or has the potential to do so.	Evidence for an amotivational syndrome equivocal; at best a rare occurrence among heavy chronic users particularly adolescents. Wodak paper cited by AMA (QLD) incorrectly interpreted (Solowij 1993).

AMA (QLD) Submission	Response
Cannabis is a substance upon which dependence can be developed (although only affects small minority of cannabis users).	Clinical features of cannabis dependence not well defined or studied and would most likely manifest in a small minority of heavy, chronic-users (Solowij 1993).
Widely accepted within the profession that more efficacious antiemetics for patients receiving cancer chemotherapy are available.	Ignores fact that some individuals are resistant to more commonly used antiemetics; submission ignores other actual or potential therapeutic uses of cannabis (Solowij 1993).

In a letter dated 6 June 1994, Dr C. J. Alroe responded on behalf of the AMA (QLD) in the following terms:

> [A]t the AMA Conference held in Canberra on the weekend of the 28th of May 1994 a workshop was conducted of representatives of the AMA from all over Australia and some extremely distinguished researchers. Psychiatrists representing most of the states of Australia were present. The meeting accepted the following:
>
> 1. Cannabis is a dangerous drug affecting mental functioning, driving ability and reproductive functioning.
>
> 2. The Community needs to be educated about the dangers of cannabis.
>
> 3. Legalisation or even decriminalisation is not acceptable but imprisonment should be avoided with a first offence and compulsory rehabilitation preferred for the users of cannabis. . . .
>
> Further more I should point out that every psychiatrist present provided clear personal experience of cases of patients severely affected by the drug. One researcher Dr. Davies noted that in his research of large groups of young men severely injured or killed in motor bicycle accidents two drugs were present in a majority of cases alcohol or cannabis or mixtures of both. The numbers of young men with cannabis alone in their body fluids greatly exceeded that of men where no drugs were present.
>
> Information has been provided which indicates that Cannabis use in South Australia is continuing to increase at the same rate as use in the rest of Australia despite the liberal legislation.

The letter concluded by rejecting as 'ill-formed' the criticisms which had been made of the papers quoted by the AMA (QLD) in its submission to the Commission.

It is to be hoped that the forthcoming report by the National Task Force on Cannabis, which has been established under the auspices of the Commonwealth/State Ministerial Council on Drug Strategy, will assist in the evaluation of these competing claims. However, on the basis of the information currently available to it, the Commission concludes that several of the propositions contained in the AMA (QLD) submission do not find strong support in the cannabis research literature. In this regard, the Commission remains of the view that the comprehensive review of the research literature on the physical and psychological effects of cannabis contained in the discussion paper (Advisory Committee 1993), provided an accurate summary of the current state of medical knowledge on the long-term health effects of cannabis use.

Cannabis as a "Gateway Drug"

A common argument for enforcing strict prohibitions against cannabis is that cannabis use leads people on to harder drugs. For instance, submissions from Australian Parents for Drug-Free Youth and Drug-Arm claimed that cannabis is a gateway drug. There is certainly evidence of an association between the use of various drugs, but this does not necessarily constitute evidence of causation. While it may be true, for instance, that most users of heroin have used cannabis it is also true that most who have tried cannabis have never tried heroin. Thus the 1993 NCADA survey of drug use in Australia found that while a large number of heroin users had used cannabis, 96 per cent of cannabis users had not used heroin.

In their study of American adolescents, Kandel and Faust (1975) identified a fairly standard sequential progression of drug use. They found that progressively fewer adolescents used each drug in the sequence, but that almost all who had used drugs which occurred later in the sequence had used all of the drugs earlier in the sequence. They also found that almost all psychoactive drug users had begun by using the legal drugs, alcohol and tobacco.

Kandel and Davies (1992) have suggested that, although those who use cannabis are more likely to use other illicit drugs than those who do not, cannabis use usually decreases in early adulthood, with the majority ceasing use by their mid to late twenties. Only a minority of people who used cannabis in adolescence continue to use cannabis regularly after reaching adulthood, or progress to the use of more dangerous illicit drugs.

Many studies concerned with the relationship between cannabis use and the use of more dangerous drugs conclude that the connection is more likely to result from psychological or sociological factors, rather than the pharmacological properties of cannabis. The contributing factors which have been identified include:

- pre-existing personality and attitudinal traits that predispose individuals to the use of intoxicants generally
- the effects of involvement in an illicit drug subculture where there is greater availability of and encouragement to use other illicit drugs, and
- the fact that different illicit drugs can have common distributive networks.

CONCLUSION

The primary purpose of this chapter has been to review relevant research relating to the use and effects of cannabis in Queensland. The key points to emerge from this review are as follows:

- Cannabis is the most widely used illegal drug in Australia. According to the most recent survey data available, some 29 per cent of adult Queenslanders have tried cannabis and around three per cent use it on a weekly basis, or more often.
- The level of cannabis use appears to have stabilised in recent years.
- Research into the effects of cannabis has identified some long-term health harms, but the degree and scope of these harms is certainly less than claimed in some submissions. Those who are most likely to experience harmful health effects are heavy and regular users. For occasional, recreational users of cannabis, the health risks appear to be fairly low.
- Cannabis has not been proven to be a significant factor in traffic fatalities. However, cannabis intoxication undoubtedly impairs psychomotor skills, with possible consequential impairment of the ability to perform complex tasks such as driving and using machinery. Analysis of the role of cannabis in traffic accidents has been hampered by the lack of a suitable methodology for measuring cannabis intoxication.

- Exposure to cannabis does not necessarily "cause" people to move on to harder drugs. However, because of the illegal status of cannabis, cannabis users are more likely to come into contact with other illegal drugs than are most other members of the general community.

Overall, on the basis of the research reviewed in this chapter, it cannot be said with certainty that cannabis is more harmful than some legally available substances. However, this should not be seen as an argument for legalisation. The inconclusiveness of many of the research findings, and the difficulties of accurately measuring the effects of cannabis use (especially over the longer term) dictate the need for caution. The health and social costs associated with the use of other legal drugs, such as alcohol and tobacco, provide a salutary lesson for governments and health authorities which should not be disregarded in the cannabis debate.

CHAPTER THREE

CURRENT LAW AND PRACTICE IN QUEENSLAND

INTRODUCTION

This chapter provides an overview of the current legislative scheme in Queensland which applies to cannabis. In particular, it:

- analyses the legislative framework and the scheme of penalties
- compares the structure of offences and penalties with laws in other jurisdictions
- describes how the law is applied in practice
- reports the results of research undertaken by the Commission into sentencing practices in minor cannabis-related offence prosecutions.

CURRENT LEGISLATIVE PROVISIONS

Offences and Penalties Generally

The *Drugs Misuse Act* presently contains all of the Queensland statutory provisions relevant to the use of illegal drugs.

The term used in the legislation for an illegal drug is a 'dangerous drug' which is defined in section 4 of the *Drugs Misuse Act* as a thing that is specified in Schedule 1 or 2 of the Act and a salt or derivative of such a thing. Schedules 1 and 2 of the Act list a wide range of substances which are deemed to be 'dangerous drugs' under the legislation.

Part 2 of the *Drugs Misuse Act* contains provisions that define and proscribe various types of conduct, including trafficking, supply, production and possession of dangerous drugs and certain specified things. Other Parts of the Act contain provisions giving police powers of search and seizure, to use listening devices and to seek the forfeiture of property used in the commission of offences under the Act.

The maximum penalty which can be imposed under the *Drugs Misuse Act* is 25 years imprisonment. This penalty applies to trafficking and supplying of dangerous drugs. These offences previously carried a penalty of mandatory life imprisonment, but an amendment to the legislation in 1990 reduced the penalty to 25 years imprisonment.[7]

The *Drugs Misuse Act* establishes a hierarchy of offences based on:

- types of offences (defined by the various provisions contained in Part 2 of the Act)
- types of dangerous drugs (distinguished by their inclusion in either Schedule 1 or 2 of the Act) and
- the quantity of the dangerous drugs involved in the particular offence (with the various quantities relevant to the particular substances contained in Schedules 3 and 4 of the Act).

Sections 8 and 9 of the *Drugs Misuse Act* prohibit the production and possession of dangerous drugs and defines such activity as a crime. The penalties provided under these sections range from 15 to 25 years imprisonment.

Under the *Drugs Misuse Act* the possession of certain things is also an offence. Section 10(1) provides that a person who has in his or her possession anything that has been used, or is for use, in connection with the commission of a crime defined in that Part of the Act, is guilty of a crime and liable to a maximum penalty of 15 years imprisonment. Section 10(2) makes it an offence for a person to have in his or her possession anything (not being a hypodermic syringe or a needle) that has been used, or is for use, in connection with the administration, consumption or smoking of a dangerous drug. The maximum penalty for the offence is two years imprisonment. The exclusion of hypodermic syringes and needles was the result of an amendment

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7 *Drugs Misuse Act Amendment Act, No. 9 of 1990.*

to the *Drugs Misuse Act* in 1989 (Act No. 34). This amendment was a government health response to the threat of Acquired Immuno-deficiency Syndrome (AIDS).

Unlike in the majority of jurisdictions, the *Drugs Misuse Act* does not create an offence of *using* drugs.[8] The Queensland legislation prohibits possession, cultivation and manufacture of dangerous drugs, trafficking and supplying dangerous drugs, and the possession of things for use in connection with the commission of a crime under the Act, or the administration, consumption or smoking of a dangerous drug.

Cannabis Offences

Consistent with the limited focus of this report (see Chapter One), the remainder of the discussion of offences and penalties in this chapter will concentrate on the provisions of the *Drugs Misuse Act* relevant to possession and production or cultivation of cannabis, particularly for personal use, and the possession of things used for the administration, consumption or smoking of cannabis (referred to as paraphernalia).

As stated above, sections 8 and 9 of the *Drugs Misuse Act* create offences of production and possession of dangerous drugs. Under these provisions a maximum penalty of 25 years of imprisonment may be imposed where the quantity of cannabis produced or possessed exceeds 500 grams or 100 plants. However, if the court is satisfied that the offender is a drug dependent person the maximum penalty is 20 years. For possession and production offences where the quantity of cannabis is less than 500 grams or 100 plants the maximum penalty is 15 years.

As a result of the amendment to section 10(2), which excluded the possession of hypodermic needles and syringes from prosecution under the section, the vast majority of prosecutions for the possession of things for use in connection with the administration, consumption or smoking of a dangerous drug relate to cannabis. Anecdotal information from duty lawyers suggests that most of these cannabis offences involve the possession of waterpipes or "bongs" used to smoke cannabis, and that the vast majority of these items are home-made from ordinary objects such as plastic fruit juice bottles and pieces of garden hose.

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8 Australian Capital Territory, New South Wales, the Northern Territory, South Australia and Victoria all have use offences.

Provision for Summary Proceedings

A particular feature of the Queensland legislation is that there is no distinction in the maximum applicable penalty for:

- possession or cultivation of a small quantity of cannabis for personal consumption and
- possession or cultivation of up to 500 grams of cannabis or 100 cannabis plants.

This means that a person charged with possessing only the smallest measurable quantity of cannabis for personal use theoretically faces a maximum penalty of 15 years imprisonment if convicted of the offence.

However, the maximum statutory penalty of 15 years applies only when the matter is dealt with in the Supreme Court. There is provision under section 13 of the *Drugs Misuse Act* for specified offences[9] to be dealt with summarily (i.e. in the Magistrates Court), at the discretion of the police, with the magistrate having an overriding discretion as to whether the matter is appropriate to be heard in the Magistrates Court (s. 45). Where cases are dealt with in the summary jurisdiction the maximum penalty which can be imposed is two years imprisonment. In practice, in Queensland around 94 per cent of drug possession cases (Advisory Committee 1993, pp. 82, 85) and 91 per cent of cases involving the manufacturing or growing of drugs are prosecuted in the Magistrates Court.

A distinctive aspect of the summary prosecution of offences under the *Drugs Misuse Act* is that the Act excludes the operation of section 659 of the *Criminal Code*. This section provides that where a person has been summarily convicted of an indictable offence, the conviction is a conviction of a simple offence only and not of an indictable offence. The exclusion of the operation of this provision means that a summary conviction of any indictable offence under the *Drugs Misuse Act* will result in the recording of a conviction for an indictable offence against the offender and not

9 Namely, ss. 6, 8, 9, 10(1), 11, and 12 and attempts to commit those offences where the person, if convicted, is liable to imprisonment for 15 years.

of a simple offence. Not only does the *Drugs Misuse Act* fail to distinguish between personal scale and commercial scale offences, but, where it does provide for summary prosecution of offences, a person convicted of possession or cultivation of even the smallest measurable quantity of cannabis will still be convicted of an indictable offence.

Indictable offences constitute the most serious of criminal offences. They are comprised of crimes and misdemeanours. Types of offences which are indictable include stealing, false pretences, assault, rape and murder. A simple offence is the least serious of criminal offences. Offences which are defined as simple offences can only be prosecuted in the Magistrates Court. Where it is considered to be appropriate, some indictable offences can also be dealt with by a court of summary jurisdiction.

A conviction of an indictable offence can have a severe impact on a person's chances of obtaining employment and undertaking overseas travel. It can exclude a person from eligibility for employment by the Commonwealth or State public services. It can also disqualify a person from obtaining certain licenses and can limit the entry or the freedom of movement of a person in overseas countries. Australia has a policy of refusing entry to the country to people who have been convicted of indictable offences.

All offences under the *Drugs Misuse Act* require a person charged to appear in court.

Police Powers

Police have extensive powers to search persons and premises under the *Drugs Misuse Act*. These powers include:

- Power to stop, search, seize and remove motor vehicles [s. 14]. The power is exercisable where a police officer reasonably suspects that a vehicle may afford evidence of the commission of any of the offences defined in Part 2 of the Act.

- Power to detain and search persons whom the police have reasonable grounds to suspect may have in their possession anything that may afford evidence of the commission of an offence under the Act [s. 15]. This power authorises body searches and the search of anything that the person has in his or her possession.

- Power for a police officer of the rank of inspector or above to require a person reasonably suspected of having a dangerous drug secreted in his or her body cavities to permit a medical practitioner to conduct an internal and/or body cavity search of that person [s. 17]. The section permits the use of such force as is necessary to carry out the examination.

- Power to enter and search property. Primarily, this power is to be exercised under the authority of a search warrant issued by a justice of the peace or a magistrate, upon the sworn statement of a police officer that he or she reasonably suspects that a search of a place may provide evidence of the commission of an offence. However, the Act also provides that when a police officer 'reasonably believes' that evidence will be concealed or destroyed unless the place is searched immediately, the officer may search a place without a warrant as if a warrant had been issued [s. 18(12)].

- Power to use tracking devices to track moveable things which a police officer suspects may contain dangerous drugs or persons suspected of being involved in the commission of an offence under the Act [s. 24].

- Power to apply to a court for a warrant to place a person under electronic surveillance [s. 25].

With the exception of section 25, which applies only where an offence carrying a penalty of 20 years or more is suspected, these powers apply in relation to the investigation of all offences against the Act.

The Criminal Code Review

In April 1990 the Attorney-General of Queensland established the Criminal Code Review Committee (CCRC) to review the *Criminal Code* (Qld). The *Criminal Code* contains the substantive criminal law of Queensland. The CCRC presented an interim report in March 1991 and a final report in June 1992. These reports are the first comprehensive review of the criminal law in Queensland.

In its final report the CCRC made recommendations in respect of the defendant's right of election in relation to indictable drug offences. When incorporating the provisions of the *Drugs Misuse Act* into the draft Criminal Code, the CCRC did not include section 13 of the *Drugs Misuse Act*. This provision permits certain indictable offences under that Act to be dealt with summarily at the election of the *prosecution*, subject

to the magistrate's discretion. The more usual practice is for *defendants* charged with indictable offences to have the right of election to proceed by way of committal followed by a trial in the District or Supreme Court before a judge and jury, *or* to have a summary trial in the Magistrates Court with a magistrate determining all questions of law and fact. The CCRC recommended a single, uniform system of election in sections 275 and 276 of the draft Criminal Code. The effect of these recommendations, if the CCRC's proposals were to be accepted, would be that all drug offences included in the *Criminal Code* would be triable before a judge and jury, with the defendant having the right to elect to have a summary trial in the Magistrates Court subject to the magistrate's discretion.

The CCRC's recommendations achieve the object of a Criminal Code which contains uniform procedural rules which apply across the range of indictable offences. If implemented, these proposals should result in the criminal law being simpler and more consistent in its operation. However, the CCRC's proposal may result in many more minor drug offences being dealt with in the higher courts, because defendants would be able to elect to have a trial by jury. This could create problems for the criminal justice system by over-loading the already strained court system with minor drug cases.[10]

The limitation of the CCRC's review was that it did not recommend changes to the present scheme of the *Drugs Misuse Act*, but merely incorporated its existing provisions into the draft Criminal Code recommended in the CCRC's final report. Reference was made to the *Drugs Misuse Act* in the introduction to the Committee's final report. The CCRC expressed the view that 'all serious drug offences should remain in the Criminal Code'. However, it also stated that it was directed to review the *Drugs Misuse Act* on the understanding that it would not be recommending substantial changes to the scheme of offences and penalties. Accordingly, the final report did not make reference to the views of the CCRC regarding the current scheme of the *Drugs Misuse Act*.

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10 The problem here is not necessarily with the right of election but with the classification of drug offences. The most appropriate method of dealing with this problem is to undertake a comprehensive review of the drug legislation's offence classification scheme and reclassify to simple offences those minor offences which should be dealt with exclusively in the Magistrates Courts' jurisdiction. In cases involving more serious drug offences, defendants should retain all of the rights available to persons charged with other serious indictable offences. However, such a review is beyond the scope of this report.

Offences and Penalties in Other Jurisdictions

Overview

The sentencing regime under the *Drugs Misuse Act* is the most severe of any jurisdiction in Australia, particularly for minor possession and cultivation offences. Under the Queensland legislation, a person who possesses or cultivates a small quantity of cannabis for personal use is notionally exposed to a maximum penalty of 15 years imprisonment. Most other Australian jurisdictions have created separate offences for small-scale possession and cultivation of cannabis. The next nearest penalty for comparable offences in other states is two years imprisonment (see Tables 3.1, 3.2 and 3.3).

New South Wales, Western Australia, the Northern Territory and Tasmania have legislative regimes similar to Queensland but with lower statutory maxima. In relation to personal possession and cultivation offences, most of these other schemes differentiate between offences involving personal scale possession or cultivation, and possession or cultivation of a commercial quantity of cannabis.

TABLE 3.1: LOWEST SCALE OFFENCE FOR POSSESSION OF CANNABIS: OTHER AUSTRALIAN JURISDICTIONS

Jurisdiction	Quantity Threshold	Criminal Offence	Maximum Penalty
QLD	< 500 grams, or where plants, the aggregate weight of the plants is < 500 grams, 100 plants	Yes	15 years imp. and/or $300,000 fine if dealt with on indictment; 2 years imp. and/or $6,000 fine if dealt with summarily
ACT	Not > 25 grams in mass	No, if expiated	$100 fine, if expiated
NSW	Cannabis leaf < 200 grams	Yes	2 years imp. or $2,000 fine or both
NT	Cannabis leaf – < 50 grams; Cannabis leaf – < 5 plants	Yes	If in a public place – $5,000 fine or imp. for 2 years. Any other case, maximum fine of $2,000
SA	< 25 grams of cannabis, < 5 grams cannabis resin	No, if expiated	Expiation amount – cannabis < 25 grams, $50; cannabis resin < 5 grams, $50
TAS.	No quantity stated	Yes	$5,000 fine or 2 years imp. or both
VIC.	< 50 grams of cannabis leaf	Yes, but special provision for first offenders	Maximum fine of $500
WA	• < 25 plants • < 100 grams cannabis • < 20 grams cannabis resin • cannabis (in cigarette form) comprising < 80 cigarettes each containing any portion of cannabis	Yes	$2,000 fine or 2 years imp. or both

Source: See Appendix 1

TABLE 3.2: LOWEST SCALE OFFENCE FOR CULTIVATION OF CANNABIS OTHER AUSTRALIAN JURISDICTIONS

Jurisdiction	Cultivation Amount	Criminal Offence	Maximum Penalty
QLD	< 500 grams or, where plants, the aggregate weight of those plants is < 500 grams, or 100 plants	Yes	15 years imp. and/or $300,000 fine if dealt with on indictment; 2 years imp. and/or $6,000 fine if dealt with summarily
ACT	Not > 5 cannabis plants	No, if expiated	Fine $100
NSW	Not > 5 cannabis plants	Yes	$5,000 or 2 years imp. or both
NT	< 5 'prohibited plants'	Yes	$5,000 or 2 years imp.
SA	< 10 plants	No, if expiated	Fine $150
TAS.	Cultivation an offence unless under a licence; no quantity stated	Yes	$5,000 fine or 2 years imp. or both
VIC.	< 250 grams – where court is satisfied that offence was not committed for any purpose related to trafficking in the plant	Yes, but special provision for first offenders	$2,000 or 1 years imp. or both
WA	< 25 plants	Yes	$2,000 or 2 years imp. or both

Source: See Appendix 1

In relation to drug paraphernalia, Queensland, which provides for a maximum statutory penalty of two years imprisonment, is on a par with New South Wales and the Northern Territory. Western Australia has the most severe statutory maximum penalty of three years imprisonment, while the maximum penalties in Tasmania and South Australia are fines of $2,000 and $50 respectively (see Table 3.3). Neither the Australian Capital Territory, which has one of the most liberal legislative regimes, nor Victoria, which has one of the more conservative, have drug paraphernalia offences.

TABLE 3.3: PENALTIES FOR POSSESSION OF PARAPHERNALIA

Jurisdiction	Criminal Offence	Maximum Penalty
QLD	Yes	2 years imp.[11]
ACT	No	N/A
NSW	Yes	$2,000 fine or 2 years imp. or both
NT	Yes	$2,000 fine or 2 years imp.
SA	No, if expiated	$50 fine[12]
TAS.	Yes	$2,000 fine
VIC.	No	N/A
WA	Yes	$3,000 fine or 3 years imp. or both

Source: See Appendix 1

Jurisdictions with distinctive legislative schemes are Victoria, South Australia and the Australian Capital Territory. As considerable reference is made to these schemes in subsequent chapters, their key features will be outlined here.

Victoria

Victoria has a sentencing scheme which provides for the imposition of pre–conviction bonds for first offenders charged with certain minor drug offences (see s. 76 of the *Drugs Poisons and Controlled Substances Act 1981*). The provision is expressly limited to persons who do not have previous drug related convictions in Victoria or elsewhere in Australia.

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11 A fine may be ordered in addition to, or instead of, imprisonment for which the offender is liable. A fine shall not exceed 5,000 penalty units where conviction on indictment, or 100 penalty units where conviction in summary proceedings: (s. 54).

12 If accompanied by another simple cannabis offence, $10.

The types of offences to which the section applies include:

- the cultivation of narcotic plants where the court is satisfied that the offence was not committed for any purpose related to trafficking (s. 72)[13]

- the possession of 'drugs of dependence' (defined under the Act), which include cannabis, provided that the quantity does not exceed 50 grams, and the court is satisfied that the offence was not committed for any purpose related to trafficking (s. 73)

- the use of cannabis (s. 75)

- conspiring with a person to commit certain offences (s. 79), or aiding and abetting etc. the commission of certain offences (s. 80) where the court is satisfied that the offence was not committed for the purposes of trafficking in cannabis.

Where the court is satisfied beyond a reasonable doubt that the person is guilty of the offence, the legislation requires the Magistrates Court, having regard to the character and antecedents of the person and all of the circumstances and the public interest, to

- not proceed to a conviction, and

- adjourn the matter for a period not exceeding 12 months and release the person upon his or her entering into a bond.[14]

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13 Under the legislation, the traffickable quantity of cannabis or cannabis plant is 250 grams. Possession or cultivation of an amount equal to or exceeding that quantity is prima facie evidence of trafficking in a drug of dependence.

14 A bond is an undertaking to the court, entered into by the person before the court, to keep the peace and be of good behaviour for the period of the bond. During the period of the bond, if the person breaches the peace or commits an offence, the bond is breached. Breaching of the bond will result in the person being brought back before the court to be dealt with for the original offence and for the offence which constituted the breach of the bond.

The court does retain a discretion under the Victorian legislation to record a conviction against the offender in circumstances where the magistrate considers it appropriate. Section 76(2) requires that where the bond provisions apply to a person before the court and the magistrate proceeds to a conviction 'the court shall state its reasons for doing so'.

If the conditions of the undertaking are observed by the offender, the Court *must* dismiss the charge without any further hearing. The undertaking operates in much the same way as a recognisance or a good behaviour bond.

South Australia and the Australian Capital Territory

Both South Australia (*Controlled Substances Act Amendment Act 1986*) and the Australian Capital Territory (*Drugs of Dependence (Amendment) Act 1992*) have cannabis expiation notice systems in which tickets imposing standard fines are issued for minor cannabis offences.

On 30 April 1987 South Australia introduced a cannabis expiation notice scheme. Under this scheme offenders aged 18 years or over are issued with a standard infringement notice (a type of ticket) for the offence and can "expiate" the offence by paying a prescribed penalty. No court appearance is required in relation to expiated offences (i.e. where the fine is paid) and, as expiation is not regarded as an admission of guilt, no criminal conviction is recorded. Notices which are not paid or expiated are dealt with before the courts in the normal manner. Offenders under the age of 18 years are dealt with in the Childrens Court.

Information from the South Australia Office of Crime Statistics indicates that, if a person fails to expiate and is found guilty of the offence, in almost all cases a conviction will be recorded by the court.

The schedule of expiable offences and prescribed penalties in South Australia is as follows:

TABLE 3.4: SCHEDULE OF EXPIABLE OFFENCES AND PRESCRIBED PENALTIES IN SOUTH AUSTRALIA

Penalty	Offence
$150	Possess 25 grams or more but less than 100 grams Possess 5 grams or more but less than 20 grams cannabis resin Non–commercial cultivation of 10 or fewer plants
$50	Possess 25 grams cannabis or less Possess less than 5 grams cannabis resin Consume cannabis other than in a public place[15] or place prescribed by regulation Possess equipment for consuming cannabis
$10	Possess equipment for consuming cannabis (when in combination with other offence above)

Source: *Controlled Substances Act 1984* (SA)

Legislation in the Australian Capital Territory provides for the issuing of expiation notices imposing fines of $100 for the possession of a quantity of cannabis not exceeding 25 grams and for cultivation of not more than five cannabis plants. Unlike the South Australian cannabis expiation notice scheme, this scheme gives police a discretion whether or not to issue an expiation notice to an offender or to proceed against the person in the usual way by arrest or summons. Another difference is that the Australian Capital Territory's scheme applies also to those under the age of 18 years.

15 The offence of consuming cannabis in a public place is treated as a more serious offence which is not expiable.

Prosecution of Minor Cannabis Offenders

As noted above, in practice virtually all minor drug offences prosecuted in Queensland are dealt with at the Magistrates Court level. In 1991/92, the most recent year for which data are available, only 54 defendants appeared in the higher courts charged with possession of drugs as the principal offence. By contrast, there were 6,100 appearances finalised in the Magistrates Courts where possession of drugs was the principal offence (ABS unpub. tables).[16]

Research undertaken by the Commission indicates that between 90 and 95 per cent of drug possession prosecutions relate to cannabis (Advisory Committee 1993, pp. 69–70). On this basis, it can be assumed that approximately 5,490 appearances in Queensland Magistrates Courts in 1991/92 related principally to possession of cannabis. 'Other drug offences', most of which would have related to the possession of cannabis paraphernalia, accounted for 1,697 appearances. Overall, appearances for possession of cannabis, or possession of cannabis paraphernalia, accounted for 4.5 per cent of total Magistrates Court appearances and 10.7 per cent of all non–driving related appearances.

The category of 'manufacturing and growing drugs' accounted for 1,165 finalised appearances in the Magistrates Courts. Again, it can be safely assumed that almost all of these matters involved the cultivation of cannabis. Research by the Commission indicates that 47 per cent of cultivation offences involved five plants or less, and 72.5 per cent involved 10 plants or less (Advisory Committee 1993, p. 72).

The discussion paper presented data from a study of court briefs undertaken by the Commission showing that the "typical" defendant appearing in court for minor drug matters is a young, single male who is either unemployed, or in an unskilled occupation (Advisory Committee 1993, p. 74). This profile is similar to that of defendants appearing in court for most other offences (Criminal Justice Commission 1991, pp. 27–38). It would appear that, compared with the general population of cannabis users, those from less privileged backgrounds are much more likely to be

16 The figures presented here relate only to cases where a drug offence was the principal offence charged. In many other cases, defendants may be charged with one or more drug offences in conjunction with other, more serious, offences.

apprehended and prosecuted. The discussion paper noted that this apparently discriminatory pattern of enforcement was 'the product of factors such as the differential visibility of offences and offenders and not the product of any deliberate intent in either law or enforcement practices' (Advisory Committee 1993, p. 76).

Sentencing

The sentences imposed by the courts for minor cannabis offences have little connection with the statutory penalties provided under the legislation. As noted, Queensland legislation does not distinguish between possession and cultivation of cannabis for personal or commercial use. However, the sentences being handed down by the courts for minor possession offences indicate that, in practice, the sentencing authorities view personal scale offences as being of a minor nature.

The Commission obtained data on all drug possession prosecutions finalised in the Brisbane Magistrates Court from 1 July to 31 December 1993. These data did not distinguish between possession cases involving cannabis and those relating to other drugs. However, on the basis of previous research undertaken (see above) it can be assumed that 90–95 per cent of these cases were cannabis–related.

Table 3.5 shows that the defendant was found guilty in 900 out of the 1,009 drug possession prosecutions finalised during this period.[17] For 535 (59.4%) of the offences in which there was a finding of guilt, no conviction was recorded. The Commission has been informed by a senior magistrate that the category of 'no conviction recorded' would include almost all first–time offenders dealt with by the court.

17 The data discussed in this section refer to specific offences, not offenders or appearances. In many cases, a person may be charged with multiple offences.

TABLE 3.5: CASE OUTCOMES – DRUG POSSESSION OFFENCES BRISBANE MAGISTRATES COURT JULY–DECEMBER 1993

OUTCOME	NUMBER OF OFFENCES	PERCENTAGE
Discharged/Withdrawn	**109**	**10.8**
Guilty – No Conviction Recorded		
• No penalty/bond	26	2.6
• Fine	476	47.2
• Other order	33	3.3
• Imprisonment	nil	nil
SUB TOTAL	**535**	**53.1**
Guilty – Conviction Recorded		
• No penalty/bond	19	1.8
• Fine	284	28.1
• Other order	18	1.8
• Imprisonment	44	4.3
SUB TOTAL	**365**	**36.1**
TOTAL	**1,009**	**100.0**

Source: Unpub. data provided by Brisbane Magistrates Court.

TABLE 3.6: FINES FOR DRUG POSSESSION OFFENCES BRISBANE MAGISTRATES COURT JULY–DECEMBER 1993

	RANGE	MEAN	MEDIAN
No Conviction Recorded	$100 – $1,200	$285	$300
Conviction Recorded	$100 – $1,500	$401	$400

Source: As above

In those cases where no conviction was recorded, the median fine imposed was $300, with the range being from $100 to $1,200. Where a conviction was recorded, the median fine was $400, with the range being from $100 to $1,500 (see Table 3.6). Overall, only 4.4 per cent of those convicted of possession of a dangerous drug were sentenced to a term of imprisonment for that offence, with the maximum term imposed being nine months. It appears that the vast majority of those offenders sentenced to a term of imprisonment for a drug possession offence:

- received that sentence in conjunction with a term of imprisonment imposed upon conviction for other criminal offences
- were serving sentences of imprisonment at the time of conviction, or
- were on probation for other offences at the time the drug possession offence was committed.

It is also possible that most, if not all, of the offences for which a term of imprisonment was imposed involved drugs other than cannabis.

In several of the submissions received by the Commission, it was claimed that the sentences imposed by magistrates upon offenders convicted of minor cannabis offences vary significantly. An officer from the Legal Aid Office (Queensland), in a private submission, stated that the fines imposed in one Magistrates Court in Queensland for possession of very small quantities of cannabis varied between $160 and $400 depending on the magistrate who dealt with the case. These claims suggested that there was substantial inconsistency in the sentences being imposed for these types of offences. The Magistrates Court study also shows a significant spread in the value of fines being imposed. However, these data are difficult to interpret in the absence of any information about drug quantity or type, the offender's criminal history or the context in which the offence occurred.

The data presented above can be compared with the results of an earlier study undertaken by the Commission in 1991 and reported in the Advisory Committee's discussion paper (1993, pp. 82–83). The comparison shows that the level of fines remained fairly constant between 1991 and 1993. However, there was a dramatic rise in the proportion of cases in which no conviction was recorded by the magistrate – up from less than one per cent in 1991 to 59.4 per cent in 1993.

This change is attributable to the introduction of the *Penalties and Sentences Act 1992*, which came into operation in December 1992. This Act applies to the

sentencing of all criminal offenders in Queensland. The Act introduced a new approach to the sentencing of offenders, requiring a court to have regard (among other things) to:

- the principles that:
  - a sentence of imprisonment should only be imposed as a last resort [s. 9(2)(a)(i)]
  - a sentence which allows an offender to remain in the community is preferable [s. 9(2)(a)(ii)]
- the offender's character, age and intellectual capacity [s. 9(2)(f)].

The Act also requires a court to consider whether or not to record a conviction against a person who is found guilty of an offence. In considering whether or not to record a conviction, the court must have regard to all of the circumstances of the case, including:

- the nature of the offence
- the offender's character and age
- the impact that recording a conviction will have on the offender's:
  - economic or social well-being
  - chances of finding employment [s. 12(2)].

The stated object of these provisions is to achieve the most appropriate sentences by striking a balance between the protection of the community, appropriate/proportional punishment and the rehabilitation of offenders. The emphasis is upon imprisonment as a last resort and offenders serving their sentences under supervision in the community. The philosophy behind the Act emphasises a less punitive and more utilitarian approach to the sentencing and treatment of offenders.

The recent practice of not recording convictions in minor cannabis prosecutions is consistent with the decision of the Court of Appeal, Queensland in *Graydon v Dickson* (36/1993 – unreported). In that case the offender was 22 years of age, a student and had no previous convictions. The Court of Appeal held that no conviction should have been recorded. The drugs were for his personal use only, he had pleaded guilty at an early stage and a conviction could have jeopardised his career. In some cases

courts continue to record convictions against first offenders in minor or personal scale cannabis offence prosecutions, but these decisions have consistently been overturned on appeal.[18]

THE COSTS OF CANNABIS PROSECUTIONS

The discussion paper noted that there are substantial costs involved in the enforcement of Queensland drug laws. These costs relate to:

- investigation and detection
- apprehension and prosecution
- detention of convicted drug offenders.

For cannabis offences, the major costs are those associated with apprehension and prosecution. The discussion paper concluded that a considerable percentage of police arrests for minor cannabis offences were as a result of chance discoveries rather than specially mounted searches or operations. Custodial costs are not an issue for minor cannabis offences because persons convicted of such offences are rarely, if ever, sent to prison.

To assist in the evaluation of various legal options, the Commission has calculated the costs to the government of prosecuting persons charged, as the principal offence, with possession of small quantities of cannabis, or of drug paraphernalia.[19] (Now that the possession of syringes is no longer an offence, almost all drug offences relating to the use, consumption, administration or smoking of a dangerous drug will be cannabis related.) These calculations are approximate only, due to the limited data available, and the consequent need to make a number of assumptions and inferences. However, they provide a useful "ball park" figure.

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18 See *R v Fullalove*, Court of Appeal, 155/1993 – unreported; *R v Condoleon*, Court of Appeal 127/1993 – unreported; *R v Lachlan Alfred Macaulay*, Court of Appeal 346/1993.

19 Due to the methodological problems involved, no attempt was made to calculate the cost of prosecuting minor cannabis offences in those cases where the defendant was also charged with a more serious offence. In addition, costs for prosecuting cultivation offences were not calculated, because it was not possible to disaggregate the relevant ABS statistical categories.

The estimated costs are:

- Prosecution of possession of cannabis offences where this was the principal offence charged – $2,132,000

- Prosecution of paraphernalia offences where this was the principal offence charged – $463,000

Details of the methodology for obtaining these estimates are provided in Appendix 2.

CONCLUSION

This chapter has reviewed the operation of the law relating to cannabis in Queensland. The key points arising out of this chapter include:

- Drug legislation in Queensland does not make separate statutory provision for lower-scale offences.

- As a consequence, much higher maximum statutory penalties apply to lower scale cannabis offences in Queensland compared with other jurisdictions.

- The sentences being imposed by Queensland courts for lower-scale cannabis offences bear no relation to the statutory penalties. For instance, on the basis of precedents set by the Supreme Court in appeal decisions, it is now generally accepted that first offenders found guilty of possession or cultivation of small quantities of cannabis, or possession of things for smoking cannabis, do not have convictions recorded against them.

- The prosecution of lower-scale cannabis offences generates substantial costs for the criminal justice system.

The features of the current legal scheme in Queensland outlined in this chapter are considered further in Chapter Six, which analyses some of the problems arising from the operation of this scheme.

CHAPTER FOUR

THE EFFECTS OF INTERNATIONAL DRUG CONVENTIONS

INTRODUCTION

Before examining in detail the various options for dealing with cannabis offences, it is necessary first to consider the legal constraints imposed by international law. Drug laws are one of the areas of Australian domestic law which are influenced and, to some degree dictated, by the obligations imposed by international conventions. Accordingly, the requirements of the international drug conventions can limit the range of options available for dealing with cannabis offences.

This chapter identifies the international drug conventions which are relevant to cannabis, the obligations which they impose and the consequent limitations for Australian domestic law. In undertaking this analysis, the Commission has proceeded on the assumption that any legislative scheme recommended for dealing with cannabis must, as a matter of principle, comply with Australia's obligations under international drug conventions.

RELEVANT INTERNATIONAL CONVENTIONS

At the present time, the drug conventions Australia has ratified and which delimit the scope of domestic drug laws are:

1961 *Single Convention on Narcotic Drugs*
1971 *Convention on Psychotropic Substances*
1972 *Protocol Amending the Single Convention*
1988 *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*

These conventions impose obligations upon countries which are party to them to ensure that their domestic laws are consistent with the terms of the conventions.

It should be noted that it is the Commonwealth Government which is the party to the international drug conventions and not the individual state governments. Accordingly,

the obligations undertaken by Australia following ratification of a convention are undertaken by the Commonwealth and not by the states.[20] The provisions of an international convention to which Australia is a party do not become part of the domestic law of Australia unless carried into effect by appropriate legislation.[21] State governments are not directly prevented from passing or retaining laws which are inconsistent with an international convention, although, as a matter of principle, they generally abide by convention obligations. However, where a law is inconsistent, it would be open to the Commonwealth Government to override the state law.

Outline of the Conventions

International efforts to control drug use date back to the *International Opium Convention, 1912*. This and subsequent conventions form the basis of the present international drug control system and the domestic drug policies and laws of many countries.

The *Single Convention on Narcotic Drugs, 1961* (*1961 Single Convention*) codified all existing conventions and obligations of the nations which were parties to the convention. It also introduced for the first time an international prohibition in relation to cannabis. The Convention is concerned with cannabis, cannabis resin, cocaine, morphine, heroin and opium and refers to a variety of different forms of these drugs.

The *Convention on Psychotropic Substances, 1971* (*1971 Convention*) extended the international control of drugs to a broad range of synthetic behaviour and mood altering drugs. The Convention is based on the control system of the *1961 Single Convention* but distinguishes between substances which are completely prohibited and those whose use and distribution is restricted to medical purposes. Among the drugs listed in the 1971 convention is THC, one of the compounds of the cannabis plant.

The 1972 Protocol amended the *1961 Single Convention*, strengthening its provisions relating to the prevention of illicit production, trafficking and use of narcotics. The Protocol also recognised the need to provide treatment and rehabilitation services to

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20 *NSW v Commonwealth (Seas & Submerged Lands)* (1975) 135 CLR 337 at 361 per Barwick CJ; *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168, 225 per Mason J.

21 *Bradley v Commonwealth* (1973) 128 CLR 557 at 582-583, per Barwick CJ and Gibbs J (with whom Stephen J agreed); *Dietrich v The Queen* (1992) 177 CLR 292 at 306 per Mason CJ and McHugh J (with whom Deane, Toohey and Gaudron JJ agreed); *Minister for Foreign Affairs v Magno* (1992) 37 FCR 298; 112 ALR 529.

drug users by permitting the provision of such programs as an alternative, or in addition, to the conviction and punishment of users and addicts who commit drug offences.

The *Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (*1988 Convention*) reinforces and supplements the *1961 Single Convention* and the *1971 Convention*. It does not replace, remove or limit existing convention obligations (Article 25). The *1988 Convention* states that its purpose is to address the various aspects of trade in illicit drugs having an international dimension. The Convention came into effect in Australia on the 14 February 1993.

Cannabis is defined as an opiate or narcotic for the purposes of inclusion in these conventions, but these labels are scientifically incorrect. The inclusion of cannabis in international conventions dealing with these substances has contributed to the confusion and misinformation about cannabis and its effects. This classification has caused cannabis to be identified with more dangerous and addictive drugs, such as heroin: an association which, on the available evidence, cannot be justified.

International Narcotics Control Board

The *International Opium Convention, 1925* (*1925 Convention*) introduced a requirement for annual reporting by party nations on production, manufacture and stocks of narcotic drugs and imports and exports. The Convention established an administrative framework with the appointment of recognised experts who were to operate independently to limit the influence of individual governments. This group became the Permanent Central Opium Board, which later became the Permanent Central Narcotics Board and thereafter the International Narcotics Control Board. This board has responsibility for overseeing and reporting on the compliance of party countries with the drug conventions.

The Effect of the Treaties Upon Australian Domestic Drug Laws

A reading of the various conventions reveals some ambiguity in their terms and their effect upon domestic drug laws.

Although a number of drug conventions concerned with various aspects of illicit drug use and trade have been negotiated since the *1961 Single Convention*, this convention remains the starting point and the overriding authority in respect of the international

drug conventions. The conventions which followed either specifically amended the *1961 Single Convention* (as with the 1972 amending Protocol), or were intended to complement its provisions by including Articles expressly stating that the obligations of a party country under the *1961 Single Convention* were not affected by the enactment of the later convention (as with the *1988 Convention*).

The conventions impose obligations on party countries to prohibit certain behaviour in respect of specified drugs through the enactment of drug laws in their own jurisdictions. Article 36 of the *1961 Single Convention* is entitled 'Penal Provisions' and states:

> Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution . . . importation and exportation of drugs contrary to the provisions of this Convention . . . shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

The *1971 Convention* contains similar provisions.[22] Article 3 of the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*, entitled 'Offences and Sanctions', requires parties to the convention to:

> . . . adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention. (Clause 2)

Each of the 1961, 1971 and 1988 Conventions make provision for countries to provide 'measures of treatment, education, after–care, rehabilitation and social reintegration' either as an alternative or in addition to the conviction or punishment of drug users found guilty of drug offences.

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22 Article 22 1(a).

All of the conventions require parties to enact domestic drug laws consistent with the obligations created by the conventions. The *1961 Single Convention* requires the creation of 'punishable offences' and the *1988 Convention* uses the term 'criminal offences'. It clearly would be outside the terms of the conventions to legalise the possession or cultivation of cannabis for personal use. However, there is some debate about what the conventions require in terms of severity and types of sanctions to be imposed. In particular, it has been suggested by some that cannabis expiation notice schemes, such as apply in South Australia and the Australian Capital Territory, may contravene the conventions. This view has been most forcefully argued by The Honourable A.R. Moffitt QC, a former president of the New South Wales Court of Appeal. In a paper on the issue[23] (unpub.), Moffitt has stated that the schemes breach the international drug conventions because:

- the treaties require the attendance of the alleged offender in court and the South Australian and Australian Capital Territory schemes do not

- there is no provision under the South Australian and Australian Capital Territory schemes to impose more severe penalties on repeat offenders or for courts to exercise their sentencing discretion to provide for rehabilitation

- the schemes impose what he describes as only 'nominal fines'.

These objections to the schemes are based not on an express requirement of the conventions, but on Moffitt's view of the defining features of a 'punishable' (*1961 Single Convention*) or 'criminal' (*1988 Convention*) offence.

A different view of the effect of the conventions has been presented by Mr H. Woltring[24] (1990) in an article entitled 'Examining existing drugs policies: The 1988 UN Convention – help or hindrance'. According to Woltring's interpretation, the combined effect of the conventions precludes only one option, namely legalisation or total deregulation of drugs permitting them to be freely available for purely recreational use.

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23 This paper was initially made available to the Commission by Australian Parents for Drug-Free Youth. See Chapter Five for further discussion of submissions.

24 Then Principal Adviser, Criminal Justice, Attorney-General's Department, Canberra.

Woltring (1990, pp. 19–20) has argued that decriminalisation of possession for personal use is permitted under the conventions by virtue of their alternative sanction provisions. In his view:

> Decriminalisation, as opposed to legalisation, reflects a social condemnation of conduct and provides a non–criminal consequence, such as treatment or rehabilitation, in lieu of criminal sanctions such as imprisonment . . . the 1988 Convention clearly permits governments to provide non–punitive sanctions for personal use related conduct.

In response to these conflicting views, the Commission sought advice from the Commonwealth Attorney–General as to the Commonwealth Government's interpretation of the treaty constraints upon domestic drug laws. The Commission also sought the Commonwealth Government's opinion as to whether the cannabis expiation notice schemes in the Australian Capital Territory and South Australia complied with the conventions.

The Commission received a response from the Commonwealth Attorney–General's Department, dated 24 February 1994, which advised:

> In relevant respects, the requirements of the 1961 and 1988 Conventions with respect to "personal consumption" conduct are not significantly different:
>
> - both require the elimination of all possession/use (outside certain specified exceptions);
> - neither therefore permits "legalisation" of personal consumption;
> - both are aimed particularly at "trafficking" conduct;
> - neither requires criminal proceedings for personal consumption.
>
> . . . one policy approach is the present law in South Australia providing the option of an "expiation fee" rather than prosecution for a "simple cannabis offence" (as defined). In the Department's view that approach is consistent with both Conventions.

Legalisation is clearly not the intention of the South Australian or Australian Capital Territory expiation notice schemes. Neither, apparently is decriminalisation. Despite the fact that many commentators and supporters of the South Australian expiation notice scheme characterise it as a form of "decriminalisation", the South Australian authorities have rejected this label. In its research report *Cannabis – The Expiation Notice Approach* the South Australian Office of Crime Statistics examined the

different meanings of the term "decriminalisation" and concluded that the term can be deceptive and did not accurately describe the South Australian scheme. It stated:

> Perhaps the best summary from a legal point of view is that the South Australian government has embarked upon a prosecution policy which de-emphasises the criminal status of small scale cannabis use, but stops short of decriminalising it. (Sarre et al. 1989, p. 5)

There is no indication that the conventions require the recording of a conviction against a person found guilty of an offence. The suggestion that there is such a requirement apparently assumes that, if a conviction for an offence is not recorded, the offence is not a criminal offence. If this interpretation was accepted, the provisions of the Queensland *Penalties and Sentences Act 1992*, which provide for such a sentencing discretion (at least insofar as they apply to the sentencing of drug offenders) would potentially be in breach of the treaty obligations. In any event, the terms of the treaties themselves allow the provision of 'measures of treatment, education, after-care, rehabilitation and social reintegration' as an *alternative* to conviction or punishment of drug offenders.[25]

As indicated, the conventions require possession and cultivation of cannabis to be a 'criminal offence'. It has been suggested by Moffitt (unpub.) that at a minimum this requires a charge to be brought and for the charge to be dealt with by a court. In his view, any form of purely out-of-court penalty would not accord with the convention obligations. However, this interpretation is open to question.

The obligations imposed on a 'Party' by the conventions are subject to the 'constitutional principles and the basic concepts of its legal system' (Article 3 Clause 2). The meaning of the term 'criminal offence' should be its normal meaning in the local jurisdiction. In Queensland the meaning of 'criminal offence' is defined by sections 2 and 3 of the *Criminal Code* (Qld):

> Section 2 **Definition of offence.** An act or omission which renders the person doing the act or making the omission liable to punishment is called an offence.
>
> Section 3 **Division of offences.** (1) Offences are of two kinds, namely, criminal offences and regulatory offences.
> (2) Criminal offences comprise crimes, misdemeanours and simple offences . . .

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25 See *Article 36* of the 1972 Protocol amending the 1961 Single Convention and *Article 3.4.(b), (c)* and *(d)* of the 1988 Convention.

The term 'simple offence' is defined in the *Justices Act 1886* section 4 as meaning '[a]ny offence (indictable or otherwise) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment or otherwise'.

Accordingly, in Queensland all offences are either criminal or regulatory offences. The only regulatory offences which exist in Queensland are those created by the *Regulatory Offences Act 1985*. These offences are:

- stealing shop goods to a value not exceeding $150
- failing to pay a restaurant, hotel or motel debt not exceeding $150 or paying with a credit card or cheque which is not honoured or which the person does not have authority to use
- wilful damage to property not exceeding $250.

All other offences created under Queensland legislation are criminal offences.

Consequently, in Queensland, offences such as illegal parking, speeding and other traffic offences are criminal offences, but they may be dealt with by way of a procedure other than an appearance in and determination by a court. In those cases an on-the-spot ticketing procedure has been adopted. There is now also a procedure for issuing tickets to minor drink driving offenders. Although this procedure is not widely used for dealing with criminal offences in Queensland it is, nonetheless, a procedure which is well-known and established as a method of disposing of certain minor criminal offences. Where the recipient of the Traffic Offence Notice or parking ticket wishes to dispute the allegation contained in the ticket, the matter is determined by the court in accordance with the usual criminal process. This is a similar procedure to that used in South Australia and the Australian Capital Territory under the expiation notice schemes. Under those schemes, all offences for which expiation notices have been issued can be dealt with in court in the same way that most criminal offences are usually prosecuted and tried.

The second of Moffitt's criticisms of the cannabis expiation notice schemes is that they do not provide a hierarchy of penalties allowing for the imposition of more severe punishments on repeat offenders. The international conventions are silent on this issue. Accordingly, the success of this argument is dependent upon showing that this feature constitutes a defining feature of a criminal offence. Although it is usual criminal law practice that there be sufficient scope in the penalty applicable to any offence to allow for the imposition of more severe sanctions on repeat offenders, this

is more a matter of practice and sentencing principle, than a fundamental feature of a criminal offence. Legal advice obtained by the Commission from Mr Roger Gyles QC of the New South Wales bar was in agreement with this proposition.

Finally, Moffitt has argued that the schemes do not comply with the international conventions because they impose only 'nominal fines'. The South Australian scheme provides for fines ranging from $10 (for a drug utensil offence in conjunction with another offence) to $150. The Australian Capital Territory fines are a standard $100. From a legal perspective, the question of whether a fine is 'nominal' should be determined objectively, based upon the location of the fine in the hierarchy of statutory sentencing options. Such a comparison shows that the fines provided for in these schemes are indeed light when compared to the maximum fines set down for many other offences. However, this approach assumes that the fines set by legislation form part of some comprehensive and ordered scheme of penalties. In practice, this is not the case.

An alternative view is that whether a penalty is 'nominal' depends very much on the financial position of the person receiving the fine. If the person receiving a $50 or $100 fine is unemployed – a strong possibility based on the profile of people charged with drug related offences – that fine could represent a substantial quantity of that person's weekly income. On the other hand, if the person receiving the expiation notice is a well-paid professional person, the fine may not have the desired deterrent effect for a member of that person's socio-economic group. In short, even from this perspective whether the fines are 'nominal' is a question of degree. Even if the fines imposed under the South Australian and Australian Capital Territory schemes are too low to realistically constitute a penalty, they could be increased. It is doubtful whether these legislative schemes, as a whole, fail to comply with the international conventions merely because of this factor.

CONCLUSION

There is some divergence of legal opinion about what is required by the international drug conventions. All commentators agree that the conventions do not permit the legalisation of possession, cultivation or use of the drugs defined in the schedules to the conventions. There is some debate about whether the South Australian and Australian Capital Territory schemes comply with the treaties. However, it seems clear that any scheme which requires a court appearance, at least when the charge is disputed, and which sets down penalties that are more than "nominal", would be consistent with Australia's treaty obligations.

The Commission is strongly of the view that, although Queensland is not strictly legally bound by the terms of the conventions, any recommendation with respect to the reform of cannabis laws in Queensland should comply with Australia's obligations under the drug conventions. However, it is unnecessary for the Commission to make a final decision on the points of disagreement among the commentators regarding the compliance of the South Australian and Australian Capital Territory expiation notice schemes with the conventions. These areas of contention are not specifically relevant to the Commission's final recommendations on this issue, which were reached on the basis of other policy considerations.

At a more general level, the Commission considers it appropriate to point out that the obligations imposed by the international drug conventions limit the responses which governments can make to the issue of drug use in Australia. The obligations imposed by the conventions have the potential to limit the range of responses which may be adopted to address these problems. It is important that the Commonwealth Government continues to monitor its obligations under the international drug conventions, with reference to the latest health, medical and other scientific research, to ensure that the most effective and appropriate responses to drug use and abuse in Australia are able to be implemented.

CHAPTER FIVE

VIEWS ON THE CURRENT LAW

INTRODUCTION

The discussion paper invited individuals and organisations who were preparing submissions to address, among other issues, cannabis policy and legislation. The issues identified by the discussion paper included:

- What should be the goal of policy in relation to cannabis?
- Should the current legislative classification of cannabis be altered and, if so, how?
- Should the penalty structure in relation to cannabis, or some cannabis-related offences, be altered?
- Should some offences be decriminalised?
- Should the possession of cannabis paraphernalia remain an offence?

This chapter provides an overview of the submissions which were made in response to these questions. In addition, the chapter summarises the results of recent public opinion surveys on Queenslanders' attitudes towards existing cannabis laws.

THE SUBMISSIONS: A STATISTICAL OVERVIEW

As stated in Chapter One, the Advisory Committee received a total of 458 submissions from 548 individuals[26] and 30 organisations. As a measure of the interest shown in this issue, and by way of comparison, the Commission received 117 written submissions in response to its discussion paper on the issue of prostitution, and 110 in response to its issues paper on police powers.

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26 Includes four petitions with a total of 128 signatories.

There was some evidence of organised campaigning, among both those groups supporting legalisation and those opposing it. It is difficult to quantify the effect of such campaigning on the number of the submissions received in favour of a particular point of view. However, it is important to point out that, because of this type of campaigning, it is dangerous to draw conclusions about public opinion generally from the submissions received.

Of 440 submissions canvassing the issue of legalisation, 62 per cent favoured legalisation and 38 per cent opposed it.

Of 449 submissions which canvassed the issue of decriminalisation, 73 per cent favoured this option either as the preferred approach or as a "second order" alternative to legalisation, and 27 per cent opposed it.

Of 432 submissions canvassing the issue of the severity of penalties, 78 per cent favoured abolishing or lessening penalties, three per cent sought no change in penalties and 19 per cent sought increased penalties.

The following discussion summarises some of the more significant submissions received from organisations interested in the cannabis debate. It is arranged under the following headings:

- submissions supporting the existing laws
- submissions supporting legalisation of cannabis use
- submissions in favour of liberalisation of the existing laws.

Submissions Supporting the Existing Laws

Organisations which made submissions in support of the existing legal framework included:

- Association of Catholic Parents
- Australian Medical Association (Queensland)
- Australian Parents for Drug-Free Youth
- Campaign Against the Legalisation of Marijuana
- Christian Outreach Centre, Mackay

- Drug-Arm
- Endeavour Forum
- Mt Isa Mines
- National Party of Australia
- Presbyterian Church of Queensland
- Queensland Cancer Fund.
- Queensland Police Union of Employees
- Queensland Police Service
- The Baptist Union of Queensland
- Trinity Coast Secondary Schools Administrators

In its submission, the Queensland Police Service (QPS), while stating that any issues concerning cannabis which could be regarded as of a policy nature were a matter for the government:

- supported a policy of prohibition and education in respect of illicit drugs
- supported imprisonment as a sentencing option in all cannabis offences
- considered the present penalty structure applicable to cannabis offences to be adequate.

The Queensland Police Union of Employees' (QPUE) submission simply stated that the Executive had considered a motion which was passed unanimously as follows:

> That this Union's Policy in relation to the Discussion Paper on Illicit Drugs titled "Cannabis and the Law in Queensland" is that the Law should remain as it currently stands.

Neither the QPS submission, nor that of the QPUE, detailed the arguments or evidence that were considered by these organisations at the time of formulating their positions on the issue.

The Australian Parents for Drug-Free Youth (APDFY) supported cannabis prohibition and called for the repeal of the 1990 amendments to the *Drugs Misuse Act*. If implemented, such a change would result in the re-introduction of mandatory life sentences for some drug offences. In support of this recommendation, APDFY

suggested that this action would 'give a strong message about cannabis to the community'. The submission stated that the number of cannabis users in the United States of America has been steadily declining since 1979 and that the Australian statistics showed an increase in the numbers of users for the same period. However, no data were cited in support of these claims.

The APDFY submission argued that there is a connection between cannabis use and suicide and schizophrenia and that cannabis is a 'gateway' drug which leads to the use of harder drugs. The submission was critical of the discussion paper in respect of the extent of its survey of the research literature and also claimed that it was 'out of date'. The submission also disagreed with the conclusion in the discussion paper that much of the research into the effects of cannabis is inconclusive and requires further long-term study.

Further, the APDFY submission raised concerns that a cannabis expiation notice scheme contravened Australia's obligations under international drug conventions. In support of this contention, APDFY provided a paper by The Honourable, Athol Moffitt QC entitled 'Australia in Breach of its Treaty Promises an Attempt to Avoid – A Breach' (unpub.). This issue was addressed in detail in Chapter Four of this report.

The Campaign Against the Legalisation of Marijuana (CALM) was strongly opposed to the decriminalisation of cannabis and favoured the imposition of more severe penalties on cannabis offenders on the basis that cannabis is a harmful substance. The submission quoted statements and research from a number of individuals in support of various claims about the effects of cannabis. The submission relied substantially on research conducted by an American academic, Professor Nahas.[27] The submission claimed that relaxation of the laws would result in an increase in cannabis use in the community. The submission also quoted a number of other academics (but provided no references for the studies cited) and newspaper and magazine articles. A substantial number of the researchers referred to in the submission were cited in the comprehensive literature review undertaken by Nelson (1993).

Drug-Arm was opposed to any change in the laws relating to cannabis in Queensland. It based its opposition on both health and legal grounds.

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27 In a paper to be published in the June edition of the *Drug and Alcohol Review*, Dr M. Christie and Dr G. Chesher strongly criticise a review of the research literature on the effects of cannabis entitled 'The human toxicity of marijuana' by Nahas and Latour.

The submission referred to a variety of studies which it stated indicated a range of side-effects associated with the use of cannabis, including cancer, birth defects, brain damage, road accidents and schizophrenia. The submission also referred to the above-mentioned paper by Moffitt regarding the constraints of Australia's international treaty obligations.

The Queensland Cancer Fund submitted that, in view of the cancer risk to users, the current prohibition scheme should be retained, unless decriminalisation or legalisation can be shown to be effective in reducing cannabis smoking rates. The submission stated that the experience with tobacco shows that the legality of this substance has hindered attempts to reduce its use.

The AMA (QLD) submitted that because of the adverse effects on health, and the implications in terms of the wider social costs, the Association could not endorse decriminalisation or legalisation.

Similar arguments to those summarised above were advanced by other organisations which made submissions supporting the existing laws.

Submissions Supporting Legalisation of Cannabis Use

Organisations which made submissions calling for some form of legalisation of cannabis included:

- Anti-Prohibition League
- Cairns Task Force to assist the Government to collect submissions for the Cannabis Issue Debate
- Help End Marijuana Prohibition
- Queensland Council for Civil Liberties

The Queensland Council for Civil Liberties (QCCL) presented a relatively comprehensive submission to the Commission. It submitted that the present legislation and policy in respect of cannabis is 'wrong in principle and has failed in practice'.

The QCCL supported legalisation of the use and possession of cannabis for personal use and the licensing of growers and cannabis sales outlets. The scheme proposed was a form of legal regulation like that which applies to the production and sale of alcohol and tobacco. The Council stated:

> Consideration should be given to sale only being made upon production of a card which identifies the user and prevents the user from acquiring large quantities [of cannabis] which would facilitate large-scale transfers. Of course, the system would permit small amounts of transfers to occur. No card should be issued to persons under the age of 16. Like a credit card, such a card would limit purchases both as to duration and in amount . . . Although such a system may appear bureaucratic, the Council favours it over the immediate adoption of an open system whereby cannabis can be bought and sold freely.

The QCCL supported the principle that individuals should be free to engage in conduct that causes no harm to others. However, it recognised the scope for regulation, and the state's interest in minimising drug-related harm.

The QCCL argued that the policy of prohibition in relation to cannabis has:

- not been shown to have curtailed cannabis use
- led to many undesirable consequences, including significant legislative incursions upon traditional civil liberties
- produced a market which is out of control.

The QCCL submitted that the proper approach to the issue is to require those who favour the policy of prohibition to justify such a policy in principle, identify the objectives of that policy, and assess whether those objectives have been met. It stated that the prohibitionists should carry the onus of demonstrating that the harm arising from cannabis use justifies the use of the criminal law, and that the costs of enforcing the prohibition do not outweigh the harm.

The QCCL said that it was inconsistent in principle to decriminalise the personal use of cannabis while maintaining the prohibition on cultivation and distribution. The QCCL claimed that such a policy ensures that the cultivation and supply of cannabis is undertaken by criminal organisations and inevitably brings the users of cannabis into contact with those organisations which supply the illegal market.

The QCCL stated that on a cost/benefit analysis the current policy of cannabis prohibition could not be substantiated. The submission also detailed other concerns regarding the costs of the prohibition to civil liberties.

Help End Marijuana Prohibition (HEMP) also advocated the abolition of current criminal sanctions against possession, use and cultivation of cannabis for personal use and the eventual legalisation/regulation of cannabis, under laws analogous to those governing alcohol.

HEMP acknowledged the constraints of the international drug conventions and recognised that legalisation of cannabis may require some amendment of Australia's current convention obligations. On this basis, in the short–term HEMP favoured the South Australian 'decriminalisation' regime as the model for Queensland.

HEMP stated that on the basis of current medical knowledge the medical and health consequences of cannabis use were not sufficiently deleterious to justify the present laws. The submission also argued that the community presently tolerates significantly higher health risks associated with the use of licit drugs.

HEMP supported the QCCL argument that cannabis prohibition laws have failed to achieve a reduction in levels of use. In its view, this situation has given rise to frustration and demands for more enforcement and tougher penalties leading to the progressive erosion of civil liberties. HEMP also suggested that the prohibition promotes criminal activity and corruption at all levels of society.

HEMP claimed that the present laws provide no social benefits and that considerable social harms are caused by current law enforcement practice, such as criminalisation of a large portion of society, the reduction of civil liberties, the entrenchment of criminal elements, the consequent growth in corruption and the loss of medical and commercial applications.

Submissions Supporting Liberalisation of the Cannabis Laws

Organisations which argued for liberalisation of the existing laws included:

- Alcohol and Drug Foundation, Queensland
- Alcohol and Drug Service, Canberra
- Australian Professional Society on Alcohol and Other Drugs

- Cairns Mental Health Support Group
- Community of Inala Legal Services Inc.
- Law Society of New South Wales
- Women's Legal Service
- Youth Link HIV/AIDS Program.

The Alcohol and Drug Foundation said that it was committed to the principle of minimising drug-related harm in respect of all drugs. Its submission pointed out that historically drug policies relating to both licit and illicit drugs have had little relationship with the health and social consequences of the particular drug.

The Foundation did not support a change to the law or policy which would condone the use of cannabis, but submitted that the criminal penalties for cannabis use should be reviewed. The Foundation stated that '. . . the low risk factors of using small amounts of cannabis do not warrant heavy legal penalties'.

The Foundation was in favour of reducing penalties for personal use of cannabis. It submitted that the limits for personal use applicable in South Australia, which provides on-the-spot fines, were appropriate. The Foundation submitted that the Queensland reforms should go further than what it described as South Australia's 'partial decriminalisation' and abolish the recording of a criminal offence for all 'personal use' offences regardless of whether they were expiated or dealt with by a court.

The Foundation also supported the legalisation of the possession of "things" such as "bongs" or waterpipes which reduce the risks associated with the smoking of cannabis. In the Foundation's view, this reform would be consistent with harm minimisation policy.

The Women's Legal Service submission supported the "decriminalisation" of possession and cultivation of cannabis for personal use. The Legal Service was in favour of the adoption of the South Australian cannabis expiation notice scheme in Queensland. The Legal Service supported the promotion of health education and expressed the view that research into the potential harmfulness of the drug has been restricted by its illegality. Similar views were expressed by the Inala Legal Service.

The Alcohol and Drug Service submission supported the Australian Capital Territory expiation notice scheme, which "decriminalises" possession and cultivation of cannabis for personal use. The submission stated that the notion of recording a criminal conviction for use or cultivation of a small amount of cannabis is out of proportion

to the seriousness of the offence. The submission further argued that it is well acknowledged within the philosophy of harm minimisation (which is the philosophy of the NCADA) that excessive punitive measures to control drug use may be counter productive.

Public Attitudes to Cannabis Use

Public opinion surveys are arguably a more reliable indicator than submissions of public attitudes towards cannabis laws. The main benefit of such surveys is that they measure the views of a broad cross-section of the community, rather than reflecting only the views of those who are articulate and sufficiently motivated to prepare a written submission, or attend a public meeting. However, as discussed below the findings of these surveys need to be treated with some caution, as results can be very sensitive to factors such as how questions are worded, the design of the sample, and the methodology used.

The discussion paper summarised data from previous NCADA surveys and from a series of surveys undertaken by Roy Morgan and Associates during the 1980s. These data showed that a substantial, although diminishing, majority of the Australian community was of the view that the smoking of cannabis should remain illegal. The surveys indicated that opinion was much more evenly divided on the issue of whether possession of small amounts of cannabis should be a 'criminal offence' (Advisory Committee 1993, pp. 48–54).

Since the release of the discussion paper, the Commission has obtained additional public opinion data from three sources:

- a survey undertaken for the Commission by the Social Research Consultancy Unit of the University of Queensland (SRCU) in December 1993
- the 1993 NCADA *National Household Survey*
- a national telephone poll conducted by Irving Saulwick and Associates in March 1994 for Age Poll.

This section summarises and discusses the findings from these various studies.

The Commission's Survey

Most public opinion surveys relating to the legal regulation of cannabis have focused only on the broad issue of whether or not cannabis use should be legalised. However, such questions considerably over–simplify the debate. It is also important to know what those who reject legalisation regard as an appropriate sanction, because opposition to legalisation does not necessarily signify support for the law as it is.

In order to obtain this more detailed information, the Commission, in December 1993, issued a tender for an independent research organisation to undertake a Queensland–wide telephone survey of approximately 850 people. The SRCU was the successful tenderer.

The survey sample was drawn from respondents aged 18 years or over, and covered the main geographical regions of Queensland. Respondents to the survey were first asked: 'Should smoking marijuana remain illegal or be made legal?' If the person queried the meaning of the term 'legal', she or he was told 'like alcohol or tobacco'. Those respondents who said that smoking should remain illegal were then asked:

> If a person is caught smoking marijuana, should that person:
>
> - go to jail
> - go to court and get a fine
> - get an on–the–spot fine like a traffic ticket?

The same questions were asked in relation to the activity of growing a few plants of marijuana for personal use.

The breakdown of responses to these questions is given in Table 5.1. The table shows that close to half of those surveyed considered that smoking cannabis, and growing a few plants for personal use, should not be against the law. Of those who were opposed to legalisation, most considered that the offences should only attract an on–the–spot fine, like a traffic ticket, or a fine imposed by a court: only around one in 10 of those surveyed were in favour of imposing a prison term.

TABLE 5.1: PUBLIC ATTITUDES TO MINOR CANNABIS OFFENCES QUEENSLAND, DECEMBER 1993

Preferred Legal Sanction	Smoking Cannabis %	Cultivate few plants %
Make Legal	47.0	50.0
On-the-spot fine	27.0	16.0
Fined by court	17.0	24.0
Go to jail	9.0	10.0

Notes: 1. The total sample size was 845. The table excludes a small number of cases where the respondent gave 'don't know' as an answer, or did not respond.

2. Responses were weighted by the SRCU to adjust for over-sampling of remote areas.

The survey also asked respondents to indicate the importance which they attached to the issue of cannabis laws. Of those who said that cannabis smoking should remain illegal, 63 per cent indicated that the current laws in Queensland were an important issue to them. By contrast, of those who favoured legalisation, only 40 per cent described the issue as important. Similarly, those who favoured imprisonment as a sanction felt more strongly about the issue than those who regarded a fine as the appropriate sanction. The 1993 NCADA *National Household Survey* (see below) also produced data showing that 'those who oppose legalisation are firmer in their view than those who favour it' (McAllister 1993, p. 37).

Other Surveys

As indicated, since the release of the discussion paper, the Commission has also had access to the 1993 NCADA *National Household Survey* (described in Chapter Two) and a national telephone poll conducted by Irving Saulwick and Associates (Age Poll) in March 1994. These two surveys provide a useful point of comparison with the Commission's survey.

In the 1993 NCADA survey, respondents were asked: 'To what extent would you support or oppose the personal use of marijuana/cannabis being legal'. Respondents were allowed to answer on a five point scale, ranging from 'strongly support' through 'neither' to 'strongly oppose'. Only 23 per cent of Queenslanders in the survey said that they supported legalisation, whereas 61 per cent said that they were opposed to it, with the remaining 16 per cent declaring themselves to be undecided. This was a much lower proportion in favour of legalisation than shown by the Commission's survey, or previous NCADA surveys.

The results from the 1993 NCADA survey can also be contrasted with findings from a national telephone survey conducted in March of this year by Age Poll (*The Age*, 21 March 1994; Queensland data provided by Irving Saulwick and Associates, unpub.). This survey covered approximately 1,000 respondents aged 18 years or over, including 176 in Queensland. According to the survey, 53 per cent of the Queensland respondents 'disagreed' when asked whether they thought that people should be prosecuted for having small quantities of marijuana for personal use. This would appear to indicate majority support for legalisation. However, because of the wording of the question, the results are not strictly comparable with the other studies discussed here. In addition, the small size of the Queensland sample means that the estimate needs to be treated with some caution.

The differences between the Commission and Age Poll surveys, on one hand, and the 1993 NCADA survey on the other, may have been due to the following factors:

- The Commission's survey, the Age Poll survey and NCADA surveys prior to 1993 allowed only two basic options – agree or disagree. This meant that those who did not feel strongly on the issue were "forced" to choose one side or the other. By contrast, the 1993 NCADA survey allowed respondents to state 'neither' as an option. As indicated, 16 per cent of respondents selected this option.

- The NCADA survey relied on face–to–face interviews, whereas the Commission and Age Poll surveys were conducted over the telephone. There is some evidence to suggest that people may be more frank in answering sensitive questions over the telephone, because of the relative anonymity which this survey technique affords (de Leeuw 1992).

- The NCADA survey was conducted in March – April 1993, before the release of the discussion paper. By contrast, the Commission and Age Poll surveys were undertaken at a time when the issue of decriminalisation was being actively canvassed in the Queensland media by a range of individuals and organisations. It is possible that the increased salience of the issue may have encouraged more people to express some support for legalisation.

- The NCADA survey included respondents in the 14–18 years age group, whereas the Commission and Age Poll surveys were restricted to people aged 18 years or over. As respondents in this younger age bracket tend to be more conservative on the issue of legalisation (McAllister 1993, p. 38), this could have had a slight effect on the aggregate results obtained.

- The SRCU, which conducted the Commission's survey, reported some reluctance from respondents about participating in the survey particularly, it seems, on the part of people who may have been opposed to changing the present law. It is possible that this factor may have resulted in the survey over–estimating the extent of public support for legalisation. However, there is no evidence to indicate that the level of resistance encountered would have been any different to that encountered by the Age Poll or NCADA surveys.

Summary

It is not possible to provide a definitive measure of public attitudes towards cannabis laws in Queensland. Much depends on the wording of the questions and the sampling methodology employed. It is possible that the Age Poll survey, and the Commission's survey, have overstated the extent of public support for the legalisation of cannabis use. On the other hand, the 1993 NCADA survey may have understated the extent of support.

To the extent that firm conclusions can be drawn from recent public opinion data, they are as follows:

- The majority of the adult Queensland population is probably still opposed to the legalisation of cannabis use and/or cultivation, but there is considerable support for relaxing the present law.

- Only a very small proportion of the total population supports the use of imprisonment as a sanction for people convicted of minor cannabis-related offences. Most of those who are opposed to legalisation consider that an "on-the-spot", .or court-imposed, fine is a sufficient penalty.

- For the most part, those who are opposed to relaxing the present law feel more strongly about the cannabis issue than those who are in favour of legalisation, or liberalisation of the law.

CONCLUSION

The purpose of this chapter has been to provide an overview of community views about current cannabis laws in Queensland, as these views have been expressed in:

- submissions received by the Commission in response to the discussion paper

- recent public opinion surveys.

In reviewing this material, the Commission has not intended to suggest that difficult issues of public and legal policy can – or should – be resolved simply by reference to prevailing public opinion and "what the polls say". As emphasised in Chapter One, any proposal to reform the laws relating to cannabis must be based on rational, well-informed argument and a careful analysis of the likely consequences of any changes. Nonetheless it is important, as part of the exercise of reviewing these laws, to take some account of prevailing community views and concerns. There is little value in proposing changes to the law for which there is no community support. Similarly, there is little point in recommending the retention of laws which lack support – as has been shown in the past, laws which are out of step with community values and expectations are rarely effective.

The discussion in this chapter has shown that there is considerable divergence of opinion within the community about the appropriateness of the present laws. A large majority of the submissions received by the Commission argued in favour of some form of legalisation of cannabis, but this may have been at least partly due to effective campaigning by pro-legalisation groups. Public opinion surveys provide a different picture. Depending on the phrasing of the question, and the methodology employed, recent surveys show that somewhere between one quarter and one half of adult Queenslanders are in favour of legalisation. However, for the most part, opponents of legalisation feel more strongly about the issue than do supporters of this option.

There is still considerable resistance in the community to proposals to legalise cannabis, but there seems to be a fairly widespread acceptance that possession and/or cultivation of cannabis for personal use only should be regarded as a relatively minor offence. Hence, one of the most significant findings to emerge from the Commission's survey is that most of those respondents who were opposed to legalisation considered an "on-the-spot" or court-imposed fine to be a sufficient penalty for such offences. Only a small minority supported imprisonment as an option. This is a clear indication that the notionally severe penalties contained in the *Drugs Misuse Act* are out of step with prevailing community views. This factor needs to be considered in determining whether the existing offence and penalty structure should be retained. This issue provides the focus of the next chapter.

CHAPTER SIX

LEGAL OPTIONS FOR DEALING WITH CANNABIS

INTRODUCTION

As discussed in the preceding chapter, the submissions which were received by the Commission in response to the discussion paper focused on three main options:

- legalisation
- retention of existing laws
- introduction of an expiation notice scheme.

This chapter critically assesses each of these options, as well as briefly reviewing the Victorian model, which provides a statutory sentencing scheme for first offenders. The key conclusions of the chapter are that:

- there is an overwhelming case for modifying the existing offence and penalty structure for dealing with minor cannabis offences
- an expiation notice scheme should not be adopted in Queensland
- the Victorian model provides a useful starting point for developing a statutory scheme for Queensland.

The Commission's preferred approach is the subject of the final chapter of the report.

LEGALISATION

When considering the legal options available for dealing with an illicit drug, the threshold issue is whether or not to legalise the substance. If the decision is not to legalise, the issue for determination is then what form of legal regime to adopt.

As outlined in the preceding chapter, considerable support for the legalisation of cannabis was expressed during the period of public consultation and in written submissions made to the Commission. This option was favoured by organisations such as the QCCL and HEMP. Similarly, legalisation is an approach commonly proposed in literature on the subject of cannabis, although no comparable jurisdiction in the world has legalised cannabis.

As discussed in Chapter Four, legalisation would not be permissible under the various international treaties to which Australia is a party. However, for the sake of completeness it is important to give some consideration to this option, especially as it was proposed in many of the submissions. The Commission also wishes to make clear that its concerns about the legalisation option do not relate solely to the legal impracticality of such an approach.

The term "legalisation", as used in the following discussion, means that the substance is no longer prohibited by law and that no criminal sanctions attach to its possession. When using this term, it is important not to equate legalisation with lack of regulation. An example of the model of legalisation envisaged in this discussion, and in the pro-legalisation submissions, is that associated with alcohol, where legislation regulates production and sale of the substance while creating criminal offences for breaches of the legislation.

Arguments in favour of legalisation are based on a variety of grounds. One of the most common is the philosophical argument such as that advanced by the QCCL (see Chapter Five, p. 63). This view asserts that in a free society all people should have the right to engage in any activity which they desire, including self-injurious activity, provided that the activity does not harm others.

There is also a utilitarian argument in favour of legalisation. From this perspective, all social policy decisions should be made on the basis of an objective assessment of the benefits and disadvantages of a certain policy or course of action, with the option selected being that which will result in the greatest good or happiness for the society as a whole. This philosophy is based on considerations of the collective interests of the community rather than on the rights or interests of individuals within the community. The utilitarian argument for legalisation emphasises that there are very substantial economic and social costs involved in maintaining the prohibition on cannabis. These include:

- law enforcement costs
- taxation income foregone by governments
- negative impacts on people who have been subject to prosecution

- encouragement of criminal activity
- corruptive pressures on police and other public bodies
- economic distortions caused by the operation of large illegal markets (Advisory Committee 1993, pp. 55–56).

In the view of the proponents of legalisation, these costs are greater than any health or social benefits of prohibition.

Some proponents of legalisation also point to other financial arguments in favour of legalisation, such as the income–raising potential of a regulated cannabis industry and of new industries based on other potential uses of the cannabis plant and its by–products.

In addition, many supporters of this option argue that, compared with the negative health effects of tobacco and alcohol, cannabis is a relatively harmless drug – hence, as a matter of logic, legal prohibition and criminal sanctions for use cannot be justified.

The Commission recognises that the substantial costs involved in enforcing legal prohibitions can, by definition, only be eliminated by legalisation. As detailed in Appendix 2, the direct cost of prosecuting persons arrested for possession of cannabis, or drug paraphernalia, as the principal offence, is in the vicinity of $2,595,000, not including detection costs. The policing of cultivation offences and trafficking–related activities costs millions more (Advisory Committee 1993, pp. 94–96). It also must be acknowledged that attempts to enforce cannabis prohibitions in the face of rising demand have contributed to a growth in large–scale illegal markets and associated criminal activity. Vigorous law enforcement can control these markets to some extent, but, realistically, only legalisation can remove the conditions which give rise to such markets.

Although legalisation may have some benefits, the Commission rejects this option for the following reasons:

- Although the available research suggests that the effects of cannabis may not be significantly more harmful than some licit drugs (see Chapter Two), this is not sufficient reason for adding to the list of available drugs, especially given the national health costs associated with licit drugs.

- Even if a tightly regulated form of legalisation were adopted, the legalisation of cannabis, like the legalisation of tobacco and alcohol, would probably lead to an increase in the use of cannabis in the community, due to:

  - the increased availability of, and ease of access to, cannabis
  - the absence of criminal sanctions, which could encourage people who might otherwise be concerned about being apprehended to try and/or keep using the drug
  - the possible development of the commercial promotion of cannabis (although this possibly could be avoided under a tightly regulated scheme)
  - members of the public interpreting legalisation of cannabis as tacit approval of its use.

  The possibility that usage levels would increase is of concern because of:

  - continuing scientific uncertainty regarding the long-term health effects of cannabis use
  - the effects that short-term impairment caused by cannabis intoxication could have on road and workplace safety, coupled with the lack of a suitable technology for measuring cannabis-related impairment.

- As noted above, Australia's obligations under the Articles of various international drug conventions preclude the legalisation of cannabis (see Chapter Four). For the legalisation option to be implemented, it would first be necessary for Australia to withdraw from these conventions, or seek to have them modified. Such action would impact upon decisions by other Australian States about their legislative schemes based on the requirements of the conventions. Further, the withdrawal from international conventions is a radical step and could negatively impact upon Australia's international relations and standing in the international community.

The Commission is committed to the view that any legislative scheme recommended for dealing with cannabis offenders must comply with Australia's obligations under international conventions. It is satisfied that there are other, more appropriate, ways of dealing with Queensland's drug laws as they apply to cannabis that do not involve reaching Australia's treaty obligations.

RETENTION OF THE STATUS QUO

Given that legalisation is neither legally feasible nor desirable, one approach to the cannabis issue might simply be to leave the law as it is, on the ground that it is working well enough in practice. As discussed in the preceding chapter, retention of the status quo was supported in a number of the submissions which the Commission received in response to the discussion paper. Proponents of the status quo argue that symbolically high maximum penalties send a clear message to those in the community who are tempted to engage in drug use that such behaviour is a serious breach of our society's standards for acceptable behaviour. Advocates of this approach also believe in the deterrent value of notionally high maximum penalties.

Severity of Penalties and Sentencing Inconsistencies

As stated in Chapter Three, Queensland has, by far, the most severe statutory penalties for personal use of cannabis of any jurisdiction in Australia (see p. 34 and Appendix 1). The regime relies heavily upon the symbolic effect of high penalties as a deterrent. However, in practice, as also detailed in Chapter Three, the statutory penalties provided under the legislation bear little or no relationship to the sentences being imposed by the courts in respect of minor cannabis-related offences.

Proponents of the current scheme defend the wide sentencing discretion which the courts exercise, arguing that this has permitted the courts to adapt to changes in community attitudes towards cannabis use and to adjust the sentences imposed accordingly. However, this wide discretion creates the potential for substantial inconsistencies in the sentences being imposed upon people convicted of minor cannabis-related offences.

More importantly, in the Commission's view, there is no principle of sentencing law or practice which can justify the current scheme of penalties under the *Drugs Misuse Act* for minor cannabis-related offences. The applicable statutory maximum penalties of 15 years imprisonment for these offences bear no relation whatsoever to:

- The harm caused by the behaviour constituting the offences. Theoretically, a person who possesses a small amount of cannabis for personal use is exposed to a greater penalty than a person convicted of the following *Criminal Code* offences:
  - unlawful carnal knowledge (s. 215)
  - conspiracy to commit murder (s. 309)

- administering poison with intent to harm another (s. 322)
- dangerous driving causing death or grievous bodily harm with a blood alcohol concentration > 0.15 (s. 328A)
- kidnapping for ransom (s. 354A)
- extortion (s. 415)
- housebreaking (s. 419).

- The public's views regarding the seriousness of harm associated with this behaviour. As noted in the previous chapter, only a very small minority of Queenslanders consider imprisonment an appropriate sanction for minor cannabis-related offences.

- The reality of the sentences being imposed by the courts. As discussed in Chapter Three, terms of imprisonment are virtually never imposed for minor cannabis-related offences and in around 50 per cent of cases no conviction is recorded.

The Issue of Deterrence

Some supporters of the status quo argue that there is benefit in retaining high statutory penalties even if they are not applied in practice, because they perform a useful deterrent role. Such penalties, it is said, send a clear message to potential and actual cannabis users in the community that this behaviour is regarded as a serious breach of our society's standards for acceptable behaviour. It is also argued that people who lack direct information about the operation of the law will take these penalties seriously and may be deterred from using cannabis as a consequence. However, there are several problems with this approach:

- If this logic were to be applied consistently, all criminal offences – even those of a very minor nature – would be assigned very high statutory penalties. This would render these penalties useless as a guide to the relative seriousness with which the community regards different offences, and would make sentencing purely a matter for judicial discretion.

- While it is reasonable to assume that criminal sanctions have some deterrent effect, it is doubtful whether a nominally severe statutory scheme has a greater deterrent effect than a more realistic scheme. The threat of apparently severe penalties may have an initial deterrent effect in some cases, but in the

longer term it is highly probable that those who are most at risk of apprehension for offences will become aware of the sentences which are imposed in practice.

- To retain severe statutory penalties, but then acquiesce in courts imposing very lenient sentences in practice, can only promote cynicism and a loss of respect within the community for the law and those agencies responsible for its enforcement and administration. It is a basic principle of our legal system – and essential to its proper operation – that the community, and potential offenders, be informed about the law and the penalties which they can realistically expect to be imposed if they break the law. If the penalties on the statute books bear no relationship to the penalties imposed in practice, the system is failing in this duty to the community.

The most obvious way to reduce the gap between the penalties set down in legislation, and those imposed in practice, is to change the legislation to align penalties more closely with practice. However, it might be argued by some that it would be better to increase the sentences being imposed by the courts to bring them more into line with the statutory scheme. There were few submissions which actively canvassed this proposal. However, this option needs to be briefly considered, especially as it is possible that some of those who argued for retention of the status quo were unaware that there was such a large gap between the maximum statutory penalties set down in the legislation and the sentences actually being imposed by the courts.

There is a dearth of research testing the effectiveness of various enforcement regimes in Australia. Although it seems reasonable to assume that the consistent imposition by the courts of significantly higher penalties would have some additional deterrent value, it is important not to over–state this effect. It is a well established finding of deterrence research that certainty of detection is, generally speaking, a much more effective deterrent than severity of punishment. If people do not think they will get caught, they will have little to fear from higher penalties. This is an important consideration in the case of cannabis use, because the police simply do not have the resources to pursue a policy of vigorous enforcement of the law in this area. Many potential cannabis users do not rate the risk of detection very highly, and hence are unlikely to take much notice of any increase in penalties. For example, a recent survey of 1,028 Year 10 and 11 schoolchildren in New South Wales asked respondents: 'If you smoked cannabis tonight, how likely is it that you would get caught?' Only 11.3 per cent of the sample regarded the risk as 'fairly' or 'very' likely (unpub. data provided by NSW Health Department, Drug and Alcohol Directorate).

In addition, deterrence research indicates that, provided that the risk of detection remains constant, increasing the severity of sanctions beyond a certain base level will

have little impact on behaviour until a very high threshold of severity is reached (Tittle, 1980). Moreover, even small increases in deterrence are very costly to bring about. For instance, consider what would happen if a policy of mandatory imprisonment of cannabis offenders was implemented. In 1991/92 some 5,700 people appeared in Queensland Magistrates Courts charged with possession of cannabis as a principal offence. In around 90 per cent of these cases the defendant was found guilty. Even if the imposition of mandatory imprisonment led to cannabis arrests being reduced by half because of the greater deterrent effect (a highly unlikely scenario), the prison system would not be able to cope, as the total number of people admitted to prison in Queensland each year would increase by about 66 per cent.

These practical considerations aside, the use of imprisonment in such a way would be contrary to the principle that imprisonment should only be imposed as a last resort. This principle has been incorporated into the *Penalties and Sentences Act 1992* which is required to be used by sentencing authorities as a guide when sentencing offenders.

When considering the principle of deterrence and its role in sentencing and criminal justice policy, it is also important to acknowledge the place of proportionality, a sentencing principle which provides a counter-balance to the principle of deterrence. Proportionality requires that the punishment imposed for the commission of a criminal offence be proportional to the harm caused by the behaviour which constituted the offence. Accordingly, at a certain point in the deterrence equation, the principle of proportionality intervenes to temper its operation and limit sentences imposed, by requiring the punishment to bear a proportional relationship to the seriousness of the offence. Based on this principle, it is inappropriate that particularly severe penalties should be imposed upon small-scale cannabis offenders in order to deter offending, because such punishments are out of all proportion to the harm caused by these offences.

Finally, if a more severe sentencing approach was adopted in respect of cannabis offenders, it would result in cannabis offenders being treated differently from those charged with other criminal offences. Such an approach would be inconsistent with the principles of sentencing adopted by the *Penalties and Sentences Act 1992,* which were intended to achieve greater consistency in sentencing across all offences.

In short, the option of significantly increasing court-imposed penalties for minor cannabis-related offences would be extremely costly and would most likely result in only a small reduction in cannabis use levels. In the Commission's view, there are many more pressing demands upon the limited resources of the criminal justice system. Further, such an approach would offend against well-established sentencing principles which were recently reaffirmed by the Queensland Government in the *Penalties and Sentences Act 1992.*

Summary

The present legislative scheme in Queensland creates a wide gap between the penalties set down in legislation and the penalties actually imposed by courts. This approach:

- is indefensible in principle
- is of questionable deterrent value
- creates the potential for inconsistency in sentencing, and
- contributes to loss of respect for the law by the community at large.

On the basis of the foregoing discussion the Commission considers that the continuation of the current legal scheme cannot be justified.

AN EXPIATION NOTICE SCHEME?

Of those submissions which argued for liberalisation of Queensland's cannabis laws, almost all supported the adoption of an expiation notice scheme modelled on the South Australian and/or Australian Capital Territory schemes (see Chapter Three). In part, this emphasis may have occurred because the discussion paper identified such schemes as the main alternative to retaining or strengthening the present law. These schemes also attract considerable interest because they are often characterised as a form of "decriminalisation" or "partial decriminalisation", although, as pointed out in Chapter Four, such labels are misnomers.

An expiation notice scheme has operated in South Australia since April 1987 and in the Australian Capital Territory since 1990. The key features of the South Australian scheme are that:

- persons detected committing minor cannabis offences are given an "expiation notice", rather than being arrested and charged
- the expiation notice is akin to an "on–the–spot" fine – if the recipient pays the fine within the specified time, no further action is taken and no conviction is recorded
- if the notice is not expiated, the person must go to court to be dealt with in the normal manner.

The scheme in the Australian Capital Territory has the same features, except that police officers have a discretion whether to issue an expiation notice or to proceed by the usual arrest process, whereas in South Australia the notice is issued as a matter of course.

The main arguments advanced in favour of implementing an expiation notice scheme in Queensland are that such a scheme would:

- make a statement on behalf of the community that drug use is not acceptable behaviour, while recognising that small-scale cannabis use and cultivation are minor offences that do not require court appearances and the recording of criminal convictions

- generate substantial savings by reducing the number of police arrests and diverting cases out of the court system, thereby freeing more resources for the investigation and prosecution of more serious crime.

The Commission's research has shown that the introduction of an expiation notice scheme in Queensland would certainly generate some savings for the criminal justice system. As detailed in Appendix 2, if possession of cannabis offences could be expiated, the likely savings for the criminal justice system would be in the vicinity of $735,000 state-wide per annum. In the case of the offence of possession of drug paraphernalia, the amount saved would be around $235,000. However, these figures represent only a small fraction of the total cost of running the Police Service and the courts. Moreover, in practice, it would be difficult to pool fragmented savings in police and court time, to enable their re-allocation to other parts of the criminal justice system.

The scope to achieve savings from the introduction of an expiation notice scheme is limited by two factors. First, it is important to be aware that many people who receive notices will not expiate (or pay) them, and so will still be required to attend court as at present. In South Australia, only about 45 per cent of notices are expiated.[28] In part, this low expiation rate occurs because the period within which the fine must be paid cannot be extended; nor is there a facility to convert the fine into a fine/option order, to enable the recipient to do community service work instead of paying the fine. It would be possible to design a scheme for Queensland which allowed recipients of expiation notices to settle the fine by use of more flexible

28 Information obtained from South Australian Police Department statistics.

options such as time-payment, part payment and fine option orders, without the requirement that the person attend before a court. However, even with these modifications to the scheme, it may be difficult to achieve an expiation rate in excess of 60 per cent.

Second, many of the costs of processing cannabis offenders are incurred when a person pleads not guilty and a trial is required. In 1991/92 there were around 680 Magistrates Court trials where the person was charged with possession of cannabis as the principal offence. These trials cost around $1,068,000, or 55 per cent of the total cost of prosecuting cannabis possession cases. It seems likely that many of those who currently plead not guilty would still choose to go to trial if an expiation notice system was introduced, given that in such cases there is often a basis for challenging the charge.

It also should be noted that many of the savings associated with an expiation notice scheme could be achieved without introducing such a scheme in Queensland. For instance, in Volume III of its Report on Police Powers, the Commission recommended the introduction of Field Court Attendance Notices (FCANs) as an alternative to arrest. These notices, which would be issued "on the spot", would require a person to attend court at a specified time in much the same way as if the person had been summonsed, but without the associated administrative inefficiencies. FCANs should require no more police time or paperwork than is likely to be involved in issuing an expiation notice, and could be used in similar circumstances. Assuming that FCANs were routinely issued in minor cannabis possession and paraphernalia cases, the savings would be around $303,000. Prosecution costs could also be reduced by applying sections 142 and 142A of the *Justices Act 1886* to minor cannabis-related offences. Those provisions allow a Magistrates Court to determine a matter in the absence of the defendant, where certain conditions have been satisfied. This procedure is often used in respect of traffic infringements, where provision is made for the defendant to forward a written plea of guilty to the charge as an alternative to appearing in court. It would be possible to achieve savings similar to those predicted for an expiation notice scheme if a similar procedure were to be used in relation to minor cannabis-related offences in conjunction with FCANs. However, the Commission does not recommend this approach.

Issues of cost savings aside, there would be several problems associated with introducing an expiation notice scheme to Queensland. In particular:

- The penalties in the existing schemes are arguably too low and defined quantities too high, especially where cultivation is concerned. For example, the South Australian scheme provides for fines ranging from $10 to $150 for a variety of personal possession and cultivation offences. The fine for

possession of 25 grams or a "street ounce" of cannabis is $50. This fine is considerably less than the value of that quantity of cannabis, taking $250 per ounce being a conservative estimate (Advisory Committee 1993, p. 97). Further, the legislation provides a standard fine of $150 for the cultivation of up to 10 plants, irrespective of the maturity or size of the plants. A quantity of 10 plants could constitute anything from non-producing seedlings through to several kilograms of usable matter. In principle, there is no reason why an expiation notice scheme could not be designed to provide for more severe penalties, but it is likely that the higher the penalties which are set, the lower the subsequent expiation rate, mainly because fewer people would be able to pay. A complicating factor here is that a "flat-rate" fine takes no account of variations in defendants' capacity to pay.

- The South Australian scheme relies on the threat of a criminal conviction as an inducement to people to expiate, and, hence, disadvantages people who exercise their right to contest a matter. Where a person issued with an expiation notice pays the fine the matter is finalised and no conviction is recorded against the person. The disposal of the matter in those circumstances is via an administrative process rather than an adjudicative one, and the payment of the fine is not taken to be an admission of guilt. If the person does not pay the fine, or wishes to contest the notice, the matter proceeds to court for determination like any other criminal prosecution. Where the court finds the person guilty of the offence alleged in the expiation notice, a conviction is likely to be recorded.

- Unpublished figures from the South Australian Police Department suggest that for the period 1989/90 to 1992/93 there has been a 50 per cent increase in the number of expiation notices issued. These figures could partly reflect an increase in cannabis use in that state (see Appendix 3). However, the rapid increase in the number of notices being issued could also indicate that the introduction of the cannabis expiation notice scheme has had a net-widening effect in South Australia. What this means is that the scheme may have resulted in more people than would have been charged with minor cannabis offences under the previous system being issued with expiation notices. This may be because the police are more ready to issue expiation notices because they involve a less formal and time-consuming procedure than the regime for prosecuting offenders by arrest or summons. Further, the police may be issuing expiation notices at a lower evidentiary threshold than under the old system, because it is less likely that the matter will be challenged in court. The police may also be more prepared to issue expiation notices because they are a less severe form of sanction.

- The possible impact of the introduction of an expiation notice scheme on use levels needs to be considered. The legal and enforcement regime is only one of a range of complex factors which can influence drug use levels within a society. However, as discussed in Appendix 3, without further, more detailed, research it is not possible to discount the possibility that the cannabis expiation notice scheme has contributed to some increase in the rates of cannabis use in South Australia.

- A major limitation of expiation notice schemes is that they do not contain a hierarchy of penalties for repeat offenders. Hence, for those who can afford to pay, the expiation notice is little more than an informal tax. Under most criminal law sentencing schemes, the penalty imposed upon repeat offenders is generally more severe than those who are convicted for the first time. This approach is based partly on the principle that people who repeat offences deserve to be punished more severely because they are more culpable. The threat of more severe penalties is also intended to deter people from further offending, although there is no research evidence that this actually occurs. This sentencing principle is not incorporated into the expiation notice scheme, thereby permitting people to disregard the law and re-offend with relative impunity if they are in a financial position to pay the fines.

  The Commission was not prepared to recommend the adoption of a cannabis expiation notice scheme in Queensland without some provision for an ascending scale of penalties for repeat offenders which recognises the greater degree of culpability involved. The Commission closely examined the possibility of introducing such a scheme, but rejected this approach because of the difficulties for officers in the field of correctly identifying repeat offenders (especially those who had never been arrested or finger-printed) and accurately recording the number of notices previously issued to a particular individual.

As discussed in Chapter Four, some submissions also suggested that a South Australian-style scheme would be in conflict with Australia's treaty obligations. The Commission is not necessarily persuaded as to the correctness of this view, but there is no need to resolve the issue here. In the Commission's view, even if an expiation notice scheme can be shown to be in compliance with the international conventions, the difficulties identified above are sufficient grounds for rejecting such a scheme for Queensland.

THE VICTORIAN MODEL – BOND WITHOUT CONVICTION FOR FIRST OFFENDERS

Victorian drug legislation[29] has established a special sentencing scheme for first offenders. As detailed in Chapter Three, the scheme applies to people:

- charged with certain minor cannabis offences, defined in the provision,
- who have no previous drug convictions in Victoria or elsewhere and who have not previously been dealt with under the scheme.

In Queensland, the *Penalties and Sentences Act 1992* has general application. The Act establishes a scheme for dealing with young and first offenders which in many cases results in non–conviction outcomes similar to those achieved in Victoria. The legislation imposes obligations upon sentencers to consider a number of issues when determining whether or not to record a conviction, including the impact on the offender of the recording of a conviction. The Queensland Act provides for offenders to enter into a recognisance without conviction (s. 19, *Penalties and Sentences Act 1992*). This provision is similar to the bond provision in the Victorian drug legislation. In practice, however, there is little use of bonds in Queensland, with the preferred penalty for first offenders being a fine without recording a conviction. The Victorian *Sentencing Act 1991* contains almost identical provisions to the *Penalties and Sentences Act 1992*. However, what makes the Victorian scheme different from Queensland's is that, in addition to the provisions of the *Sentencing Act 1991* (Vic.), the *Drugs Poisons and Controlled Substances Act 1981* (Vic.) mandates the use of a bond in certain circumstances. The Victorian scheme, therefore, goes a step further than the Queensland sentencing provisions in relation to first–time minor cannabis offenders, by providing for a more certain and consistent outcome.

This option could be implemented in Queensland by amending the *Drugs Misuse Act,* or any other statutory provisions which contain minor cannabis–related offences, to provide for the imposition of a bond without conviction upon people dealt with for these offences. There would be no need to amend the *Penalties and Sentences Act 1992*.

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29 Section 76 *Drugs Poisons & Controlled Substances Act 1981*

The Victorian approach enables the law to make allowances for behaviour which results in one–off minor criminal offences so that what may be a single incident of youthful irresponsibility or out–of–character behaviour will not result in the long–term stigmatisation of a criminal conviction.

The main advantages of such a scheme are that:

- it allows more substantial penalties, including criminal convictions, to be imposed on second and subsequent offenders

- the bond given by the court constitutes a formal denunciation on behalf of the community of drug use as unacceptable behaviour and is also a fairly significant sanction

- it provides a more consistent approach and more certain sentencing outcomes when dealing with first offenders.

In contrast to the South Australian and the Australian Capital Territory schemes, there is no reduction in police and court workloads or criminal justice system costs as no cases are diverted out of the current prosecution system.

Introduction of such a scheme in Queensland would, at one level, require relatively little change to current sentencing practice as it is routine not to record a conviction where the person before the court is a first offender charged with a minor drug offence. However, a requirement to impose a bond would be a significant change. In the Commission's view, while greater consistency in the treatment of first offenders is highly desirable, magistrates would need to retain some discretion to take account of the circumstances of individual cases. Imposition of a bond – which is a relatively significant sanction – may not be the most suitable response in every case. It would be sufficient if, as is the case under present law, this remains an *option* for magistrates to use where appropriate. The Victorian scheme is also somewhat restrictive in that it only applies to first time offenders. The benefits of the scheme do not extend to people who offend only infrequently, and who perhaps should have their period of non–offending taken into account when being sentenced, particularly as to whether a conviction should be recorded.

CONCLUSION

This chapter has outlined a variety of legal options for dealing with minor cannabis–related offences. It has defined the features of each of the options, where possible has provided information on the particular scheme in operation and has critically reviewed each option, listing its advantages and disadvantages.

The Commission is of the view that none of the three main options – legalisation, retention of the status quo or cannabis expiation notice schemes – are appropriate for adoption in Queensland. The Commission does, however, consider some features of the Victorian scheme suitable for the Queensland context.

In particular, the review of the status quo and the alternative options contained in this chapter has pointed to the need for a scheme which:

- creates minor cannabis–related offences
- reduces the maximum penalties applicable to minor cannabis–related offences
- provides an appropriate scheme for dealing with first and infrequent offenders.

The next chapter will outline the Commission's recommended approach for dealing with minor cannabis–related offences. It will define the features of the recommended scheme and explain the reasons for choosing the particular features. The discussion will take account of the advantages and deficiencies of the current system in Queensland and of the alternative legal options reviewed in this chapter.

CHAPTER SEVEN

RECOMMENDED APPROACH

INTRODUCTION

Queensland's drug laws, as they relate to minor cannabis offences, cannot be justified in principle (for the reasons outlined in Chapter Six) and are out–of–step with established community values and the penalties being imposed by the courts. However, as discussed in the preceding chapter, the most commonly proposed alternative – an expiation notice scheme – also has a number of serious deficiencies.

This chapter outlines a set of recommendations which, in the Commission's view, incorporate the best features of approaches in other jurisdictions while avoiding the problems associated with an expiation notice scheme. Broadly speaking, it is proposed that:

- drug legislation define separate offences of possession and cultivation of lesser quantities of cannabis, as opposed to the current scheme in which there is one offence classification covering all cases from the smallest measurable quantity up to 500 grams of cannabis or 100 cannabis plants

- the lowest level cannabis possession and cultivation offences be reduced to the status of simple offences, with commensurately adjusted maximum statutory penalties

- legislation specifically provide that, where a person is found guilty of a simple cannabis offence involving possession or cultivation of a specified small quantity of cannabis, a conviction not be recorded where:

  - the offender has not been found guilty of a similar offence within the previous three years; and

  - the offender has not previously been found guilty of any other drug offence; and

  - there are no special circumstances which would justify a court not applying this provision

- the offence of possession of a thing for use, or that has been used, in connexion with the administration, consumption or smoking of cannabis (i.e. cannabis paraphernalia) be abolished

- the powers contained in the *Drugs Misuse Act* be amended so that the more intrusive powers are not available in respect of the investigation of simple cannabis offences.

It is also proposed that the current national and state health strategies to educate the public, and in particular the youth of the nation, about the health and social costs of cannabis use should continue to receive government support, with a greater emphasis on the provision of drug education programs in schools.

The discussion which follows sets out in detail the rationale for each of these recommendations.

THE NEED FOR SIMPLE OFFENCES

The quantities of cannabis specified in the Third Schedule of the *Drugs Misuse Act* do not distinguish, for the purposes of the penalty to which an offender is liable, between possession or cultivation of a small quantity of cannabis for personal consumption, and possession or cultivation of 500 grams of cannabis or 100 plants. The first increase in the hierarchy of offence seriousness occurs only when the quantity of cannabis exceeds 500 grams or 100 plants.

There are four major problems with the present approach:

- Possession or cultivation of up to 500 grams of cannabis or 100 cannabis plants potentially includes a wide range of circumstances from possession for personal use to trafficking in the drug. These quantities are between five and 20 times higher than the limit for the lowest level cannabis possession offences in other Australian jurisdictions (see Appendix 1).

- The statutory maximum penalty, which is presumably set to deal with cases where up to 500 grams of cannabis or 100 plants may be involved, is of no applicability to the minor cannabis-related offences which constitute the great bulk of drug-related matters coming before the courts. For instance, as noted in Chapter Three, the usual penalty imposed for possession of cannabis is a fine, with no conviction being recorded. The average fine imposed for possession of a drug in the Brisbane Magistrates Court for the period July-December 1993 was $321, with the median being $300.

- The present scheme is not consistent with the new two-tiered approach of international conventions which distinguish between drug offences committed for the purposes of 'personal consumption', and 'trafficking' offences. The most recent United Nations drug convention (the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*) makes a distinction between offenders involved in drug trafficking and production [Article 3, para. 1.] and those who possess, purchase or cultivate narcotic drugs or psychotropic substances for 'personal consumption' [Article 3, para. 2.]. In the former case signatory nations are obliged to introduce penalties which reflect the 'grave nature of these offences' [Article 3, para. 4.(a)]. By contrast, in the latter case, nations that are party to the Convention can provide treatment, education, after-care, rehabilitation and social integration as alternatives to conviction or punishment [Article 3, para. 4. (c) and (d)].

- At present, the vast majority of minor cannabis-related offences are dealt with in the summary jurisdiction. However, all drug offences are indictable offences, and are dealt with summarily only at the discretion of the police, with the magistrate having an overriding discretion as to whether or not to deal with the matter. Further, a conviction of an indictable offence under the *Drugs Misuse Act*, albeit in summary proceedings, results in the offender being convicted of an indictable, rather than a simple, offence.

In the Commission's view, many of the problems with the existing approach could be overcome by creating simple offences for the possession or cultivation of smaller quantities of cannabis. These offences would be accompanied by commensurately adjusted maximum statutory penalties. The main advantages of creating such offences are as follows:

- The classification of minor cannabis-related offences as simple offences would more accurately reflect the seriousness with which the community views these offences.

- Reduced statutory penalties would more accurately reflect the reality of current sentencing trends. The approach is therefore more "rational" and logical.

- Prosecutions of minor cannabis-related offences would continue to be kept out of the higher courts. As indicated, this is not a significant problem under the present law but could become one if the recommendations of the CCRC with respect to the right of election for trial of defendants is adopted.[30]

- The approach does not require any significant change to current sentencing practices in relation to possession and cultivation offences, and so should not diminish the deterrent effect of the law.

It is conceded that implementation of this option, by itself, would not reduce police and court workloads, or criminal justice system costs. However, on the basis of the analysis presented in the preceding chapter, it is doubtful that any reform short of legalisation of cannabis is capable of generating significant savings. To the extent that savings are possible, they can to some extent be achieved by other means, such as the use of Field Court Attendance Notices (see Chapter Six).

7.1 Recommendation – Creation of Simple Offences

The Commission recommends that:

- **legislation define separate offences of possession and cultivation of small quantities of cannabis (see Recommendations 7.2 and 7.3)**

- **the lowest level cannabis possession and cultivation offences be reduced to the status of simple offences, with commensurately adjusted maximum statutory penalties (see Recommendations 7.2 and 7.3).**

30 See Chapter Three, p. 32 for a discussion of this potential problem.

PENALTIES AND QUANTITIES

In proposing the creation of new simple offences to deal with minor cannabis-related offences, it is necessary also to consider:

- the quantities of cannabis to which these offences should apply
- the maximum statutory penalties which should apply for these offences.

The Commission's recommendations in relation to these matters are discussed in detail below. At the outset, it should be noted that it is difficult to set penalty levels precisely, especially given that the penalties for other offences under the *Drugs Misuse Act* have not been reviewed. The monetary penalties and terms of imprisonment recommended below have not been calculated according to systematically applied criteria – they are intended to be suggestive only. The key feature of the recommended approach is the *structure* of the scheme.

7.2 Recommendation – Scope of Simple Possession Offence

In relation to cannabis possession, the Commission proposes that:

> **The possession of a quantity of cannabis not exceeding 100 grams or of cannabis resin not exceeding 20 grams shall be a simple offence. The maximum penalty shall be six months imprisonment, and, in addition to or instead of imprisonment, a fine not exceeding 25 penalty units (i.e. $1,500).**

Rationale

The quantities of 100 grams of cannabis and 20 grams of cannabis resin have been proposed by the Commission on the following grounds:

- quantities of cannabis and cannabis resin up to these amounts are within the range of the amounts defined in comparable possession offences in other jurisdictions
- the Magistrates Courts routinely deal with cannabis possession cases involving this quantity of cannabis, or even larger amounts.

The penalty of six months imprisonment is recommended on the basis that at the present time under the *Drugs Misuse Act* the maximum penalty which can be imposed in the summary jurisdiction is two years imprisonment and/or a fine of $6,000[31] for possession of a quantity of cannabis up to 500 grams. It seems appropriate that the maximum penalty which can be imposed should be reduced in proportion to the reduction in the maximum quantity of the drug specified in the offence. The same rationale applies in respect of the recommended maximum fine. The Commission's research (Chapter Three, p. 44) indicates that, at the present time, fines for possession of drugs in the Magistrates Court, which could include up to 500 grams of cannabis, or drugs other than cannabis, range from $100 to $1,500. In a recent six month period at the Brisbane Magistrates Court, the maximum term of imprisonment imposed in any drug possession case was nine months.[32] The Commission is therefore of the view that the proposed penalties are more than sufficient to cover cases of simple possession up to 100 grams.

It also should be noted that while possession of less than 100 grams of cannabis will often indicate that there was no commercial purpose, it is still open for the prosecution to charge the person concerned with trafficking in or supplying the drug – provided, of course, that the facts support such a charge.

7.3 Recommendation – Scope of Simple Cultivation Offence

In relation to the offence of cultivation of cannabis, the Commission proposes that:

> **The cultivation of a quantity of cannabis plants, not exceeding 10 plants, shall be a simple offence. The maximum penalty shall be two years imprisonment, and, in addition to or instead of imprisonment, a fine not exceeding 100 penalty units (i.e. $6,000).**

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31 Section 54 provides for a fine of 100 penalty units. One penalty unit is $60.

32 In all of the cases where a term of imprisonment was imposed in respect of a drug possession offence (most likely not involving cannabis), the penalty was in addition to a term of imprisonment for another offence imposed at the same time or with a term of imprisonment already being served. Accordingly, it is reasonable to assume that, in all of those cases where a term of imprisonment was imposed, the offender had an extensive criminal history or that the penalty reflected the seriousness of the overall conduct of the offender.

Rationale

The Commission's court briefs survey, the results of which were published in the discussion paper, showed that 72.5 per cent of the cannabis cultivation offences for which quantities or numbers of plants were recorded on the court brief involved the cultivation of 10 plants or less. Offences involving 100 plants or less accounted for 95.4 per cent of all cannabis cultivation offences (Advisory Committee 1993, p. 72). This survey included all drug offences dealt with in the Magistrates and Supreme Courts during the periods of the survey.

These data show that the vast majority of cannabis cultivation offences prosecuted are at the lower end of the severity scale for that offence, with about 91 per cent of the prosecutions proceeding in the Magistrates Court jurisdiction. Such findings illustrate the need for a legislative scheme which recognises lower scale offences and does not expose people who commit these offences to possible conviction of an indictable offence and a notional penalty of 15 years imprisonment.

The Commission has proposed a higher penalty for cultivation than for possession, in recognition of the potential for larger quantities of cannabis to be produced from mature plants. The penalty of two years imprisonment, which is recommended by the Commission, is the maximum which can be imposed in the summary jurisdiction. This penalty is recommended on the basis that there is potential to produce a reasonably large quantity of cannabis from 10 cannabis plants. To attempt to distinguish between seedlings (which would produce minimal quantities of cannabis) and mature producing plants would present difficulties for legislative drafting, and for the police in practice. Again, it should be emphasised that where there is evidence that a person who is cultivating less than 10 plants is doing so for a commercial purpose, it will still be possible for that person to be charged with the more serious offence of trafficking or supply, provided that the police have evidence to support such a charge.

A Statutory Sentencing Scheme for Minor Cases

The proposal to create simple offences of possession or cultivation of small quantities of cannabis addresses some deficiencies in the present law. However, this proposal, by itself, does not go far enough. Even if the maximum statutory penalties for minor cannabis-related offences are reduced to six months for possession and two years for cultivation, in the vast majority of cannabis-related prosecutions there will still be a very large gap between the maximum penalty defined by law and the sentences imposed in practice in the Magistrates Court.

An important issue which needs to be addressed in this context is how best to deal with first and occasional offenders. The reality is that a substantial percentage of the population has experimented with cannabis at some stage in their lives (see Chapter Two, p. 10). Among some groups, such as males in their 20s, the percentage of survey respondents who report having tried cannabis exceeds 50 per cent (Jones 1993, pp. 50–51). Use of cannabis is clearly not an activity restricted to delinquent sections of the population.

Until recently, a person who was charged with possession of a small amount of cannabis was likely to have a criminal conviction recorded against his or her name, even though that person's record and general behaviour may have been impeccable in other respects. This could, and did, have a major impact on future career prospects – consequences which were far out of proportion to the nature of the offence committed. As discussed in Chapter Three, the *Penalties and Sentences Act 1992* has gone a considerable way towards addressing this problem by requiring sentencers to consider whether or not to record a conviction against a person found guilty of an offence, having regard to the nature of the offence, the offender's character and age and the impact of recording a conviction on the offender's economic or social well-being and employment prospects. This change in legislation has been reflected in sentencing practice, and, as documented in this report, it is now routine for first offenders charged with possession of cannabis to receive a fine with no conviction being recorded. However, there is still potential for sentencing inconsistencies in the way in which these general provisions are applied.

In the Commission's view, it is important to make explicit allowance in the legislation for behaviour which results in one-off, or occasional, minor criminal offences. This is needed to ensure that what may be an isolated incident of youthful irresponsibility or out-of-character behaviour will not result in the long-term stigmatisation of a criminal conviction.

7.4 Recommendation – Special Provisions for Minor Cases

The Commission recommends that:

- **Where an offender has been found guilty of a simple cannabis offence, and:**
  - **the offender has not been found guilty of a similar offence in the preceding three year period; and**

- **has not previously been found guilty of any other drug offence;[33] and**

- **the quantity of cannabis which is the subject of the charge did not exceed 25 grams, 5 grams of cannabis resin or one cannabis plant;**

the Court should:

- **not record a conviction against the offender, and**

- **where it sentences the offender to a fine, impose a fine not exceeding $500**

unless, having regard to the matters referred to in Part 2 of the *Penalties and Sentences Act 1992*, it is satisfied that there are special circumstances which justify not proceeding under this provision. Where the court elects not to proceed under this provision, it shall state its reasons for doing so.

Rationale

The quantities of 25 grams of cannabis and 5 grams of cannabis resin (for possession) and one plant (for cultivation) have been chosen because most cannabis "deals" are for 25 grams or less and a single plant is obviously the smallest quantity which can be cultivated. It is proposed that the scheme apply to persons who have not committed a similar offence within the preceding three years, as well as to first offenders, in a way similar to the operation of the *Regulatory Offences Act 1985* (see below).

In the Commission's view, there will be a small number of cases where it may be appropriate to record a conviction, and/or a more substantial fine or other penalty, even though the offender possesses less than the specified quantity and does not have any relevant prior convictions. For this reason, it is proposed that the magistrate may elect not to apply the provision where there are 'special circumstances'. In such a

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33 Given that the Commission has recommended the repeal of legislation relating to cannabis paraphernalia, this limitation should not include previous convictions for such offences.

case, the court must indicate the nature of the 'special circumstances'. It is not possible to be exhaustive about the circumstances where the provision should not apply. However, examples of cases where a more substantial penalty might be appropriate include:

- Where a person is in a hotel with a considerable number of "foils"[34] in his pocket and there is a suggestion of an isolated act of sale. These circumstances may not be sufficient to establish an offence of 'trafficking', but would indicate some criminal purpose.

- Where there was evidence that the possession was for the purpose of supplying to minors.

- Where a person in a position of *loco parentis* has possession of cannabis, and smokes it in front of the children for whom he or she has responsibility.

This recommendation is not intended to derogate from the sentencing discretion exercised by the courts in cases which do not fall within the criteria of the proposed sentencing scheme. The courts should continue to exercise the sentencing discretions available under the *Penalties and Sentences Act 1992* which allow them in appropriate circumstances to not record a conviction against a person to whom the sentencing scheme may not apply.

This recommendation should not reduce the deterrent value of existing cannabis prohibitions, as the proposed penalties are very close to those which are currently being imposed by the Queensland courts in similar cases (see Chapter Three). Moreover, in contrast to an expiation notice scheme:

- the requirement of a court appearance will be retained – arguably offenders are more likely to have the consequences of their actions brought home to them if they are required to appear in court, than if they simply have to dispatch a fine payment through the mail

- those who re–offend within a certain period will face the prospect of escalating penalties; in contrast, a South Australian–type scheme is little more than a tax on those who are willing and able to pay.

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34 A "foil" is the smallest quantity of cannabis which can be purchased and is usually contained in aluminium foil.

The concept of a statutory sentencing scheme which applies to a certain class of minor offender is not new in Queensland law. The *Regulatory Offences Act 1985* provides a scheme of alternative charges and sentencing dispositions (where certain conditions are satisfied), for people who would otherwise be charged with certain types of indictable offences. For example, the *Rgulatory Offences Act 1985* includes offences of stealing shop goods; failing to pay a restaurant, hotel or motel debt not exceeding $150, or paying with a credit card or cheque which is not honoured or which the person does not have authority to use; and wilful damage to property not exceeding $250. A conviction of an offence under the *Regulatory Offences Act 1985* is a conviction of a regulatory offence only, not of a criminal offence. Whether a person is proceeded against under the Act is determined according to the Director of Prosecutions' Guidelines Relating to the Prosecution of Offenders Under the *Regulatory Offences Act 1985*. The Guidelines recommend that a person be dealt with under this Act if the offender has not been convicted of a similar offence in the preceding three years. If the conditions are not satisfied, these offenders could be liable to be charged with the indictable offences of stealing, wilful damage etc. under the *Criminal Code*.

The proposed statutory sentencing scheme also has some similarities to the sentencing scheme for first offenders under section 75 of the Victorian *Drugs Poisons and Controlled Substances Act 1981* (see previous chapter). The main difference between the Victorian approach and that proposed here is that, in Victoria, the magistrate must impose a bond. Under the Commission's proposal, a bond would be one of the sentencing options available to the magistrate, but would not be mandatory. In addition, the Victorian scheme applies only to first offenders. For the reasons indicated, the Commission's proposal applies also to those who do not commit a similar offence within three years, provided they have not previously committed any other drug offence.

A possible objection to the Commission's proposed scheme is that it is inconsistent to continue to treat trafficking in, and commercial production of, cannabis as serious crimes, while recommending that only relatively light penalties be imposed on users. According to this argument, it is only possible to make serious inroads into the illegal market for cannabis if demand and supply activities are punished with equal severity. However, it is now standard practice, in Australia and many overseas jurisdictions, for the law to treat consumers of drugs much more leniently than those who are

involved in the market for financial gain. As noted above, this bi-furcated approach is consistent with the requirements of international drug conventions. More lenient treatment of minor cannabis users can also be justified on the grounds that:

- The offences of possession and/or cultivation of cannabis for personal use do not involve the infliction of harm on others and hence, on the principle of proportionality, should be treated as less serious offences.

- As a matter of practicality, the enforcement of tougher penalties for users, especially if this were to involve widespread use of imprisonment, would quickly overload the criminal justice system (see Chapter Three). Given the limited resources available to the criminal justice system, it is much more cost-effective to concentrate resources on the apprehension, prosecution and punishment of those involved in the market for financial gain.

Abolition of Cannabis Paraphernalia Offences

As pointed out in Chapter Three, the *Drugs Misuse Act* does not create an offence of using dangerous drugs, but it does make it an offence to possess things (not a hypodermic needle or syringe) for use in connection with the administration, consumption or smoking of a drug. It appears that the vast majority of charges brought under this provision relate to the possession of things used for smoking cannabis, particularly homemade waterpipes ("bongs").

When the *Drugs Misuse Act* was first introduced in Queensland, it created the offence of being in possession of a syringe or hypodermic needle for use in the administration of a dangerous drug. However, following the outbreak of the Human Immuno-deficiency Virus (HIV) the Act was amended to make the possession of such items legal. This legislative amendment was part of a national strategy to reduce the risk of HIV infection associated with intravenous drug use. The criminalisation of the possession of needles and syringes was identified as exacerbating the high risk practice among illicit drug users of needle-sharing and contributing to the spread of the virus. The amendment to the Act legalised the distribution of clean needles and syringes by doctors and other people authorised under the Act and by the Minister for Health.

The question of whether the possession of cannabis paraphernalia should remain a criminal offence raises issues of a different kind. On one view, it can be argued that it is inconsistent to penalise cannabis smokers who use waterpipes or other smoking aids, while permitting possession of needles to self-administer heroin – a drug which

is almost universally regarded as much more dangerous than cannabis. On the other hand, there are strong public health considerations which justify this apparent anomaly in the law. As indicated, there is overwhelming evidence that needle–sharing is a significant factor in the spread of HIV and other infectious diseases. In the case of cannabis, the public health benefits of permitting the use of paraphernalia are of a considerably more modest nature. As stated in Chapter Two (p. 16), cannabis produces similar carcinogenic "tars" to those produced by tobacco (Queensland Cancer Fund 1993, submission). It was generally accepted among health workers and researchers consulted on this issue that the use of a waterpipe would reduce the harm associated with smoking as a method of consumption of cannabis. For example, in its submission, the Alcohol and Drug Foundation, Queensland, supported the legalisation of the possession of waterpipes on the basis that they reduce the risks associated with the smoking of cannabis. The Foundation argued that such a step was consistent with the national and state drug policy of harm minimisation. APSAD in its submission stated that it:

> . . . would recommend the suspension of cannabis paraphernalia offences. The inhalation of cannabis smoke through water may result in the absorption of water soluble carcinogens. The availability of cannabis paraphernalia could be used by authorities to educate drug users regarding less harmful modes of administration in the same way that injecting drug users are encouraged to use only sterile needles and syringes. (APSAD 1993, submission, p. 5)

However, to the Commission's knowledge, this is not an area where there has been any substantial scientific research. Even if such research were to be undertaken, it would be very difficult to measure the health benefits of waterpipes, given that many regular cannabis users also smoke tobacco on a regular basis.

Although the abolition of cannabis paraphernalia offences is difficult to justify on public health grounds alone, there are other strong arguments for adopting this course of action. In the Commission's view, retention of a separate offence of possession of drug paraphernalia can only be justified if it can be shown that the existence of this offence makes people less likely to use the drug concerned. It is possible to mount such an argument where heroin is concerned. Needles and syringes are essential for administering heroin intravenously, which is the normal method whereby the drug is consumed. In addition, where the availability of needles and syringes is restricted due

to legislative prohibitions, needle-sharing is likely to be more common. This, in turn, may deter some potential users who are concerned about the adverse health effects of using shared needles.[35] However, the situation is quite different where cannabis is concerned. This is because:

- Some people may prefer to smoke cannabis by using a waterpipe, but it is hardly necessary equipment. If people are concerned that use of a waterpipe, or other paraphernalia, may expose them to an additional offence and penalty, they can avoid this risk simply by smoking the drug in the normal manner. In contrast to the situation with heroin, the prohibitions on cannabis paraphernalia are only likely to impact on the manner in which the drug is consumed, not the extent of use.

- Needles and syringes must be specially manufactured. Hence, it is possible to restrict access to them by enforcing controls at the point of production and distribution. By contrast, waterpipes can be made by anyone from freely available materials (for example, a piece of garden hose and a plastic drink bottle). In contrast to the situation with heroin, legal prohibitions on cannabis paraphernalia do not make it more difficult for potential users to access these items.

These considerations aside, in cases where a person is found in possession of cannabis, there seems little to be gained from charging them with the additional minor offence of possession of paraphernalia, as the possession charge should be sufficient to communicate society's disapproval of the person's behaviour. Arguably, the situation is somewhat different where the only charge is possession of paraphernalia. In this instance it might be said that the effect, if not the purpose, of prosecuting a person for possession of paraphernalia is to punish him or her for a past possession of cannabis. Although this might deter some people who are prosecuted for this particular offence from engaging in other cannabis-related offences in the future, the more general deterrent effect is likely to be extremely limited.

Finally, it should be noted that the abolition of paraphernalia offences in respect of items used for the administration of cannabis could lead to nominal savings for the criminal justice system of approximately $463,000 (Appendix 2). As noted in Chapter Three, it would be difficult to consolidate these savings for use elsewhere in the criminal justice system. The Commission is also not suggesting that cost

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35 It should not be inferred from this discussion that the Commission considers that the prohibitions relating to possession and needles should be re-imposed. The public health arguments for making these items freely available are overwhelming.

considerations should be allowed to dictate the development of drug policy. However, in the absence of other strong reasons for retaining a paraphernalia offence, the potential to achieve some savings should not be ignored.

7.5 Recommendation – Abolition of Cannabis Paraphernalia Offence

The Commission recommends that it should not be an offence to possess any thing for use in connexion with the administration, consumption or smoking of cannabis, or that has been used in connexion with such a purpose.

Drugs Misuse Act 1986 – Use of Powers

While reviewing the laws relating to cannabis it is also appropriate to review the powers available to police under the *Drugs Misuse Act* and consider whether these powers are appropriate to be exercised in the investigation of minor cannabis offences.

As identified in Chapter Three police have extensive powers to search persons and premises under the *Drugs Misuse Act*. These include:

- power to stop, search, seize and remove motor vehicles (s. 14)
- power to detain and search persons (s. 15)
- power to order internal body searches (s. 17)
- power to enter and search property with or without a warrant (s. 18)
- power to use tracking devices in or on moveable objects or vehicles (s. 24) and listening and visual surveillance devices (s. 25).

With the exception of s. 25, which applies only to offences carrying a maximum penalty of 20 years imprisonment or more, these powers apply in relation to the investigation of all offences against the Act, including minor offences.

The powers available to police under the *Drugs Misuse Act* authorise serious encroachments on the rights of citizens. Many of the powers available under the Act are not available for the investigation of many other serious indictable offences such as rape or murder (Criminal Justice Commission 1993a, p. 316). In the case of the

report to the notice of the Minister. This requirement aside, it would clearly not be a sensible use of police resources, given the expensive nature of the technology involved, to permit the use of tracking devices where the only purpose is to obtain evidence that a person has committed a simple offence. The use of tracking devices more generally will be considered in Volume V of the Commission's Review of Police Powers.

One possible area of concern raised in relation to the proposed limits on the powers available to police to investigate simple drug offences is that such restrictions may hamper police and other law enforcement bodies in their investigation of more serious drug offences. The basis for this concern is that police often use a "bottom-up" strategy to break into drug production and drug distribution networks – for instance, by targeting a small-scale dealer to determine his or her sources of supply. The suggestion was raised that the proposed limitations would make it more difficult for police to use such techniques.

The Commission considers that it is vital that the police and other law enforcement agencies retain the ability to penetrate drug distribution networks and apprehend and prosecute large-scale traffickers and suppliers. However, the Commission is confident that its proposals will not hamper such investigations. Under the Commission's proposals, the police will retain substantial powers even in relation to simple offences, including the power to stop and search people and vehicles, and to enter premises with a warrant. Moreover, the only circumstances where police would not be able to access all of the powers currently provided under the *Drugs Misuse Act* is where the *only* drug offences which are the subject of investigation are the simple offences of possession or cultivation.

7.6 Recommendation – Use of Powers

The Commission recommends that:

- **the powers contained in the *Drugs Misuse Act* authorising police to:**
  - **seize motor vehicles (s. 14)**
  - **detain a person and require him or her to submit to an internal body cavity search (s. 17)**
  - **enter and search premises without a warrant [s. 18(12)]**

- **use tracking devices (s. 24)**

be limited to the investigation of indictable drug offences and should not apply to the investigation of the simple offences recommended in this report.

- **the powers contained in the *Drugs Misuse Act* authorising police to:**

  - **stop and search and remove motor vehicles (excluding the power to seize vehicles) (s. 14)**

  - **detain and search people and anything in their possession (s. 15)**

  - **enter and search premises with a warrant [s. 18(1) – (11)]**

  should continue to apply to the investigation of the simple cannabis offences recommended in this report.

Implementation

The mode of implementation of this recommendation depends upon whether the Government acts upon the recommendations of the CCRC and enacts a new Criminal Code for Queensland. If the draft Criminal Code is adopted, the offences previously contained in the *Drugs Misuse Act* will be included in the Criminal Code. It would not be appropriate for simple cannabis offences (proposed by Recommendation 7.1) to be included in the new Criminal Code as it will include only indictable offences.

As part of the criminal law reform package, the CCRC proposed the creation of a Summary Offences Act, which would contain all of the indictable offences which the CCRC recommended should be reduced to the status of simple offences. The simple cannabis offences recommended in this report could be included in the proposed Act. The effect of doing this would be to remove those offences from the scope of the powers currently contained in the *Drugs Misuse Act*. Those powers which are considered appropriate to be exercised in the investigation of simple cannabis offences could be included in the Summary Offences Act.

Alternatively, the inclusion of simple cannabis offences in the *Drugs Misuse Act* would require an amendment which expressly limits the above defined powers to the investigation of indictable drug offences only.

THE NEED FOR EDUCATION

This report has focused heavily on legal options for dealing with cannabis. However, the issue of controlling cannabis use is not simply, or even primarily, a problem for the law. This point can be illustrated by reference to the recent survey of New South Wales school children referred to in Chapter Six. As indicated, this survey covered 1,028 year 10 and 11 students. According to the survey, 59 per cent of the sample had had the opportunity to smoke cannabis in the last year. Of this group, 75 per cent said that they had avoided using cannabis at least some of the time. The major reasons cited for avoiding use are shown in Table 7.1. It is significant that fear of health effects was the most frequently cited consideration. By contrast, less than a quarter of those who avoided cannabis when presented with the opportunity to use it cited fear of detection as a significant consideration. This factor also ranked slightly behind concern about 'fear of loss of respect of peers'.

TABLE 7.1: REASONS FOR AVOIDING CANNABIS NEW SOUTH WALES SCHOOLS SURVEY, 1993

Reason for Avoiding Cannabis on One or More Occasions	% citing as 'quite or very' important (n=457)
Fear of health problems	45.7
Fear of losing respect of peers	27.8
Fear of feeling guilty	26.9
Fear of being caught by police	23.4

Note: Percentages sum to more than 100 as more than one response was possible.
Source: Unpub. data provided by NSW Health Department, Drug and Alcohol Directorate.

Such findings indicate that strategies aimed at educating young people about the health risks associated with cannabis use have the potential to have a greater impact on use levels than those strategies which give pre-eminence to law enforcement – provided, of course, that education programs contain messages which are taken seriously by their target audiences. The law undoubtedly has a role to play in communicating to young people that society does not regard cannabis use as acceptable behaviour and, as Table 7.1 shows, it can have a deterrent effect some of the time. However, reliance on law and law enforcement is unlikely to be effective in controlling use beyond a certain level.

The importance of education has been emphasised at the federal level through the National Drug Strategy (formerly NCADA) and is beginning to win recognition at state-level as well.[37] Consistent with this approach, the Commission supports the development of more comprehensive education strategies relating to both licit and illicit drugs. Provided that they are properly designed and evaluated, such initiatives should be funded as a matter of priority.

CONCLUSION

In this report, the Commission has proposed a restructuring of Queensland drug laws as they relate to cannabis. The main changes recommended are:

- creation of simple offences of possession of up to 100 grams of cannabis, 20 grams of cannabis resin and cultivation of up to 10 cannabis plants
- adoption of a statutory sentencing scheme whereby, unless there are special circumstances, a conviction would not be recorded against a person who
  - is found guilty of possessing 25 grams or less of cannabis, 5 grams or less of cannabis resin or of cultivating one cannabis plant, for personal use only, and
  - has not been found guilty of a similar offence in the preceding three years, and has not previously been found guilty of any other drug offence.

These recommendations require relatively few adjustments to current prosecution and sentencing practices. However, the proposed changes should promote a more rational and consistent approach to the cannabis issue by:

- aligning the law "on the books" more closely with the law "in practice", and with the community's views about the seriousness with which minor cannabis offences should be treated by the courts
- ensuring that the law gives a more realistic indication of the penalties which are likely to be imposed in relation to minor cannabis offences
- reducing the scope for sentencing disparity.

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37 The Queensland Ministerial Task Force on Drug Strategy has produced a Drug Strategy for the State which complements the National Drug Strategy's National Drug Strategic Plan.

The Commission has also recommended that possession of cannabis paraphernalia should no longer be a criminal offence. This proposal is based on the Commission's assessment that this offence does not act as a significant deterrent to cannabis use, and that some savings for the criminal justice system, and some potential health benefits, could result from its abolition.

In addition, the Commission has proposed that some of the police powers set down in the *Drugs Misuse Act* be not available for the investigation of simple cannabis offences. This recommendation is consistent with the approach taken in previous Commission reports. The proposed limitations, if implemented, should not detract from the ability of the police to enforce the legal prohibition against cannabis, nor hinder the investigation of more serious drug offences.

In developing its recommendations for legislative change, the Commission has had regard to a wide range of factors, including the relative harmfulness of cannabis (according to scientific research on the subject), Australia's obligations under the international drug control conventions, public views of the current law, the structure and operation of legislative schemes in other jurisdictions, and current prosecution and sentencing practices in Queensland. The Commission considers that the reforms which have been proposed as a result of this review are a rational and practical response to the complex social, scientific and legal issues raised in the debate over cannabis. In particular, the recommended approach addresses the shortcomings of the present legal framework, while avoiding the problems which would be likely to arise if a cannabis expiation notice scheme were to be adopted in Queensland.

The development of appropriate drug laws and policies should be seen as a continuing process. As additional research is undertaken into such matters as:

- the health and public safety effects of cannabis
- techniques for measuring cannabis intoxication
- the effectiveness of different types of enforcement strategies and policy approaches, and
- community attitudes towards the drug

further changes to the law may be required. For this reason, the Commission is strongly of the view that its recommendations, if adopted, should be closely monitored, and subject to periodic review by the State Government.

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APPENDICES

APPENDIX 1

CANNABIS LAWS IN OTHER AUSTRALIAN JURISDICTIONS

COMPARATIVE TABLES

TABLE A1.1: LOWEST SCALE OFFENCE FOR POSSESSION OF CANNABIS

JURISDICTION AND LEGISLATION REFERENCE	QUANTITY THRESHOLD	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
ACT *Drugs of Dependence Act 1989*, s. 171	Not > 25 grams in mass.	No, if expiated	Fine	$100	This offence is a 'simple cannabis offence'. An offence notice may be issued prescribing the penalty. If the penalty is paid, the person's liability is discharged and no conviction is recorded for that offence.[1]
NSW *Drugs Misuse & Trafficking Act 1985*, ss. 10 and 21	Any amount of 'cannabis leaf'.[2]	Yes	Imprisonment	2 years imprisonment or $2,000[3] fine or both.	
NT *Misuse of Drugs Act 1990*, s. 9 (2)(f)	Cannabis leaf – < 50 grams; Cannabis plant – < 5 plants.	Yes	Imprisonment	If in a public place $5,000 or imprisonment for 2 years. Any other case, $2,000.	

1 See s. 171A of the *Drugs of Dependence Act 1989* (inserted by the *Drugs of Dependence (Amendment) Act 1992*).

2 A distinction is made between a growing plant and plants or parts of plants not growing: see definitions of 'cannabis leaf' and 'cannabis plant' in s. 3.

3 The penalty is prescribed as 20 penalty units. A penalty unit is $100: *Interpretations Act 1987*, s. 56.

JURISDICTION AND LEGISLATION REFERENCE	QUANTITY THRESHOLD	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
SA *Controlled Substances Act 1984*, s. 31	Possession of a prohibited substance (which includes cannabis and cannabis resin).[4] < 25 grams of cannabis. < 5 grams of cannabis resin.	No, if expiated	Fine	Expiation amount – Cannabis < 25 grams $50. Cannabis resin < 5 grams $50.	An expiation notice must be given prior to commencement of proceedings in respect of a simple cannabis offence (committed other than by a child). [5]

4 *Controlled Substances (Declared Prohibited Substances) 1985* Regulations, 74/1985: Cl. 4 and Schedule.

5 Expiation of offences provided for in s. 45a of the Act (inserted by Act No. 64 of 1986).
The penalty for < 100 grams cannabis but > 25 grams is $150. The penalty for < 20 grams but > 5 grams is $150.
Expiation is not available in respect of –

- Possession of cannabis of 100 grams or more
- Possession of cannabis resin of 20 grams or more.

JURISDICTION AND LEGISLATION REFERENCE	QUANTITY THRESHOLD	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
TAS. *Poisons Act 1971*, [refers to Indian hemp] s. 49	Possession of a prohibited plant (whether in its original form or not) or any part of a prohibited plant is an offence unless under a licence – no quantity stated.	Yes	Imprisonment and/or fine	$5,000 or 2 years or both.	
VIC. *Drugs, Poisons & Controlled Substances Act 1981*, s. 73	50 grams Cannabis L (without licence).	Yes, but see "Special Conditions"	Fine	Not > $500[6]	Where certain conditions are satisfied, including there having been no previous conviction under s. 72 (and other provisions of the *Drugs, Poisons & Controlled Substances Act 1981* and other Acts) the court may, without proceeding to conviction, adjourn the proceedings for up to 12 months and release the offender upon the offender's undertaking to be of good behaviour during the adjourned period, at the end of which the charge would be dismissed: s. 76(1).

6 The penalty is expressed as 'not more than 5 penalty units': s. 73(1)(a). A penalty unit is $100: *Sentencing Act 1991*, s. 110.

JURISDICTION AND LEGISLATION REFERENCE	QUANTITY THRESHOLD	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
WA *Misuse of Drugs Act 1981*, s. 6(2), s. 7(2) and s. 11 and Sch. V	< 25 plants • < 100 grams cannabis • < 20 grams cannabis resin • cannabis (in cigarette form) comprising < 80 cigarettes each containing any portion of cannabis.	Yes	Imprisonment and/or fine	$2,000 or 2 years or both: s. 34(1)(e)	If 25 or more plants – deemed to have possession with intent to sell. If the quantities of cannabis (for other than plants) is not less than those stated under 'Quantity Threshold', there is a deemed possession for sale.
QLD *Drugs Misuse Act 1986*, s. 9	< 500 grams or, where plants, the aggregate weight of the plants is < 500 grams, 100 plants	Yes	Imprisonment	15 years.[7]	May be dealt with summarily – then maximum penalty is 2 years: s. 13(1).

7 A fine may be ordered in addition to, or instead of, imprisonment. A fine shall not exceed 5,000 penalty units where conviction on indictment, or 100 penalty units where conviction in summary proceedings: s. 54.

TABLE A1.2: LOWEST SCALE OFFENCE FOR CULTIVATION OF CANNABIS

JURISDICTION AND LEGISLATION REFERENCE	CULTIVATION AMOUNT	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
ACT *Drugs of Dependence Act 1989*, s. 162	Where not > 5 cannabis plants are cultivated.	No, if expiated	Fine	$100	This offence is a 'simple cannabis offence'. An offence notice may be issued prescribing the penalty. If the penalty is paid, the person's liability is discharged and no conviction is recorded for that offence.[8]
NSW *Drugs Misuse & Trafficking Act 1985*, s. 23(1)(a) and s. 30(1)(a)	Where not > 5 cannabis plants.[9]	Yes	Imprisonment	$5,000[10] or 2 years imprisonment or both	
NT *Misuse of Drugs Act 1990*, s. 7 and Sch. 2	Where < 5 'prohibited plants'.	Yes	Imprisonment	$5,000 or 2 years imprisonment	

8 See s. 171A of the *Drugs of Dependence Act 1989* (inserted by the *Drugs of Dependence (Amendment) Act 1992).*

9 Note the distinction between plants and leaf (see Table A1.1)

10 The penalty is expressed as 50 penalty units: s. 30(3). A penalty unit is $100: *Interpretations Act 1987*, s. 56.

JURISDICTION AND LEGISLATION REFERENCE	CULTIVATION AMOUNT	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
SA *Controlled Substances Act 1984*, s. 32	Up to 10 plants.[11]	No, if expiated	Fine[12]	$150	
TAS. *Poisons Act 1971*, [refers to Indian hemp], s. 52	Cultivation an offence unless under a licence – no quantity stated.	Yes	Imprisonment and/or fine	$5,000 or 2 years or both[13]	

11 Notwithstanding the use of the word "must" in s. 45a(2) relating to the giving of an expiation notice, it is arguable that the giving of such a notice is discretionary: see s. 45a(7) which provides:

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

Section 32(6) as inserted by the *Controlled Substances Act Amendment Act (No. 2) 1990* and s. 45a(8)(d) as substituted by that Act provides:

> *Where a person is found guilty of an offence involving cultivation of not more than the prescribed number of cannabis plants and the court is satisfied that the person cultivated the plants solely for his or her own smoking or consumption, the person is liable only to a penalty not exceeding $500.*

45a(d) includes in the definition of 'simple cannabis offence' *an offence arising out of the cultivation of not more than the prescribed number of cannabis plants.*

For the purpose of sections 32(6) and 45a(8), the prescribed number of plants is 10 plants: see *Controlled Substances (Declared Prohibited Substances) Regulations 1985* as varied by regulations number 208/1991 published in the Government Gazette, 26 September 1991, pp. 960–961.

12 See s. 45a of the Act re: expiation notices and Cl. 5 of *Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987* (as varied by Regulations 188/92).

JURISDICTION AND LEGISLATION REFERENCE	CULTIVATION AMOUNT	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
VIC. *Drugs, Poisons & Controlled Substances Act 1981*, s. 72	< 250 grams – where court is satisfied that offence was not committed for any purpose related to trafficking in the plant.	Yes, but see "Special Conditions"	Imprisonment and/or fine	$2,000 or 1 year or both[14]	Where certain conditions are satisfied, including there having been no previous conviction under s. 72 (and other provisions of the *Drugs, Poisons & Controlled Substances Act 1981* and other Acts) the court may, without proceeding to conviction, impose a bond for up to 12 months: s. 76(1).
WA *Misuse of Drugs Act 1981*, s. 7(2) and s. 11 and Schedule V	Cultivation of < 25 prohibited plants.	Yes	Imprisonment and/or fine	$2,000 or 2 years or both [s. 34(1)(c)]	There will be a deemed intention to sell or supply where not less than 25 cannabis plants.[15]

13 The penalty is described as 'Fine not exceeding 50 penalty units or imprisonment for a term not exceeding two years, or both': see *Penalty Units & Other Penalties Amendment Act 1991*. A penalty unit has a monetary value of $100: *Penalty Units & Other Penalties Act 1987*, s. 4.

14 The penalty is expressed as 'a penalty of not more than 20 penalty units or to imprisonment for one year or to both that penalty and imprisonment': s. 72(1)(a).

15 With intention to sell or supply – an indictable offence punishable by fine not exceeding $20,000 or to imprisonment not exceeding 10 years or both (where sentenced by District or Supreme Court) or if sentenced by a summary court to a fine not exceeding $5,000 or to a term of imprisonment not exceeding 4 years or both.

JURISDICTION AND LEGISLATION REFERENCE	CULTIVATION AMOUNT	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
QLD *Drugs Misuse Act 1986*, s. 8 'produces' means, inter alia, 'cultivate'	< 500 grams or where plants, the aggregate weight of those plants is < 500 grams, 100 plants.	Yes	Imprisonment	15 years.[16]	May be dealt with summarily – then maximum penalty is 2 years: s. 13(1)

16 A fine may be ordered in addition to, or instead of, imprisonment. A fine shall not exceed 5,000 penalty units where conviction on indictment, or 100 penalty units where conviction in summary proceedings: s. 54.

TABLE A1.3: POSSESSION OF PARAPHERNALIA OFFENCE

JURISDICTION & LEGISLATION REFERENCE	DESCRIPTION OF OBJECTS	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
ACT *Drugs of Dependence Act 1989*	N/A	No	N/A	N/A	N/A
NSW *Drugs Misuse & Trafficking Act 1985*, s. 11 and s. 21	Any item of equipment for use in the administration of a prohibited drug.	Yes	Imprisonment and/or fine	$2,000[17] or 2 years or both	
NT *Misuse of Drugs Act 1990*, s. 12	Possess a thing (other than a hypodermic syringe or needle).	Yes	Imprisonment	$2,000 or 2 years	
SA *Controlled Substances Act 1984*, s. 31(1)(c) and s. 31(2)(a)	Any piece of equipment for use in connection with the smoking, consumption . . . or the preparation of [cannabis] for smoking, consumption or administration.	No, if expiated	Fine	$50	If accompanied by another simple cannabis offence, $10.[18]

17 The penalty is expressed as 20 penalty units. A penalty unit is $100: see *Interpretations Act 1986*, s. 56.

18 See Cl. 5 of *Controlled Substances (Expiation of Simple Cannabis Offences) Regulations 1987.*

JURISDICTION & LEGISLATION REFERENCE	DESCRIPTION OF OBJECTS	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
TAS. *Poisons Act 1971*, s. 83A	Any pipe, syringe or other utensil, or any other appliance or thing, for use or designed to be used in connection with the preparation, smoking, inhalation, administration, or taking of a . . . prohibited plant.	Yes	Fine	$2,000[19]	
VIC. *Drugs, Poisons & Controlled Substances Act 1981*	N/A	No	N/A	N/A	N/A
WA *Misuse of Drugs Act 1981*, s. 5(1)(d) and s. 34(1)(d)	(i) Any pipes or other utensils for use in connection with the smoking of a prohibited drug; or (ii) any utensils used in connection with the manufacture or preparation of a prohibited drug or prohibited plant for smoking in or on which pipes or utensils there are detectable traces of a prohibited drug or prohibited plant.	Yes	Imprisonment and/or fine	$3,000 or 3 years or both	

19 The penalty is expressed as 'a fine not exceeding 20 penalty units': see *Penalty Units & Other Penalties Amendment Act 1991*. A penalty unit is $100: *Penalty Units and Other Penalties Act 1987*.

JURISDICTION & LEGISLATION REFERENCE	DESCRIPTION OF OBJECTS	CRIMINAL OFFENCE	MAXIMUM PENALTY TYPE	MAXIMUM PENALTY	SPECIAL CONDITIONS
QLD *Drugs Misuse Act 1986*, s. 10(2)	Anything (not being a hypodermic syringe or needle) for use in connection with the administration, consumption or smoking of a dangerous drug or which the person in possession of the thing has used in connection with such a purpose.	Yes	Imprisonment	2 years	A fine may be ordered in addition to, or instead of, imprisonment for which the offender is liable. A fine shall not exceed 5,000 penalty units where conviction on indictment or 100 penalty units where conviction in summary proceedings: s. 54.

APPENDIX 2

COST OF ENFORCING MINOR CANNABIS-RELATED OFFENCES

This appendix sets out the methodology used to calculate the cost of prosecuting simple cannabis offences, and the likely savings which would flow from:

- introducing an expiation notice system for minor possession offences
- abolishing paraphernalia offences.

To obtain these estimates, the cost of prosecuting these offences must first be determined.[1]

LIMITATIONS OF ESTIMATES

In preparing these estimates, it has been necessary to make several assumptions due to the lack of suitable data. These assumptions, and the source material on which they are based, are set out in the text.

For ease of presentation, only a single set of estimates has been provided, rather than a range. However, the figures presented should be regarded as approximate only. By varying one or more assumptions, it would be possible to obtain significantly higher, or lower, estimates of the cost of various schemes.

Costs and potential savings have been calculated only for cases where possession of cannabis, or possession of paraphernalia, was the principal offence. It is not possible to disaggregate the costs where persons are charged with these offences in conjunction with other more serious offences. Further, due to limitations in the available data, no attempt has been made to calculate costs and potential savings for cultivation offences.

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1 Aggregate costs have been rounded to the nearest $5,000 and other estimated costs to the nearest dollar.

COST PER CASE

The cost of prosecuting a case consists of:

- arrest and processing costs incurred by the QPS. These are assumed to be the same for each case.
- Court-related costs incurred by the Magistrates Court, the police prosecutor and the Legal Aid Commission. These costs will vary depending on whether:
  - the case is dealt with as a guilty plea or trial
  - the defendant is eligible for legal aid funding.

The basis on which each of these different costs has been calculated is set out below.

Arrest and Processing Costs

These costs include the time spent by police:

- apprehending the suspect
- conveying the suspect to the watchhouse
- processing the suspect at the watchhouse
- collecting any criminal history
- preparing the court brief and associated paper work.

On the advice of police experienced in arrest and watchhouse procedures, it is estimated that between two hours 10 minutes and three hours 15 minutes of the equivalent of one police officer's time is spent on these activities. The mid-point of this range is two hours 40 minutes. This time is used in subsequent calculations.[2]

Officers of various ranks could be involved in these processes. However, the rank of Senior Constable was chosen as typical. The average hourly cost of a Senior

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2 A detailed breakdown of the police time involved in an arrest is provided in an attachment at the conclusion of this appendix.

Constable is $20.50 (including on–costs).[3] This hourly rate, multiplied by the time estimate, gives an expenditure of about $55 per accused for effecting and processing an arrest.

Court Costs

Court costs for a case will vary depending on:

- the type of plea entered
- the type of legal aid provided, if any.

Guilty Pleas: Duty Lawyer

Court costs associated with a guilty plea are as follows:

- *Magistrates Court time.* The Department of Justice and Attorney–General has advised that the average daily cost of running a Magistrates Court is $2,500. Magistrates Courts sit for five and a half hours a day. It is assumed that the average court time taken to process a guilty plea to a minor cannabis offence is 10 minutes. Hence, each plea costs around $76.

- *Police prosecutor's time.* On the basis of advice provided informally by members of the QPS, it is assumed that 20 minutes of police prosecutor time will be expended in preparing for a guilty plea. This is made up of 10 minutes preparation time and 10 minutes in court. Assuming that the police prosecutor is of the rank of Senior Constable, the cost per case for the QPS will be $7.

- *Duty lawyer's time.* It is assumed that the only legal aid provided to defendants who plead guilty to minor cannabis offences in the Magistrates Court is in the form of a duty lawyer. On the basis of advice provided by the Legal Aid Commission, the duty lawyer spends around 20 minutes per client. This consists of 10 minutes for taking instructions and 10 minutes for the hearing. The Legal Aid Commission advises that the costing for a duty lawyer is $73 per hour. This equates to about $24 per case.

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3 This was calculated from the second pay point for a Senior Constable, taking into account on–costs of around 20 per cent (based on the Commission's own experience) and rostered days off.

Adding these various costs together gives the following court costs per legally aided guilty plea:

Magistrates court costs	$76
Police prosecutor costs	$7
Duty lawyer costs	$24
Total court cost	**$107**

Guilty Plea: Privately Funded

Where a guilty plea is privately funded, the costs to the State will be the above figure less the duty lawyer costs, that is $107 – $24 = $83.

Not Guilty Plea: Legally Aided

In the case of a person who pleads not guilty, it is assumed that there will be an initial five minute hearing to enter the "not guilty" plea and set a trial date. It is further assumed that the average trial will last half a day.

The costs involved are:

- *Magistrates Court costs*. These have been estimated as five minutes plus half a day's court sitting, that is $1,288.

- *Police court costs*. This has three components:

  (i) Police prosecutor costs of $97 – on the basis of advice provided informally by members of the QPS, it is assumed that prosecutor time will amount to half a day of court time ($56), plus two hours preparation time ($41).

  (ii) Costs of $113 for the investigating officers' time spent in giving evidence – it is assumed that both investigating officers will be in court for the half-day.

  (iii) Costs of $5 associated with weighing the substance concerned and producing a certificate – this task was assumed to take around 15 minutes.

The rank of Senior Constable was used for calculating the costs of these components.

- *Legal Aid solicitor costs*. The Legal Aid fees are based on the standard Legal Aid fee schedule. They consist of $226 for preparation and $198 for up to three hours in court.

Adding these costs together gives the following total:

Magistrates Court costs	$1,288
Police court costs	
Police prosecutor court time	$56
Police prosecutor preparation time	$41
Police witnesses	$113
Weighing and certifying evidence costs	$5
Legal Aid Solicitor costs	
Preparation	$226
Trial	$198
Total court cost per legally aided trial	**$1,927**

Not Guilty Plea: Privately Funded

Where there is no Legal Aid funding for the trial, the cost to the State will be the above figure less the Legal Aid costs, that is $1,927 – $424 = $1,503.

Total Cost per Case

The total prosecution cost per case is obtained by adding the arrest and processing costs and court-related costs. As indicated, the former cost ($55) is assumed to be the same for all cases; the latter will vary depending on how the matter is resolved.

The total cost per case for the different types of cases are:

Guilty plea (duty lawyer)	$55 + $107	=	$162
Guilty plea (privately funded)	$55 + $83	=	$138
Not guilty plea (legally aided)	$55 + $1,927	=	$1,982
Not guilty plea (privately funded)	$55 + $1,503	=	$1,558

AGGREGATE COST

To enable the aggregate cost to the Government to be calculated from costs per case, it is necessary to estimate:

- the annual number of cases where cannabis possession is the principal offence and the number where the principal offence is the possession of utensils
- the percentage of not guilty pleas which are funded by the Legal Aid Commission, and the percentage of guilty pleas that are privately funded.

The ABS publication, *Law and Order Queensland* 1991/92, provides the latest available data on Magistrates Courts' dispositions. In 1991/92 there were 6,167 people whose most serious charge was drug possession or use, and 1,697 whose most serious charge was possession of utensils. These figures do not differentiate the charges by type of substance. However, the discussion paper presented the results of a study of court briefs showing that 93 per cent of drug possession offences involved cannabis (Advisory Committee 1993, p. 80). Accordingly, it was assumed that a total of 5,735 persons were charged with cannabis possession or use as the principal offence in 1991/92. The number of persons charged with cannabis-related utensil possession charges as the principal offence was assumed to be 1,578.

The Legal Aid Commission reported that in 1991/92 it funded 723 summary drug possession matters and 126 possession of utensil matters in the Magistrates Court. It was not possible to disaggregate these figures by substance type. However, it was assumed that 15 per cent of these cases did not involve cannabis. On this basis, it was estimated that the Legal Aid Commission funded 615 cannabis possession matters and 107 utensil possession matters. It was further assumed that all of these matters involved trials, given that the Legal Aid Commission normally does not fund guilty pleas where a non-custodial penalty is the likely outcome.

Anecdotal evidence from a senior magistrate suggests that a maximum of 10 per cent of guilty and not guilty pleas are funded privately. Consequently, the total cost to the State are based on the assumptions that:

- 615 legally aided pleas of not guilty represent 90 per cent of the total number of not guilty pleas for the possession of cannabis, giving an overall not guilty plea rate of 12 per cent
- 107 legally aided pleas of not guilty represent 90 per cent of the total number of not guilty pleas for the possession of utensils, giving an overall not guilty plea rate of 7.5 per cent.

The calculations for determining the total cost to the Government are set out in Tables A2.1 to A2.3.

TABLE A2.1: COST PER CASE

Offence	Costs	Plea			
		Not Guilty		Guilty	
		Legal Aid	Privately Funded	Duty Lawyer	Privately Funded
Possession	Pre-Court	$55	$55	$55	$55
	Court	$1,927	$1,503	$107	$83
Utensils	Pre-Court	$55	$55	$55	$55
	Court	$1,927	$1,503	$107	$83

TABLE A2.2: NUMBER OF CASES

Offence	Plea				Total
	Not Guilty		Guilty		
	Legal Aid	Private Funding	Duty Lawyer	Private Funding	
Possession	615	68	4,547	505	5,735
Utensils	107	12	1,313	146	1,578

TABLE A2.3: TOTAL COST TO STATE

Offence		Plea				Total
		Not Guilty		Guilty		
		Legal Aid	Privately Funded	Duty Lawyer	Privately Funded	
Possession	Pre-court	$34,000	$4,000	$250,000	$28,000	$316,000
	Court	$1,185,000	$102,000	$487,000	$42,000	$1,816,000
Utensils	Pre-court	$6,000	$1,000	$72,000	$8,000	$87,000
	Court	$206,000	$18,000	$140,000	$12,000	$376,000
Total		$1,431,000	$125,000	$949,000	$90,000	$2,595,000

Note: The figures in this table have been rounded to the nearest $5,000.

Summary

Based on the above assumptions, it is concluded that in 1991/92 the total cost of processing and prosecuting persons charged with possession of cannabis and cannabis-related utensils as principal offences were:

- possession of cannabis – $2,132,000
- possession of cannabis-related utensils – $463,000.

Although the combined not guilty plea rate for the two offence categories is only around 11 per cent, contested matters accounted for 60 per cent of the total processing cost.

SAVINGS FROM AN EXPIATION NOTICE SCHEME FOR CANNABIS POSSESSION OFFENCES

Under an expiation notice system, suspects allegedly possessing cannabis for personal use would be given an "on-the-spot" expiation notice, rather than being arrested. As some suspects would not be able to produce satisfactory proof of identity, a small proportion would continue to be arrested.

The administration of this expiation notice scheme entails two stages:

(i) the issuing of an expiation notice, or the arrest of the suspect depending on the circumstances

(ii) the payment of the fine imposed by the notice, or the election by the suspect to go to court.

Costs Associated with Issuing the Expiation Notice

In order to estimate the costs of issuing an expiation notice, the following assumptions were made:

- *Cost of issuing expiation notice.* It is assumed that about 20 minutes of a Senior Constable's time would be spent in issuing an expiation notice. At an hourly rate of $20.50 (see earlier), this amounts to about $7 per notice.

- *Cost of effecting and processing an arrest.* As previously estimated, it costs the QPS about $55 per accused to effect and process an arrest.

Court Costs

As discussed above, the court costs incurred per case depend on:

- the plea in each case, that is whether the case is dealt with as a guilty plea or trial

- the defendant's eligibility for legal aid funding.

The court costs per case for the different types of cases were estimated earlier as:

Guilty pleas (duty lawyer)	$107
Guilty pleas (privately funded)	$83
Not guilty pleas (legally aided)	$1,927
Not guilty pleas (privately funded)	$1,503

Aggregate Costs: Possession of Cannabis

To estimate aggregate costs to the State for an expiation notice scheme for possession of cannabis, it is necessary to determine the number of persons who would be participating at each stage of the process.

- *Number of persons issued with expiation notices.* As indicated, in 1991/92 an estimated 5,735 persons were charged with cannabis possession as the principal offence. It is assumed that 85 per cent of these persons would receive an expiation notice, and 15 per cent would be arrested for failure to produce satisfactory identification, or for possessing a quantity above the limit for an expiation notice. Hence the breakdown will be as follows:

Expiation Notices	4,875
Arrests	860

  Consequently, the aggregate costs at this pre-court stage would be:

Cost of issuing notices to 4,875 suspects (@ $7)	$34,000
Cost of arresting 860 suspects (@ $55)	$47,000
Total pre-court cost of expiation notice scheme	**$81,000**

- *Number of persons going to court.* Under the South Australian expiation notice scheme, it is estimated that close to 45 per cent of those issued with notices choose to pay the fine, rather than go to court (Unpub. data provided by Statistical Services Division of South Australia Police Department). With more flexible provisions for the settlement of fines, such as the ability to convert fines to fine option orders without the requirement of attending at

court, it should be possible to attain around a 60 per cent "take-up" rate of the fine under an expiation notice scheme.[4]

Accordingly, it is estimated that around 1,950 (40%) of the 4,875 persons issued with expiation notices would proceed to court. This group would include those challenging the notice and those who had simply defaulted on the fine. When the "non-expiators" are added to those who were arrested and not issued with notices (860), this gives 2,810 persons attending court.

- *Number of guilty and not guilty pleas.* In 1991/92, of the 5,735 persons charged with possession offences as the principal charge, an estimated 683 (12%) pleaded "not guilty" and 5,052 (88%) pleaded guilty (see Table A2.2). It is assumed that the rate of "not guilty" pleas under an expiation system will drop from 12 per cent to 10 per cent of the *total number of defendants* for this offence. As the payment of a fine under an expiation notice will not amount to a criminal conviction or an admission of guilt, it is likely that some of those previously pleading not guilty would now opt to pay the fine. However, the South Australian experience indicates that many of those who currently contest charges would still opt to do so under an expiation notice system.

  Hence of a total of 2,810 attending court, it is estimated that there would be 574 not guilty pleas and 2,236 guilty pleas.[5]

  It is again assumed that 10 per cent of both the not guilty and the guilty pleas would be privately funded.

  Using the costs calculated above, the total court cost under an expiation notice scheme are set out in Table A2.4.

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4 Conversion of fines to fine option orders can be done through an administrative procedure that does not require attendance at court. Once established, the cost of a computerised administrative procedure would be minimal. Hence, the cost of converting to fine option orders has not been included in these calculations.

5 The proportion of not guilty pleas of those going to court under an expiation scheme is higher (20%), as it is expected that many of those pleading guilty would opt for the payment of the fine, and not appear before the court.

TABLE A2.4: EXPIATION NOTICE SCHEME – TOTAL COURT COST FOR PROCESSING CANNABIS POSSESSION OFFENCES

Plea	Court cost per case	No. of cases	Total cost
Guilty (duty lawyer)	$107	2,012	$215,000
Guilty (privately funded)	$83	224	$19,000
Not Guilty (Legal Aid funded)	$1,927	517	$996,000
Not Guilty (privately funded)	$1,503	57	$86,000

Note: Total cost figures are rounded to the nearest $5,000.

Adding the pre-court and court costs, the total cost of an expiation notice scheme for the possession of cannabis is estimated as:

Pre-court costs	$81,000
Court costs	$1,316,000
Total cost	**$1,397,000**

Savings from an Expiation Notice Scheme

The estimated saving of introducing an expiation notice scheme for the possession of cannabis offences is:

Pre-court costs of current system (Table A2.3)	$316,000
Court costs of current system (Table A2.3)	$1,816,000
Total cost of current system	**$2,132,000**
Pre-court costs of expiation scheme	$81,000
Court costs of expiation scheme	$1,316,000
Total cost of expiation notice scheme	**$1,397,000**
Saving	**$735,000**

On these calculations, there is a saving of $235,000 in pre-court costs and $500,000 in court costs.

SAVINGS FROM AN EXPIATION NOTICE SCHEME FOR CANNABIS-RELATED PARAPHERNALIA OFFENCES

For these calculations, the same method as outlined above was used. The estimated costs of issuing a notice and processing an arrest, and the court costs per case, remain the same.

Aggregate Costs: Paraphernalia Offences

Once again, the estimated aggregate cost of an expiation notice scheme is based on:

- *Number of persons receiving an expiation notice.* In 1991/92 an estimated 1,578 persons were charged with the possession of utensils as the principal offence. It is assumed that around 90 per cent (1,420) would receive an expiation notice, and 10 per cent (158) would be arrested due to their failure to satisfy the police as to their identity.

- *Number of persons going to court.* As this is a less serious offence, it is expected that a higher proportion of those issued with a notice will pay the fine. Accordingly, it is assumed that 65 per cent of those issued with a notice will pay. On this basis, 497 of those receiving expiation notices will go to court. When added to the number arrested, this gives a total of 655 persons going to court.

- *The type of plea entered.* In 1991/92, an estimated 119 out of 1,578 persons (8%) pleaded not guilty to the possession of cannabis-related utensils. For similar reasons as discussed earlier, it is assumed that the percentage of the *total number of defendants* for this offence pleading not guilty will drop from eight per cent to five per cent. This gives:

Guilty pleas	576
Not guilty pleas	79

Similarly it is assumed that 10 per cent of guilty and not guilty pleas will be privately funded.

On this basis, the total cost of the expiation notice scheme for the offence of possession of cannabis utensils is as follows:

Pre–court costs	
Cost of issuing notices to 1,420 suspects (@ $7)	$10,000
Cost of arresting 158 suspects (@ $55)	$9,000
Total pre–court cost	**$19,000**
Court costs	
Guilty pleas (duty lawyer) – 518 x $107	$55,000
Guilty pleas (privately funded) – 58 x $83	$5,000
Not guilty pleas (legally aided) – 71 x $1,927	$137,000
Not guilty pleas (privately funded) – 8 x $1,503	$12,000
Total court cost	**$209,000**
Aggregate cost	**$228,000**

Savings from an Expiation Notice Scheme

The estimated savings from introducing an expiation notice scheme for paraphernalia offences are:

Pre–court costs of current system (Table A2.3)	$87,000
Court costs of current system (Table A2.3)	$376,000
Total cost of current system	**$463,000**
Pre–court costs of expiation scheme	$19,000
Court costs of expiation scheme	$209,000
Total cost of expiation scheme	**$228,000**
Saving	**$235,000**

This breaks down into a saving of $68,000 in pre–court costs and $167,000 in court costs.

SAVINGS FROM THE ABOLITION OF THE PARAPHERNALIA OFFENCES

By abolishing the paraphernalia offences, the savings on the 1991/92 figures would be about $463,000 (see Table A2.3).

SUMMARY

According to the calculations detailed in this appendix the estimated savings from:

- introducing expiation notices for the possession of cannabis is about $735,000
- introducing expiation notices for the possession of cannabis–related utensils is about $235,000
- abolishing the possession of cannabis–related utensils offence is around $463,000.

ATTACHMENT TO APPENDIX 2: POLICE TIME INVOLVED IN PROCESSING AN ARREST

This attachment outlines the typical steps and time taken by police to process an arrest for a cannabis offence. The estimates of the time involved in processing an arrest are qualified by the following:

- The usual arrest will involve two police officers.
- Due to the nature of cannabis offences it is unlikely in most cases that the police will conduct a record of interview before charging. Consequently, the estimates were made on the basis that the alleged offender would be taken straight to the watchhouse, without an interview or other inquiries.
- The procedures outlined in Table A2.5 are based on the operations of the Brisbane City watchhouse.
- The times calculated are conservative estimates and do not include time taken waiting to access typewriters, computers, fingerprinting and photographic equipment, and waiting for watchhouse staff to complete the processing of other persons under arrest.

TABLE A2.5: ESTIMATED POLICE TIME INVOLVED IN PROCESSING AN ARREST FOR A CANNABIS OFFENCE

Activity	Time	Total Officer Time
Arrested person conveyed to watchhouse in police vehicle in the company of two police officers.	10 mins.	20 mins.
Pre-charging Requirements:		
• Prisoner placed in holding cell in watchhouse. One officer supervises the prisoner. Other officer types up Bench Charge Sheet (BCS) for each offence with which the prisoner is to be charged.	7–10 mins. for each charge.	14–20 mins. for each charge.
• Officer checks whether the prisoner has a criminal history or outstanding warrants on the Query Persons of Interest Index.	5 mins.	10 mins.
• Arresting officer types up fingerprint forms which record information about the prisoner's identifying features such as description, scars, tattoos and other features.	5–10 mins.	10–20 mins.

Activity	Time	Total Officer Time
Charging: Prisoner removed from holding cell and taken to charge counter. • BCSs are given to the charging officer (whenever possible this officer is of the rank of Sergeant). • Charging officer makes entries in the Custody Register and verifies charge, the identity of the prisoner and other relevant information. • Arresting officer reads the charge/s out to the prisoner and signs the Custody Register. • Charging officer makes enquiries with the arresting officer regarding bail for the prisoner and whether watchhouse bail is considered to be appropriate. (The arresting officer and his or her partner have now transferred responsibility for the prisoner to the watchhouse staff and are free to go.)	7–10 mins. depending on the no. of charges.	21–30 mins. depending on the number of charges.

Activity	Time	Total Officer Time
Fingerprinting:		
One of the watchhouse staff rostered on to do fingerprinting	10–15 mins.	10–15 mins.
• enters the prisoner's details on a fingerprint form		
• takes the prisoner to the photographic room, types up a fingerprint card and enters details into the Fingerprint and Photograph Book		
• takes two photographs of the prisoner		
• takes the prisoner to the fingerprint room where three sets of fingerprints are taken. Officer and prisoner wash–up.		
Bail:		
• During the fingerprinting process the property officer should have completed the Cash Bail Book or the Undertaking Book if the prisoner is to get watchhouse bail.	2–4 mins.	2–4 mins.
• Prisoner is taken to the charge counter. Conditions of bail are explained to the person. She or he is told of the time and court in which she or he is to appear. The prisoner is asked to confirm that she or he understands the bail obligations and to sign the Cash Bail Book or the Bail Undertaking Book and the Custody Register.	5 mins.	5 mins.

Activity	Time	Total Officer Time
Preparation for Court:		
• The BCSs are attached to the Bail Undertaking and left for collection the next morning by the Court Co–ordinator (the police officer who manages the appearances in Magistrates Court 1). The Court Co–ordinator delivers the forms to the Court 1 Magistrate's Clerk.	5 mins.	5 mins.
• The watchhouse also keeps a running record of people processed through the watchhouse. Copies of this sheet called the Court List Entries are sent to: 1. Prosecutor 2. Magistrates Court 1 3. Court Co–ordinator 4. Inspector–in–charge of the watchhouse 5. Other record–keeping areas of the QPS.	2–3 mins. per entry.	2–3 mins per entry.
• Arresting officer types up QP9 Court Brief and delivers to Police Headquarters for collection by the Prosecution section the next morning.	30 mins.– 1 hr.	30 mins.– 1 hr.
• Request for Criminal History, faxed or sent by computer message to Information Bureau.	5 mins.	5 mins.
• Printout of Criminal History at Information Bureau.	2–3 mins.	2–3 mins.
• Criminal History faxed or sent by computer message back to station requesting.		
TOTAL		2 hrs. 13 mins. – 3 hrs 17 mins.

APPENDIX 3

EXPIATION NOTICES AND CANNABIS USAGE IN SOUTH AUSTRALIA

INTRODUCTION

There has been considerable debate about whether the introduction in 1987 in South Australia of a cannabis expiation notice scheme has led to increased cannabis use in that State. This appendix reviews earlier studies which have addressed this issue, and examines more recent data from NCADA surveys.

METHODOLOGICAL ISSUES

Measurement of the impact of different legislative or enforcement regimes on usage levels is a difficult and complex research issue. There are two main areas where problems arise:

- accurately measuring use levels within a community over time
- establishing causality between the legal regime and use levels.

The basic tool of measurement for determining drug use levels is the survey. For a variety of reasons, surveys may not produce accurate measures of use: some people are likely to deny using a substance when they have in fact tried it, others may claim to have used it when they have not. A further difficulty is that the severity of the legal regime itself may influence the willingness of respondents to admit to illegal activity. Survey findings are also sensitive to factors such as how questions are worded and the method used to administer surveys. (For example, there is some evidence that people may be more willing to confess to illegal drug use in an anonymous telephone survey, than in a face–to–face interview.) Where question format and methodology vary over time, it is particularly difficult to accurately

measure trends in use. Other measures of drug use within a community which have been suggested are even less satisfactory. For instance, figures showing the numbers of arrests for drug offences made during any period tell more about law enforcement activity than about drug use. Other surrogate measures of drug use, such as hospital admissions connected with the use of certain drugs, or the number of drug-related deaths, are not appropriate to cannabis because the drug rarely, if ever, produces reactions of this magnitude.

In terms of establishing causality between legal regimes and use levels, the main strategies are:

- comparisons of use levels and trends in jurisdictions with different legal and enforcement regimes

- comparisons of use levels in one or more jurisdictions before and after changes in law or enforcement practice.

These strategies are often very difficult to apply in practice because of the problem of data comparability – different jurisdictions use different measures of use and, even within the one jurisdiction, usage may not be measured in the same way over time. A further problem is that many factors impact on drug use, such as the general cultural climate, the age structure of the population, and so on. Even if a change is in the 'predicted' direction, it is often not possible to isolate the effects of a change in legal regime from the impact of these other factors.

THE EVIDENCE FROM SOUTH AUSTRALIA

The South Australian Office of Crime Statistics had prepared for the change in legal regime in that State by collecting data over a nine month control period prior to the introduction of the cannabis expiation notice scheme in 1987. The Office reviewed

the first nine months of operation of the cannabis expiation notice scheme and reported on this review in 1989 (Sarre et al. 1989). While conceding that nine months was a relatively limited review period, the report drew the following major conclusions:

> The study does not provide support for claims that introduction of an enforcement notice approach encourages previous non users to experiment with cannabis . . . Careful compilation and assessment of police figures on CENs in the first nine months indicates that there was no increase in detections either generally or among 'at risk' groups such as young people. Even if enforcement figures do alter in future the study has provided enough evidence to suggest that factors other than a real shift in the extent of drug possession or use are likely to be responsible. (Sarre et al. 1989, pp. 38–39)

Two other sources of data are:

- large sample surveys of secondary school students in South Australia and New South Wales, covering the years from 1986 to 1989
- periodic National Household Issues Surveys carried out by NCADA between 1985 and 1993.

The school surveys were examined by Christie in 1991, on behalf of the South Australian Drug and Alcohol Services Council. According to this study

> there is no firm basis for concluding that the introduction of the Cannabis Expiation Notice System in South Australia in 1987 has had any detrimental effect in terms of leading to increased levels of cannabis use in the South Australian community. (Christie 1991, pp. 37–38)

This position was reaffirmed by the Council in its submission to the Commission in response to the cannabis discussion paper (Advisory Committee 1993). However, the data on which the Council relied were available only for the period up to 1989. It is possible that the full effect of the cannabis expiation notice scheme on cannabis use was not felt until later.

The NCADA surveys provide a much longer time series, but detailed inter- and intra-state comparisons are difficult because of the relatively small sample sizes. For example, the 1993 National Household Survey obtained responses from only 39 South Australian residents in the 14–19 years age bracket. For a sample population of this size, the estimate of usage levels could be subject to very large sampling errors.

The potential unreliability of NCADA state-level usage figures is illustrated by comparing results from different surveys. As detailed below, the NCADA surveys show that in New South Wales the usage of cannabis amongst 14–19 year olds fell steadily between 1988 and 1993. However, according to a comprehensive survey of New South Wales secondary school students aged 12–17, the proportion of students who had ever used cannabis actually rose substantially between 1989 and 1992 (Cooney et al. 1993). For these younger age groups, the school surveys provide a more accurate measure of trends than the NCADA surveys because they are based on much larger samples.[6]

The only question which has been consistently asked over a range of NCADA surveys is: 'Have you ever tried cannabis?'. Responses to this question are presented in Tables A3.1 and A3.2. Trends are shown for two age groups: 14–19 year olds and 20–39 year olds. These are the groups with the highest usage levels. The 14–19 year old bracket is of interest, notwithstanding the problems with sample sizes, as a large proportion of respondents in this group would have used cannabis relatively recently. By contrast, respondents in the 20–39 year old bracket could have been referring to behaviour which they had engaged in some years earlier. On the other hand, statistical estimates for this group are much more robust because of the much larger sample sizes. Usage trends are shown only for the five mainland states, as sample sizes for the smaller jurisdictions are too small for meaningful comparisons to be made.

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6 In the 1993 NCADA sample, only 57 of the respondents in New South Wales were in the 14–19 years age bracket. By comparison, the 1992 New South Wales Schools Survey covered 3,828 respondents.

The tables show that:

- In 1993 South Australia had the second highest reported usage rate amongst 14–19 year olds and the equal highest rate in the 20–39 year old bracket. Western Australia, which has a stricter legal regime, had the highest reported usage rates in both age categories.

- Between 1985 and 1993 the proportion of South Australian respondents in the 14–19 year old bracket who said that they had ever used cannabis increased by 50 per cent. All of this increase occurred from 1988 onwards, after the cannabis expiation notice scheme had been introduced. However, all other jurisdictions apart from New South Wales recorded similar rises over the same period. Hence it is not possible, on these data, to attribute the apparent increase in usage amongst this age group to the introduction of the cannabis expiation notice scheme.

- Since 1985, the proportion of South Australian respondents in the 20–39 year age bracket who said that they had ever used cannabis increased by 31 per cent. Again, all of this increase occurred from 1988 onwards. Of the five jurisdictions compared, South Australia had by far the highest rate of increase. This trend is consistent with the hypothesis that the introduction of the cannabis expiation notice scheme in that State may have contributed to an increase in cannabis use.

TABLE A3.1: PER CENT EVER USED CANNABIS: 14–19 YEARS BY JURISDICTION AND YEAR OF SURVEY NCADA DATA

Year of Survey	Queensland	New South Wales	South Australia	Victoria	Western Australia
1985	27	28	28	28	39
1988	18	40	25	22	29
1991	22	33	40	30	44
1993	28	26	42	39	51

TABLE A3.2: PER CENT EVER USED CANNABIS: 20–39 YEARS BY JURISDICTION AND YEAR OF SURVEY NCADA DATA

Year of Survey	Queensland	New South Wales	South Australia	Victoria	Western Australia
1985	47	48	47	47	56
1988	51	48	46	42	60
1991	55	53	56	48	60
1993	46	55	62	50	62

Source: NCADA Household Surveys 1985–93, unpub. data.

CONCLUSION

The South Australian case illustrates the methodological problems associated with assessing the effect of changes in legal and enforcement regimes on cannabis use levels in a community. Since the introduction of expiation notices in 1987, there has been a substantial rise in South Australia in the proportion of survey respondents in the 14–19 and 20–39 year old brackets reporting that they have tried cannabis. However, similar trends are evident in other states, including those which have relatively severe legal enforcement schemes. The rate of increase in South Australia appears to be higher than in other jurisdictions, especially since 1988, but the differences are relatively small and the possibility of sampling error cannot be discounted. Even if it is conceded that there has been a greater than average increase in South Australia, this may not necessarily have been due to the change in the law. Finally, it should be pointed out that an increase in the proportion of people who say they have tried cannabis may not be a cause for concern if it can be shown that most of this increase is made up of casual experimenters who try the drug once, or a few times, and then desist.

Notwithstanding these various qualifications, on the data available it is not possible to disprove the hypothesis that the introduction of cannabis expiation notices in South Australia may have contributed to an increase in usage levels in that State.

REFERENCES

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Statistical Services Division of the South Australian Police Department 1994, unpub. data.

considerations should be allowed to dictate the development of drug policy. However, in the absence of other strong reasons for retaining a paraphernalia offence, the potential to achieve some savings should not be ignored.

7.5 Recommendation – Abolition of Cannabis Paraphernalia Offence

The Commission recommends that it should not be an offence to possess any thing for use in connexion with the administration, consumption or smoking of cannabis, or that has been used in connexion with such a purpose.

Drugs Misuse Act 1986 – Use of Powers

While reviewing the laws relating to cannabis it is also appropriate to review the powers available to police under the *Drugs Misuse Act* and consider whether these powers are appropriate to be exercised in the investigation of minor cannabis offences.

As identified in Chapter Three police have extensive powers to search persons and premises under the *Drugs Misuse Act*. These include:

- power to stop, search, seize and remove motor vehicles (s. 14)
- power to detain and search persons (s. 15)
- power to order internal body searches (s. 17)
- power to enter and search property with or without a warrant (s. 18)
- power to use tracking devices in or on moveable objects or vehicles (s. 24) and listening and visual surveillance devices (s. 25).

With the exception of s. 25, which applies only to offences carrying a maximum penalty of 20 years imprisonment or more, these powers apply in relation to the investigation of all offences against the Act, including minor offences.

The powers available to police under the *Drugs Misuse Act* authorise serious encroachments on the rights of citizens. Many of the powers available under the Act are not available for the investigation of many other serious indictable offences such as rape or murder (Criminal Justice Commission 1993a, p. 316). In the case of the

investigation of serious drug offences, such intrusive powers are justified and are accepted by the community on the basis that the benefits of apprehending significant offenders outweigh the costs in terms of the loss of civil rights. However, consideration needs to be given to whether all of the powers currently available to police under the *Drugs Misuse Act* should continue to be exercised where the only offence suspected of having been committed is a simple cannabis offence.

The Commission recognises that the police need sufficient powers to enable them to detect offences, but a more appropriate balance needs to be achieved between the seriousness of the offences being investigated and the intrusiveness of the powers being used to investigate those offences. A number of the powers listed above have been reviewed as part of the Commission's *Report on a Review of Police Powers in Queensland*. Volume II of that report addressed powers of entry, search and seizure. In that volume, recommendations were made by the Commission with respect to the following powers under the *Drugs Misuse Act*:

- stop, search and seize motor vehicles (s. 14)
- power to detain and search persons, i.e. body searches, and anything they may have in their possession (s. 15)
- power to detain a person and require him or her to submit to an internal body cavity search (s. 17)
- enter and search premises without warrant [s. 18(12)].

The Commission recommended the retention of the powers under sections 14, 15 and 18. These recommendations were made in relation to offences under the *Drugs Misuse Act* which carried penalties of 15, 20 and 25 years imprisonment. In respect of indictable offences generally, the Commission recommended much more limited powers. The power to enter premises without a warrant and the power to search motor vehicles without a warrant were recommended in respect of offences carrying a maximum of seven years imprisonment or more, if the circumstances were such that the evidence was likely to be concealed or destroyed if the search was not conducted immediately.

It is consistent with the Commission's stated position in that report that the special powers in the *Drugs Misuse Act* should not be available for offences carrying a maximum penalty of less than seven years, unless extraordinary reasons justify their retention. On the other hand, the Commission recognises that evidence of minor

cannabis–related offences is most commonly derived from police searches of motor vehicles, persons and premises. Police need to retain some of these powers to enable them to detect these offences. Accordingly, the Commission is of the view that the powers to:

- stop and search and remove motor vehicles (s. 14)
- detain and search people and anything they may have in their possession (s. 15)

should continue to apply to simple cannabis offences. The power to enter and search premises without a warrant should not be available in respect of these simple offences. The Commission considers that the power to enter and search premises pursuant to a warrant, along with the provisions allowing for search warrant applications by telephone, is sufficient to allow police to properly investigate these offences. The exercise of these powers should incur the additional obligations that the police inform persons searched of the reasons for the search and record the details of the search in a Search Register.[36]

With respect to the power under section 17 (internal body searches), the Commission recommended that the section be amended to require the person to consent in writing to the search and, if the person does not consent, for the police to obtain the approval of a Stipendiary Magistrate to proceed with the search. Given the highly intrusive nature of internal body searches, the Commission does not consider that the power to conduct such searches should be available where only a simple offence is involved. The Commission recommended that the safeguards existing in section 259 of the *Criminal Code* should also apply to searches under section 17 of the *Drugs Misuse Act*. The Commission (1993a, p. 327) recommended the retention of this power with such modifications, because of the 'seriousness of the potential offence which it contemplates'. If a simple offence is to be created whereby the seriousness of the offence is significantly reduced, the Commission would not advocate the availability of this power in these circumstances.

The Commission further considers that section 24 (use of tracking devices) should not apply where the only offence under investigation is a simple cannabis offence. This section of the Act is clearly intended to apply to more serious offences, as indicated by the requirement under section 24(2) that the police officer who exercises this power must make a written report to the Commissioner of Police, who must in turn bring the

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36 See Recommendation 11.6 of *Report on a Review of Police Powers in Queensland Volume II: Entry, Search and Seizure* (Criminal Justice Commission 1993a, p. 469).

report to the notice of the Minister. This requirement aside, it would clearly not be a sensible use of police resources, given the expensive nature of the technology involved, to permit the use of tracking devices where the only purpose is to obtain evidence that a person has committed a simple offence. The use of tracking devices more generally will be considered in Volume V of the Commission's Review of Police Powers.

One possible area of concern raised in relation to the proposed limits on the powers available to police to investigate simple drug offences is that such restrictions may hamper police and other law enforcement bodies in their investigation of more serious drug offences. The basis for this concern is that police often use a "bottom-up" strategy to break into drug production and drug distribution networks – for instance, by targeting a small-scale dealer to determine his or her sources of supply. The suggestion was raised that the proposed limitations would make it more difficult for police to use such techniques.

The Commission considers that it is vital that the police and other law enforcement agencies retain the ability to penetrate drug distribution networks and apprehend and prosecute large-scale traffickers and suppliers. However, the Commission is confident that its proposals will not hamper such investigations. Under the Commission's proposals, the police will retain substantial powers even in relation to simple offences, including the power to stop and search people and vehicles, and to enter premises with a warrant. Moreover, the only circumstances where police would not be able to access all of the powers currently provided under the *Drugs Misuse Act* is where the *only* drug offences which are the subject of investigation are the simple offences of possession or cultivation.

7.6 Recommendation – Use of Powers

The Commission recommends that:

- **the powers contained in the *Drugs Misuse Act* authorising police to:**
  - **seize motor vehicles (s. 14)**
  - **detain a person and require him or her to submit to an internal body cavity search (s. 17)**
  - **enter and search premises without a warrant [s. 18(12)]**