



No. 48 Cannabis, the Law and Social Impacts in Australia

Lynn Atkinson and David McDonald

Cannabis law enforcement costs the Australian community well in excess of \$300 million per year (about three-quarters of the total cost of illegal drug enforcement). The enforcement of laws relating to cannabis can have an impact on future employment, education and travel prospects of thousands of young Australians.

This Trends and Issues looks at the social impacts of cannabis and of actual and potential law enforcement and criminal justice system responses to cannabis, particularly to minor cannabis offences. It derives from a larger, ongoing study commissioned by the National Drug Strategy Committee (NDSC) at the request of the Ministerial Council on Drug Strategy (MCDS), Phase 1 of which was completed in April 1995. A range of analytical points from the research and some basic data are presented here, to help inform this important policy debate.

Adam Graycar
Director

Considerable resources are devoted to policing laws relating to cannabis and to dealing with cannabis offenders in Australia. Most cannabis-related apprehensions involve minor cannabis offences, that is, the personal-scale possession and cultivation of cannabis, its use, and the possession of related implements, such as "bongs". In fact, over a recent reporting period in jurisdictions where data were available, at least 87 per cent of all cannabis-related offences (crimes reported or becoming known to police) were minor (*see* Table 1). Based on national offence figures compiled by the Australian Institute of Criminology (AIC) for 1992-93, drug offences — most of which are in fact minor cannabis offences — accounted for over 5 per cent of all reported crimes. By contrast, motor vehicle thefts comprised about 7 per cent and robberies less than 1 per cent of reported crimes in the same year.

Do personal-scale cannabis offences merit such a law enforcement and criminal justice system investment? Are punitive legislative and criminal justice system responses appropriate in the context of widespread use of cannabis? What are the major issues connected with cannabis use and its illegal status?

The need for a study to explore these questions had been identified by the National Task Force on Cannabis, which also recommended that all Australian States and Territories consider discontinuing the application of criminal penalties for minor cannabis offences. The South Australian and Australian Capital Territory (ACT) expiation schemes, therefore, provide a particular focus both here and in the ongoing study.

AUSTRALIAN INSTITUTE
OF CRIMINOLOGY

trends

&

issues

in crime and criminal justice

October 1995

ISSN 0817-8542

ISBN 0 642 23324 1



Australian Institute
of Criminology
GPO Box 2944
Canberra ACT 2601
Australia

<http://www.aic.gov.au>

Phase 1 Research Team

Dr Robert Ali, Director, Clinical Services & Policy Coordination, SA Drug & Alcohol Services Council

Ms Lynn Atkinson, Criminologist, Australian Institute of Criminology

Professor Wayne Hall, Director, National Drug and Alcohol Research Centre

Professor David Hawks, Director, National Centre for Research into the Prevention of Drug Abuse

Mr Simon Lenton, Research Fellow, National Centre for Research into the Prevention of Drug Abuse

Mr David McDonald (Project Coordinator), Senior Criminologist, Australian Institute of Criminology

Dr Mary Sheehan, Head of Section, Department of Social & Preventive Medicine (Southside), University of Queensland

Ms Cheryl Wilson, Senior Policy Analyst, Policy and Coordination, Community Division, ACT Department of Health and Community Care

The research was commissioned by the National Drug Strategy Committee and funded by the National Drug Crime Prevention Fund as a component of the National Drug Strategy.

The AIC collaborated on Phase 1 of the study with colleagues in other research institutions and agencies (*see inset above*). The Report on Phase 1 was considered by the Ministerial Council on Drug Strategy on 16 June 1995. The second and final phase of the study is expected to commence in October 1995 and will take place over an eighteen-month period.

Study Objectives

The objectives of the two-phase study are to implement the MCDS resolution that research be undertaken into the social impact of the various actual and potential legislative responses to cannabis, the main focus being on minor cannabis offences; to describe and analyse the social impacts of legislative responses to cannabis and patterns of enforcement; and to make recommendations to contribute to the development and implementation of national and

State/Territory policies on cannabis law and its enforcement.

Six legislative options in relation to minor cannabis offences were considered in the Phase 1 research. These are: total prohibition with no expediency principle (as practised in most of the Australian States and the Northern Territory); total prohibition with an expediency principle, to allow for the formal non-enforcement of minor infringements (as in The Netherlands); prohibition with civil penalties (as in South Australia and the ACT); partial prohibition, where personal-scale incidents are not criminalised (a policy adopted by Spain); government regulation (as in the tobacco and alcohol industries) and free availability (not a legal option anywhere).

Social Impacts of Legislative Options for Cannabis

Policy positions on the legislative status of cannabis are related to some extent to public attitudes. The legislative options debate has gathered momentum in Australia in recent times, reflecting a shift in public opinion. Recent Australian survey research conducted under the National Drug Strategy indicates that a little over half of the general community now supports cannabis possession and use becoming legal. Moreover, a substantial majority is in favour of removing the criminal sanctions that currently apply in at least some circumstances in all Australian States and Territories. Is current public opinion in line with current wisdom, based on contemporary research?

Non-criminal justice system social impacts

Part of the Phase 1 study involved drawing together the findings of Australian and overseas research into significant social issues which are at the heart of the debate on the legal

status of cannabis. These findings are summarised below.

- Cannabis use and legislative change

Small changes in the legislation on cannabis, and on the patterns of law enforcement, such as those which have occurred in South Australia, the ACT and eleven states of the USA, have little impact on levels of cannabis consumption, and probably little impact on the patterns of use (but the evidence is not so clear regarding patterns of use).

- Health and psychological functioning

In terms of the possible impact on public health, the fact that most cannabis users consume the drug only occasionally means that most of the adverse health consequences are related to being intoxicated by the drug, rather than to chronic use. Nevertheless, long-term, heavy use elevates the risk of health problems developing. The health impacts are not so serious as to justify (on their own) the total prohibition of the drug.

- Financial impacts of law enforcement

Under the total prohibition policy operating in most Australian jurisdictions, it was conservatively estimated that cannabis law enforcement in Australia cost some \$329 million in 1991-92. This was approximately 73 per cent of the total costs of illegal drug law enforcement for the year. The value of the black market in cannabis in Australia has been estimated to be some A\$1.9 billion. Overseas evidence indicates that substantial cost savings may be derived from removing criminal sanctions for minor cannabis offences. However, such savings have not been observed to date in South Australia or the ACT, where civil penalties exist for these offences.

- Driving

Although people intoxicated by cannabis alone may not have a highly elevated risk of road crash, it is probable that an elevated risk exists

when alcohol and cannabis are taken in combination, and, in reality, cannabis is frequently taken in combination with alcohol and/or other mood-altering substances. Legislative and enforcement options which result in more people taking the drugs in combination should therefore be avoided.

- Knowledge of legislation
Large numbers of people, both cannabis users and non-users, do not understand the legal status of cannabis in Australia. The level of confusion appears to be higher in the jurisdictions which have introduced non-criminal sanctions than in the other jurisdictions.

- Employment, education and travel

While insufficient information is available to be definite, it appears that the criminal justice system responds **themselves** to the prohibition options practised in Australia have less adverse impact on people's educational and employment opportunities than the knowledge of **use** of the drug which the criminal justice process brings into the public arena. It is the climate of opinion that the legislation reflects and creates (that cannabis use should result in negative sanctions) that seems to prompt the application of sanctions in the educational and employment areas. In other words, the fact of cannabis use, more than the criminal conviction as such, may be the source of sanctions such as suspension from school and termination of employment. A conviction or an arrest for even a minor cannabis offence can be the cause of some nations refusing to grant tourist visas to incoming travellers. The seriousness of these impacts on individuals over the longer term is an area for further research.

- Self-esteem or identity
Single convictions for cannabis offences may have a small and relatively insignificant impact upon an individual's immediate personal identity but the potential exists for a

cumulative effect to develop. In particular, with regard to young offenders, coming to the attention of the local police may engender hostility and lead to further criminal justice system involvement.

Criminal justice system impacts

The Phase 1 research produced new information from the Australian States and Territories, and, additionally, from a national perspective, about the impact of cannabis-related legislative options in Australia. These findings are summarised below.

- Variable cannabis-specific statistical collections

The national picture of minor cannabis offending — its extent and nature and how offenders are dealt with — is less than comprehensive, given the variability between the jurisdictions in the nature of the data recorded, in the way data are coded, and in accessibility to data. However, there are sufficient data available on the most common minor cannabis offences — possession and use — to develop a national tally of such offences, and to compare proportions and rates of these offences. Table 1 summarises this, and provides additional information where available. The reporting years referred to in the text below are those cited in Table 1.

- Possession and use of cannabis
Across Australia in a recent twelve-month period there were more than 47 000 offences detected and reported by police for possession and use of cannabis. Where information was available, in the majority of jurisdictions possess/use cannabis offences represented more than half the total number of drug offences. Possession and use of cannabis represented from 2.4 per cent (New South Wales, recorded crimes) to 8.4 per cent (Tasmania, charges finalised in local courts) of all offences (that is, drug and non-drug offences) for the reporting year in question. Clearly, there are significant resource implications in relation to the policing

and criminal justice system processing of possess/use cannabis offences. (One jurisdiction, Queensland, does not have a separate offence of use or administer cannabis).

- Paraphernalia offences

The possession of implements, such as "bongs", relating to the use of cannabis is not a criminal offence in Victoria and the ACT. All other Australian jurisdictions criminalise the possession of cannabis paraphernalia. In the reporting year in question, South Australia and Western Australia had high proportions of paraphernalia offences relative to the other jurisdictions, and correspondingly lower proportions of possess/use cannabis offences. Paraphernalia and possess/use offences combined produced an offence rate in South Australia (897 per 100 000 population) which was more than triple the rate in New South Wales (242 per 100 000 population). The Western Australian rate for the combined offences (441 per 100 000) was almost double the New South Wales rate (and approximately equal to the rate for equivalent offences in Queensland).

- Minor cannabis offences and the criminal justice system

In a recent one-year period, minor cannabis offences comprised between 87 per cent and 93 per cent of all cannabis offences in jurisdictions where calculations were possible (New South Wales, Western Australia and South Australia); and between 70 per cent and 90 per cent of all drug offences. It is estimated that in a one-year period there are likely to be more than 61 000 minor cannabis offences detected and recorded by police across Australia.

- Inconsistent State legislation

The types and seriousness of offences under illegal drugs legislation and the penalties these offences attract, vary enormously from one jurisdiction to the next (*see* Table 2). Within jurisdictions there are often inconsistencies between the intent of

the legislation and the way minor cannabis offences are dealt with in practice. Penalties being handed down by the courts, for example in Queensland, do not necessarily reflect heavy penalties provided for in some Acts. Legislation in the ACT and South Australia allows for minor cannabis offences to be dealt with out of court through expiation schemes. Victoria's legislation provides for no conviction to be recorded against certain minor cannabis offenders, and for the penalty to be an adjourned bond.

There appears to be no simple relationship between the range of minor drug offences provided for in the legislation of a particular jurisdiction and the total numbers and rates of minor cannabis offences. A jurisdiction with no "use" (for example, Queensland) or "possess implements" offences (for example, Victoria) does not necessarily have a lower rate of minor cannabis offending than a jurisdiction like New South Wales whose legislation provides for the full range of minor cannabis offences.

- Expiation schemes

South Australia: The introduction of the Cannabis Expiation Notice (CEN) scheme in 1987 appears to have had a substantial netwidening effect; that is, there has been a significant increase since the scheme commenced in the total number of cannabis offences detected by police. At the same time, the National Drug Strategy drug use surveys show that use of cannabis in the community has increased only slightly, and at a rate similar to the other States. It is most likely that significantly increased detection of

Table 1: All Jurisdictions: Summary of offences, percentages and rates of cannabis offences

Jurisdiction/ Year for which figures apply	Relevant offences under the legislation	Possess/use cannabis % of drug offences	Possess/use cannabis % of all offences	Minor cannabis % of all cannabis (% of all drug offences)	Minor cannabis % of all offences	Possess/use cannabis. Offence rate per 100 000 pop.	Possess/use/ possess implements. Offence rate per 100 000 pop.
New South Wales 1993	possess/use/ cultivate/ possess implements	50.4% (recorded offences)	2.4% (recorded offences)	Approx. 87% ; (70%) (recorded offences plus estimates)	Approx. 3.3% (recorded offences plus estimates)	199 (recorded offences)	242 (recorded offences)
Victoria 1992-93	possess/use/ cultivate/	59.8% (reported offences)	3.5% (reported offences)			324 (reported offences)	324 (reported offences)
Queensland 1991-92	possess/ cultivate/ possess implements					259 (cleared offences)	443 (cleared offences)
Western Australia 1993	possess/use/ cultivate/ possess implements	41.9% (police charges at arrest)	5.8% (police charges at arrest)	Approx. 87.8%, (75%) (police charges at arrest)	Approx. 10.3% (police charges at arrest)	271 (police charges at arrest)	441 (police charges at arrest)
South Australia 1991-92	possess/use/ cultivate/ possess implements	Approx. 40% (reported crimes plus CEN data)	Approx. 3.7% (reported crimes plus CEN data)	Approx. 93%, (90%) (reported crimes plus CEN data)	Approx. 8.3%, (reported crimes plus CEN data)	494 (reported crimes plus CEN data)	897 (reported crimes plus CEN data)
Tasmania 1993	possess/use/ cultivate/ possess implements	61.3% (charges finalised in mag. crts)	8.4% (charges finalised in mag. crts)			489 (charges finalised in mag. crts)	
Northern Territory 1993	possess/use/ cultivate/ possess implements	67.5% (charges - ABCI data)				317 (charges - ABCI data)	
Australian Capital Territory	possess/use/ cultivate						

Notes:

1. In the study, minor cannabis offences have been defined as those involving use (including paraphernalia offences) and personal-scale possession and cultivation. Additional minor offences exist under some Acts (e.g. Sect. 5(1)(e) of the WA *Misuse of Drugs Act 1981*, which defines the offence of being found in any place being used for the purpose of smoking a prohibited drug or prohibited plant); however, prosecution for such offences is relatively rare (84 such offences in WA in 5 years) and coding procedures often make it difficult to isolate the relevant figures.
2. CEN - Cannabis Expiation Notice. 3. ABCI - Australian Bureau of Criminal Intelligence. 4. Blank cells indicate no data were available.

Table 2: Australian States and Territories — Penalties for minor cannabis offences¹

Jurisdiction and Legislation	Applicable Minor² Cannabis Offences	Maximum Penalties
New South Wales <i>Drug Misuse and Trafficking Act 1985</i>	Possession; self-administration (use); possession of implements for administering [cannabis] (all summary offences); cultivation (indictable offence).	If summary offence: fine of 20 penalty units (@ \$100/unit) and/or 2 years imprisonment. Same for indictable offences heard in summary jurisdiction (e.g. personal-scale cultivation) but max. fines of 50 or 100 penalty units, depending on quantities.
Victoria <i>Drugs, Poisons and Controlled Substances Act 1981</i>	Use (summary offence), possession and cultivation (indictable offences).	Use, 5 penalty units (@ \$100/unit); possession - small quantity - 5 penalty units; possession or cultivation - less than trafficable amount - 30 and 20 penalty points respectively and/or 1 year imprisonment. Provision for an adjourned bond for first-time, minor cannabis offenders.
Queensland <i>Drugs Misuse Act 1986</i>	Possession, production (cultivation) (indictable offences); possessing things in connection with using [cannabis] (summary offence).	Possession or cultivation (of up to 500 grams), 15 years imprisonment (or 2 years if dealt with summarily) + provision to replace with fine (100 penalty units @ \$60/unit if dealt with summarily; 5000 penalty units if dealt with on indictment). 2 years imprisonment for implements offences.
Western Australia <i>Misuse of Drugs Act 1981</i>	Possession, cultivation (personal-scale quantities), use, possession of utensils for use in connection with smoking etc. (simple offences).	Simple possession, use, personal-scale cultivation offences, and being in a place used for smoking [cannabis] ² , \$2000 fine and/or 2 years imprisonment. Implements offences: \$3000 fine and/or 3 years imprisonment.
South Australia <i>Controlled Substances Act 1984</i>	Possession, use, cultivation, possession of equipment for smoking etc.: expiable offences if involving defined small quantities, offender is over 17 years, and use is not in a public place.	For offences expiated: penalties range from \$10 for some implements offences, to \$150 for possession of 5-<100g. cannabis (5-<20g. cannabis resin), or cultivation of up to 10 plants. Use in a public place (non-expiable offence), and simple cannabis offences not expiated, fine of \$500.
Tasmania <i>Poisons Act 1971</i>	Possession, use, cultivation, possession of [implements].	Possession and use, \$3000 fine (\$4000 for cultivation) and/or 2 years imprisonment (no quantities specified). Implements offences, fine of \$2000.
Northern Territory <i>Misuse of Drugs Act 1990</i>	Possession and cultivation (indictable offences); self-administration (use) and possession of things for administering [cannabis] (summary offences).	Possession (in a public place) and cultivation, \$5000 fine or imprisonment for 2 years. Possession (in any other case), fine of \$2000. Self administration and implements offences, fine of \$2000 or imprisonment for 2 years. All penalties are for less than trafficable quantities.
Australian Capital Territory <i>Drugs of Dependence Act 1989</i>	Possession, self-administration, cultivation: simple offences providing defined small quantities involved, and expiable at the discretion of the apprehending police officer.	Penalty of \$100 for each simple offence under either the Simple Cannabis Offence Notice (SCON) scheme or courts system.

Notes:

1. Consult jurisdiction-specific legislation (or the *Social Impacts of the Legislative Options for Cannabis in Australia*, Phase 1 Research Report) for quantities defining particular offences. 2. See note 1 for Table 1.

cannabis offences is a result of changes in police behaviour, rather than it being a reflection of greater use of cannabis within the community. Only about 45 per cent of CENs are paid. It is possible that inability to pay is one factor in the expiation rate not being higher. Of those non-payment cases which proceed through the courts, most result in a conviction being recorded.

The ACT: Insufficient information is available to determine whether the Simple Cannabis Offence Notice (SCON) Scheme in the ACT has had a similar netwidening effect. The ACT scheme has been in place only since

1993. Since then, a slightly higher proportion of SCONs has been paid (approximately 56 per cent) than CENs expiated in South Australia. Unlike the situation in South Australia, police in the ACT decide whether to issue a SCON for an eligible minor cannabis offence or to proceed through the criminal justice system. It is possible the practice of police discretion impacts on payment rates.

- Apprehension impacts on offenders

Most minor cannabis offenders dealt with in the courts are convicted and fined. There is some departure from

this profile in Victoria, where the legislation provides for an adjourned bond and no conviction for certain first-time cannabis offenders. We estimate that about 40 per cent of minor cannabis offenders in Victoria might be dealt with in this way. Community-based dispositions are used relatively infrequently in Australia for cannabis offences. Imprisonment is rarer still. Probably fewer than twenty people are in prison at any one time whose most serious offence was a minor cannabis offence (this does not include consideration of minor cannabis offenders in prison for fine default — such data are not available nationally).

More Information Needed

Major areas of uncertainty remain as to the social impacts of the various legislative options for cannabis in Australia.

We know little, and need to know more, about the impacts of minor cannabis convictions on young people's life chances in areas such as education, employment and interpersonal relationships; and about any further criminalising effects of a minor cannabis conviction.

The netwidening tendencies of the South Australian and possibly the ACT cannabis expiation schemes need to be understood and addressed. Other aspects of the expiation schemes which raise questions of both cost and equity include the issues of non-expiation by significant numbers of offenders, social class differentials in expiation patterns, and the schemes' apparent failure to deliver financial savings within the criminal justice system. An alternative response to minor cannabis offences, the Victorian adjourned bond system, needs to be evaluated.

Conclusion

In Australia the evidence is accumulating — from public attitude surveys coming down on the side of liberalising cannabis laws, from criminal justice system data indicating a vast, expensive and relatively punitive net being cast over youthful cannabis users, and from evidence that liberalisation does not increase cannabis use — that the total prohibition approach is costly, ineffective as a general deterrent, and does not fit with the National Drug Strategy's goal of harm minimisation. On the other hand, a strong constituency exists for maintaining the current approach to dealing with cannabis. This reflects, in particular, concerns about the health impacts of the drug.

The "war on drugs" in the United States has been a major contributor to that nation's acute problem with prison overcrowding and the increased over-representation of minority groups in prison — yet it has not solved serious crime and corruption at the commercial level of drugs production and distribution.

Australians have genuine concerns about policies and practices which might increase the level of any drug use in our communities. However, dealing with problematic cannabis use requires expertise, policies and practices that are outside the ambit of the criminal justice system. Further, since most drug offences are minor cannabis offences, the illegal commercial operators are seldom caught in the criminal justice net.

The second stage of the study will take the research to greater depth. It will provide new information on the social impacts of cannabis legislation in Australia and will provide the basis for informed policy making which is appropriate to contemporary Australian circumstances.

The Report on the Phase 1 study is available on disc. Write or fax requests to the Publications Section of the Australian Institute of Criminology



Inquiries about the Trends and Issues series should be forwarded to:
The Director
Australian Institute of Criminology
GPO Box 2944
Canberra ACT 2601 Australia

