

**Review of policy makers, police and
judicial perspectives on the Western
Australian Cannabis Infringement
Notice Scheme**

Baseline, Year 1

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and judicial perspectives on the
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Infringement Notice Scheme**

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This is the final report from Sub-study 5 of: *An evaluation of the impact of changes to cannabis law in WA on cannabis use, the drug market, law enforcement, knowledge and attitudes, and cannabis-related harms - Year 1*

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OTHER REPORTS ON THIS RESEARCH

Sub-study 1

Fetherston, J. & Lenton, S. (2005) *Effects of the Western Australian Cannabis Infringement Notice Scheme on public attitudes, knowledge and use – Baseline, Year 1*. Perth, National Drug Research Institute.

Sub-study 2

Chanteloup, F., Lenton, S., Barratt, M. & Fetherston, J. (2005) *Effects of the Western Australian Cannabis Infringement Notice Scheme on regular cannabis users regarding attitudes, use, and drug market factors – Baseline, Year 1*. Perth, National Drug Research Institute.

Sub-study 5

Sutton, A. (2005) *Review of policy makers, police and judicial perspectives on the Western Australian Cannabis Infringement Notice Scheme– Baseline, Year 1*. Perth, National Drug Research Institute.

Sub-study 7

Farrington, F. & Lenton, S. (2005) *Effects of the Western Australian Cannabis Infringement Notice Scheme on the attitudes and drug use of school children – Baseline, Year 1*. Perth, National Drug Research Institute.

Summary report

Lenton, S., Chanteloup, F., Fetherston, J., Sutton, A., Hawks, D., Barratt, M. & Farrington, F. (In press) *An evaluation of the impact of changes to cannabis law in WA - Summary of the Year 1 findings*. Canberra: National Drug Law Enforcement Research Fund.

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EXECUTIVE SUMMARY

This is the final report from sub-study five of an *Evaluation of the impact of changes to cannabis law in WA on cannabis use, the drug market, law enforcement, knowledge and attitudes and cannabis-related harms*. The overall project, funded by the National Drug Law Enforcement Research Fund and coordinated by the National Drug Research Institute at Curtin University of Technology, is reviewing the first phase of development and implementation of a “prohibition with civil penalties” system for adults who commit minor cannabis offences in Western Australia. The current report explores the policy aims of this model and the ways police and other criminal justice personnel understand and are beginning to implement it.

The legislative basis for the reforms evaluated in this and other sub-studies has been provided by the *Cannabis Control Act 2003*, approved by the Western Australian Parliament on 24 September 2003 and proclaimed on 22 March 2004. Under this law, small-scale possession, cultivation and use of cannabis continue to be illegal. However, many such offences now can be dealt with by means of an infringement notice rather than by a formal court prosecution.

Western Australia is the fourth Australian jurisdiction - after South Australia, the Australian Capital Territory and the Northern Territory - to introduce prohibition with civil penalties. Advocates of this approach argue that it enables governments, through statutes and their enforcement, to make it clear that cannabis use, possession, cultivation and distribution are disapproved. At the same time, infringement notices offer individuals found committing less serious offences the opportunity to avoid a court appearance and adverse career and other social consequences associated with a conviction or finding of guilt for a drug offence. Extending the infringement notice option to cultivation of a small number of plants for personal use may also make it more likely that some regular users will not need to rely on illicit drug supply networks that are dominated by organised crime.

Research on cannabis infringement notice systems elsewhere has disclosed a number of law enforcement and criminal justice problems that Western Australia has tried to avoid. South Australia, for example, has seen some commercial cannabis producers avoid prosecution by keeping the numbers of plants at any one location under the infringement limit. The *Cannabis Control Act 2003* deals with this problem by excluding hydroponic cultivations from the infringement provisions and limiting the “infringeable” number of plants to two per household. Western Australian legislation also gives police the discretion to charge offenders detected with infringeable amounts in their possession, if they believe such individuals are flouting the intention of the law by engaging in commercial dealing.

Infringement notice systems in other States also have experienced low rates of compliance. To help combat this problem Western Australia’s legislation allows people unable or unwilling to pay amounts specified on the infringement notice to discharge their obligations by attending a specified cannabis education session at a community based drug treatment centre. Such sessions explain the health and other risks associated with cannabis use, and are designed to assist offenders to make more informed choices. This and other distinctive aspects of the Western Australian legislation are explained in more detail in the report.

Research took the form of intensive semi-structured interviews and a small number of focus group discussions. Data was collected both at the pre-implementation stage (March and June 2003) and shortly after the *Act* became operational (mid-June 2004).

Pre-implementation interviews clarified the aims of the *Cannabis Control Act 2003* and provided insight into extensive information gathering and consultations that had preceded its implementation. Informants indicated that the key objective was to develop reforms that would be accepted by the public and by the law enforcement and other agencies required to put them into effect. Senior police in Western Australia generally understood and accepted the aims of an infringement notice system, and the Police Service had been represented on the Ministerial Working Party that had researched and drafted the initial Bill. For reasons outlined in the report, it was not possible to interview large numbers of operational police prior to implementation. Among those who were interviewed, however, a few expressed concerns that rank and file personnel might perceive cannabis infringement notices as a form of “de facto” legalization, and as a result might not bother to administer them. Other police, however, were enthusiastic about the proposed new provisions - and in particular about the idea that the infringement notice system might result in large numbers of offenders “turning their lives around” after attending an education session. A few police interviewed during the pre-implementation phase seemed to interpret the proposed “flouting” provisions - which allow individuals to be prosecuted in a criminal court even if they might technically be eligible for an infringement notice - more broadly than the researchers understood the Ministerial Working Party intended. Overall, pre-implementation research suggested that criminal justice personnel would accept the cannabis infringement notice system, but that there was potential for its aims to be misunderstood. There also was a possibility that implementation of a cannabis infringement notice system would be accompanied by significant “net widening”, with far more individuals receiving notices than had been charged with a minor cannabis offence under the previous legislation.

Post-implementation research updated perspectives canvassed during the pre-implementation interviews. In addition, it sought information on procedures for instructing operational police on the infringement notice provisions and procedures, how the system was working in practice, whether operational police fully understood the new system and whether the public seemed to have an adequate grasp of the *Cannabis Control Act 2003*. Again, data was collected through semi-structured interviews supplemented by a focus group discussion. Those taking part included operational police who had administered notices, a number of station sergeants, staff from the Western Australia Police Service’s Alcohol and Drug Coordination Unit (responsible for developing and implementing relevant police training) and key staff from Western Australia’s Drug and Alcohol Office (responsible for public education in relation to the *Cannabis Control Act 2003*).

Research indicated that at this early stage of implementation - just three months after the *Act* was proclaimed - some operational enforcement personnel (ie. station sergeants and constables) were still uncertain about the circumstances under which cannabis infringement notices should be issued. This was not surprising, given the relatively short time - approximately six months - Western Australia’s Police Service had had to train its members. The Alcohol and Drug Coordination Unit stated that at

the time of interviews, approximately fifty five percent of “front-line” police had been trained on the *Cannabis Control Act 2003* and associated police regulations. It will be some time - we estimate eighteen months - before infringement notices fully settle in, in an operational sense. In the meantime, media and other sources should be cautious about reading too much into police data on numbers of notices issued and on rates of compliance.

Research during the early stages of implementation also indicated that cannabis infringement notices might result in less savings in police work-time than architects of the legislation had anticipated. This was because rather than issuing notices “on the spot”, Western Australian police were taking offenders back to the station in order to interview them and weigh and seal cannabis seized. Police at all levels of the organization saw this as necessary in order to minimize the possibility that, after a notice had been issued, an offender would allege that the apprehending officer had stolen part of the cannabis seized. The recent Royal Commission into the Western Australia Police Service had seen many such allegations aired. While appreciating police concerns about false allegations, the researchers are of the view that in many instances - for example when only a minimal amount has been detected - it may not be necessary for police to interrupt a patrol in order to weigh cannabis at the station before issuing a notice. This would be more consistent with the aims of the *Cannabis Control Act 2003*, and the legislators’ intention that police be accorded judgement and discretion in its administration. It is to be hoped that, as police become more experienced with the cannabis infringement notice procedures, they will become more confident about issuing notices on the spot.

Police interviewed during the post-implementation stage took an extremely professional approach to the *Cannabis Control Act 2003*: the researchers found no evidence that operational police might ignore or boycott its provisions. Concerns about net widening do, however, remain. Evidence from other jurisdictions indicates that once an infringement notice system has been introduced, police are less likely to apply other sanctions - such as a caution - against minor cannabis offenders. Enforcement personnel interviewed in the course of the present study indicated that they would be less likely to caution a minor cannabis offender now that infringement notices were available, and some saw the fact that the recipients could discharge their obligations by attending an education session as a positive incentive to give them an infringement notice. Police were pessimistic, however, about possibilities for achieving high rates of compliance with the infringement notice provisions. In their view, many offenders would ignore notices received, just as they ignored and tried to evade other fines and obligations.

A final issue highlighted by post-implementation research was the need for more public education about the *Cannabis Control Act 2003*. Police reported that members of the public seemed confused about cannabis infringement notice provisions, with many feeling that private possession and use of cannabis, and cultivation of small amounts, now were legal. This confusion may be a by-product of vigorous political and media debates that occurred when the *Cannabis Control Bill* was making its way through parliament. Attempts already have been made to dispel this confusion through media campaigns, convenience advertising in hotels and other venues, and community based education. However more needs to be done in this area.

Experience in South Australia and other jurisdictions has highlighted the need to continuously monitor police and other criminal justice perspectives when implementing a prohibition with civil penalties approach to minor cannabis offences. The main aim of the current study has been to provide opportunities for criminal justice personnel to provide feedback on the reforms. Data so far indicate the system is being implemented professionally but that, in light of Royal Commission experience, the Police Service is being extremely cautious in its administration of infringement notice procedures. Research so far has not elicited any evidence that commercial producers are trying to exploit the infringement notice provisions as occurred in South Australia, although more time will be needed to assess this aspect. Many law enforcement personnel see provisions which allow recipients of a notice to satisfy their obligations by attending an education session as extremely beneficial - however it is important that the law enforcement sector not develop unrealistic expectations about the ability of such education sessions to change offenders' lives.

Understanding of the new laws amongst both police and members of the public is far from perfect. For the system to achieve the outcomes intended by legislators, it is essential that levels of understanding improve. Media and other campaigns to inform the public that cannabis cultivation and use remain illegal, and to warn about risks associated with cannabis use, should be extended. Where possible, relevant Drug and Alcohol Office pamphlets and booklets should be made available to operational police, and distributed to offenders.

Police and other criminal justice perspectives should be further monitored, in a follow-up study eighteen months after the CIN system's implementation. Such a study can assess whether difficulties noted during early stages have been addressed, as well as providing opportunities to identify possible unintended consequences such as net widening.

BACKGROUND

This report focuses on the ways police and other criminal justice personnel in Western Australia understand, and are implementing, “prohibition with civil penalties” procedures for adults detected committing minor cannabis offences. A proposal to reform the State’s cannabis laws along these lines was included in the Labor Party’s pre-election policy and was endorsed by an August 2001 Community Drug Summit convened after it won government. Pursuant to the Drug Summit, the Minister for Health formed a Working Party of experts to advise on implementation of relevant recommendations (Prior, Swensen, Migro et al., 2002). Research and consultations by this group informed a *Cannabis Control Bill* presented to Western Australian Parliament in March 2003. The bill was the subject of vigorous parliamentary debate, in the context of which amendments were agreed. Despite - or perhaps partly as a result of - widespread political and media discussions, public understanding of the *Cannabis Control Act 2003*, which was passed on 24 September 2003 and came into operation 22 March 2004, still is far from perfect. False perceptions may well have implications for criminal justice personnel, as they apply relevant law. One of the aims of the current study, and of the broader evaluation coordinated by Curtin’s National Drug Research Institute, is to facilitate better understanding of the nature and impacts of Western Australia’s reforms and to ensure that, should they result in outcomes not desired by legislators, relevant problems can be detected and addressed without excessive delay.

The key features of Western Australia's new Cannabis Infringement Notice (CIN) system are as follows:

The Cannabis Infringement Notice (CIN) Scheme

Principles and Goals:

The scheme recognises that cannabis, like other drugs has the capacity to cause harm.

The scheme should:

- Not encourage use, nor patterns of use which may increase harm;
- Reduce the adverse social costs of being apprehended for a minor cannabis offence;
- Move cannabis supply away from large-scale, criminal, commercial suppliers;
- Free up the police and the courts to deal with more serious crimes.

Key Features ^[1]:

- The possession of cannabis for personal use remains illegal.
- An adult possessing up to 15 grams of cannabis is eligible for an infringement notice with a penalty of \$100.
- An adult possessing more than 15 but not more than 30 grams of cannabis is eligible for an infringement notice with a penalty of \$150.
- Possession by an adult of a used smoking implement attracts a penalty of \$100.
- Cultivation by an adult of not more than 2 non-hydroponic cannabis plants is eligible for an infringement notice with a penalty of \$200. Adults in households where there are more than 2 plants are not eligible for an infringement notice. Persons cultivating cannabis hydroponically are not eligible for an infringement notice but are subject to criminal prosecution.
- Offenders are required to pay the penalty in full within 28 days or complete a specified cannabis education session.
- Those receiving more than two infringement notices across more than two separate days within a three-year period do not have the option of paying a fine. They must complete the education session or face a criminal charge.
- Juveniles are not eligible for an infringement notice under the CIN scheme but can be cautioned and directed to intervention programs.
- Police will lay criminal charges against persons who attempt to flout the intention of the scheme, for example by engaging in cannabis supply, even if they are only in possession of amounts otherwise eligible for an infringement notice.
- Where those otherwise eligible for an infringement notice face more serious charges for other concurrent offences police will issue criminal charges for the cannabis matters, rather than issue a CIN.
- Thresholds for dealing have been reduced from 100 grams or 25 plants to 100 grams or 10 plants.
- Persons possessing hash, or hash oil are not eligible for an infringement notice.
- Implementation of the scheme has been accompanied by a public education campaign on the harms of cannabis and the laws that apply.
- 'Head shops' (cannabis paraphernalia retailers) and hydroponic equipment suppliers now are subject to regulation.
- The scheme will be subject to ongoing monitoring and review.

^[1] The Government made two changes to the scheme proposed by the Ministerial Working Party on Drug Law Reform. Given the timing of these changes it was not possible to evaluate public attitudes to these as part of this sub-study. These changes involved:

(a) Making possession of a used smoking implement an offence under the CIN scheme attracting a \$100 fine.

(b) In response to an Upper House amendment moved by the Opposition, the Government decided to cap the number of notices so that those receiving more than two infringement notices across more than two separate days within a three year period will not have the option of paying a fine. They will have to complete the education session or face a criminal charge.

Opponents of the *Cannabis Control Act 2003* have characterised it as "softening" the State's position in relation to cannabis and some members of the public even seem to believe that possession, cultivation and use of small quantities now are permitted. In an attempt to counteract misunderstandings, introduction of the new laws was preceded by a two-week mass media campaign coordinated by Western Australia's Drug and Alcohol Office. This campaign, and further community information produced and disseminated on an ongoing basis, has concentrated on improving public understanding in relation to penalties that still apply to cannabis cultivation, possession and use, potential health harms associated with cannabis consumption and the education sessions that some offenders will be required to attend. Members of the Working Party also have pointed out that some aspects of the new regime in fact are more onerous than preceding provisions. For example, legislative thresholds for deeming cannabis in possession to be for the purpose of dealing have been reduced from 100 grams and 25 plants to 100 grams or 10 plants, and "headshops" (cannabis paraphernalia retailers) and hydroponic equipment suppliers now are subject to stricter regulation.

Western Australia is the fourth Australian jurisdiction - after South Australia, the Australian Capital Territory and the Northern Territory - to introduce prohibition with civil penalties for some cannabis offences. Other countries - for example Canada and the United Kingdom - are monitoring our experience with interest. In the context of a government commitment to ensuring comprehensive assessment of both intended and unintended consequences, Curtin's National Drug Research Institute has secured National Drug Law Enforcement Research Fund (NDLERF) support for a pre-change phase review¹ of the effects of the *Cannabis Control Act 2003* on patterns of cannabis use, cannabis markets, relevant law enforcement practices and public knowledge about cannabis-related harms. This report - which focuses on policy makers and the law enforcement sector - forms part of this review.

Prohibition with civil penalties, some history

Western Australia did not implement an infringement approach for minor cannabis offences without first assessing possible benefits and costs, and reviewing experience in other jurisdictions. Some distinguishing aspects of the Western Australian model reflect attempts to avoid problems perceived to have occurred elsewhere. Before presenting findings from the current research it is useful briefly to outline why prohibition with civil penalties for minor cannabis offences has been advocated, and to discuss experience in South Australia after it pioneered this approach in 1987.

Cannabis has long been one of the illegal drugs used most frequently by Australians. A 1998 National Drug Strategy Household Survey suggested that almost 45% of Western Australians aged fourteen and over had tried cannabis at least once in their lifetime, and that about one in five had used it during the preceding twelve months

¹ In the context of the sub-study, this would have meant surveying police and other criminal justice attitudes *before* Western Australia's cannabis infringement notice system was agreed by parliament. For reasons outlined later in this report, however, the Western Australia Police Service did not see it as helpful for large numbers of its members to be interviewed while relevant reforms had not been finalised. This sub-study therefore was broken into two stages and also includes interviews with criminal justice personnel *shortly after* the Cannabis Control Act came into effect.

(Fitzsimmons and Cooper-Stanbury 2000). Regardless of statistics, however, the majority of Australians do not favour making the production, distribution and use of cannabis legal. The most frequently stated reason is adverse health effects. Alleged problems include respiratory system damage and the possibility that regular cannabis consumption may exacerbate pre-existing dispositions toward schizophrenia and other mental illnesses. Many Australians also are concerned that exposure to cannabis may provide a gateway or “stepping stone” toward experimentation with other, more harmful, illicit substances such as the amphetamines, cocaine and heroin.

Not all advocates of a prohibition with civil penalties approach accept these concerns - particularly the gateway hypothesis. Most, however, do accept the possibility that prolonged and excessive cannabis use may precipitate significant health problems (see Hall, Degenhardt and Lynskey 2001), and agree that outright legalization of cannabis cultivation, distribution and consumption would not be desirable. As well as lacking political feasibility, such an approach would be inconsistent with Australia’s obligations under international treaties. It also would make it more likely that, as has occurred with alcohol and tobacco, powerful economic interests would use advertising and other mechanisms to aggressively promote cannabis in order to extend its consumer base.

Reform advocates still see it as anomalous, though, that substances such as alcohol and tobacco, whose health and other harms are well documented, can be consumed legally while cannabis users face criminal prosecution. They see it as wasteful and even counter-productive to devote extensive police and court resources to apprehending and prosecuting people for possession or use of small amounts in private. According to this view, rigorous bans on the cultivation of small quantities of cannabis may have the unintended consequence of compelling users to rely even more on organised criminal networks for supplies. Moreover the consequences of conviction for cannabis possession or use can be disproportionate to the offence itself. Not only can it significantly impair prospects of employment in many professions and fields such as policing and the mining industry, it can result in a person being barred entry to some countries.-. for example the United States.

Prohibition with civil penalties enables governments to continue to make clear, through statutes and their enforcement, that cannabis possession and use are disapproved. This in itself can deter people for whom it is important to be law-abiding. However an infringement notice system also provides mechanisms whereby those detected committing some less serious offences can avoid a court appearance and the adverse career and other social consequences associated with a conviction or finding of guilt for a drug offence. If the notice option is extended to cultivation of a small number of plants it may also allow regular users to avoid contact with, and reliance on, dedicated illicit drug supply networks by growing cannabis for their personal use under the infringement notice scheme.

As noted, South Australia was the first jurisdiction to implement prohibition with civil penalties for some cannabis offences in 1987. Its experience over the last two decades has been extensively researched. Findings by bodies such as the Australian Institute of Criminology, the South Australian Drug and Alcohol Service Council, the South Australian Office of Crime Statistics and Research and Curtin’s National Drug Research Institute have had significant bearing not just on Western Australia’s

decision to adopt cannabis infringement notices but on much of the detail of the system it put in place.

Briefly summarised, research on South Australia indicates that cannabis infringement notices have been less costly to administer than formal prosecutions (Brooks, Stathard, Moss, Christie and Ali 1999), and that perceived longer-term career and other repercussions for offenders receiving and paying notices were less severe than for individuals incurring convictions (Lenton, Christie, Humenuik, Brooks, Bennett and Heale 1999). Despite dire predictions, there has been no evidence that the reforms caused significant increases in the incidence of cannabis use among the general population (Ali et al 1999: 26; see also Christie 1999; Donnelly, Hall and Christie 2000). Finally, after early claims from their Association that infringement procedures would prove unworkable, South Australian police have accepted them. Interview and focus group discussions with drug squad detectives and uniformed personnel ten years after prohibition with civil penalties were introduced did not disclose any officers wanting the approach to be abandoned and formal prosecutions reinstated (Sutton and McMillan 1999).

However South Australia also has experienced some difficulties. One of these is net widening: significant increases in the number of minor cannabis offences proceeded against. Between 1987/88, when notices were introduced, and 1993 the number of minor cannabis offences dealt with in South Australia increased about three-fold: from 6,200 to 17,000 (Ali and Christie 1994: iv). Contrary to initial expectations, moreover, the majority of notices - about 55 percent - are not being paid in South Australia (Ali and Christie 1994: 15), forcing police to issue warrants and initiate court proceedings. Finally, and perhaps most significantly, there is evidence that provisions requiring notices to be issued when small numbers of plants were detected could, in some circumstances, be exploited by individuals and groups intent on cultivating and distributing cannabis commercially rather than for personal use.

South Australia's initial legislation specified that notices be issued to individuals found cultivating "a small number" of cannabis plants "for non-commercial purposes". However in 1990 the maximum number deemed non-commercial was set at ten. This followed some court cases where people cultivating significant numbers of plants escaped conviction because it could not be established beyond reasonable doubt that the crop was not for personal use. Despite this change, the ten-plant limit itself came under question within a few years. In 1996 the Australian Bureau of Criminal Intelligence (ABCI) reported that:

Groups are taking advantage of this system by growing ten plants at a number of locations and then pooling the harvest to increase the profit. The smaller crops reduce the risk of detection and only attract a \$150 fine if discovered. (Australian Bureau of Criminal Intelligence 1996: 29)

Such claims were confirmed in a 1998 study by one of the present authors and a colleague, who interviewed South Australian drug squad and regional detectives as well as representatives of the State's Director of Public Prosecutions and of the National Crime Authority (Sutton and McMillan, 1999). Part of the problem was that technical innovations - for example hydroponics (which had significantly reduced the seed to harvest cycle) and plant grafting (which ensured that only the most fertile

female stock were used) - had made it possible even for small crops to produce significant amounts of head. Intelligence reports indicated that some entrepreneurs were cultivating cannabis plants in numbers below the infringement notice limit, but for commercial purposes (Sutton & McMillan 1999: 47-50). In light of these findings South Australia reduced the infringement notice limit from ten to three plants in June 1999 (Christie & Ali, 2000) and to one non-hydroponic plant in January 2003.

Western Australian reforms

In assessing reform options, Western Australia has been acutely conscious of South Australian and other experience. While convinced that prohibition with civil penalties would have benefits, both the Government and the Ministerial Working Party have tried to ensure that wherever possible the State's *Cannabis Control Act 2003* incorporates mechanisms that will forestall unwelcome consequences. Such reasoning also informed amendments to the Bill agreed at the parliamentary debate stage. Table 1 summarizes the ways Western Australia's legislation and procedures have tried to avoid problems experienced elsewhere.

Table 1: Problems experienced with cannabis infringement notice systems in other Australian jurisdictions and how Western Australian approach tries to counteract them

Problem(s) Reported Elsewhere	Mechanisms in WA <i>Cannabis Control Act 2003</i> and procedures to forestall
Attempts by entrepreneurs to grow cannabis for commercial reasons, but escape with infringement notices if detected. Often hydroponic techniques are used to speed the plant maturation process and increase yield per plant, while keeping numbers of plants at any one location below the infringement notice limit.	<ul style="list-style-type: none"> • Maximum number of expiable plants limited to <u>two per household</u>. (The “household” provision also prevents cultivation of commercial-size crops in shared accommodation, with each household member claiming nominal ownership of just two plants). • An infringement notice cannot be issued for cannabis grown hydroponically. • Police have discretion to charge an offender rather than issue a notice, if they believe he or she is attempting to flout the intentions of the law. • Stricter regulation of “headshops” and hydroponic suppliers.
Attempts by cannabis traffickers to avoid being charged and taken to court by never carrying more than an “infringeable” amount of cannabis when in public.	<ul style="list-style-type: none"> • Police have discretion to charge an offender rather than issue a notice, if they believe he or she is attempting to flout the intentions of the law.
A high rate of non-payment of cannabis infringement notices.	<ul style="list-style-type: none"> • Offenders who cannot or will not furnish evidence of identity will not be issued with an infringement notice. (Evidence from other jurisdictions suggests that offenders may have escaped fine payment by providing a false name and address to police). • An infringement notice will not be issued to an offender who also is being apprehended for a more serious offence. (Anecdotal evidence from South Australia suggests that one reason for its high rate of non-payment of infringement notices may be that offenders also charged with more serious offences such as breaking and entering tend to ignore notices and ask for all outstanding matters, including unpaid cannabis fines, to be dealt with when their major charge reaches court). • Offenders unable or unwilling to pay infringement notice fines have the alternative of attending an education session at a designated drug treatment centre. (Note: this also reduces the possibility that offenders who fail to pay notices simply because they lack financial resources will find themselves incurring a conviction for a minor cannabis offence).

The need to forestall problems apparently experienced elsewhere is not, of course, the only reason for significant differences between Western Australia’s cannabis infringement notice system and schemes in place in South Australia, the Australian Capital Territory and the Northern Territory. Some features - for example giving offenders the option of attending an education session rather than simply paying infringement notice fines - also reflect and extend distinctive Western Australian experience. Participation in community-based education had already been part of a

caution and diversion program for adult minor cannabis offences implemented throughout Western Australia in March 2000 (Lenton, 2004). Most people interviewed in the context of the current research saw such educational sessions as likely to benefit users - the fact that rates of non-compliance with infringement notices might also be reduced by allowing offenders to attend such a session in lieu of paying fines was not the major reason for including this option in the cannabis infringement notice “package”.

This point acknowledged, it is clear that Western Australia has made, and is making, sustained efforts to avoid the more problematic aspects of South Australia’s experience. Western Australia Police Service involvement in development and refinement of its prohibition with civil penalties scheme - including participation by senior police in both the Drug Summit and the subsequent Ministerial Working Party - has been important in this respect. The aim has been to ensure that law enforcement and other justice agencies are equipped with a system that is both workable and efficient, and which has minimal potential to generate loopholes and unintended consequences. Western Australia’s distinctive “catch-all” provision, which enables police to charge and prosecute individuals they consider to be flouting the intentions of relevant laws even if such individuals seem technically entitled to receive a notice, is particularly significant. In effect this acknowledges the need for police to be able to exercise judgement and discretion in administering a prohibition with civil penalties scheme, and makes such discretion central to the *Cannabis Control Act 2003*. Whether and how the Western Australia Police Service recognizes and acts on this discretionary potential is, of course, one of the key issues to be explored in research.

The present study

In light of experience elsewhere, the National Drug Research Institute sees monitoring of police and other criminal justice perspectives and experience as a critical part of its comprehensive review of the Western Australia’s Cannabis Infringement Notice System (CINS) reforms. Therefore it allocated a portion of the NDLERF grant to commissioning an assessment of criminal justice perspectives. The current study canvasses policy makers, police and other criminal justice views both *before* and immediately *after* introduction of relevant reforms.

Formal objectives of the current sub-study have been:

- to examine the attitudes and practices of policy makers, members of the law enforcement and magistracy and other judicial sectors involved in enforcing the new legislation and regulations for minor cannabis offences; and
- to examine perceptions among policy makers and law enforcement personnel of the influence of the new legislation and regulations for minor cannabis offences on the drug market and its dynamics.

Research was in two phases. The *pre-implementation phase* involved intensive interviews with key stakeholders prior to introduction of the *Cannabis Control Act 2003*, during March and June of that year. Issues canvassed at this stage included the background and aims of the reforms and the challenges they might pose for the

Western Australia Police Service. *Post-implementation phase* interviews occurred shortly after the *Act* had been proclaimed. Between 14 and 18 June 2004, key stakeholders - including senior management level and operational police - provided detailed feedback on such issues as enforcement sector training on infringement notice laws and procedures and how the system seemed to be working at the grassroots. Findings from both phases are summarised below.

METHOD

Both phases of research employed qualitative rather than quantitative methods. The majority of data was collected in the context of semi-structured interviews, supplemented in some instances with focus group discussions. Interviews and focus groups were of approximately one hour's duration, and were audiotaped and transcribed. Interview guides for both the pre- and post-implementation research are attached in Appendix 1. During the first round of interviews, interviewees who were not familiar with the details of the proposed scheme were given a brief article outlining the CIN recommendations and how they were being evaluated (Appendix 2).

Audio taped interviews were transcribed by the Chief Investigator and analysed for key themes. Standard techniques for qualitative analysis were employed. The small number of participants in both phases of data collection meant that it was not necessary to employ data analysis software. Ethics approval for the sub-study, formally classified as "low risk", was obtained from the Department of Criminology Human Research Ethics Advisory Group, a designated sub-committee of the University of Melbourne's Human Research Ethics Committee. Prior to the commencement of each interview or discussion, informants were briefed on the study aims and methodology. They were then presented with, and signed, a written statement formally confirming their agreement to participate. All participants were told that, should they wish, they could withdraw from the research at any stage before data analysis and report writing began. As anticipated, collection of interview and focus group data did not give rise to any distress or concerns among respondents.

PRE-IMPLEMENTATION INTERVIEWS AND FINDINGS

As noted, these interviews focused on key stakeholder perspectives prior to introduction of the cannabis reforms. Fifteen people were spoken to during March and June 2003. Twelve interviews were with individuals, while three senior members of the Western Australia Police Service participated in a group discussion. Participants in this first phase comprised:

- the Chair, Executive Officer, and five of the six other members of the Ministerial Working Party charged with researching and refining Western Australia's "prohibition with civil penalties" proposal;
- four Western Australia Police Service officers with extensive experience in the development and implementation of drug and alcohol related programs and training, and/or in the investigation of trafficking and other drug-related offending;
- the Health Department senior bureaucrat who served as the Minister's instructing officer for the Cannabis Reform Bill;
- the Manager of Diversion Programs in Western Australia's Drug and Alcohol Office;
- a non-government community service based clinician with experience in delivering criminal justice-mandated education for cannabis users;
- The Honourable David Malcolm QC, the Chief Justice of Western Australia.

Issues canvassed during the pre-implementation research included:

- the background and origins of the proposed reforms;
- their key aims;
- whether the Bill presented to Western Australian parliament represented achievement of these aims;
- advantages and disadvantages of a prohibition with civil penalties approach;
- how rank and file police in Western Australia were likely to perceive the proposed reforms;
- whether and how Western Australian police might make a Cannabis Infringement Notice System (CINS) work;
- a "worst case" scenario for the CIN system (that is, interviewees were asked to speculate on how the proposed reforms "might go wrong")

Researchers would like to have canvassed a wider range of criminal justice perspectives - in particular to obtain the views of more operational police. Not unreasonably, however, the Western Australia Police Service took the view that it

would be unhelpful to ask large numbers of officers about ways they might implement cannabis law reforms at a time when relevant legislation was still being debated in parliament and there had been no opportunity for the Police Service to develop and implement relevant briefing and training procedures. The aims of pre-implementation research therefore were more limited: to clarify and discuss the purpose of the proposed cannabis law reforms, to make a preliminary assessment of possible unintended outcomes, and to identify key challenges police and other justice personnel might encounter once an infringement notice system came into effect.

Findings confirmed that Ministerial Working Party members developed the CIN proposal in a spirit of pragmatic, cautious reform. Key aims were to ensure that legislation was consistent with the government's formal condemnation of cannabis production, distribution and use, while at the same time improving efficiency and reducing counterproductive effects of criminal justice interventions. Efficiency would be improved because a CIN system should allow police and other justice agencies to dedicate fewer resources to apprehending and processing minor offenders, and more to the targeting and punishment of higher-level producers and dealers. Counterproductive effects would be reduced by affording users, and those cultivating plants solely for personal use, an opportunity to avoid the stigma, and the employment and other social disadvantages, associated with being convicted or found guilty of a drug-related offence.

All Working Party members were adamant that the reforms should neither condone, nor seem to be condoning, cannabis use. Members were aware of health risks associated with frequent cannabis use. This point made, Working Party members also were concerned about the impacts that involvement with police and the criminal justice system could have on the lives and careers of users who were otherwise law abiding citizens. In Western Australia, as in other parts of Australia, cannabis is the most widely used of the illicit drugs. The group's pragmatic, gradualist recommendations were seen as a way of acknowledging this "fait accompli" and reducing the impacts of criminal law on users while at the same time respecting current public opinion and political and media debates. The key concern was to develop reforms that would be accepted both by the public and by the agencies required to put them into effect (see also Lenton 2004).

Making the cannabis infringement notice system workable from an enforcement perspective had always been a high priority. It was for this reason that the Ministerial Working Party recommended that police issuing of cannabis infringement notices should be discretionary, rather than obligatory. Concern about frustrations expressed by South Australian police, who had seen "cultivation" provisions exploited by commercial producers, also explained why the Working Party recommended that the number of cannabis plants in cultivation for which a notice could be issued should be limited to two per household. Subsequently, of course, Western Australia's Cabinet further limited eligibility provisions, by excluding individuals found cultivating cannabis hydroponically from the CIN system.

Pre-implementation interviews provided useful background on the reasons - outlined earlier in this report - that completion of designated community-based education session was included as an option for minor cannabis offenders unable or unwilling to pay an infringement notice. Even more importantly, however, it helped alert the

researchers to some unintended consequences that might occur at the implementation stage. One related to possible apathy among operational police. As noted, it was not possible to interview a wide cross-section of officers during this stage. Among the operational personnel who were able to be interviewed, however, there were concerns that the rank and file might perceive the CIN scheme as “soft option” which “gave the green light” to small scale cannabis possession, cultivation and use. Officers who interpreted the legislation in such a way “might not bother” to issue notices, even though they might have detected someone possessing or using a small amount of cannabis. If such attitudes and practices became widespread, police would in effect be introducing a de-facto form of legalisation which, in the view of these few respondents, might encourage significant increases in the incidence of cannabis use among “at risk” groups (eg. younger people). It should be noted that the view summarised here was a minority one, and that other Australian jurisdictions implementing cannabis infringement or expiation notices have not experienced boycotts by operational police. However the very fact that a few experienced police speculated about such an outcome did highlight the need for operational police to be thoroughly briefed on, and trained in, the CIN system before it was introduced to Western Australia.

Another possible unintended consequence highlighted during this research was net widening. As noted, net widening occurred in South Australia when cannabis infringement (or expiation) notices were introduced. It reflects the fact that issuing a notice is far easier, and involves significantly less time and paperwork, than taking an offender to court. Recipients of notices also are perceived as less likely to contest them, because if they take the matter to court they run the risk not just of losing their case but also of incurring a criminal conviction. Operational police may therefore become less wary about initiating proceedings, even in borderline cases.

Most Working Party members were aware of, and had some concerns about, net widening. Even from these early interviews, it was clear that Western Australia Police Service culture and authority systems did not encourage operational police to exercise their right *not* to proceed in every instance where an offence was suspected - even in circumstances where strict application of the law may not be beneficial. Some net widening therefore was expected to occur once the CIN system was introduced. However Working Party members believed that any economic and social harms associated with this consequence would be outweighed by the benefits that flowed from affording cannabis users the possibility of avoiding a criminal conviction. Most interviewees also suggested that the innovative provision that would allow Western Australians to elect to attend an education session within the prescribed 28 day period, in lieu of paying infringement notice fines, should further minimise harms from net widening.

Even when these arguments are taken into account the pre-implementation research still provides reasons to believe that net widening might become a significant problem for Western Australia’s cannabis infringement notice system. For it to be kept to a minimum, it would seem essential that the purpose and intended benefits of the education component of the CIN system be made clearer to police and other criminal justice practitioners. One or two police interviewed during the pre-implementation research had high expectations in relation to the education sessions: feeling that such sessions had the potential to “change the lives” of cannabis users. Actual providers of

these sessions tended to be less ambitious, arguing that the main aim was to ensure that individuals referred to them were in a better position to make informed choices. The researchers emerged from this phase convinced that before a CIN system was introduced, operational police should be given a realistic appreciation of what the education interventions can, and cannot, achieve. In the absence of such an understanding, there was a real possibility that introduction of Western Australia's system would lead to significant amounts of net widening.

Police discretion in relation to the issuing of Cannabis Infringement Notices also emerged as a possible point of contention. As noted, the main aim of the *Act's* discretionary provisions was to ensure that action could be taken against individuals possessing or growing "infringeable" amounts, but believed to be involved in the commercial supply and distribution. However some police interviewed prior to implementation saw potential for the "flouting" provision to be interpreted much more broadly - for example to enable police to charge, rather than issue a CIN to, users who already had received several notices (eg. two or three). Subsequently, of course, Western Australia's Parliament amended the *Cannabis Control Bill* to ensure that offenders who had already received two notices, on different days, within a three-year period would forfeit the option of paying a fine, and be compelled to attend an education session. This amendment may have reduced the likelihood that police will try to charge repeat offenders, on the grounds that they were "flouting the intentions of the legislation", rather than continuing to issue infringement notices to them.

Other concerns raised in the first round of interviews included misperceptions about the aims of the CIN system among the mass media and the general public, and a possible increase in cannabis use among established users. The interviewees confirmed the need for follow-through on the Working Party's recommendation of a thorough public education program prior to implementation of the cannabis infringement notice scheme. All these issues were followed up during the post-implementation phase interviews.

POST-IMPLEMENTATION INTERVIEWS AND FINDINGS

As noted, cannabis infringement notice procedures became operational in Western Australia on 22 March 2004. The second round of interviews, which took place between Monday 14 and Friday 18 June 2004, focused therefore on the very early stages of implementation. The key objective was to obtain feedback on ways police were converting the *Cannabis Control Act's* legislative framework into a system of "law in action".

As with the earlier research, most data collection took the form of semi-structured interviews. However there was one group discussion. Informants during this stage of the review included:

- the officer in charge and several key senior staff from the Western Australia Police Service's Alcohol and Drug Coordination Unit;
- two members, and the former executive officer, of the recently disbanded Ministerial Working Party on Drug Law Reform;
- the program manager and a senior project officer in the Drug and Alcohol Office who had been responsible for commissioning and coordinating mass media and community education in relation to the *Cannabis Control Act 2003*;
- two senior sergeants from a police station in suburban Perth;
- three constables (one from Canning and two from Perth Central) who already had issued cannabis infringement notices;
- a senior officer from Western Australia Police Service's Organised Crime Investigation Unit;
- the officer in charge of the Western Australia Police Service's Crime Research Unit;
- a senior clerk within the police service responsible for administering the infringement notice system.

During this phase a total of eighteen people volunteered information and perspectives, either individually or in group discussions. In addition the Drug and Alcohol Office invited the researchers to attend part of a workshop for its community drug treatment centre staff (approximately forty in attendance). This provided an opportunity to gather further information on the nature and content of cannabis education sessions and to assess treatment sector views on the early stages of implementation of the cannabis law reforms.

While emphasis was on assessing ways the cannabis infringement notice procedures were implemented, we also sought to review and update perspectives canvassed at the pre-implementation phase. Key matters canvassed include:

- police training in cannabis infringement notice laws and procedures;

- how the infringement notice system was working in practice (eg. whether notices were being issued and drugs confiscated “on the street” or whether offenders were being taken back to a police station to be questioned and have drugs weighed);
- whether operational personnel fully understood these new procedures;
- whether implementation of infringement notices seemed to be affecting police willingness to issue cautions to minor cannabis offenders;
- whether any operational police had attempted to bypass or boycott CIN provisions;
- how offenders were reacting to being issued with a cannabis infringement notice;
- how offenders were responding to cannabis education sessions;
- how mass media and community based publicity in relation to the *Cannabis Control Act 2003* had been implemented, and the perceived effectiveness of this publicity.

Our key concerns were:

- to monitor how the Western Australia Police Service had prepared for implementation of cannabis infringement notices;
- to assess how the system was working in practice;
- to provide operational police and other relevant personnel with opportunities to say how they viewed the system; and
- to review public education in relation to the *Cannabis Control Act 2003*.

Findings on each of these aspects are summarised below.

Implementation of Cannabis Infringement Notice procedures by the Western Australia Police Service

The comparatively short time period - just six months - between the *Cannabis Control Act's* approval by Parliament and its date of implementation (approved 24 September 2003, proclaimed 22 March 2004) gave the Western Australia Police Service a limited window of opportunity in which to prepare relevant forms and associated explanatory documentation, modify computer systems, finalize administrative procedures and train personnel. In interviews, the Police Service's Alcohol and Drug Coordination Unit stated that a training package had had to be prepared within about eight weeks. This formed the basis for a two-day course, administered to police District Training Officers (DTO's) from throughout Western Australia. The course, which ran at the Western Australian Police Academy, covered the philosophy and aims of the cannabis infringement notice system, its relationship to other government and police service drug and alcohol programs, and the “nuts and bolts” of implementation. Following

this instruction, training officers had returned to their districts and had developed and implemented schedules for visiting local stations to instruct staff. From the start, the Alcohol and Drug Coordination Unit had recognised that it would be not be possible for all operational police to received direct training on the *Cannabis Control Act 2003* before its proclamation on 22 March 2004. The aim had been to ensure that, within a minimum period, at least fifty percent of officers would attend a session convened by a DTO. Officers who had received direct training could then pass on their understanding to patrol colleagues. Alcohol and Drug Coordination Unit records indicated that, at the time of our data collection (mid-June 2004), approximately fifty five percent of “front-line” police had attended a session on the *Cannabis Control Act 2003* convened by a District Training Officer.

Quite rightly, the Alcohol and Drug Coordination Unit saw this as a significant achievement. However interviews with operational personnel highlighted a few early difficulties. While some officers demonstrated excellent knowledge of the cannabis infringement notice system and the circumstances under which a notice could be issued, others were less certain. One front-line officer, for example, was under the impression that cannabis infringement notices, like the earlier system of formal cautions, could only be issued to adult first offenders. We also came across instances where notices had mistakenly been issued to people also charged with more serious offences. Withdrawing these notices had been quite a complicated process during the early stages of implementation - although all respondents acknowledged that the problem had already been solved.

Such uncertainties and misunderstandings are inevitable when a procedure is in its early stages and the lead-time for implementation has been limited. As our informants pointed out, operational police are constantly required to implement new systems and it is simply not possible for the average officer to become an instant expert after each innovation. Like most people, police tend to learn on the job and adjustments take some time. Given the nature of police work, moreover, it had not always been possible for officers who already had attended a session on the *Cannabis Control Act 2003* to impart all the relevant information to yet-to-be trained colleagues at the same station. Factors such as these mean that it would have been unreasonable for the researchers to expect, less than three months after formal proclamation, that every operational police officer in Western Australia would demonstrate detailed knowledge of the *Cannabis Control Act 2003*.

In light of these early interviews, however, the researchers would caution against media and other interpreters trying to read too much into early statistics on cannabis infringement notices issued by police. Experience in other States suggests that it took up to eighteen months for all operational police to become fully knowledgeable about, and confident in applying, such procedures. Despite the excellent training program developed by the Alcohol and Drug Unit, we anticipate that Western Australian police may require a similar adjustment period.

How the system is working in practice

Of greater concern is the fact that the operational and senior police we talked to in Western Australia did not consider issuing an infringement notice to be much less time-consuming than formally charging a minor cannabis offender. This was because,

prior to being issued with a notice, all relevant offenders were being arrested and taken back to the police station. Even when only a minimal amount (eg. a single joint) has been detected, Western Australian police were reluctant simply to issue the notice “on the spot” - that is, at or near the location where the offence had been detected - as would be the case for most traffic infringements.

In taking this approach, station-based sergeants and constables were following instructions provided in training sessions and accompanying documentation. This was confirmed by the superintendent in charge of the Police Service’s Alcohol and Drug Unit, who was adamant that the legislation and infringement notice procedures required police to weigh all cannabis detected before issuing a notice. To facilitate the process of weighing, every police station in Western Australia had been issued with a set of scales. Barring exceptional circumstances (eg. deployment of several staff for a raid on a hotel or other location suspected of being frequented by large numbers of cannabis users) the scales tended not to be moved from the station. This meant that operational police had to interrupt patrols and take cannabis offenders back to base before issuing them with the notice.

Operational police and station sergeants could identify other reasons for issuing notices at a police station rather than on the spot. These included the need to verify the offender’s identity (notices cannot be issued to individuals who can not or will not provide evidence of identity) and to check his or her previous criminal history. Some officers also saw a formal station interview as the best way to assess whether there were complicating factors - for example involvement by the offender in commercial production or distribution of cannabis - that would make it inadvisable to issue a notice.

Underlying these reasons, however, was a more fundamental concern. Officers at all levels of the organization thought that simply issuing a notice on the spot while confiscating any cannabis found in the offender’s possession would render police too vulnerable to false accusations. Weighing cannabis as soon as possible after detection at a police station in the presence of the offender and preferably other witnesses, then putting it in a sealed exhibit bag minimised the possibility that, after a notice had been issued, an offender would allege that police had misappropriated some of the cannabis. As a number of interviewees pointed out, the Western Australia Police Service has recently been the subject of a Royal Commission where accusations that police have stolen drugs have been made with some frequency. As the Superintendent in charge of the Alcohol and Drug Unit pointed out, even the most innocent over-estimate on an infringement notice (eg. assessing an amount at twenty grams but finding later, when it was weighed, that only fifteen grams have been seized) may create the impression of corruption. Weighing cannabis at the station in the presence of the offender helps avoid this problem. Operational constables tended to support this view. They saw any additional work and inconvenience as worthwhile, if it provides reassurance that they cannot be falsely accused:

“Often people say to me ‘I’d hate to have your job, with all the paperwork’. But to me, at the end of the day, it keeps me safe. You know, I’d much rather have the paperwork, because it means that if you just follow the guidelines, follow the rules, you don’t have to worry about anything”.

(Constable interviewed during phase two.)

The fact that infringement notices are being issued at the station rather than in the field does not, of course, mean that even as currently administered the CIN system will not facilitate some reduction in police workloads. Police still will be able to spend less time preparing briefs and attending court cases. However the savings will be less significant than advocates of prohibition with civil penalties had anticipated.

As it accumulates experience with Cannabis Infringement Notices, the Police Service may wish to explore possibilities for issuing a higher percentage of notices on the spot. Informants not working in the Police Service, including former members of the Ministerial Working Party, were not convinced that temporary arrest and return to the station before issuing a CIN always was necessary. Capacity to produce a driver's license or acceptable documentation would seem to obviate the need for every minor cannabis offender to be taken back to the station to establish their identity, and it is not clear why extensive record checks are necessary in circumstances where the facts and circumstances of the offence clearly satisfy criteria for an infringement notice. In many instances - for example when someone has been found with a single joint - formally weighing the cannabis seized in the presence of the offender seems over-elaborate. The physical layout of the Cannabis Infringement Notice form in use in Western Australia seems to allow for the possibility of issuing a notice before drugs are weighed - indeed the box where the amount (ie. weight) seized must be written on the CIN is in a section headed "*Details to be completed by issuing officer after service of infringement*". As one experienced policeman pointed out, the very process of arresting someone and taking them back to the station to issue a notice can, in some instances, lead to further complications and perhaps even additional charges such as resisting arrest. Not unreasonably, the Western Australia Police Service's approach to administering cannabis infringement notices has been coloured by the fact that a number of its officers have recently been exposed to allegations later shown to be without foundation. In the long term, however, it is important to recognize that legislators always intended the Western Australia Police Service to be able to exercise judgement and discretion in its application of the *Cannabis Control Act 2003*. The current police approach to enforcing the *Act* does not seem entirely consistent with this intention.

Police perspectives on the cannabis infringement notice system

As noted, researchers were not able to canvass the views of a representative cross-section of law enforcement officers. Those we did speak to, however, seemed generally supportive of the *Cannabis Control Act 2003*. Senior officers were attracted to the idea of diverting cannabis users into an educational program where they could learn more about associated health and other risks. Younger police, most of whom acknowledged having had cannabis users among their circle of friends and acquaintances, were generally supportive of the idea that minor offenders should have some opportunity to avoid the adverse career and other consequences associated with a finding of guilt for a drug offence. We came across no evidence to support concerns, voiced by one or two informants during phase one research, that operational police might see cannabis infringement notices simply as a back door form of legalization and therefore would decline to apply the provisions.

It should be noted, however, that one experienced officer was far from certain that the infringement notice system would in fact help users avoid adverse consequences

typically associated with a court conviction. He thought that the existence of such notices still would need to be disclosed to prospective employers, to United States immigration officials and so on. The researchers subsequently have checked this issue, and have been reassured that the police service will not disclose infringement notice data in response to routine criminal history requests. Given the importance that many operational police attach to this aspect, however, it may be helpful in future training to make disclosure limitations clearer.

Post-implementation interviews with police did little, however, to allay concerns about possible net widening. One way to reduce net widening would be for police to apply other sanctions - for example a formal or informal caution - rather than issuing a notice for every minor cannabis offence detected. Evidence from other jurisdictions indicates, however, that once an infringement notice system has been introduced police are less likely to invoke alternative sanctions. Much the same seems likely to occur in Western Australia. When asked directly whether availability of the infringement notice procedure would make them less likely to deal with a cannabis offender by way of a caution, all the police we spoke to agreed that this would be the case. Most stated that, in light of the recent Royal Commission, it would be unwise and risky not to issue a notice once the relevant offence had been detected. As noted, at least some police interviewed also saw the inclusion of education as an alternative to fine-payment as a positive incentive for them to issue notices to adult cannabis offenders. If, as a result of receiving such a notice, an offender attended an education session and managed to “turn his or her life around” then the law enforcement intervention would have been well worthwhile.

In light of comments such as these, the researchers would be surprised if, in the longer-term, implementation of Western Australia’s cannabis infringement notice system does not result in significant net widening. Our interviews with police also gave some grounds for believing that, despite the range of options provided, levels of offender compliance with notices (that is, *either* paying the notice *or* attending an education session) may be somewhat less than architects of Western Australia’s infringement notice scheme had hoped. Several of our informants predicted that a significant minority of people receiving notices would simply ignore them or tear them up - just as they tended to ignore other fines and civil requirements. As some police saw it, turning a blind eye to, or constantly evading, demands for payment of fines and other debts was a way of life for many individuals living on the margins of society, and these were the types of people police often found themselves apprehending for minor cannabis offences. Police were sceptical whether offenders in this category would respond to an opportunity to pay a fine or attend an education session, even if it meant they could avoid a criminal conviction.

Time alone will tell whether these predictions are correct. Already it is clear, however, that allowing cannabis offenders to “work off” one or more notices by attending an education session at a community based drug treatment centre is likely to cause significant change both in the numbers and the characteristics of people attending such sessions. Centres will have to deal with much larger numbers of repeat cannabis offenders, some of whom may be unreceptive to educational and treatment interventions. Senior Drug and Alcohol Office staff and treatment personnel were well aware of the impending challenge, and were confident of being able to deal with it. Educational materials were in the process of being modified and extended, to make

them more relevant to a wider range of clients. However the dynamics and the impacts of the cannabis education sessions, and their capacity to maintain public credibility, will need to be closely monitored. Interviews suggested that, rightly or wrongly, some police already perceived the educational intervention as a key rationale and justification for the cannabis infringement notice system.

Police we interviewed seemed less aware of, or concerned about, ways the infringement notice system might affect the cannabis industry in Western Australia. One of the reasons for including cultivation of up to two non-hydroponic cannabis plants among the infringement offences was to try to undermine organised crime's monopoly over cannabis supply and distribution (Prior, Swenson, Migro et al 2002: 4). The fact that they could avoid a court appearance and criminal conviction even if detected with one or two plants might make some regular users less disinclined to "grow their own", and some of this home-grown material might later find its way to friends and acquaintances. From interviews, however, it seemed that the Police Service had not, as yet, considered monitoring or enhancing intelligence and other data on cannabis production and distribution in Western Australia in order to assess whether the advent of an infringement notice system had any significant impact on markets. The researchers understand that the National Drug Research Institute will be surveying cannabis users in an attempt to assess whether patterns of supply do change in the aftermath of the *Cannabis Control Act 2003*. However, even experienced cannabis users may have limited capacity to provide reliable information about the ultimate source of their supplies. The value of the NDRI survey would be enhanced if the Police Service also were able to collect and monitor quality intelligence on local patterns and trends in cannabis production and distribution.

Public education in relation to the *Cannabis Control Act*

From the outset, architects of Western Australia's reforms have been conscious that the public would need to be kept fully informed about any cannabis infringement notice scheme:

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

Without the supporting campaign a change of this magnitude ... there could be confusion about the status of illicit drugs in general. It is also important to maintain confidence in the law enforcement process that will be adopted for issuing an expiable cannabis offence notice." (Prior, Swenson, Migro et al, 2002: 22)

South Australia, which did not ensure that implementation of reforms coincided with a comprehensive program to educate the public about their nature and the purpose, has seen ongoing confusion about the legal status of minor cannabis offences. A telephone survey of 605 residents in the late 1990's - more than a decade after prohibition with civil penalties had been introduced - found almost a quarter of respondents incorrectly believing possession of less than 100 grams of cannabis to be legal, and 53 percent believing that growing three plants was now not against the law (Heale, Hawks and Lenton 1999). In the report recommending a prohibition with

civil penalties approach for Western Australia, the Ministerial Working Party on Drug Law Reform therefore provided detailed recommendations on a public education campaign that should coincide with implementation of the scheme. Such a campaign:

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

- that the possession and cultivation of cannabis is still illegal and will attract penalties;
- the new law, including the implications of and penalties for minor and major infringements;
- distinguishing between the processes involving adults and juveniles who have committed a minor cannabis offence;
- the risks and harms associated with cannabis use;
- treatment and other support options and how to access these; and
- other penalties ... that would still apply to those involved in trafficking and other serious offences.” (Prior, Swenson, Migro et al. 2002: 22-23)

The Working Party also provided cost estimates, based on an assumption that the education campaign would be from four to eight weeks in duration.

Pursuant to this recommendation, implementation of the *Cannabis Control Act 2003* in March 2004 was preceded by a high profile media campaign, coordinated by the Drug and Alcohol Office. Due to budget constraints, however, the press publicity was shorter than the Working Party anticipated: just two weeks. However the Drug and Alcohol Office was able to complement this mass media work with a number of other information resources such a web-sites, convenience advertising in toilets in licensed venues, and an eye-catching and informative series of pamphlets on the new laws, the possible health harms of cannabis use and the existence and content of cannabis education sessions. It also has funded a wide range of relevant community based educational initiatives. The Drug and Alcohol Office also has produced and distributed a range of printed materials to hydroponic shops and to venues retailing pipes and other implements that might be used for cannabis consumption. These materials provide advice both on the harms that can be associated with cannabis use and on retailers’ obligations under the new laws.

The researchers received detailed briefings on the Drug and Alcohol Office’s work and were impressed by what has been achieved. However interviews with criminal justice personnel left the impression that there is still a great deal to be done. As noted, some police themselves seemed unclear about the content and implications of the new cannabis laws. Those operating at the “front line” reported that many members of the public seemed confused:

“We now get phone calls from people saying ‘We hear now that it’s legal to have two plants in your back garden’. Well it’s not legal. It’s a new system that’s in place ... People now think: ‘It’s come from South Australia. It’s

legal there. Now it's going to be legal here. And my son has got a couple of plants ...'. So I think there is a lot of confusion" (Constable interviewed during phase two)

Lack of clarity in the public mind about the aims and content of the *Cannabis Control Act 2003* is understandable, when one considers the vigorous and often emotional public and media debates that surrounded its passage through parliament. However it can only add to the difficulties experienced by police and other justice personnel charged with implementing laws and ensuring respect and support for them. We recommend that further and more extended mass media campaigns, aimed at correcting popular misconceptions about the *Act*, be considered.

Consideration also should be given to increasing financial and other support for the Drug and Alcohol Office and for the Police Service's Alcohol and Drug Unit to enable them to further improve law enforcement and public knowledge about Western Australia's cannabis infringement notice system. We understand that collaboration between the Drug and Alcohol Office and the Police Alcohol and Drug Unit in relation to these cannabis law reforms has been close. However consideration should be given to further consolidating partnerships and the capacity for information exchange - at operational as well as program and policy levels - between these organizations. Regular semi-formal meetings at the regional or district level between relevant representatives of community based drug treatment centres and operational staff would enhance both parties' understanding about the ways the infringement notice system is working in practice. We also see possibilities for the information pamphlets and booklets on the *Cannabis Control Act 2003* developed by the Drug and Alcohol Office to be used more extensively as a resource by operational police - helping them, for example, to brief individuals detected committing minor cannabis offences on risks associated with cannabis use, their obligations under the *Act* and on what is entailed in cannabis education sessions. None of the operational police we spoke to during post-implementation interviews had yet seen these materials - but on inspecting them agreed they were interesting and useful. Future police training could make reference to these materials, which also could be distributed to police stations and used as a resource by operational staff.

CONCLUSIONS

Western Australia is the fourth Australian jurisdiction to implement prohibition with civil penalties for minor cannabis offences. In contrast to some of these other systems, Western Australia's cannabis infringement notice procedures have been developed in close collaboration with its police service, and care is being taken to monitor law enforcement and other criminal justice perspectives on the reforms. The present study, which canvasses policy and criminal justice perspectives both prior to and shortly after the *Cannabis Control Act 2003* came into effect, reflects this commitment.

Our interviews confirm that the Western Australia Police Service's implementation of the cannabis infringement notice system has been extremely professional. However due to the short time between parliamentary approval of the *Cannabis Control Act 2003* and its proclamation date, it has not been possible for all operational personnel to be thoroughly trained. Some operational police still seem unsure about relevant procedures, and we estimate that it will be at least 18 months before the system has settled in. During the early stages, the Police Service also is being extremely cautious in its administration of infringement notice procedures - preferring to take offenders back to the station and weigh cannabis seized rather than issue notices on the spot. This approach seems somewhat inconsistent with the legislators' intention to grant police significant capacity to exercise judgement and discretion in relation to the issuing of notices - it is to be hoped that, as police gain more experience with CIN procedures, they will be more prepared to issue notices while on patrol, rather than taking all offenders back to the station. Police we interviewed had seen no evidence, so far, that commercial producers were trying to exploit the infringement notice provisions as occurred in South Australia. Many law enforcement personnel viewed provisions, unique to Western Australia, that allow recipients of a cannabis infringement notice to satisfy their obligations by attending an education session as extremely beneficial. However it is important that the law enforcement sector not develop unrealistic expectations about the ability of such education sessions to change offenders' lives.

Understanding of the new laws among both police and members of the public is far from perfect. For the system to achieve the outcomes intended by legislators, it is essential that levels of understanding improve. Media and other campaigns to inform the public that cannabis cultivation and use remain illegal, and to warn about risks associated with cannabis use, should be extended. Where possible, relevant Drug and Alcohol Office pamphlets and booklets should be made available to operational police, and distributed to offenders.

Police and other criminal justice perspectives should be further monitored, in a follow-up study eighteen months after the CIN system's implementation. Such a study can assess whether difficulties noted during early stages have been addressed, as well providing opportunities to identify possible unintended consequences such as net widening.

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APPENDIX 1: INTERVIEW GUIDES

DRAFT GUIDE FOR INTERVIEWS/FOCUS GROUP DISCUSSIONS

(Note: The following schedule was prepared prior to the commencement of data collection. As is common with qualitative research, the wording and ordering of questions sometimes was varied to fit the specific background and experience of the interviewee. Most interviewees also were asked an additional, more speculative, question relating to a “worst case scenario” for the proposed cannabis infringement notice system.)

1. Please briefly outline the ways your professional work has required you to understand Western Australia’s laws in relation to cannabis.
2. What is your understanding of WA’s proposed Cannabis Infringement Notice scheme?
3. How will it change the ways people found possessing, cultivating or using small amounts of cannabis are proceeded against?
4. What are the legislators trying to achieve with this scheme?
5. Will they succeed in this aim?
6. What do you see as the main strengths (if any) of the proposed Cannabis Infringement Notice scheme?
7. What do you see as the main weaknesses (if any) of the proposed Cannabis Infringement Notice scheme?
8. Of the following approaches, which if any do you see as the best way to try to restrict cannabis production, distribution and use? (Give reasons for your preference. If none preferred, outline the approach you would like to see taken)

Strict prohibition (ie. production, sale and use of any amount illegal and law applied without exceptions)

Prohibition, but cautions for some users of small amounts

Prohibition, but civil fines for minor offenders (eg. Western Australia’s proposed infringement notice system)

Other (give details)

9. What, in your view, are the *main harms* associated with cannabis production, distribution and use in Western Australia?
10. Can the criminal law and criminal justice systems have any effect on these harms?
If yes, outline how it might affect particular harms;
If no, why do you think it can have no effect?
11. What types of groups are involved in the commercial supply of cannabis in Western Australia? (give brief outline)
12. Are all commercial suppliers equally harmful? (If yes, why? If no, explain why some groups more harmful)
13. Does law enforcement policy in Western Australia currently give priority to targeting and apprehending some types of commercial suppliers, or are all suppliers given equal priority?

14. Will the proposed Cannabis Infringement Notice scheme change the ways WA Police enforce the laws against commercial cannabis suppliers?

If yes, outline changes that are likely to take place.

15. When the proposed Cannabis Infringement Notice is introduced, should police have discretion over whether to issue a notice when a minor cannabis offence is detected?

16. *If yes, how should such discretion be controlled and made accountable?*

ADDITIONAL QUESTIONS FOR POST-IMPLEMENTATION INTERVIEWS

For Law Enforcement Personnel

1. Has introduction of the cannabis infringement notice system affected your willingness to issue cautions to adult cannabis offenders?
2. Once you detect a minor cannabis offender who may be eligible for an infringement notice, what do you do (ask officer to take me through procedures)
 - what do you do with the person?
 - what do you do with the cannabis seized
 - what if the person does not have ID?
3. What would you do in a scenario where someone has been cultivating two plants (non-hydro), but has just harvested them and the weight is over the limit for an infringement notice?
4. Have you come across any attempts by police to use the infringement notice procedures in innovative ways?
5. How do you find the record-keeping procedures for the CIN system?
6. How are people reacting when they receive a cannabis infringement notice?
7. What do you know about the education sessions for cannabis offenders being provided by community based treatment centres?
8. What do you, personally, think of the CIN system?
9. Can you think of any unexpected outcomes that might occur?

For Drug and Alcohol Office Personnel

1. Please outline the public education campaign(s) that accompanied introduction of the *Cannabis Control Act*.
2. Have you had any feedback in relation to these campaigns? (If so, what?)
3. What are your views on the law's requirement that people receiving a third or subsequent CIN in a three year period must attend an education session (ie. they cannot pay the fine)?
4. Are education sessions for offenders being changed, and if so how?
5. Can you think of any unexpected outcomes that might occur, as a result of introduction of the CIN system?

APPENDIX 2: EXPLANATORY ARTICLE

(Shown to some interviewees prior to pre-implementation interviews)

issuing forth

Contributing to policy change through research – The cannabis story



Unlike treatment research, which has a clear audience of potent 'agents of action' in the form of treatment service providers, the agents for implementing drug policy research (policy makers, legislators, politicians) are far less accessible. Typically, they are not seekers of research findings, they have limited expertise in how to read such findings, and they are not, by their nature, 'research practitioners'. Furthermore, the levers of policy change, which research findings might be able to influence, are difficult to pull, and are subject to many other competing forces, not least of which is the political process.

The impact of research on drug policy needs to be evaluated over a long time period. Implementation of policy change is rarely a smooth incline of improvement, but rather hills and dales and long plains, where seemingly very little improvement happens. Additionally, when windows-of-opportunity for changing drug policy open, they rarely stay open for long. The following story of NDRI's involvement in evidence-based policy recommendations for minor cannabis offences demonstrates many of these themes.

Australia has a long and internationally recognised history of research on cannabis law. Publications by researchers such as Sarre, Christie, McDonald, Atkinson, Sutton, Ali, Hall, Donnelly, Weatherburn, Sanson-Fisher, Makkai, McAllister, and others including NDRI staff have provided a considerable body of evidence on cannabis law in Australia.

In May 1999 NDRI finalised a report entitled: *The regulation of cannabis possession, use and supply*¹ for the Drugs and Crime Prevention Committee of the Parliament of Victoria. The report summarised the Australian and international literature on legislative options for cannabis and, as requested, made recommendations as to the most viable and appropriate options for Victoria. The recommended model was one of *prohibition with civil penalties which incorporated cautioning*. However, while the report was being considered, an election was called by the Liberal Kennett Government, and the process of cannabis policy review in Victoria was put on hold.

It was not until November 1999 that the new Victorian Labor Government appointed a Drug Policy Expert Committee, chaired by Professor David Penington, who had also headed the previous Government's Premier's Drug Advisory Council. Unfortunately, by the time the NDRI report was finally approved by the new

Government for release in April 2000, the Victorian cannabis reform policy window was probably closing, if not already closed.

The new Government appeared to have gone quiet on its drug law reform agenda in the wake of two events. A community consultation process on the proposed establishment of a Supervised Injecting Facility had led to a great deal of community opposition that was extensively covered in the media. Also, there was a great deal of concern about the role of cannabis use in psychosis, following an international conference in Melbourne in February 1999.

However, there was considerable interest in the publication from elsewhere, including the Western Australian branch of the Australian Labor Party, who were in opposition, and were formulating their drugs policy in preparation for an election the following year.

In February 2001, the Labor Party was elected to government in WA with a policy platform which included the intention to hold a community drug summit and to introduce a system of *prohibition with civil penalties* for minor cannabis offences (see box below).

Given the prevalence of cannabis use throughout the community, and given that criminalising its use apparently fails to provide any real deterrence, the adverse effects of continuing with this policy need to be given serious consideration. If criminal penalties do not act as a deterrent but do have a range of negative effects, and if the community does not wish to have the personal use of cannabis legalised, the options of the civil penalty, or expanding the current Government's cautioning system, may be acceptable and logical alternatives.

We propose a decriminalised regime which would apply to possession of 50 grams of cannabis or less and cultivation of no more than two plants per household. A person who admitted to a simple cannabis offence would be issued with a cautioning notice as a first offence, be required to attend an education and counselling session for a second offence or, in lieu of accepting that option, face a fine as a civil offence, and be fined for any subsequent offence. Possession and cultivation of cannabis would not be legalised.

(Australian Labor Party WA Branch, 2001)

The new Government promoted their Community Drug

Summit and approach to drugs as 'evidence based' and through some of the processes before and during the summit there was an opportunity for NDRI researchers to feed in the results of research and literature reviews we had performed on cannabis and other drug policy. Unlike drug summits held elsewhere in Australia, the majority of delegates to the WA summit were members of the public. Consistent with some of the practices used for citizen juries it was decided to advertise for the 100 delegates. There were 80 delegate places from the general community and 20 places for persons involved in illicit drug related policy, service delivery or research.

The WA Community Drug Summit was held from August 13 to 17 2001, and made 45 recommendations which were endorsed by the majority of delegates. One of its recommendations passed by the 100 community delegates (72 for, 27 against, and 1 abstention) was:

Recommendation 39

"For adults who possess and cultivate small amounts of cannabis the government should adopt legislation that is consistent with prohibition with civil penalties, with the option for cautioning and diversion".

This should also address:

- Education for the public re the health risks of cannabis and the laws that apply to the drug
- The evaluation and monitoring of the impact of this legislation on patterns of use, harms and the drug market
- The re-affirmation of relevant responsibilities and legislation re preventing intoxication while driving, or operating machinery

(The Western Australian Government, 2001, p.13)²

On 27 November 2001, the Government released its response to the recommendations of the Drug Summit³. It accepted all but one (dealing with a supervised injecting facility) of the 45 recommendations. It also set up a *Ministerial Working Party on Drug Law Reform* to provide advice on how the recommended cannabis and

other drug law reforms could be implemented. The eight-member working party is chaired by a WA Law Society representative and includes representatives of the WA Police Service, a justice official, a medical practitioner, a drug researcher, and staff from the new Drug and Alcohol Office. I was lucky enough to be the drug researcher appointed. The working party presented its report to the Minister of Health at the end of March 2002, after which it was considered by Cabinet⁴. On 25 May 2002 the report was released to the public. The Government endorsed all of the recommendations in the report for a scheme of *prohibition with civil penalties* for minor cannabis offences, but excluded hydroponic cultivation of cannabis plants from the infringement notice scheme. The proposal has now been referred to the parliamentary drafts people, and the Minister hopes to have the scheme before Parliament and in place by the end of the year.

The main features of the *prohibition with civil penalties* scheme recommended to the WA Government by the Ministerial Drug Law Reform Working Party are:

- Persons found to be in possession of less than 30 grams of cannabis or no more than 2 plants, will be eligible for an infringement notice.
- Offenders who receive an infringement notice will be required to, within 28 days, pay their penalty (between \$100 and \$200), or complete a specified cannabis education session.
- Police will lay criminal charges against those persons who attempt to flout the intention of the scheme, for example by engaging in cannabis supply, even if they are only in possession of amounts otherwise eligible for an infringement notice.

- There will be tougher thresholds for dealing, down from 100 grams or 25 plants to 100 grams or 10 plants.
- Suppliers of smoking paraphernalia, such as water pipes or bongs will be required to display information about cannabis, its health effects and the laws, and will not be permitted to sell to juveniles.
- People who possess hash or hash oil, the most potent forms of cannabis, will not be eligible for an infringement notice and will be charged with a criminal offence.
- Juveniles are not eligible for an infringement notice under the proposed cannabis scheme but can be cautioned and directed to intervention programs.
- Comprehensive education will be provided for the general public, school children and cannabis users about the health effects of cannabis and the laws which apply to it, emphasizing the point that cannabis possession and use remains illegal.
- The scheme will be subject to ongoing monitoring and review.

NDRI has received initial funding from the National Drug Law Enforcement Research Fund (NDLERF) for the first year of a three-year project to evaluate the impact of changes to cannabis law in WA on cannabis use and related harm. The study consists of seven substudies, four of which will entail data collection before, and 18 months after, the proposed changes are implemented. The substudies will address impacts on: (1) The general public: cannabis use, attitudes, knowledge; (2) Regular cannabis users: use, attitudes, knowledge; (3) The drug market: price, potency, availability, source (self supply, dealer

supply, etc); (4) Apprehended offenders: use, attitudes to the law and social impacts; (5) Law enforcement: trends in activity; attitudes and practices; drug market perceptions; (6) Health effects: drug treatment seeking, serious road injuries, psychosis and violence; and (7) Impacts on school students and teachers: use, attitudes, knowledge.

The study will be unique in documenting the changes from a scheme of *prohibition with cautioning for first offenders*, to a scheme of *prohibition with civil penalties*. Importantly the prospective pre-post design will enable stronger conclusions to be drawn about the relative effectiveness of these models for cannabis regulation.

Simon Lenton

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