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## Reforming the Old and Refining the New: A Critical Overview of Australian Approaches to Cannabis

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Reforming the Old and Refining the New: A Critical  
Overview of Australian Approaches to Cannabis

Maurice Rickard  
Social Policy Group  
10 October 2001

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# Contents

Major Issues . . . . .	i
Introduction . . . . .	1
Cannabis in the Australian Context . . . . .	2
Patterns of Cannabis Use . . . . .	2
Prevalence . . . . .	2
Young People . . . . .	2
Regularity of Use . . . . .	3
Age of starting . . . . .	3
Rural/Metropolitan . . . . .	4
Cannabis Supply and Distribution . . . . .	4
The Legislative Response to Cannabis in Australia . . . . .	5
The Possible Legislative Approaches to Cannabis . . . . .	5
The Australian States and Territories . . . . .	6
The Role and Activities of the Commonwealth . . . . .	7
Assessing Alternative Approaches to Cannabis: Clarifying Goals and Criteria . . . . .	8
The Primary Purpose of Drug Policy and Legislation . . . . .	8
Potential Harms, Costs and Health Benefits of Cannabis . . . . .	9
Harms of Cannabis Use . . . . .	9
Harms Associated with the Acquiring of Cannabis . . . . .	14
Harms and Costs Associated with Controlling Cannabis Use and Supply . . . . .	15
Putting the Harms in Perspective . . . . .	17
Who is Most at Risk? . . . . .	18
How Should Alternatives be Compared? . . . . .	19
Key Criteria for Comparing Alternatives . . . . .	19
Limitations of Comparison and Provisos . . . . .	22

Australian Approaches to Cannabis Compared . . . . .	23
Prohibitionism in Australia: Criminal versus Civil Penalties . . . . .	24
Targeting of Harm . . . . .	24
Proportionality in Penalties. . . . .	26
Comprehensiveness . . . . .	28
Effective (and Pragmatic) Harm Reduction . . . . .	29
Efficient Harm Reduction. . . . .	33
Integrated and Consistent Harm Reduction . . . . .	34
The Overall Evaluation: Which Australian Approach has a Greater Capacity to Reduce Harm? . . . . .	35
Room for Improvement? . . . . .	35
Improvements to the Civil Penalty System. . . . .	35
Improvements <i>on</i> the Civil System? The Non-prohibitionist Alternative . . . . .	37
Appendix 1: Legislative Approaches in the Australian States and Territories (and Other Relevant Non-legislative Initiatives). . . . .	42
Appendix 2: Current and Emerging Overseas Approaches to Cannabis . . . . .	45
Endnotes. . . . .	49

## **Major Issues**

Cannabis is by far the most widely used illicit drug in Australia. It is used by all ages, but most particularly by Australian youth. The most recent data show that usage among young people continues to grow, and sometimes in ways that might be cause for concern. Although cannabis use is not as harmful (in terms of individual health and public health costs) as tobacco or alcohol abuse, it is not as innocuous as many would portray it. There is emerging evidence of the role of cannabis in the development of dependence syndromes. And attention is focusing increasingly on the nature of its relationship to mental illness. There are also legitimate concerns about its role in the development of more harmful illicit drug use.

Different Australian states and territories adopt different legislative approaches to cannabis. In some jurisdictions all cannabis possession, use and supply is criminally prohibited (Victoria, New South Wales, Tasmania, Queensland, and Western Australia), while in others, only civil penalties apply for some minor offences (South Australia, Northern Territory and the Australian Capital Territory). With the former, all cannabis related activities are prohibited in law, and counted as criminal activities. In line with their criminality they can attract serious penalties (such as major fines, or incarceration, or the equivalent). With the latter, cannabis related activities are still prohibited by law (i.e. are illegal), but some are not considered criminal offences. Less serious 'civil' penalties are applied to minor offences such as possession or cultivation for personal use. Rather than the possibility of a criminal conviction, minor fines or other forms of expiation apply (i.e. ways of discharging an obligation or penalty, which can include payment of fines, but also community work, for instance). A civil penalty system applies in the case of minor traffic infringements.

Although drug related legislation has traditionally been a matter for the states and territories, it is still of considerable significance to the Commonwealth. The Federal Government has responsibility for allocating funding to the states in a number of relevant areas, including health care. Mental health, in particular, has been among its key priorities for a number of years. As well as this, there is some Commonwealth legislation that is relevant to cannabis (e.g. laws penalising the importation of cannabis),<sup>1</sup> and arguments about preferred legislative approaches at state and territory level may have relevance to those Commonwealth laws. The situation is similar with Australia's participation in international treaties which govern drug use. Perhaps most important, is the issue of whether state and territory approaches are consistent with long-standing national policies

on drug matters. Since 1985, Australia has had a policy of harm minimisation in relation to drug use, both licit and illicit. Officially, it still is the policy.

The current paper presents the most recent information about cannabis use and supply in Australia, as well as the nature of the potential harms associated with cannabis. The paper takes into account not only the harms and social/economic costs associated with cannabis use, but also those associated with the acquisition and legislative control of cannabis. The paper examines the short-term physical and psychological effects of cannabis use, as well as longer term potential health risks, such as the possible connection with mental illness, the development of cannabis dependence, and the hypothesis that cannabis is a gateway to other more dangerous forms of drug use. The social, personal and economic costs associated with different systems of cannabis legislation are also considered—factors such as the personal impacts of a criminal conviction, the economic costs of processing cannabis offenders through the criminal justice system, and the potential dangers associated with the different ways of acquiring cannabis, particularly exposure to the criminalised cannabis blackmarket.

In the context of this and related information, the paper compares the capacities of the two Australian approaches to reduce cannabis related harm (as per national policy). That comparison is conducted critically and systematically, in terms of how strongly they each reflect the key characteristics of harm minimisation.

Very often a commitment to harm minimisation is expressed without being fully explicit about what that means. A central undertaking of this paper is to articulate the core properties of harm minimisation—what it requires of policy and legislation—and to apply these as criteria for comparing the relative capacity of the two existing Australian approaches to reduce harm. The approaches will be compared in terms of:

- how accurately their legislative aims and objectives target harm
- how comprehensively they apply processes of law enforcement and administration to target harm
- how proportionate the penalties they impose are in relation to the harm of the activity they penalise
- how effective they actually are in reducing harmful or high risk use, acquisition and supply, and
- what other costs and harms they generate in seeking to reduce cannabis related harms (in terms of resourcing and unintended side effects and outcomes).

The importance of having a unified and consistent approach to cannabis (and other harmful drugs) across Australian jurisdictions is also noted.



There is, in particular, one factor whose importance echoes throughout the comparison. There is no legislative approach to cannabis (or drug use in general) that does not, itself, generate costs and harms of its own. Some of the more serious harms that attend illicit drug use in Australia, and throughout the world, are a consequence of the very legislative approaches that are designed to deal with drug use. These approach-generated harms need to be fully recognised and solidly factored into the harm minimisation equation. A key message emerging from the paper is that the choice between legislative approaches to cannabis will always be a compromise that involves enduring some harms and costs for the sake of reducing other more significant ones. With this in mind, the paper probes a little deeper toward its end, and briefly examines the status of nonprohibitionism with respect to harm minimisation.

The purpose of the paper is twofold: to provide a single source for the most recent data and research in this area, but also to put that data and research to work by treating it as evidence that is relevant to choosing one way or another between approaches to cannabis. With complex social-legal questions such as these the devil is often in the detail, and the arguments will inevitably be data driven ones. Despite the complexity from time to time, some key findings and conclusions emerge throughout the paper, including:

- Over one-third of all Australians, and 40 per cent of teenagers have used cannabis, and it is being used more regularly by teenagers. However, cannabis use tends to decline beyond young adulthood, suggesting that among young people it is mostly experimental and transitional, with relatively few becoming ongoing regular users. Adolescents are using cannabis at an earlier age, and early initiation has been associated with increased risk of dependence. The highest rate of cannabis offences (mostly for consumption) are concentrated in the 15–19 year age group, and many offences result in a criminal conviction.
- The significant health related risks and harms connected with cannabis use are associated with heavy and sustained use. There are identifiable groups of people who are more at risk of heavy or sustained use or the harms resulting from it. These include people who start cannabis use early in adolescence, and those who are vulnerable to psychosis.
- Cannabis use that is not heavy and sustained (but which is occasional and recreational) generally does not involve the same significant risk of health related harm (except for particular contexts such as operating vehicles or machinery).
- The Commonwealth National Illicit Drug Strategy has, for a number of years, provided policy direction in relation to cannabis and other drugs, as well as extensive funding for research and program development. While there is no ongoing Commonwealth funding specifically tagged for cannabis related issues, many of the programs funded through the national drug strategy will have application to, or impact on, those issues (e.g. funding of general drug treatment programs). The peak government advisory body, the Australian National Council on Drugs, also provides policy advice to the Federal Government. The most recent initiative sponsored by the Commonwealth to have impact on state approaches

to cannabis, is its funding for the development of the 'Tough on Drugs' drug diversion programs in the states and territories. In the case of some jurisdictions (e.g. Qld), this funding has contributed to the initiation of cannabis cautioning schemes.

- There is widespread use of cannabis in most countries, including the European Union, the United States and Canada. There are varied approaches to cannabis legislation in these overseas jurisdictions. At the federal level, the United States criminally prohibits all cannabis related activity, though a number of states have adopted a civil penalty approach in the past. Canada also criminally prohibits cannabis related activities. There is more diversity of approach, however, in the European Union. The Netherlands has for some time not penalised possession or use of small amounts of cannabis, and makes provision for the state regulated availability of cannabis in 'coffee shops'. Spain and Italy have also for some time had a civil approach to cannabis (and other drug use). Recently, some other EU countries (Belgium, Portugal and some German states) are liberalising their approaches by adopting civil or no penalties for minor cannabis offences. Switzerland has also very recently opted for state controlled management of the cultivation and distribution of cannabis for the personal use of its adult citizens.
- Australian legislative approaches involving civil penalties have a greater capacity to minimise cannabis related harms than approaches employing criminal penalties. The former are more sensitive in their targeting of cannabis harms, more effective in achieving their aims, more efficient in their use of resources and the harms and costs they produce, and more proportionate in the penalties they impose.
- The civil penalty systems in Australia do not act to increase cannabis use more than the criminal prohibitionist systems.
- The civil and criminal prohibitionist systems in Australia are similar in their capacity to deter or reduce cannabis use.
- The operation of civil penalty systems in Australia cost considerably less than the operation of criminal prohibitionist systems.
- Because the civil systems in Australia do not apply criminal penalties to low-level cultivation (unlike the criminal prohibitionist approaches), it involves less risk of cannabis users being exposed to more dangerous drugs through the organised criminal cannabis black market.
- Despite the civil approaches being preferable, some of them have been shown to have shortcomings. Nevertheless, these can be readily addressed in order to maximise the capacity of those approaches to reduce harm.

Civil and criminal penalty based approaches to cannabis are both alike in being totally prohibitionist. Arguably, total prohibitionism will still leave in place a significant range of potential harms—most notably connected with the organised cannabis black market. There

are some preliminary reasons for considering the possibility of nonprohibitionist approaches to cannabis as alternatives.



## **Introduction**

The undertaking of this paper is to present a comparative overview of the legislative approaches in Australian state and territory jurisdictions to cannabis use and supply. It is true that laws and legal approaches do not exhaust all of the state sponsored responses to drug use and supply. In fact, it could be argued that some of the most enduring impacts on problems of drug use are attributable to the operation of drug programs, policies and community based initiatives. Notwithstanding this, the focus here will remain fixed on legislation for the important reason that legislation determines and limits what sorts of drug policies, programs and initiatives the community can ultimately pursue.

No sound overview of the impacts of drug legislation can proceed without all of the relevant available data at hand. The paper therefore begins with a survey of the most recent data on patterns of cannabis use and supply in Australia. Against this background, a brief description is supplied of the existing Australian legislative responses (A more extensive description is provided as Appendix 1. Also, a description of the approaches to cannabis taken overseas in the European Union and in North America is supplied in Appendix 2). Given that the task of the paper is a critical comparison, attention then turns to the issue of how different legislative approaches are to be compared and judged. Arguments are presented in defence of harm minimisation as the primary goal of drug policy, and consequently as the primary measuring stick for legislative success. Following on this, is an extensive survey of the most recent research and views on the nature of the potential harms that harm minimising cannabis legislation should address. These include potential health related harms from cannabis use, harms that may attend different modes of acquiring cannabis, and importantly, the sorts of harms and costs that may be brought about by legislation governing cannabis use and supply. Along the way, an attempt is made to give some sense of how serious and how likely such harms might be, as well as any potential benefits of cannabis.

The choice between legislative approaches will turn ultimately on how well the various harms and risks are reduced, or more precisely, the *capacities* that the different legislative approaches have to reduce them. Determining what these capacities are, and exactly what the successes and failures of an approach might be due to, is inevitably a difficult and detailed thing. In order to facilitate and organise this assessment, the paper identifies a number of key hallmarks of harm minimisation to act as criteria or dimensions for evaluating particular facets of different legislative approaches.

All of the relevant available evidence and data about the operation of Australian approaches (and from time to time, overseas approaches) is brought to bear to determine how well they meet each criteria. The project of comparison is continued just a little more at the end, where some observations are made about prohibitionism compared to nonprohibitionist alternatives.

## **Cannabis in the Australian Context**

### **Patterns of Cannabis Use**

Cannabis is the most commonly used illicit drug in Australia. The following dotpoints provide a summary of recent characteristics of its use and its users.

#### **Prevalence**

- It has been estimated that, in 1998, 39 per cent of the Australian population over 14 years of age had used cannabis at some point in their lifetime, and nearly a fifth of them (2.7 million people) had used it in the preceding 12 months.<sup>2</sup>
- Cannabis is also the most increasingly used illicit drug in Australia in recent years, with an eight per cent increase between 1995 and 1998 in the proportion of people over 14 years of age who have used cannabis at least once (compared to a three per cent increase for amphetamines or tranquillisers, and nearly one per cent for heroin or cocaine).<sup>3</sup>

#### **Young People**

- Although a significant proportion of older adults have used cannabis (39 per cent of 30–59 year olds in 1998, an increase of over 10 per cent since 1995 of 30–59 year olds who have used cannabis), cannabis users are mainly young people, with nearly 60 per cent of all those who used cannabis at least once in 1998 being 14–29 year olds.<sup>4</sup> It is also estimated that, in 1998, four in every 10 teenagers (14–19) had used cannabis.<sup>5</sup>
- The use of cannabis by young people has increased significantly, as well, with the proportion of 14–24 year olds who used cannabis within the preceding year increasing by 36 per cent in the ten years between 1988 and 1998.<sup>6</sup>
- Not only are cannabis users more likely to be young people, young people are more likely to use cannabis than any other illicit drug (being used by 38 per cent of 14–24 year old illicit drug users in 1998, compared to 16 per cent in that group who used ecstasy or amphetamines, and just over three per cent who used cocaine or heroin).<sup>7</sup>
- Results of a 1993 national household survey indicate that 96 per cent of cannabis users did not go on to try other illicit drugs.<sup>8</sup>

## **Regularity of Use**

- There is some evidence to suggest an increase in the regularity with which teenagers (14–19 years) use cannabis. In 1995, 33 per cent of adolescent cannabis users used cannabis at least once a week (six per cent more than in 1988), and 41 per cent used it once or several times a month (14 per cent more than in 1988).<sup>9</sup> This contrasts with the regularity of cannabis use considered overall (for all age groups together) for the same period, with a decline of six per cent in those using at least once a week.<sup>10</sup>
- Data from the 1996 Australian School Students Alcohol and Drug Survey indicated that 36.4 per cent of surveyed 12 to 17 year olds reported using cannabis at least once in the previous week, with four per cent of males reporting cannabis use on at least six occasions in that week.
- There is some recent evidence that an estimated 12 per cent of adolescents who have used cannabis in their middle school years go on to daily (and potentially harmful and dependent) cannabis use in their late school years/late teens.<sup>11</sup>
- Despite the increase in regular use among teenagers, cannabis use tends to decline beyond young adulthood. While 77 per cent of teenagers in 1998 who had ever used cannabis had used it within the preceding twelve months, only 57 per cent of 20–29 year olds who had ever used cannabis used it recently, and 35 per cent of 30–39 year olds.<sup>12</sup> This suggests that cannabis use among young people is mostly experimental and transitional, with few becoming ongoing regular users. For those who do continue their use into middle age, however, frequency of use appears to decline for women, but increase for men.<sup>13</sup>
- There is a high rate of heavy cannabis use among young adults with psychosis (a third being daily users)<sup>14</sup> and among adolescents involved in the criminal justice system.<sup>15</sup> Psychosis is a class of conditions typified by a distorted perception of reality.

## **Age of starting**

- There is evidence that teenagers are increasingly coming to start cannabis use at an earlier age. It is estimated that in 1993, 14 per cent of people surveyed indicated that they first used cannabis at 15 years old or less, and this increased to 18 per cent in 1995.<sup>16</sup>
- It has also been noted that people who have used cannabis recently, and use it frequently, are more likely to have started cannabis use earlier.<sup>17</sup>
- Recent research<sup>18</sup> has found that among sentenced property offenders, the average beginning age for regular use of cannabis was 14.7 years, compared to 18.4 years for use in the community as a whole (according to results from the 1998 National Drug Strategy Household Survey). There is a suggested association between criminal involvement and

early initiation of cannabis use and regular use. (It is not clear whether this association is a causal one, however.)<sup>19</sup>

## **Rural/Metropolitan**

- In 1998, 49.6 per cent of people in Australian metropolitan areas had ever used cannabis, compared to 40.8 per cent for regional areas. Between 1988 and 1998, the rate of growth in the number of people who had ever used cannabis was greater in metropolitan areas, with a 5.85 per cent average increase in metropolitan users per annum, compared to a 3.9 per cent average increase in regional users per annum.<sup>20</sup>

## **Cannabis Supply and Distribution**

The most recent data from the Australian Bureau of Criminal Intelligence (ABCI)<sup>21</sup> indicates that cannabis continues to be readily available Australia wide, and that the domestic production and supply of cannabis was a large-scale industry in Australia. The following dotpoints summarise some of the key characteristics of cannabis supply and distribution in Australia.

- It is estimated that in 1998, over half (51 per cent) of all 14–24 year olds had the opportunity to use cannabis (i.e. it was offered to them or otherwise available to them though they may not have used it), and had greater opportunity to use it than any other illicit drug.<sup>22</sup> The high rates of cannabis use noted above also reflect its high level of availability.
- It has been estimated that Australian cannabis users spend over \$7 billion a year on cannabis, double the per capita annual spending on wine.<sup>23</sup>
- The ABCI reports that there is a continuing trend in the demand for, and production, of the more tetra-hydro-cannabinol (THC) potent hydroponically grown cannabis.<sup>24,25</sup> There has been an associated decrease in outdoor cultivation.
- Hydroponically grown cannabis is not only favoured by users for its potency, it is favoured by cultivators because of the potential for year round yields, and more easily managed crops. The greater potential for concealment and varied location is also a major incentive, with private residences often being rented or owned solely for the purpose of hydroponic growing. Information on hydroponic growing, as well as necessary equipment, is also easy to obtain.
- Theft of electricity is often involved in hydroponic growing, and state governments are beginning to cooperate with electricity suppliers to identify such thefts.



- Many crops are still grown outdoors, however, and Queensland police indicate that highly organised groups with sophisticated business practices are becoming increasingly involved in large-scale outdoor cultivation.
- There is evidence that legitimate businesses are used to disguise cannabis cultivation and distribution, and that organised groups such as outlaw motorcycle gangs are heavily involved in the supply of cannabis.
- The use of booby traps and armed guards to protect outdoor crops is also reported by the ABCI as common. As well as this, there is evidence that some groups were recruiting people for specific tasks such as crop sitting.
- Cannabis is also distributed in Australia through a variety of means including mail, cars, trucks and aeroplanes.
- The ABCI reports that South Australia is the source of large quantities of cannabis for other jurisdictions, and it is often distributed through long haul transport.
- Given the widespread use of cannabis, and the fact that it is illegal in all Australian jurisdictions, cannabis offence rates are very high (accounting for 67 per cent of all drug related offences in Australia in 1999–2000).
- Cannabis offences are mostly concentrated in the 15–29 age group (with the highest rate being among 15–19 year olds).<sup>26</sup> The offences are predominantly for consumption, rather than supply of cannabis, and although few result in custodial sentences, a great many result in criminal convictions. Offences, however, have declined from 80 000 Australia wide in 1995–96 to 56 000 in 1999–2000.
- In 1995, it was estimated that 13 per cent of all criminal justice and police resources were devoted to detecting and processing cannabis offences.<sup>27</sup>
- The rate at which civil infringement notices are issued is comparatively high in the three Australian jurisdictions that have adopted a system of civil penalties. However, the rate of issue has declined in the ACT and South Australia between 1995–96 and 1999–2000, while it has doubled in the Northern Territory.

## The Legislative Response to Cannabis in Australia

### **The Possible Legislative Approaches to Cannabis**

There are a number of possible legislative approaches to cannabis. According to a widely cited taxonomy developed by David McDonald et al.,<sup>28</sup> most of the possible approaches are versions of *prohibitionism*, where cannabis related activities (possession, use and supply) are legislatively prohibited, and are thereby made illegal.

- *Prohibitionism with criminal penalties*<sup>29</sup> counts cannabis related activities as criminal activities, and in line with their criminality they can attract serious penalties (such as major fines, or incarceration).
- *Prohibitionism with civil penalties* still treats cannabis related activities as prohibited by law (illegal), but applies less serious 'civil' penalties such as minor fines or other forms of expiation (i.e. ways of discharging an obligation or penalty, which can include payment of fines, but also community work, for instance).
- A system based on *nominal prohibitionism* (or what McDonald et al. call *legislative prohibitionism with an expediency principle*) treats cannabis related activities as prohibited *in law*, but *in practice* the law is not enforced, pursued, or administered when it comes to certain of those nominally prohibited offences. (In the Netherlands and Denmark, where nominal prohibitionism applies, these are possession and use and sometimes sale of small quantities.)
- A *partial prohibitionist* approach would legislatively prohibit some cannabis related activities (for instance, the cultivation/supply of commercial quantities), but allow others (like personal use, and cultivation/supply of small quantities) without penalty.
- A system of *regulated availability* (which is arguably a form of partial prohibitionism) would involve state control over, or regulation of, the production and availability of cannabis. Personal use within those regulations would not be prohibited. This is the system that currently applies in the case of tobacco, alcohol and licit drugs in Australia.
- Finally, there is the possibility of a totally nonprohibitionist system of *free or unregulated availability*, where no legislative restrictions or penalties are applied to any cannabis related activity. In this case, the possession, use, cultivation and supply of cannabis would be treated as purely within the domain of personal freedom.

## **The Australian States and Territories**

Traditionally, it has been a matter for each Australian state and territory to determine its own approach to cannabis related activities, and there are differing approaches in all of them as a result.<sup>30</sup> In all jurisdictions the penalties imposed for possession of cannabis will depend on the amount possessed. Legislation in Australian states and territories often makes a distinction between possession of small amounts (for personal use), possession of large amounts sufficient to create a presumption that the cannabis is intended for selling (trafficable quantities), and sometimes possession of even larger 'commercially trafficable' quantities. All Australian jurisdictions prohibit (with criminal penalties) the supplying of cannabis, or the possession of large (trafficable) quantities.

Australian jurisdictions differ, however, in the legislative approaches they take to the possession and use (and cultivation) of small amounts of cannabis (presumptively for

personal use). The approaches are of two kinds—prohibitionism with criminal penalties (Tas., Vic., NSW, WA, Qld) and prohibitionism with civil penalties (SA, ACT, NT). Both approaches are prohibitionist in that they legislatively prohibit cannabis possession and supply for personal use (they are illegal), and count them as offences that ought to be penalised. But each jurisdiction prohibits these offences with different degrees of coercive strength, reflected in the different types of penalty they apply. While the former predominantly imposes potentially serious criminal penalties, the latter mostly imposes less serious 'civil' penalties such as minor fines or similar forms of expiation.

In the civil prohibitionist jurisdictions, the offences attracting a civil infringement notice include

- possession of small amounts of cannabis plant (up to 100g in SA, 25g in the ACT, and 50g in NT), and
- cultivation of cannabis plants (up to three in SA, five in the ACT, and two in NT)

Failure to pay the fines may result in court appearances and subsequent conviction.

The criminal prohibitionist jurisdictions have also recently adopted 'diversionary' cautioning procedures which allow first or second time cannabis possession/use offenders to receive a caution or education/counselling session instead of the normal court appearance.<sup>31</sup> (A more detailed description of the legislative approaches in Australian jurisdictions is supplied in Appendix 1. A snapshot of some overseas approaches is also supplied as Appendix 2.)

## **The Role and Activities of the Commonwealth**

While legislative responses to cannabis are primarily a state responsibility, the Commonwealth still plays some role in this area. The Commonwealth National Drug Strategy has, for a number of years, provided policy direction in relation to cannabis and other drugs, as well as extensive funding for research and program development.<sup>32</sup> While there is no ongoing funding specifically tagged for cannabis related issues, many of the programs funded through the National Drug Strategy will have application to, or impact on, those issues (e.g. funding of general drug treatment programs). The peak government advisory body, the Australian National Council on Drugs, also provides policy advice to the government.

The most recent initiative sponsored by the Commonwealth to have impact on state legislative approaches to cannabis, is its funding for the development of the 'Tough on Drugs' drug diversion programs in the states and territories. In the case of some jurisdictions (e.g. Qld), this funding has contributed to the initiation of cannabis cautioning schemes.

## **Assessing Alternative Approaches to Cannabis: Clarifying Goals and Criteria**

### The Primary Purpose of Drug Policy and Legislation

Which legislative approach to cannabis is the best or most successful? In answering this question, it is essential to clarify what the primary or underlying goal(s) of cannabis legislation should be, and what criteria are central to deciding how well a legislative approach meets those goals.

There are currently two major views about the fundamental goals of cannabis policy or legislation.<sup>33</sup> The views are related, but differ importantly. The first view holds that the aim of cannabis (and all drug) policy and legislation is to reduce or minimise the *use* of cannabis. With this view, the more that some legislative approach reduces the overall usage of cannabis, the more successful it is, or the more preferred it will be to another approach that reduces its use less. The second, and increasingly favoured, view is that cannabis legislation is successful when it reduces or minimises the overall *harms* associated with cannabis, (even when this does not necessarily result in a reduction in cannabis use). The more cannabis related harm that is reduced by a legislative approach, the better it will be on this view. Harm reduction does not completely ignore the question of cannabis use. It targets *harmful* or risky cannabis use, and seeks to reduce this, and the harms arising from it.

Harm reduction has been Australia's official policy toward drug use since 1985. There are good reasons to favour it over use reduction as the truly basic goal of cannabis legislation and policy. Clearly, when deciding whether drug use is a good or bad thing, it is the harms associated with drug use, rather than the mere use itself, that seem to be the important consideration. Drug use, if it is problematic or objectionable, seems to be so because of its consequences—the harms it produces or has the capacity to produce. If drug use had no harmful consequences at all, the use of drugs would not be a concern. This strongly suggests that if reducing drug use is desirable, it is only desirable in a secondary and dependent sense, because it sometimes serves the more fundamental goal of reducing harm.<sup>34</sup>

If the primary goal of sound cannabis legislation is to reduce cannabis related harm, then a system of legislation that reduces these harms to a greater degree will be preferable to ones that reduce them to a lesser degree (or not at all). This principle of harm minimisation will be taken here as the ultimate desiderata when comparing the success of differing approaches to cannabis. In order for such a comparison to be accurate, it will need to take into account the full and comprehensive array of harms associated with cannabis, including the harms and social costs that are inevitably involved in controlling or regulating cannabis. No approach to cannabis control or regulation will be completely harm free or cost free. Different systems will involve different degrees of intrinsic cost (e.g. time and resources in administering and enforcing the regime) as well as differing possible harmful or costly consequences or side effects. In a sense, a harm minimisation

principle will require alternative forms of cannabis legislation to be assessed on a cost-benefit basis. This process of assessment requires a clear picture of what the potential harms, costs and benefits are in the equation, and the following few sections give an indication of these.

## Potential Harms, Costs and Health Benefits of Cannabis

Like any other mind-altering drug, cannabis use involves potential harms, costs and benefits. Just what these harms, costs and benefits are, and the degree to which they are so, will depend very much on the context and circumstances surrounding the cannabis use. This will include factors such as who is using the cannabis and how frequently, how the cannabis was acquired, and also what the legal consequences are of using it. In view of all this, the following will outline cannabis related harms and benefits under the headings of cannabis use, cannabis supply and cannabis control.

### Harms of Cannabis Use

#### Physical and Cognitive/Psychological Harms

There are physical and cognitive/psychological consequences of cannabis use that can occur immediately after use (acute effects), or as a result of long-term use (chronic effects).

The immediate effects, which generally do not persist after intoxication,<sup>35</sup> can include:

- ***Short-term impairment of psychomotor coordination and reaction time.*** The degree to which these effects are harmful will depend on context. In themselves they may merely count as an inconvenience, but when driving or operating dangerous machinery, they may carry the strong risk of very serious harm (especially in conjunction with alcohol, seeing that the effects are additive in conjunction with other nervous system depressants).
- ***Short-term deterioration of attention and memory.***<sup>36</sup> These effects manifest in performing complex tasks requiring divided attention (such as driving and operating machinery).
- ***Distorted temporal and spatial perception.*** Time is perceived as going faster than actual clock time, and perceptions of distance and depth are affected.<sup>37</sup>
- ***Mood changes.*** (These are dose dependent) feelings of panic, anxiety and mild paranoia, particularly with novice users.<sup>38</sup>
- ***Increased risk of experiencing psychotic symptoms (while intoxicated) among vulnerable individuals.***<sup>39</sup> Short-lived symptoms include the likes of hearing voices, having unwarranted feelings of persecution, feelings of depersonalisation.<sup>40</sup>

The potential physical and cognitive/psychological effects of long-term regular cannabis use are not just experienced while intoxicated, but can persist as risks or conditions after long-term use. These effects can include:

- ***Susceptibility to respiratory disorders and cancers.*** These include chronic bronchitis and emphysema, and an increased chance of cancer of the mouth, oesophagus, and certain forms of pharyngeal cancer.<sup>41</sup> The tar from a cannabis cigarette contains all the constituents of tobacco smoke (with the exception of nicotine).<sup>42</sup>
- ***Subtle cognitive impairment.*** This includes impairment of memory, attention, and capacities to organise and integrate complex information.<sup>43</sup> The longer cannabis has been used, the more pronounced the impairment. These impairments are low-level and it is not clear as to the extent to which they affect normal daily functioning, or whether the impairments would desist after an extended period of abstinence.<sup>44</sup>
- ***Possible risk factor for mental illness.*** It was noted above that people can experience (short-lived) psychotic symptoms while intoxicated from cannabis. It has also been hypothesised that cannabis use may be linked with the onset or exacerbation of an ongoing psychotic *syndrome* or *condition* in vulnerable individuals. Though there is some evidence to support this, the relationship between cannabis use and chronic psychotic disorders is complex and subject to qualification and ongoing theoretical debate.<sup>45</sup>

In this theoretical debate, three distinct hypotheses can be discerned as follows (from stronger to weaker):<sup>46</sup>

- that heavy cannabis use may cause a specific 'cannabis psychosis', a psychosis which would not have occurred except through cannabis use, and which will remit when cannabis use ceases
- that heavy cannabis use is one among a number of possible factors (like genetic disposition), that can bring about an episode or condition of schizophrenia, which may or may not persist after abstaining from regular or ongoing use, and
- that cannabis use can worsen or exacerbate symptoms in those who have a schizophrenic disorder.

Recent extensive reviews of the existing evidence<sup>47</sup> argue that the third of these hypotheses is the most supported—that cannabis use makes worse the symptoms of schizophrenia in those individuals already affected by the condition. This is supported by controlled retrospective and prospective studies.<sup>48</sup> There are physiological as well as behavioural reasons to support this. The active component of cannabis (THC) increases the release of the neurotransmitter dopamine in the brain, and it is known that variations in dopamine levels affect psychotic symptoms.<sup>49</sup> It may also be that cannabis use/intoxication may reduce people's compliance in taking prescribed medication, or clinical attendance.

With respect to the second hypothesis, it is likely that cannabis use can induce the onset of a psychotic condition in those who are vulnerable to psychosis (and who would probably develop it anyway).<sup>50</sup> However, there are still important residual questions about the 'causal direction' in the association between cannabis use and onset of psychosis in vulnerable individuals. Rather than the cannabis use causally inducing their psychosis, it may be that such use is an attempt to 'self-medicate', and reduce certain of the symptoms of a psychotic condition which has already developed independently (e.g. depression).<sup>51</sup> One recent Melbourne study of 193 young people who had experienced psychotic episodes indicated that more than 50 per cent of them were unable to quit using cannabis even after serious psychotic episodes.<sup>52</sup>

With the first hypothesis, there does not appear to be compelling evidence that there is a distinct 'cannabis psychosis' condition or syndrome which would not occur other than from heavy cannabis use.<sup>53</sup> It should be noted also, that alcohol abuse is a stronger predictor of psychotic symptoms than regular cannabis use (by a factor of four).<sup>54</sup>

- ***Immunity and Reproductive effects.*** There have been suggestions in the literature that chronic cannabis use can affect immunity and decrease resistance to infection.<sup>55</sup> The evidence for this, however, is inconclusive, and based on studies of the effects of very large doses of THC on animals. The situation is similar with studies indicating that THC can have reduce fertility.<sup>56</sup> The evidence that cannabis use in human pregnancy can decrease birth weight, is slightly stronger.<sup>57</sup> There is also evidence that being exposed *in utero* to cannabis results in deficits in attention, memory and higher cognitive functioning during infancy and early years.<sup>58</sup> It should be noted that the effects of cannabis are small compared to those of maternal tobacco use.<sup>59</sup>
- ***Development of Cannabis Dependence Syndrome.*** There is emerging evidence that some users can become dependent on cannabis in the sense that they are unable to reduce or adjust their use even when they recognise it as having undesirable impacts on their lives. The distinctive harm associated with dependence (above and beyond the other potential harms mentioned here) is the fact that one's use comes to interfere with the enjoyment of opportunities, or the undertaking of responsibilities. It is not entirely clear whether cannabis dependence is psychological, or one which has a pharmacological basis (or a combination of both). However, there is some evidence of 'withdrawal' symptoms associated with abrupt cessation of heavy cannabis use,<sup>60</sup> and also evidence that the active chemical agents in cannabis act on the same neurological reward systems as alcohol, cocaine and opioids.<sup>61</sup> It has been estimated that, in the USA, one in ten of those who ever use cannabis exhibit symptoms of dependence at some time in their four or five years of heaviest use. (This is a similar rate for alcohol dependence, but less than for nicotine or opiate dependence).<sup>62</sup> In Australia, an estimated two per cent of adults exhibited symptoms of cannabis dependence in 1998.<sup>63</sup> Those who use cannabis daily over periods of weeks to months are most at risk.<sup>64</sup>
- ***'Amotivational Syndrome'.*** It is sometimes thought that heavy cannabis use can result in lethargy, an unwillingness to work, a general loss of interest and a desire to 'opt out'.<sup>65</sup>

The empirical evidence for what has been called an *amotivational syndrome* has largely come from uncontrolled studies of long-term cannabis users in various cultures, and it is not clear what credibility they have.<sup>66</sup> It is true that a proportion of cannabis users are unemployed (in 1995, 23 per cent of Australians recently using cannabis).<sup>67</sup> However, these 'amotivational' symptoms may be nothing more than mere manifestations of being intoxicated, or else a reflection of the fact that frequent cannabis use can itself be a concomitant of unemployment, or a pre-existing dissatisfaction with one's life or social circumstances.

- **Effects on school performance.** Similar things can be said of the observed association<sup>68</sup> between heavy cannabis use during adolescence and early exit from secondary schooling and job instability in young adulthood. When this association is examined more closely, it turns out that young heavy cannabis users had poor school performance compared to their peers before they used cannabis.<sup>69</sup> There have been some studies, however, that do show an association between early cannabis use and the likes of unplanned parenthood, unemployment, and leaving home early.<sup>70</sup> It should be recognised, nevertheless, that there may be no simple cause and effect relationship between early heavy cannabis use and these behaviours.<sup>71</sup> It is also important to recognise in this context that many adolescents who merely experiment with cannabis still do well at school.<sup>72</sup>
- **A Gateway Effect.** It is commonly believed that cannabis is a 'gateway' drug in the sense that it leads to the use of more harmful illicit drugs like heroin, cocaine and amphetamines. The belief that cannabis use leads to harder drugs has its source in the observation that nearly all those who use harder drugs have used cannabis first.<sup>73</sup> However, while the evidence of a correlation is strong, it is generally agreed that the 'causal gateway' interpretation of the evidence is faulty. Such an interpretation is falsified by the fact that even though the great majority of harder drug users used cannabis first, the great majority of cannabis users<sup>74</sup> do not go on to use harder illicit drugs.<sup>75</sup> A causal relationship would suggest that (at least) most of those who use cannabis would go on to use other illicit.

This is not to deny that there is a correlation between cannabis and harder drug use, and that the former can act as a (weak) predictor of the latter. Compared to those who do not use cannabis, cannabis users are definitely more likely to use harder drugs.<sup>76</sup> However, commentators are increasingly coming to view this correlation in terms of the operation of certain background factors that are common to both (some) heavy cannabis users and harder drug users. There is still question as to exactly what the factors might be. However, after an analysis of the existing evidence and argument, Lenton et al. observe that heavy cannabis use and the use of other illicit drugs may be related to a similar set of complex underlying socio-demographic and personality variables. They conclude that the gateway correlation is most likely due to either:<sup>77</sup>

- (i) heavy cannabis users and users of hard drugs sharing underlying characteristics (e.g. rebelliousness, stimulus seeking, poor economic prospects, etc.); and/or



- (ii) heavy cannabis users' frequent involvement in the cannabis market exposing them to many opportunities to use other drugs (the 'overlapping drug markets' or 'drug-subculture' hypothesis).

Lenton et al. note that the latter hypothesis has been empirically tested and partially verified. In a sample of New York State high school students, it was found that cannabis users who did not become involved in the illicit market were no more likely to begin using other illicit drugs than non-cannabis users.<sup>78</sup> The overlapping markets hypothesis also appears to be given some support by the observation that the more frequent the cannabis use (and so, the more frequent the exposure to drug sellers), the more likely one is to come to use other illicit drugs.<sup>79</sup> With this said, Hall notes that there are still studies suggesting that *heavy* cannabis use in adolescence predicts an increased risk of harder drug use, where this is not due to background factors such as those of (i) and (ii) above.<sup>80</sup>

#### Physical and Cognitive/Psychological Benefits of Cannabis Use

If cannabis were not perceived to have beneficial effects it would not be used. Many people who use cannabis, use it because of its relaxant and euphoric effects, and in some cases because of the belief that it facilitates social interaction. Historically, cannabis has also been used for medicinal purposes in various parts of the world. There is now an emerging body of scientific evidence that some of the active components of cannabis can have therapeutic effects.<sup>81</sup> A recent review of the evidence<sup>82</sup> has collated the following beneficial actions of active components in cannabis:

- ***Suppression of nausea and vomiting*** (particularly in cancer patients). Often patients are reluctant to undergo chemotherapy because of the nausea involved, and THC has been shown to be effective in reducing nausea.<sup>83</sup>
- ***Muscular relaxant***. Muscle spasms and spasticity associated with multiple sclerosis has been shown to be reduced by doses of THC.
- ***Appetite stimulant for cancer and AIDS patients***. There is evidence that THC is effective in appetite improvement and slowing of weight loss in cancer patients.
- ***Pain relief***. THC has been shown to have analgesic effects.
- ***Glaucoma treatment***. There is evidence that THC and other cannabis compounds can reduce the intra-ocular pressure symptoms associated with glaucoma.
- ***Treatment of insomnia, anxiety and depression***. There is evidence from some studies that THC in the form of Nabilone can produce significant improvements in patients experiencing anxiety. Preliminary data also suggest that the active component in cannabis may be an effective hypnotic to reduce insomnia. THC has also been observed to have anti-depressant effects in cancer patients and others.

- ***Anticonvulsant.*** There is evidence (though not conclusive) that THC can reduce the rate of seizures associated with epilepsy.

A number of government reports have recently been completed on the issue of the medical use of cannabis, including the following:

- In the UK in 1998, a Select Committee of the House of Lords recommended that cannabis should remain a controlled drug, but that the law should be changed to allow doctors to prescribe an appropriate preparation of cannabis if they saw fit.
- More recently, in March 2001, it was reported that the House of Lords Select Committee on Science and Technology considered it undesirable that genuine therapeutic users of cannabis who possess or grow it for their own use should be prosecuted.<sup>84</sup>
- A recent report commissioned by the NSW government<sup>85</sup> recommended the introduction in NSW of a compassionate regime to assist those suffering from a specified range of illnesses to gain the benefits associated with the use of cannabis without facing criminal sanctions. It also recommended further clinical trials and surveys. The NSW Premier Bob Carr has given strong indication that clinical trials will be conducted.<sup>86</sup>
- The recent report of the Victorian Drug Policy Expert Committee recommended that Victoria Police and the courts use their discretion when dealing with people using cannabis to manage symptoms of serious, debilitating and often terminal conditions for which there are indications of therapeutic effect.<sup>87</sup>

## **Harms Associated with the Acquiring of Cannabis**

There are different ways in which users can acquire their cannabis, or in which others can supply it to them. Users can acquire it through organised networks involved in large scale cultivation and supply. They can also acquire small amounts through peers and friends who grow their own. And individuals can grow cannabis themselves for their own use. There will be different levels of potential risk, costs and harms associated with these for the user as well as for third parties. The most serious costs and harms are associated with the organised large-scale production and supply of cannabis, the currently dominant source of cannabis in Australia.<sup>88</sup> Lenton et al. have noted the following risks and costs associated with large scale supply:

- ***Associated criminal activity.*** Large-scale production and supply of cannabis often involves organised profit driven criminal distribution networks. The sums of money involved in large-scale production also involve a high risk of other criminal activities such as money laundering, violence, and corruption of officials

- ***Risk to users of further criminal involvement.*** Organised criminal distribution networks are a potential harm to individual cannabis users who directly access the networks to acquire their drugs and become exposed to the risk of further criminal involvement themselves.<sup>89</sup>
- ***Opportunity for harder drug use provided by overlapping markets.*** There is evidence that cannabis users acquiring their cannabis from the existing large scale illicit drug market become exposed to other more harmful illicit drugs. Lenton et al. argue that large-scale profit driven drug markets involve cannabis users in distribution networks where there is opportunity to use a variety of other illicit drugs. They cite a number of studies in relation to this. For example:
  - A 1993 study of drug dealers indicated that cannabis buyers might be willing or persuaded to buy cheap injectable amphetamines from them if cannabis turned out to be unavailable or expensive.<sup>90</sup>
  - A 1998 survey of 55 cannabis users found that 43 per cent of them had purchased their cannabis from suppliers who also offered them another illicit drug.<sup>91</sup>
  - A 1999 study of 51 first time minor cannabis offenders found that nearly half who had bought cannabis in the last 12 months had been offered (or asked for) other drugs in that period.<sup>92</sup>

The phenomenon of overlapping markets involves the considerable risk of serious harm to cannabis users, who are predominantly young, occasional users who might not otherwise dabble with more dangerous substances.

Compared to large-scale provision, self-supply and low-level acquisition (acquiring small amounts from friends who grow their own) can be argued to involve fewer of these harms (legal consequences aside, which will be discussed shortly).<sup>93</sup> With self-supply, the immediate concern is probably the costs to the grower in terms of initial equipment outlays, labour and time in maintaining plants as well as efforts at concealment. There is also the risk of failure of plants to grow or survive, or to properly develop heads (the most THC-active parts).<sup>94</sup> In this event, the potential harm of crop failure is not so much the added cost of having to re-grow, but the possibility that the grower will resort to the established large-scale market to acquire cannabis.<sup>95</sup>

### **Harms and Costs Associated with Controlling Cannabis Use and Supply**

As was said, not only will cannabis use and supply involve potential harms, so too can the very attempts to regulate or control cannabis use and supply. Of course the nature and level of cost and harm will depend on the form of regulation in question. Nonetheless, some key observations can still be made about the prohibitionist approach that is dominant in Australia at the moment. Again, after reviewing the evidence, Lenton et al. note the following risks and harms of prohibitionism:

- ***Very high level of police and justice resource expenditure.*** As noted, a substantial proportion of all drug offences in Australia are cannabis related ones (nearly 70 per cent). The great bulk of these are consumer as opposed to provider offences, and relatively few are serious enough to result in prison sentences. The time and resources expended by police and the courts in processing such a large proportion of offences is considerable, particularly when the offences are minor ones.<sup>96</sup> It was estimated in 1995, that 13 per cent of all police and criminal justice resources were devoted to cannabis offences.<sup>97</sup> When viewed in terms of other more serious crimes that could have been attended to, this level of resource expenditure on cannabis charges seems all the more serious.
- ***High resource costs of detection with very limited impact.*** There are considerable costs involved in police detection efforts and operations relating to organised large-scale cannabis production, but there has been limited success and minimal impact on the availability of cannabis.<sup>98</sup>
- ***Personal costs of a criminal conviction.*** In most Australian state jurisdictions, there is the likelihood of a criminal conviction for cannabis possession or use, and certainly for supply (if not for the first or second offence, then for later ones). A 1996 study found that in Western Australia 2–3 people per day received a criminal conviction for merely possessing cannabis for personal use.<sup>99</sup> A criminal conviction can have impacts on the lives of those convicted, including possible difficulties with employment, accommodation and travel to certain destinations.<sup>100</sup> Eric Single makes the following observations:

Anyone with a criminal record is at a disadvantage in subsequent criminal proceedings: a criminal conviction may influence a police officer to lay a charge; it may be grounds for denying bail; it can influence a crown attorney to proceed by way of indictment rather than by summary conviction; it may be raised to impeach the suspects credibility as a witness; and it may result in more severe penalties as dictated by various criminal statutes.<sup>101</sup>

Although Single is speaking of Canada, many of these consequences are likely to apply in Australian jurisdictions. These impacts are of particular concern given that a large proportion of offenders will be quite young people who would not otherwise have much, if any, criminal involvement.<sup>102</sup>

- ***A deterrent to seeking advice and help.*** It is often argued that the prohibited and criminal status of cannabis use can act to deter people, particularly young people, from seeking accurate information about the harms and effects of cannabis use. The same could be said about seeking out professional help with problematic use.

With respect to the supply of cannabis, criminal prohibitionism can also involve potential harms:

- ***Prohibiting self-supply may continue to entrench large-scale organised cannabis production.*** If self-supply is prohibited, then this is an incentive for those people who are

determined to use cannabis (and who would not be deterred by laws against use), to continue accessing the cannabis black market, with its associated risks. To the individual user, it is better that the black marketeers take the risk of serious penalties for supply, than the individual user.

For completeness, it is worth mentioning that there may also be benefits from controlling or regulating cannabis use and supply as well as costs and harms. Exactly what the benefits are, and the degree to which intended benefits are realised, will depend on the particular form of control/regulation in question, and what things would be like without any control at all. Without going into the detail (just yet) of the effectiveness of various approaches at controlling or regulating cannabis, it would probably be safe to say that *some* form of control or regulation or public management of cannabis use and supply would be better than none. Where cannabis is freely available to anyone under any circumstances, and there is no license for state intervention, there is probably less chance of addressing the potential harms of cannabis use and supply.

### Putting the Harms in Perspective

The cannabis related harms listed above are *potential* harms. This means they will not *necessarily* arise or occur in every case for every cannabis user or acquirer, or in every instance under a legislative system. They have been noted in clinical and empirical studies as outcomes of cannabis use or outcomes of modes of acquisition or regulation that are probable (rather than matters of pure chance), and probable enough to take note of. The harms are not all equally probable either. Some may be more likely to occur than others. Similarly, some types of user will be more vulnerable to some harms than to others. Given all this, the harms listed above are best thought of as cannabis related *risks* which may or may not be realised in any particular case depending on a variety of circumstances and contextual factors.

The evidence suggests that the *significant* health related risks from cannabis use are associated with heavy and sustained use, and early adolescent use or initiation. Other than in these circumstances, cannabis use does not appear to be significantly harmful to health and wellbeing (aside from the risks associated with its legal status, of course). It was noted earlier that in 1998, 39 per cent of Australians over 14 years of age (approximately 5.4 million people) had used cannabis at some point in their life, and that 2.7 million had used it in the previous 12 months. In the vast majority of these cases, cannabis use is thought to be occasional. It was noted also that among young people it is typically experimental and transitional, with few becoming ongoing regular users. Approximately 96 per cent of those who had used cannabis did not go on to use more harmful illicit drugs. Certainly all cannabis use brings with it the possibility of the immediate, but short-lived acute harms mentioned earlier (and these can be significant when, say, driving a car). But the overall level of chronic health related harms is limited, despite the widespread prevalence of cannabis use in the community.<sup>103</sup> Dependence is arguably the most prevalent of the health related harms currently associated with cannabis use.<sup>104</sup> However, while 10 per cent of

those who have ever used cannabis meet some of the criteria for dependence, that still leaves 90 per cent of those who have ever used who do not exhibit symptoms of dependence.

This does not mean that the harms of cannabis use are negligible. They are certainly worthy of public policy concern, especially when certain groups are particularly vulnerable to risk of significant harm.

### **Who is Most at Risk?**

***Adolescents.*** As was observed earlier, cannabis users are mainly young people, and a significant proportion of them are adolescents. Adolescents are often more disposed to risk taking and experimentation, and tend to be more susceptible to peer influences. They are generally also not as socially well placed as adults to access reliable information, or support in the context of drug use. But it is not only the harms specifically associated with cannabis use that are a heightened risk for adolescents. Susceptible adolescents are particularly at risk when it comes to acquiring their cannabis from suppliers who may also be in the business of providing other illicit drugs. As was noted earlier as well, adolescents who are heavy cannabis users are more at risk of using other more harmful drugs.

***Adolescents who begin use early in their adolescence.*** There is evidence that earlier initiators of cannabis use are more likely to become long-term frequent users, and with this there is increased risk of experiencing cannabis related harms, including cannabis dependence.<sup>105</sup> At least one study has also indicated that early initiators are more likely to try other illicit drugs.<sup>106</sup> As well as this, there is an observed association between earlier initiation of cannabis use and property offending.<sup>107</sup>

***Adolescents involved in the criminal justice system.*** These people have high rates of very heavy cannabis use.<sup>108</sup>

***People susceptible to mental illness.*** Heavy cannabis use can bring on psychosis in those predisposed to it, or make symptoms worse in those suffering it. There is also evidence that those suffering a mental illness can become dependent on cannabis use<sup>109</sup> (and this can interfere with treatment or retard recovery). One-third of young adults with psychosis are daily cannabis users.<sup>110</sup>

***People driving or operating machinery under the influence of cannabis.*** Given the well observed perceptual and psycho-motor affects of cannabis, those in control of vehicles or machinery are at significant risk of seriously harming themselves or others.

***Pregnant women.*** Heavy cannabis use during pregnancy may affect unborn children.

It should be kept in mind with these at-risk groups, that some individuals can fall into more than one risk category (for instance, cannabis users who are adolescent females with a mental illness who are at risk of pregnancy).

## How Should Alternatives be Compared?

The overview of cannabis related harms and benefits just presented gives some indication of *what*, at bottom, needs to be compared when assessing alternative approaches to cannabis. But there is still a further, closely related question about *how* a comparative assessment like this is to best proceed. Simply listing or collating all the harms reduced by each legislative approach would be cumbersome and unorganised. Besides this, legislative approaches to cannabis need to be compared not just in terms of their observed impact, but also sometimes in terms of their probable or potential impact on cannabis related harms. Given this, it makes sense to go about comparing legislative responses in terms of their general *capacities* to reduce harm. In other words, in terms of how well they exemplify or reflect certain hallmarks of harm reduction—legislative properties that arguably facilitate and maximise the reduction of cannabis related harm. By proceeding in this way, potential as well as observed impacts can be taken into account. It will also make for a more organised and informative comparison.

## Key Criteria for Comparing Alternatives

The central aim of cannabis legislation is not merely to reduce harm, but to reduce it as much as possible in the circumstances. Arguably, there are certain characteristics that a system of legislation can have that serve to enhance its capacity to minimise harm. The more strongly those properties are exhibited in the legislative approach, the more successful it is likely to be in minimising harm. These hallmarks of harm minimisation can thus act as criteria for critically comparing different approaches to cannabis.<sup>111</sup>

**Rational targeting of harm.** This first hallmark of harm minimisation relates to the aims and objectives of a legislative approach, and the types of cannabis activities (e.g. possessing, using, acquiring, cultivating, supplying cannabis, etc.) that it should disallow or aim to deter (or otherwise regulate). Harm minimising cannabis legislation will target cannabis related harm. It will disallow only cannabis activities that are (sufficiently) harmful or risky, but not disallow those that are harmless (or involve only a very low risk).<sup>112</sup> The focus on harm is paramount. There is no compulsion to reduce or restrict instances or types of cannabis activity that do not involve imminent or deferred harm (of a sufficient degree). Harm targeted cannabis legislation, in other words, will be selective and tolerant in the cannabis activities that it seeks to regulate. This will apply not just to types of cannabis use that are low risk, but also types of cannabis production and supply that are (near) harmless (if there are any).<sup>113</sup>

Well targeted cannabis legislation will be rational in its targeting, too. Clearly, the harms it seeks to deter need to be sufficiently serious (either in each individual case, or in their collective impact). But it would not seek to restrict a cannabis activity simply because there may be *some* probability of it being harmful. Simply saying that the cannabis activity *can* be harmful, is not enough, no matter how serious the potential harm. The harm needs to be a *typical* or expectable consequence of that type of activity—there needs to be a significant probability that the harm will, in fact, arise. It may be that, even when a cannabis activity can result in a serious harm, the expected incidence of that harm may be so low, or confined to such specific circumstances, that it may be just not justified to restrict the entire type of activity.<sup>114</sup> Rationally targeting will be responsive to both the seriousness and the likelihood of harm. So, harm minimising cannabis legislation will seek to come as close as possible to capturing all and only those cannabis activities that are likely to involve sufficiently serious harm. The closer a legislative approach comes to this, and the more sensitive it is in its targeting, the more preferred it will be from the point of view of harm minimisation.

**Comprehensiveness.** The procedures and interventions that surround legislation—the enforcement and the administration of the law—can also significantly contribute to its harm reducing capacity.<sup>115</sup> Written legislation is sometimes a blunt instrument for targeting harms, especially when the harms are variable and contextual. Law enforcement interventions and judicial decisions usually relate to particular cases of cannabis activity. They can, therefore, be more sensitive and attuned to the nature and probability of the potential harms involved, and can respond accordingly. Police, for example, are in a good position to exercise discretion<sup>116</sup> in judging how to deal with an encounter, or whether to proceed with it, in the light of the harm involved.<sup>117</sup> Similarly, the more that discretion in sentencing can be exercised by the judiciary, the more opportunity there is to match consequences to the actual harm of the offence (as per proportionality, discussed later).

Law enforcement interventions and judicial decisions can also provide opportunities for *demand reduction* and *secondary prevention*, opportunities that might not otherwise be available. For example, police have the capacity to provide information to offenders, or to direct them to drug education or counselling or maybe even treatment—all with the aim of reducing their inclination to further engage in harmful cannabis use or modes of acquisition or supply.<sup>118</sup> Similarly with sentencing. There are opportunities for judges and magistrates, when imposing consequences for offences, to require offenders to undertake similar demand reducing activities, including drug treatment, or life skills training or employment tasks. The greater the opportunities a system of legislation provides for demand reduction and discretionary targeting of harm, and the more fully and comprehensively their potential is used, the greater its capacity to reduce harm.

**Efficient harm reduction.** It was pointed out earlier that the very process of attempting to reduce cannabis related harms will involve costs, and these costs can themselves be counted as harms. It is central to harm minimisation that as much harm as possible is reduced with the least possible created. This means that a good legislative approach to



cannabis needs to be efficient at two points—at the point of resource expenditure and at the point of emergent outcomes. Consider the first. There would be something troubling about a legislative approach to cannabis if the resource costs (e.g. time, labour and material) of enforcing and administering it significantly exceeded the benefits it produced,<sup>119</sup> or if an alternative approach produced the same or greater benefits with fewer resource costs. It seems desirable that the costs of enforcing and administering a system of cannabis legislation should be as low as possible for the harms it reduces, and certainly should not outweigh or exceed the harms reduced. On a goal of harm minimisation, approaches that reduce the most harm with the least resource cost will be preferred.<sup>120</sup>

The second point of efficiency relates to the harmful or risk producing outcomes or side effects that a system of drug legislation can sometimes unintentionally have. To take an example relating to injecting drug use, laws prohibiting possession of injecting equipment, though intended to deter injecting drug use, can also provide a disincentive for injectors to use needle syringe exchanges (which require them to carry their used and new injecting equipment). A great public health risk is thereby perpetuated. Similarly, a system of cannabis legislation and enforcement may unforeseeably (or even predictably) affect the pattern and prevalence of cannabis use and acquisition, and this may result in changes in the level and distribution of harms. Severely reducing the availability of cannabis in some area, for instance, may result in some people shifting to the use of other more harmful drugs such as amphetamines. Clearly, a legislative approach to cannabis should avoid such harmful side effects and 'perverse incentives' as much as possible, and not cause more harm than it reduces. Harm minimisation will prefer approaches that are the most outcome efficient and reduce the most harm with the least degree of harmful side effects.<sup>121</sup>

**Effective (and pragmatic) harm reduction.** An approach to cannabis not only needs to aim for the right outcomes (as per targeting), there needs to be a sound expectation of it being reasonably successful in achieving them. The more effective an approach is in achieving the particular objectives it sets for itself in reducing cannabis harm, the better (other things being equal). But this is not the end of the story. Certain outcomes may *ideally* be good to produce, and a system of cannabis legislation may design itself to produce them, but it may turn out in reality that there is little chance of it being effective.<sup>122</sup> Many believe, for example, that the complete elimination of potentially harmful drug use and supply is such an outcome, and that regardless of our efforts, there will always be those who continue to use drugs and those who will continue to supply them. A legislative approach to cannabis that aims too high in its attempts at harm reduction, and is ineffective, will be less preferable to an approach that seeks more modest or qualified harm reduction outcomes but is more successful in achieving them.<sup>123</sup>

**Integrated and consistent harm reduction.** If cannabis related harms are to be reduced as much as possible, it is important that there be consistency and coordination of legislative approaches between Australian jurisdictions. It is pointless having a harm reducing approach in one Australian jurisdiction if it is undermined by the outcomes and side effects of the less harm reducing approaches in other geographically adjacent

jurisdictions, where people can freely and easily come in and out. Within a federation of state jurisdictions with open geographical boundaries and easy transport, such as in Australia, it is important that legislative approaches to cannabis be as coordinated as possible to minimise counterproductive effects.

The capacity an approach has to reduce harm can also be held back if it does not respond in a consistent way to the interrelationships between different types of cannabis activities. For example, using cannabis and acquiring it are clearly interrelated activities. If a legislative approach makes provision for cannabis use in some way, it also needs to address the issue of how this use is to be acceptably supplied.<sup>124</sup> There also needs to be harm sensitive legislative consistency in relation to drugs other than cannabis, including licit ones. The deterrent force of laws relating to cannabis are very likely to be influenced by the laws and legal attitudes to other drugs such as tobacco and alcohol.

**Proportionality in penalties.** When a legislative approach specifies penalties for engaging in certain cannabis activities, the 'cost' or burden to the offender of the imposed penalties should be proportionate to the harms caused by, or inherent to, the offence (whilst also factoring in the need for a deterrent effect). The point of this is to prevent the seriousness of the penalties being manifestly out of step with the harmfulness of the offence, through being too severe or too lenient.

## **Limitations of Comparison and Provisos**

The task at hand now is to assess the different approaches to cannabis in terms of how well they reflect these six hallmarks of harm minimisation. To do this, we need to identify the relevant social impacts of the different approaches, and to sensibly compare these with alternatives (both actual and possible). This process is far from an exact science, however. Often the impacts to be compared will merely be postulated or probable ones based on extrapolations or other arguments. And even when the impacts in question are concrete and observable, there may still be questions about how they should be interpreted. Consequently, expectations about the outcomes of broad social comparisons such as these need to be qualified and tempered with a degree of caution. The following indicates some of the major methodological limitations that can apply when comparing alternative legislative approaches to cannabis.

**The question of causal attribution.** The critical comparisons being conducted here assume that the specific impacts of legislation on cannabis harms can be incontrovertibly isolated and retraced. The truth, however, is that the nature and prevalence of cannabis related harms in society at any one time is influenced by a number of interrelated social factors, legislative conditions being only one among them. Socioeconomic, cultural, and individual or personal factors can all play a causal role. There will always be difficulty in sufficiently disentangling the various influences of these factors to be in a position to unequivocally attribute a particular state of drug related harms in society to a particular cause.<sup>125</sup>

**The availability of limited and non-uniform data.** Not all jurisdictions that might be usefully compared keep all of the data that might be pertinent to such comparisons. Where they do, it is not always readily available in a form suitable for comparison. For instance, not all Australian jurisdictions keep information on treatment episodes where cannabis is the drug of primary concern, or information about the resource costs of processing cannabis offenders. And with data that does exist in a jurisdiction, it is not always centrally located or easily accessible (as with law enforcement data, sometimes). Its collection is not always centrally coordinated, or collected and processed in a way that is uniform between jurisdictions. Given all this, the aim can only be to make comparisons where the available data allows them to be soundly made. Unfortunately, this may not give as full a picture as might ideally be desired.

**The commensurability of the harms being compared.** If different legislative approaches are to be assessed as to their capacity to reduce cannabis related harm, it must be possible to plausibly judge that a particular sort of risk or harm has the same or different weight or importance or urgency as another sort of risk or harm. In many cases those judgements can plausibly be made and defended. For instance, few would disagree that being at high risk of a psychotic episode is more serious than being slightly disoriented from cannabis intoxication. But there are other comparisons which are not as easily made. Which is worse, for instance, the risk of permanent subtle cognitive impairment or the risk of further criminal involvement through exposure to black market drug suppliers? Even when no particular harms are in mind, which has greater weight, the small probability of a very great harm, or a great probability of a modest harm? Which legislative approach should be preferred, one that reduces the former risk or the latter?<sup>126</sup> To compound these questions, it is even possible that different stakeholders in the issue of cannabis regulation might sometimes assign different weights to different harms.<sup>127,128</sup>

The upshot of these three methodological limitations is that comparing alternatives may not always be straightforward, and the conclusions that arise ought not to be thought of as the incontrovertible conclusions of watertight arguments—proven beyond reasonable doubt, as it were. They should be viewed more as emerging on the balance of probabilities, in the context of the limited available evidence and the best arguments that can be framed from it. The comparative overview to follow is presented with this in mind.

## **Australian Approaches to Cannabis Compared**

The rest of this paper will set about providing a critical overview of Australian approaches to cannabis by comparing their respective capacities to minimise harm. The two types of legislative approach currently operating in Australia—prohibition with predominantly criminal penalties (NSW, Qld, Tas., Vic., WA) and prohibition with civil penalties (ACT, SA, NT)—will be compared in terms of how strongly each exhibits or reflects the hallmarks of harm minimisation identified above. To determining how strongly each reflects those hallmarks, account will be taken of the available data and evidence, including observed outcomes, probable or projected impacts, and other considerations and

arguments when they are relevant. This will hopefully leave us in a position to decide which of the two types of approach appears preferable overall.

## Prohibitionism in Australia: Criminal versus Civil Penalties

Distinctions are usually made in Australian state legislations between offences of possession of small amounts of cannabis for personal use, possession of larger quantities, possession of commercially trafficable quantities, and cultivation, supply and trafficking offences. These are the broad sorts of activities that prohibitionist legislation in Australian jurisdictions prohibits and penalises. There are differences between civil prohibitionist jurisdictions and criminal prohibitionist jurisdictions in the penalties they impose, and how they class some activities as offences. In what follows, each of the hallmarks of harm minimisation will be taken in turn and the two legislative approaches compared with respect to it.

### Targeting of Harm

*Criminal prohibitionism.* Criminal prohibitionist cannabis legislation in Australia targets all forms of cannabis possession, use, cultivation and supply. All instances of these types of activities are disallowed. How accurately does this sort of legislation target harm? Taking cannabis possession and use first, because criminal prohibitionism seeks a blanket prohibition, it certainly aims to deter all those cases of possession and use that are likely to involve significant harm. But there are reasons to think it casts the net too widely, and fails to confine its deterrent aims as close as possible to *only* those cases that involve a significant risk of harm. It was observed in an earlier section (pp. 9–13) that, for the most part, cannabis use is not a significantly harmful activity (legal consequences aside). Certainly all cannabis use brings with it the possibility of the immediate, but short-lived, harms mentioned earlier. And clearly, in some contexts like operating vehicles or machinery, cannabis intoxication is a serious risk. However, the chronic health related harms and risks that have been associated with cannabis use are largely associated with heavy, sustained use, or in some cases, early age initiation of use.

In view of this it would seem that in a notable proportion of cases of cannabis use, blanket prohibition over-targets. It seeks to prohibit and intervene in cases where a goal of harm minimisation would be tolerant. (And to the extent that possession of a small amount of cannabis can be taken as an indication of occasional use, a case could be put that there is some over-targeting in the blanket ban on possession, too.)

It might be replied here that even though occasional or experimental use is not particularly harmful, it still involves a risk of harm, albeit small, that it might lead to heavier use—and this risk justifies a blanket prohibition. It is better to make sure that people do not use cannabis at all, and are never exposed to that risk, by seeking to deter *all* cases of possession and use. So, it could be continued, blanket prohibition does accurately target

harm to the extent that it targets use that carries a risk of harm. On top of this, targeting all use has the extra benefit of sending a message that there are risks. If some types or occasions of use were freely allowed, this would send the wrong message, particularly to young people, and would completely undermine the deterrent force of the law.

It is not clear, though, that this sort of argument is convincing. The probability that any one occasion of cannabis use will result in sufficiently serious health related harm (either immediately or later) would be very small. The only risks and probabilities that are arguably worth heeding are those associated with heavy use, or with specific circumstances (like use of machinery), or at-risk groups. It is not just any possible risk of harm in an activity that warrants a legislative response to it. The risk needs to be serious enough. Claims about sending the wrong message are questionable as well. But they are best examined under the heading of effectiveness, and will be taken up shortly.

What about the blanket prohibition on cannabis cultivation and supply? Whether this targets harm well or not depends on whether all or most or enough cases of cultivation and supply involve a sufficient risk of harm. It can be argued that there are two possible 'sources' of the harms associated with cannabis cultivation and supply. At one level, cultivating and supplying cannabis (for people's use) might be considered harmful to the extent that using cannabis can be risky or harmful. The observations above suggest that there is only a limited capacity to justify a blanket targeting of cannabis cultivation and supply on this basis. The significant risks attach mostly to heavy sustained use. Low-level occasional use does not carry the same risk, and if there are forms of supply and cultivation associated with occasional use (perhaps, home-growing of small amounts for personal use), there will be less justification for prohibiting them.

But there are also other reasons, apart from the risks with cannabis use, to view cultivation and supply as harmful activities. The possible involvement of organised criminal syndicates, large sums of money, money laundering, and the threat of violence—all connected with medium to large-scale cultivation and organised distribution—are examples. These potential harms are certainly serious enough to warrant attention. Criminal prohibitionism seeks to deter and intervene in these occurrences, and to that extent it is well targeted. With this said, however, there is significant question as to whether criminal prohibitionism (or prohibitionism in general, for that matter) is likely to be successful in reducing such harms. (This important issue will be taken up later.)

So, in all, it appears that criminal prohibitionism does not completely confine its aims to deterring only those forms of cannabis possession, use, cultivation and supply that hold a significant risk of harm. It correctly aims to deter the major harms associated with the cannabis black market, but it over-targets in other areas. This is particularly so in the case of possession of small amounts for occasional personal use, and perhaps even small scale home cultivation for occasional personal use.

*Civil prohibitionism.* Does this approach do any better? Civil prohibitionism and criminal prohibitionism, while differing in the strength of penalties they apply, are still the same in

the cannabis activities that they prohibit (and apply penalties to)—all possession, use, cultivation and supply. They both impose a blanket prohibition and, to that extent, civil prohibitionism targets harm pretty much along the lines of criminal prohibitionism. There is a sense in which they both seek to deter all cannabis related activities.

Of course, it will be rightly observed here that targeting harm is not just a matter of which activities are aimed at, but also the degree of strength with which they are targeted. Assigning penalties of different severity to different activities serves to focus different levels of deterrent force on them. Different levels of penalty also provide different incentives and disincentives for behaviours. From a harm reductionist point of view, more harmful activities should be targeted with greater deterrence (or with stronger incentives against or disincentives for, the activities). Criminal and civil prohibitionist legislations both apply a graduated system of maximum penalties, presumptively in line with the relative harmfulness of the activities penalised. Typically very severe penalties are applied to large-scale cultivation and trafficking, and less severe to smaller scale activities, and even less so to simple possession and use. However, by imposing only fines for possession or use of small quantities, the civil prohibitionist approach sets a level of deterrence closer to the actual harm of these, by and large, low risk activities.

Civil prohibitionism also has another important advantage. Under criminal prohibitionism there are strong disincentives for users to acquire their cannabis by producing it themselves on a small scale. And for those who still want to use cannabis, this can act as an incentive to source their cannabis from others, including large-scale criminally organised cultivation and distribution networks.<sup>129</sup> Civil prohibitionism, in applying less serious penalties for small small-scale cultivation weakens this incentive, and acts as an influence to 'separate' drug markets (thereby targeting the risks associated with exposure to organised drug networks).

### **Proportionality in Penalties**

*Criminal prohibitionism.* Is a criminal conviction (apart from whatever monetary or custodial penalties accompany it) a proportionate response to the harms involved in the cannabis activities that prohibitionism prohibits? This is different from asking whether a conviction or any other penalty is a sufficient deterrent for an activity. A life sentence for possession or use of cannabis, or a death penalty for any level of cultivation, would probably have sufficient deterrent force. But they would generally be regarded as completely disproportionate to the seriousness of the offences involved. Although effectiveness is crucial, proportionality is more a matter of fairness or justness (and limits what can justifiably be imposed in the name of deterrence or punishment).

Under criminal prohibitionism in Australian jurisdictions, there is the possibility of a criminal conviction for any of the cannabis activities prohibited. It was mentioned in an earlier section that receiving a criminal conviction can have notable impacts on people's lives and life opportunities, including restrictions on some career opportunities and travel

options, as well as the possibility of social stigmatisation. The risks and potential harms associated with major activities like large-scale supply and distribution are agreed to be considerable, so most of the attention has focused on whether a criminal conviction is proportionate in the case of minor offences such as possession of small amounts for personal use, or cultivation of small amounts for that purpose.

Whether one will actually receive a criminal conviction as a sentence for mere possession/use of cannabis, as opposed to some other varies between Australian criminal prohibitionist jurisdictions. Some jurisdictions convict at a higher rate than others. Between 1993 and 1995 in Western Australia, for instance, 99 per cent of those charged with possession/use received a criminal conviction.<sup>130</sup> In 1993, two to three West Australians per day acquired a criminal record for cannabis use or possession of small amounts for personal use.<sup>131</sup> A substantial proportion of these people would have had no previous conviction (40 per cent in 1996)<sup>132</sup> and many would have been first time offenders (42 per cent in 1993).<sup>133</sup> In other jurisdictions, other sentencing options may sometimes be applied which avoid conviction, (e.g. an adjourned bond with or without conditions, in Victoria). (There are also diversion schemes for first time offenders which will be noted below.)

In most cases, people's use of cannabis is experimental, occasional and involves relatively little harm to users or others. Given this, many argue that the enduring consequences of a criminal conviction are out of step with the seriousness of the offence.<sup>134</sup> This is thought to be particularly so seeing that experimental and occasional use is most prevalent among young people, and that cannabis users generally appear to be otherwise law abiding people.<sup>135</sup>

*Civil prohibitionism.* Civil prohibitionism arguably fares better with respect to proportionality because it applies penalties that are more commensurate with the level of harm involved in minor cannabis offences. A criminal conviction is not the first port of call in the case of small scale possession, use and cultivation offences—moderate fines being imposed instead. There is an important qualification to this, nevertheless. Although a criminal conviction may not be the first port of call with minor cannabis offences, it is not always completely off the agenda, either. In many civil prohibitionist approaches, if offenders in the end fail to pay their fine, the matter reverts to the justice system and is dealt with via court order. In these circumstances, the matter may well result in a conviction being imposed after all.<sup>136</sup>

Overall, however, the civil system employs penalty options that do seem more proportionate than those of the criminal prohibitionist approach. (Of course, in view of the earlier discussion on targeting, it can still be argued that applying *any* penalties to cannabis activities that are not significantly harmful is always disproportionate.)

## **Comprehensiveness**

Both criminal and civil prohibitionist Australian jurisdictions have opportunities to enforce and administer their cannabis legislation in potentially harm reducing ways. Compared to those jurisdictions that apply civil penalties, the criminal prohibitionist jurisdictions tend to employ a little more in the way of these options. All such jurisdictions currently employ cannabis cautioning or diversionary programs which allow police to divert first or early offenders away from the usual processes that may lead to a criminal conviction.<sup>137</sup> Diversion also has the virtue of conserving the police and court resources that would otherwise be expended on processing offenders. It should be noted, though, that imposing a treatment or counselling intervention as a condition of a cannabis caution for first time or early offenders (as in the case of Western Australia and Tasmania) tends to be ill-targeted in two senses. Firstly, it defeats the purpose of conserving resources. One of the harms targeted by diversion is the overall costs of dealing with minor cannabis offenders. Limited counselling/treatment resources could be better directed to those who are demonstrably in need. Secondly, requiring treatment seems inappropriate for cannabis users who are not demonstrably likely to develop problematic use. It targets a harm that is not there.

Apart from enforcement initiated cautioning, there are also formal and informal opportunities for the courts to respond to minor cannabis offences without having to impose criminal convictions. The reason that these diversionary options are not so prevalent in civil prohibitionist jurisdictions is the fact that there is already less prospect of receiving a criminal conviction for a minor cannabis offence in these jurisdictions.

The exercise of police discretion to proceed or not with a charge in the light of its seriousness has been a notable feature of prohibitionist cannabis law enforcement. It also allows police to target law enforcement efforts away from relatively harm-free offences, or to direct at-risk offenders to help. However, it has been suggested that this useful technique has become less prevalent in civil prohibitionist jurisdictions such as South Australia because it is relatively easy to give an infringement notice.<sup>138</sup> It is possible that discretionary informal cautioning will also decline in prohibitionist jurisdictions with the broader use of formal cautioning programs.

On the face of it, criminal prohibitionism does apply a more comprehensive range of ostensibly harm targeted options than civil prohibitionism, mainly in the form of diversion. But there is substantial question as to how well and, indeed whether, these diversionary options target harm. To the extent that they direct early offenders away from the criminal justice process, they are essentially compensatory. They seek to avoid the harms/costs imposed by the criminal prohibitionist approach itself (i.e. resource costs of processing, and personal costs of criminal conviction), and not necessarily any cannabis related harms that would exist independently. To the extent that diversions provide offenders with information or education, they do reduce an already small risk of problematic use. To the extent that they impose treatment or counselling for early



offenders (who are not necessarily problematic users), they are arguably mis-targeting harm (and using resources).

Police operational discretion, on the other hand, does seem to be a potentially useful technique if it is applied systematically, judiciously and in the light of all the relevant information. However, as observed, it has become less prevalent in the wake of infringement notice systems, and is possibly under threat from formal cautioning programs. (In view of this, it is all the more important that these formal cautioning programs be thoroughly evaluated.)

### **Effective (and Pragmatic) Harm Reduction**

The effectiveness of criminal and civil prohibitionism can be measured in terms of a range of indicators of cannabis-related harm (or the significant risk of harm). The underlying assumption of prohibitionism is that if all forms of cannabis use and supply are deterred and reduced, the opportunities for harm will be reduced too. It has been argued already that blanket deterrence of use and supply is not a very harm targeted objective in some respects. But keeping these observations to one side for the moment, it is still worth comparing the relative deterrent force of the criminal and civil approaches to cannabis.

*Reduction of use.* There is quite a natural inclination to suppose that weaker (civil) penalties will have less deterrent force, and stronger criminal penalties more. And that, as a consequence, the overall levels of cannabis use and supply (and the level of harm) would be greater under a civil approach than under a criminal one. Is this borne out by the accumulated data on levels of use and supply in Australian and/or overseas jurisdictions? The following points present the relevant recent data.

- Between 1985 and 1995 there was a seven per cent average annual increase in the proportion of the Australian population who had ever used cannabis. There was a 10 per cent increase in the proportion of the population who had ever used cannabis in South Australia (where a civil scheme had operated since 1987). However, Victoria and Tasmania (where criminal prohibition operates) had similar rates of increase to South Australia.<sup>139</sup> This has been taken to suggest that the increase in people trying cannabis in South Australia was probably not due to the civil scheme.<sup>140</sup>

Supplementary evidence from overseas conforms with this.

- Analysis of the usage rates in the 11 states in the USA which had adopted a system of civil penalties since 1973 indicates that applying civil penalties did not lead to higher rates of cannabis use.<sup>141</sup>
- Since 1937, the USA has predominantly employed and actively enforced a criminal prohibitionist approach to cannabis possession and use. Despite this, rates of cannabis use

in the US continued to rise, peaking in 1979,<sup>142</sup> then falling steadily until 1992 when there was a large increase in use up to 1996.<sup>143</sup>

- In 1986, Federal guidelines increasing the severity of drug penalties were introduced in the US. Adolescent cannabis use continued to decline at the same rate before and after their introduction, until 1992, when they began to rise significantly (still under the same guidelines).<sup>144</sup>

The thrust of these data trends seems to be that applying less severe civil penalties for cannabis use does not result in increases in the number of people who use, and applying more severe criminal penalties does not necessarily decrease the rate of cannabis use.

None of this is to suggest that prohibition *per se* has no deterrent effect at all. A recent survey indicated that the third most frequently endorsed reason that the 20–29 year old respondents had for never or no longer using cannabis was the fact it was illegal.<sup>145</sup> But this deterrent reason was considerably outweighed by their simple dislike for smoking cannabis, and concerns about its health effects. It should be noted, as well, that this study addressed the perceived deterrent force of illegality (prohibition), and this must be understood as also incorporating prohibition with civil penalties. The study, therefore is of limited use for determining the relative deterrence of civil versus criminalist approaches.

There is also evidence to suggest that criminal penalties have only a limited deterrent effect for cannabis users who have already been convicted.

- A survey of 68 West Australians who had received a conviction for a minor cannabis offence indicated that six months after the conviction 87 per cent had continued their use at the same rate as before.<sup>146</sup>

*Reduction of high risk use.* Variations in the overall prevalence of cannabis use is only a weak indicator of harm or the risk of harm. The significant risks of harm are more closely associated with frequent use, and early adolescent initiation of use. The following points give some indication of how the civil and criminal approaches fare with respect to these indicators.

- There was an increase in the rate of weekly cannabis use across all Australian jurisdictions between 1988 and 1995, but there is no significant statistical difference between the rate of increase in South Australia and in the rest of Australia. The largest increase occurred in Tasmania, between 1991 and 1995, a criminal prohibitionist state.<sup>147</sup>
- There is no published comprehensive analysis comparing recent Australian state data on age of initiation. However, information is available that early age initiation of cannabis use significantly increased in Victoria between 1992 and 1996, with a jump from three per cent to 15 per cent in the proportion of Year 7 students trying cannabis.<sup>148</sup> Lenton et al. also suggest that on the basis of South Australian surveys of 3000 school students between

1986 and 1989, it does not appear that the civil system impacted on cannabis use among 11 to 16 year olds.

This limited data relating to the stronger indicators of risk suggests that civil penalties do not seem to increase frequent use or early age use. But frequency still increases under criminal penalties, and early initiation still increases in at least one criminal prohibitionist state.

It has been suggested that the low deterrent effect of criminal sanctions is due to a number of factors including:

- the low probability of detection. Lenton et al. estimates the chances of being charged in WA (an active criminal prohibitionist state) as less than .01 per cent for any one occasion of use)
- evidence of low levels of social support for criminal sanctions for minor cannabis offences<sup>149</sup>
- a high degree of acceptability among 14–39 year olds of regular cannabis use (45 per cent of males and 30 per cent of females in 1998)<sup>150</sup>, and
- significant support among 14–39 year olds for the legalisation of cannabis use (42 per cent of males and 34 per cent for females in 1998).<sup>151</sup>

*Reduction of Supply.* How successful has criminal prohibition been in deterring harmful modes of supply? All the available evidence suggests that cannabis continues to be readily available throughout Australia (which is predominantly criminal prohibitionist). Also, as noted at the outset, the Australian Bureau of Criminal Intelligence attributes a significant proportion of the supply to organised, large-scale producers and distributors. In 1999–2000, South Australian police reported an increase in outdoor as well as indoor cultivation, and it is believed that South Australia provides other jurisdictions with large quantities of cannabis through long haul transport. So, in both criminal and civil prohibitionist jurisdictions there is still strong evidence of undeterred large-scale supply of cannabis. (It should be observed, though, that in civil prohibitionist jurisdictions large-scale production and distribution of cannabis is still criminally prohibited.)

*Separation of Drug Markets.* How well have civil penalties worked to separate cannabis markets, and reduce users' exposure to organised criminal distribution networks (and to reduce the demand for those networks)? A response to this will be slightly more involved. Again, South Australia, the longest and most extensively examined civil regime, provides some relevant information. Two observations are important to note in this connection:

- There is evidence that commercial scale growers were exploiting the expiation system and growing a number of smaller 10 plant crops indoors, therein reducing the risk of detection as well as penalty.<sup>152</sup> This would have required the involvement of a number of growers at

different sites to form consortia. But it is unclear to what extent these growers would have already been involved in commercial distribution networks, as opposed to being criminally unconnected growers/users who were simply recruited.<sup>153</sup>

- It has been argued by Sutton, that even if the expiation scheme by removing criminal penalties removes a major disincentive to self-cultivation/self-supply, there are still some major disincentives, particularly for the teenage/young adult users who were of most concern in the initiative to separate markets. Sutton observes that young people are less likely to have the economic and social resources to command the personal space required to grow plants without detection. He argues that this makes it more likely that young adults will 'forego the "option" of growing their own, and continue to rely on commercial suppliers'.<sup>154</sup> If this is right, then the capacity of the civil system to separate markets for more vulnerable younger users will not be as great as perhaps envisaged.

*Reduction in criminal conviction.* One of the central objectives of the civil system was to ensure that minor cannabis offenders would avoid criminal convictions, and the social and personal costs these involve. The South Australian system, however, has experienced problems in meeting this expectation. The following points indicate how.

- Between 1987–88 (close to when the SA expiation scheme was initiated) and 1993, the number of issued expiation notices rose from 6200 to 17 000. The increase has been attributed to police activity (net widening) rather than changes in use. Whereas, before the expiation scheme an informal caution would have been given and the matter taken no further (usually because of the time and resources involved), with the advent of the scheme, there was less reason to caution because issuing a notice was easy.
- Only about 45 per cent of the fines imposed through civil expiation notices in South Australia are paid.<sup>155</sup> This leaves about 55 per cent open to prosecution and the risk of a criminal conviction. (About 92 per cent of those forwarded for prosecution resulted in a criminal conviction for the original offence.)<sup>156</sup> This means that as early as 1993, there were over 9000 offenders in South Australia (55 per cent of 17 000) still at risk of criminal conviction, more than the number of offenders when the scheme began in 1987.

The phenomenon of net widening brought about by the ease of issuing notices, and the high rate of failure to expiate have been counterproductive to one of the key goals of the civil penalty system in South Australia.

So, in all, both criminal and civil prohibitionism have limited effectiveness in reducing harm. Criminal prohibitionism appears not to be more effective than civil in reducing cannabis use, reducing risky forms of use, or reducing supply. Both are on a par in these respects. Civil sanctions do not 'send the wrong message' if this means people becoming more inclined to use cannabis because of those weaker sanctions. And criminal sanctions do not appear to send an especially effective 'message' either. It should be said, though, that the civil system (in SA, at least) may to some degree facilitate commercial cultivation and distribution. The South Australian civil system, as it was originally designed, has fallen below expectation in

its goal of reducing the prospect of criminal conviction for minor offences. All of these (largely unforeseen) shortcomings of the civil system need to be seen in the correct comparative light, however. They are failures in the civil system's goals of avoiding some of the harms of criminal penalisation. Those harms are still inherent to the criminal system, and the failure of the civil approach to fully avoid them does not make it less effective at reducing harm than the criminal approach.

### **Efficient Harm Reduction**

A comprehensive assessment of the harm reduction capacity of a legislative approach needs to include not only what drug related harms the approach positively reduces, but also the harms and costs that are inevitably generated in doing so. How do criminal and civil prohibitionist approaches compare on these?

*Resources and expenditure.* In 1994, the Queensland Criminal Justice Commission estimated that in Queensland (a criminal prohibitionist state), the smallest cost per case of police and court processing of a minor cannabis offence was \$138.<sup>157</sup> In 1999–2000, there were 42 791 cannabis arrests in criminal prohibitionist Australian jurisdictions. On the assumption that approximately 70 per cent of all cannabis arrests in Australia were for minor use/possess offences,<sup>158</sup> this would mean that in 1999–2000, at least \$4.1 million was spent by those jurisdictions dealing with minor (and relatively harm free) cannabis offences.

A comparison of estimated costs of the civil system in South Australia (with a 44 per cent expiation rate) and a criminal system if it had operated in that state in 1995–96 was conducted by Brooks, Stathard, Moss, Christie and Ali. It estimated that the total cost of the criminal approach would have been \$2.01 million, with \$1 million revenue from paid fines. The total cost of the civil system was estimated at \$1.24 million, with incoming revenue of \$1.68 million. So, the criminal system would have had a net cost of \$1.01 million, while the civil approach no net cost and a revenue balance of \$0.44 million. It is important to note here, however, that the costs of the expiation system are escalated when non-expiated fines are pursued by the police and/or prosecuted by courts. Nonetheless, the infringement notice system has a considerable capacity to be very cost beneficial when there is a sufficient degree of compliance.

*Harmful/costly outcomes and side effects.* The major undesirable side effects and outcomes that have been associated with the criminal prohibitionist approach includes the following:

- It has already been suggested that a criminal conviction seems disproportionate to the harm of a minor cannabis offence. There is also evidence that a conviction in these cases can result in a weakening of respect for the law and police on the part of otherwise law abiding people who are convicted.<sup>159</sup>

- The possibility of a criminal penalty for small-scale personal cultivation of cannabis can provide an incentive for individual users to continue accessing organised cannabis distribution networks, rather than growing their own. (It is better from their point of view that others should take the risk of a serious penalty for cultivating or supplying cannabis.) Ongoing contact with large-scale distributors increases the risk of contact with more harmful drugs. It also increases the risk of exposure to violence, or further criminal involvement.
- It is sometimes argued that the threat of criminal penalties for cannabis use can act to inhibit the dissemination of reliable information about the dangers of cannabis use, particularly to vulnerable adolescents. It might also act to inhibit people (again, especially young people) from seeking therapeutic help, or acknowledging the existence of a cannabis problem.<sup>160</sup>

Some of the unanticipated potentially harmful outcomes of the civil system were noted above in the discussion of effectiveness. Chief amongst these was the formation of organised consortia in South Australia which exploited the (previous) 10 plant limit for commercial distribution. In relation to this, however, it is very worth remarking that it is not the operation of civil penalties in itself that *generates* the harm that is associated with criminally organised commercial distribution. The civil system is only responsible for facilitating or enabling a harm that, in this case, has its true source in the existence of the cannabis black market, and in turn, the circumstances that sustain its existence and operation. This issue, and its significance, will be taken up a little more at the end of this paper. For the moment it is sufficient to recognise that the civil penalty approach may not be fully responsible for its harmful side effects in this instance. Those harms may be predisposed by other conditions that prevail.

In all, the civil approach certainly has a much greater potential to be cost effective, and even revenue generating. And though both approaches do suffer from harmful outcomes and side effects, more seem to attach to imposing criminal penalties for minor offences. The civil approach would therefore appear to be the more efficient approach overall.

### **Integrated and Consistent Harm Reduction**

Even when the legislative approach to cannabis in one state has a good capacity to reduce harm, this can be undermined if the approaches in other jurisdictions are out of step with it. A clear example is, again, the case of South Australia and the fact that it is a significant exporter of cannabis to other Australian jurisdictions. This would occur less if the need in other jurisdictions for importation was weaker, and it might arguably be weaker if a similarly liberalised approach to small-scale cultivation also applied in those jurisdictions. The occurrence of large-scale cannabis exportation from South Australia is usually viewed as an indictment of the legislative approach in that state.<sup>161</sup> But it may well be better seen as a reflection of the restrictive regimes that apply in other jurisdictions. It is important that there be consistent application of harm reduction between all Australian jurisdictions.

On a slightly different note, there is also a need to reduce inconsistency between legislative responses to cannabis and to other drugs like alcohol and tobacco. There is increasing public awareness of the substantial harms of tobacco and alcohol abuse in comparison with cannabis use,<sup>162</sup> and apparently widespread acceptance of the (regulated) legality of alcohol and tobacco. It is important not to undermine confidence in the law by maintaining disparate legal approaches which are hard to reconcile from the point of view of harm reduction.

### **The Overall Evaluation: Which Australian Approach has a Greater Capacity to Reduce Harm?**

Reviewing the performance of both approaches on all of the harm minimisation criteria, it is arguable that the civil prohibitionist approach is to be preferred. Though both approaches, in being completely prohibitionist, over-target for cannabis harm, the civil system sought to address some harms that the criminal approach did not. To that extent it was better targeted. The civil approach was also more proportionate in its penalties. Criminal prohibitionism did seem more comprehensive in the range of options it currently employed for harm reduction. But most of them were employed to reduce or compensate for the harmful impacts of that legislative system itself, and not independent health related cannabis harms or risks. So, it could only be regarded as slightly more comprehensive in its means of reducing harm.

With respect to effectiveness, the criminal system appeared to have no special advantage in deterring use or supply, and there was even evidence that levels of harmful use increased under it. The civil system in South Australia, on the other hand, was subject to some unanticipated failures and side effects that made it fall short of its intentions. Even so, the shortcomings resided in how well it circumvented some of the harms and problems of the criminal approach. Given this, it would at worst be no less effective than that approach. On top of this, what is really being assessed here is the *capacity* or potential of an approach to be effective in reducing harm. Were the unanticipated impediments to the South Australian civil system addressed, there would be much more confidence in the effectiveness of the civil approach. On the matter of efficiency, however, there would be less equivocation. The civil approach is more resource efficient in its operation, and there is less danger of it generating some of the harms inherent in the criminal approach.

### Room for Improvement?

#### **Improvements to the Civil Penalty System**

The fact that the civil penalty system appears to have the greater capacity for harm reduction does not mean that it is as successful as it could be. The evidence above identified ways in which it fell short of its goals and produced unintended outcomes, at least as it was practised in South Australia. So, there is certainly room for improvement, particularly when it comes to being effective in its intentions, and maybe even in its

comprehensiveness. (And perhaps adopting a more comprehensive strategy might be the route to enhancing its effectiveness). The following relate some of the ways in which commentators believe some of the potential shortcomings of the civil system can be addressed. Before going on to this, though, why should we not try to salvage criminal prohibitionism in the same way? It too fell short of its goals and produced problematic outcomes. Why not seek ways of patching these up? The reason is that many of those problems and shortcomings are due to the criminal penalties at the heart of that approach. It could not be sufficiently improved (at least not to bring it up to the level of civil prohibitionism (as amended)) without changing its very nature as *criminal* prohibitionism. It would be self-defeating in other words.

*Failure to expiate.* Research has suggested that in South Australia, the low rate of expiation may be due to a combination of many recipients' low financial resources (many recipients being teenagers, young adults, and the unemployed), and also a lack of their awareness of the consequences (both financial and legal) of non-expiation.<sup>163</sup> To address the first contributing factor, there has recently been an increase in the modes of expiation available, to allow for example paying by instalments or through community service. The second impediment could be minimised through an increase in clear and comprehensive information about expiation. (The practice in the Northern Territory of taking non-expiators into custody until their fine is paid is clearly costly and inefficient, and some other noncustodial option for encouraging payment would seem more advised.)

*Net widening.* A factor that may have contributed to the low rate of expiation is the increase in young people being issued Cannabis Expiation Notices (CENs) when they would have previously been cautioned. One commentator has suggested that SA police need to revert to the use of discretion in their cannabis policing and to give informal or formal warnings more, and selectively issue notices only when 'this would be likely to achieve some broader benefit—for example, helping to suppress undesirable producers and disrupt harmful markets'.<sup>164</sup> Here, harms may be better targeted by being flexible in the way the law is enforced.

*Development of commercial consortia.* In response to this phenomenon, the SA government in 1999 reduced the expiable plant limit from 10 to three plants. The belief was that this would increase the number of people who would have to be co-opted to produce a marketable quantity of cannabis. There is no evidence yet as to whether this has worked to weaken the formation of consortia or not. However, it has been argued that this measure will simply make it more likely that criminal networks will continue to dominate the cannabis market, and more likely that personal users will continue accessing those networks instead of other friendship based ones relying on low level self-cultivation.<sup>165</sup> Rather than decreasing the number of plants, it has been argued that a better option would be for police to more actively utilise provisions in the law to lay charges against those they believe are engaging in commercial consortia, or to take other action like confiscation of equipment, or repeated issuing of CENs.<sup>166</sup>



With these sorts of procedural modification, the civil system may be better placed to more fully achieve its goals.<sup>167</sup>

## **Improvements on the Civil System? The Non-prohibitionist Alternative**

The evidence and analysis so far has suggested that civil prohibitionism (when properly refined) has a greater capacity to minimise harm than criminal prohibitionism. Its advantage lies largely in its potential to avoid certain of the harms that the operation of criminal prohibitionism can generate. But, as the earlier discussion of effectiveness showed, it is not especially better at reducing or addressing other sorts of serious harms and risks, like harmful/high risk cannabis use, or the deeply entrenched control by organised criminal groups of cannabis distribution. One reason it is no better might be that, apart from its application of civil penalties to minor offences, it is still largely a criminal prohibitionist approach. And some would further suggest that *any* prohibitionist approach to cannabis will be very limited in its capacity to address these serious harms.<sup>168</sup> Holders of this view will argue that civil prohibitionism is simply a less problematic variant of a broad approach to cannabis that is unsatisfactory because it leaves the real problems unresolved. What sorts of considerations might underlie this view, and what benefits if any might a nonprohibitionist approach hold? The remainder of this paper takes a brief look at this issue. In keeping with the previous analysis, it will focus on how well prohibitionism and how well its alternatives might target harm, and reduce harm effectively and efficiently.

There are three types of alternative to total prohibitionism—partial prohibitionism, regulated availability (as with alcohol and tobacco), and unregulated free availability (as with tomatoes). An example of partial prohibitionism would be the proposal made by the Victorian Premier's Drug Advisory Council in 1996 (Penington Inquiry) to allow Victorians to possess a small quantity of cannabis and to grow up to five plants for personal use without penalty. Larger scale possession and production were to remain serious criminal offences.<sup>169</sup> All of the various issues and arguments about the suitability of total prohibitionism will arguably reduce to one fundamental deciding question: is total prohibitionism, with its attendant costs and harms, justified in the light of the cannabis related harms that would exist if it were not in place (but some alternative were)? Hopefully some impressions will emerge about this from looking at the targeting, effectiveness and efficiency of total prohibitionism.

### **Targeting of Harm**

#### *Total prohibitionism*

- It was argued earlier that total prohibitionism, in aiming to reduce all cannabis use and all modes of acquisition and supply, over-targets for harm. Only some forms of use, acquisition and supply hold a significant risk of harm. (It was conceded that civil penalties for minor use and supply were more appropriate in their targeting. But they still, strictly

speaking seek to deter or reduce activities that, viewed overall, are not significantly harmful.) Clearly, seeking to reduce or deter nonharmful activities will be a source of great inefficiency. But it is also undesirable in that it amounts to coercively interfering in individual activities that are typically not within the domain of the law. As practised in Australia, the activities that are typically the concern of the law are those that harm others (warranting criminal sanctions) or inconvenience others (warranting at most civil sanctions).<sup>170</sup>

### *Partial prohibitionism*

- Removing penalties for possession, use and cultivation of small amounts would be an improvement to the extent that it would no longer target activities that generally hold a low risk of harm. Supplementary measures that are nonpunitive (such as highly targeted education, information and treatment programs) may be better placed to identify and deal with individuals whose patterns of use are harmful, or those groups that are at high risk of harm.
- Maintaining prohibition of larger-scale production and distribution of cannabis does, strictly speaking, aim at activities that potentially involve serious harm. But there is significant question as to whether prohibition is an effective way of aiming to address those harms. (See the discussion below.)

### *Regulated availability*

- If the distribution of cannabis is either undertaken by government agencies, or by non-government agencies under government regulation, then there would be opportunity to have greater control over which individuals or groups receive what amount of cannabis of what strength and for how much. As with alcohol and tobacco, governments will never have complete control over who gets to use cannabis, but it would probably have more control over this than if distribution remains within the control of completely unregulated, and often unscrupulously profit driven criminal groups.

### *Free availability*

- Though allowing anyone to use, produce and distribute cannabis may act to weaken the role of the criminal black market, it would leave untargeted those forms of use that are high-risk (particularly, childhood or early adolescent use).

## **Effectiveness and Efficiency**

Would nonprohibitionist alternatives probably decrease or increase harmful cannabis use, or use among at-risk groups? Would those alternatives probably decrease or increase the harms associated with the forms of supply/distribution of cannabis that currently exist under prohibitionism?

### *Total prohibitionism*

- As the earlier outline of patterns of use in Australia indicate, the incidence of cannabis use has increased under its prohibitionist system. The incidence of use by at-risk groups (early age initiation) has increased, as has frequency of use among young people. There is also a significant level of cannabis dependence syndrome, and continuing risk of it with frequent use during adolescence.
- The commercial scale supplying and distribution of cannabis has not abated nor been significantly deterred under a prohibitionist system in Australia.
- With respect to the resource costs and undesirable outcomes of prohibitionism, two points are worth making. First, to the extent that prohibitionism actively enforces the deterrence of and intervention in a large number of mostly risk-free, cannabis activities, it will be exceptionally costly for whatever benefits it brings. Second, many argue, and not implausibly, that some of the most serious harms and risks that cannabis prohibitionism is intended to reduce—the domination of cannabis distribution by organised criminal groups—are themselves products of prohibitionism. History shows that where an activity for which there is great demand is prohibited, but there is only limited prospect of completely deterring or detecting it, there is the tendency for a black market in production or supply to develop. (Witness bootlegging in the US, and prostitution almost everywhere else.) These markets are beyond official scrutiny, regulation or state control as to what is supplied or to whom or by what means. Organised, powerful groups driven by profits, willing and capable of taking significant risks, tend to thrive within them. The harmful outcomes that unsuccessful prohibitionism leaves in its wake, will arguably, be substantial.

### *Partial prohibitionism*

- Would usage rates among at-risk groups increase under this. A recent analysis of overseas data indicates that there was no significant difference in usage rates among young people in the Netherlands and other compared nations during the period when the Netherlands depenalised small-scale cannabis use and sale, i.e. adopted a form of partial prohibition.<sup>171</sup> (See the further data noted below, however.)
- A partial prohibitionist approach would be more resource cost effective to the extent that it would not intervene in small-scale use and supply.
- A partial prohibitionist approach will still actively and strongly prohibit large-scale production and distribution. Because it allows small-scale cultivation and supply, it may act to weaken the market for cannabis from large-scale suppliers.
- The partial prohibitionist approach may not completely eliminate the role of that market, and to that extent it is likely to leave in place some level of the harms of criminal black

markets. Evidence from the Netherlands suggests that the large-scale commercial black market continued to operate in the context of partial prohibition.<sup>172</sup>

### *Regulated availability*

- Recent analysis of overseas data indicates that cannabis use among adolescents in the Netherlands increased relative to other compared nations between 1984 and 1992 corresponding to the gradual progression toward commercialised availability (i.e. regulated availability). The authors of the analysis tentatively attribute the increase to the heightened salience and glamorisation of its availability through coffee shops.<sup>173</sup>
- Hall notes that, on the basis of our experience with alcohol, it is plausible to think that regulated (and commercialised) availability of cannabis may also produce some increase in the number of regular and sustained users, (though what level of increase would be hard to tell). With increases in this risky form of use, there would be increases in concomitant health related harms.<sup>174</sup> Similarly, there are indications from a recent survey that 14 per cent of 20–29 year old respondents would be more likely to use cannabis more frequently if it were legal. Eighty-three per cent indicated they probably would not use it more frequently.<sup>175</sup>
- Regulating the availability of cannabis might not reduce its use, and may contribute to some increase in its regular use, but depending on how it operates, it may be better placed to manage risky or harmful use, or harms to at-risk groups. For example, modelling shows that there is a relationship between the price of cannabis and usage rates.<sup>176</sup> Through price regulation, it may be possible to reduce access to cannabis by adolescents (a strategy used with tobacco taxation). Revenue might also be productively used to prevent or redress consequent risks or harms.
- To the extent that a system of regulated availability would take control of large-scale production and distribution of cannabis, it would leave little room for an unregulated black-market, with its attendant harms. It would involve a lesser degree of those undesirable side effects that total and partial prohibitionism allow. Though partial prohibition might not increase levels of use as much as regulated availability (with a commercial dimension), regulated availability would seem to have greater capacity to remove the (arguably more serious) harms of the black market.
- From the point of view of resource costs, regulating the availability of cannabis may also be cost effective if taxes are imposed on sales.

The nonprohibitionist Dutch approach has also had some success in separating drug markets, with significantly fewer cannabis users going on to use more dangerous drugs. It has succeeded more in reducing progression to other drugs than the US prohibitionist system.<sup>177</sup>

It is worth reiterating here, the point that has been made throughout—that no legislative approach to cannabis will be harm free. The choice between approaches will always be a compromise that involves enduring some harms and costs for the sake of reducing other more significant ones. The challenge is to know where the best compromise lies.

It should be said that the observations made in the last section fully recognise that there is limited empirical data directly relating to how things would look in Australia if something other than its current totally prohibitionist system were in place. So, to a considerable extent the observations made are probabilistic and hypothetical. But their hypothetical nature does not mean they have no substance, nor that they are just as plausible and conjectural as any other hypothetical claims. There is an important evidentiary role for hypothetical projections and extrapolations about probable causes, outcomes and influences, as long as they are carefully made. Public policy initiatives are often made on their basis, sometimes to good effect and sometimes not. Indeed, persistent and deeply entrenched social problems (such as illicit drug abuse) sometimes require innovative public policy solutions, and if the solutions are truly innovative there will be little in the way of previous concrete experience and empirical evidence to rely on. Good policy is made on the basis of the best available evidence, information and argumentation; the absence of one sort of information—pre-existing empirical data in this case—should not bring policy debate and decision making to a complete halt. So while the few observations made here are in no way sufficient to decide the case one way or the other for prohibitionism, they are nonetheless interesting enough for the possibility of nonprohibitionist options to be on the agenda for further consideration and investigation. This is all the more the case now that overseas jurisdictions are beginning to take steps in the nonprohibitionist direction with cannabis.

## **Appendix 1: Legislative Approaches in the Australian States and Territories (and Other Relevant Non-legislative Initiatives)**

The following brief survey of legislative approaches in Australian jurisdictions will focus primarily on possession, use and cultivation of small amounts of cannabis.<sup>178</sup>

**Victoria.** Under Victorian legislation<sup>179</sup> the use of cannabis is a summary offence with a maximum penalty of \$500. Possession and cultivation are indictable offences. Possession of less than 50 grams (any part of the plant) for personal use attracts a maximum penalty of \$500, and possession of 50 grams or more for personal use a maximum penalty of \$3000 and/or one year imprisonment. Cultivation of less than 250 grams of cannabis (if not for trafficking) carries a maximum penalty of \$2000 and/or one year imprisonment. 250 grams or more, or 10 plants, is counted as a trafficable quantity, and possession of those amounts is taken as evidence of trafficking.

Victoria also has statutory procedures for dealing with first and second time possession/use cannabis offenders. A system of adjourned bonds has applied for some time in Victoria for minor first time (possession and use) drug offences.<sup>180</sup> First offenders are given a bond, and no conviction is recorded if the bond conditions are complied with. In 1993, adjourned bonds were applied to 40 per cent of all minor cannabis charges in Victorian magistrate's courts.<sup>181</sup> Victoria also has a police diversion initiative—the Cannabis Cautioning Program—which has operated since 1998 (although it is not legislatively based). First or second time offenders (over 17 years of age) who have had little or no previous contact with the criminal justice system can be issued a caution notice instead of having the offence proceeded with through the courts (for possession/use of up to 50 grams). The caution notice includes information about the harms of cannabis use. Whether an offender is offered a caution is at the discretion of the police officer concerned.

**New South Wales.** Possession or use of up to 200 grams of cannabis leaf is a criminal offence in NSW,<sup>182</sup> with a maximum penalty of \$2000 fine and/or two years imprisonment. In 1993, 78 per cent of these cannabis offences were dealt with through a fine (often a small one of \$200)<sup>183</sup>, and 90 per cent of those found guilty had a conviction recorded against them.<sup>184</sup>

In April 2000, the NSW police began a statewide trial of a cannabis cautioning scheme. The conditions of the cautioning trial are similar to that in Victoria. The relevant quantities of cannabis are modest, however, with only up to 15 grams allowed for a caution to be issued.<sup>185</sup> Another important legislative initiative in NSW is the establishment of drug courts under the *Drug Court Act 1998*. While the majority of people involved in the NSW Drug Court program may identify heroin as their drug of choice, cannabis is also used by these offenders.

**Western Australia.** The use of cannabis, the possession of up to 100 grams, (or 20 grams of resin i.e. concentrated cannabis extract), and the cultivation of up to 25 plants are

criminal offences.<sup>186</sup> The maximum penalty is two years imprisonment and/or \$2000 fine. The possession of implements for use or cultivation of cannabis is also a criminal offence, with a maximum penalty of \$3000 and/or three years imprisonment.

WA has also implemented a statewide cannabis cautioning program (since March 2000) for first/second time adult offenders in possession or use of up to 50 grams of cannabis. The caution has an education/counselling intervention as a condition.

**Queensland.** It is an offence in Queensland to possess up to 500 grams of cannabis, or where plants are concerned, up to 100 plants (or up to 500 grams equivalent in weight).<sup>187</sup> If the offence is dealt with as an indictment, the maximum penalty is 15 years imprisonment and/or \$300 000 fine. If dealt with summarily, the maximum penalty is two years imprisonment and/or \$6000 fine. There is no distinction under Queensland law between small amounts (for personal use) and larger quantities up to 500 grams (which most other jurisdictions would regard as a trafficable quantity). Possession of drug paraphernalia is an also offence.

Currently, under the *Queensland Juvenile Justice Act*, those under 17 years of age can receive a caution for possession of small amounts of illicit drugs including cannabis. The Queensland government is currently negotiating with the Commonwealth for the development and funding of a Police Diversion Program targeting offenders in possession of up to 50 grams of cannabis.<sup>188</sup> Attendance at a counselling and education program will be a condition of the diversion.

**Tasmania.** Section 49 of the *Poisons Act 1971* prohibits the possession of Indian hemp (i.e. cannabis). The maximum penalty is 50 penalty units or two years imprisonment or both.

Tasmania has a three staged Drug Diversion Initiative. First time adult offenders for possession or use of any drug including cannabis (up to 50 grams) are issued a cautionary notice by police as well as a pamphlet containing educational material. Second time adult offenders are referred to a one-hour counselling/treatment intervention, and third time offenders are diverted to a more comprehensive assessment, and based thereon, are referred to either further counselling, detoxification, or rehabilitation.

**South Australia.** A civil infringement notice system has applied in South Australia since 1987 (the Cannabis Expiation Notice Scheme, or CENS).<sup>189</sup> Adults<sup>190</sup> in possession of up to 100 grams of cannabis plant material or up to five grams of cannabis resin, or who cultivate up to three plants, can be issued with fines of \$50 (for possession of amounts less than 25 grams of cannabis plant material, or less than five grams of resin, or for consuming cannabis in a private place) or \$100 (for between 25 and 100 grams of cannabis plant material), or \$150 (for between five and 20 grams of cannabis resin, or for cultivation of no more than three plants)<sup>191</sup>. If the fine is not paid within 60 days (expiated), a reminder is sent, and if still not paid, a criminal conviction for cannabis is automatically recorded.<sup>192</sup>

**ACT.** A similar infringement notice scheme has applied in the ACT since 1992 (the Simple Cannabis Offence Notice Scheme, or SCONS).<sup>193</sup> Adults or juveniles possessing or using up to 25 grams of cannabis, or cultivating up to five plants are issued a \$100 fine at police discretion. Those in receipt of the notice have the option of paying the fine within a prescribed time or later appearing in court, with the possibility of a conviction (though a conviction is not inevitable).

**Northern Territory.** Adults in possession of up to 50 grams of cannabis plant material or up to 10 grams of cannabis resin, or cultivating up to two plants are issued with an on the spot fine of \$200 (via a Drug Infringement Notice, or DIN).<sup>194</sup> If the fine is not paid within a specified time (after a reminder), the offender is taken into custody or the amount can be recovered by a warrant of distress. They have the option of contesting their infringement in court, with the consequent possibility of a criminal conviction.



## **Appendix 2: Current and Emerging Overseas Approaches to Cannabis**

Most countries are parties to the United Nations *1961 Single Convention on Narcotics* which requires drug abuse and trafficking to be combated in each country by national legislation. Article 36 (Penal Provisions) of the *Single Convention* suggests that possession of scheduled drugs (cannabis included) should attract strong sanctions in the domestic law of State Parties. The most recent international convention—*The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988*—requires that the possession, purchase or cultivation for personal use of scheduled illicit drugs (cannabis included) should be established as *criminal* offences under domestic law (Article 3, Clause 2).<sup>195</sup> It is unsurprising, therefore, that the legislative approaches to cannabis in most overseas jurisdictions will be prohibitionist in orientation. There are a range of possibilities within this broad orientation, however, and many jurisdictions (particularly in the European Community) are exploring varied approaches to cannabis.

The following gives a brief snapshot of some established and emerging legislative and policy approaches to cannabis overseas. Nearly all of the cited jurisdictions will be similar in treating the supplying or large-scale cultivation of cannabis as serious criminal offences. The differences between them relate mostly to how they deal with minor cannabis related activities (e.g. possession, use, cultivation of small quantities), and whether the jurisdiction makes a distinction in legal approach between 'hard' and 'soft' drugs.

### **European Community**

The recently published *Extended Annual Report on the State of the Drug Problem in the European Union 1999*<sup>196</sup> reports the following observations about cannabis use in the European Union overall:

- the proportion of the population who have ever used cannabis has increased in most countries in the European Union, and its use is not associated with any particular social context or social group
- the proportion of offences for cannabis use is either increasing or remaining stable in European Union countries. The total quantity of cannabis seized in the EU rose rapidly in the 1990s from 236 tonnes in 1989 to 758 tonnes in 1995, and there has been an eight-fold increase in the number of cannabis seizures since 1985, and
- cannabis is reported as the main problem drug for presentation to treatment in only 10 per cent or less treatment admissions across the EU. Cannabis treatment clients are generally much younger than those for heroin or other drugs, and cannabis is most often reported as a secondary problem drug for those accessing treatment.

**Austria.** Possession and acquisition of small quantities of drugs (cannabis included) are punishable offences depending on the policies of Austrian States. The penalty usually corresponds with the quantities involved (from a fine to six months imprisonment), with trafficking offences being particularly severe. (Five years for a basic offence, and 1–15 years for supplying large amounts.) Charges may be set aside or withdrawn in the case of first time offenders, and those willing to undergo treatment.<sup>197</sup>

**Belgium.** In 1998, Belgium relaxed the enforcement of its prohibitionist laws regarding cannabis use, so that cases of private possession and consumption be the lowest priority of law enforcement. More recently, in January 2001, a royal decree was ordered for prosecutors not to pursue people for personal possession or consumption of cannabis. The production or supply of large quantities, and the 'problematic' use of cannabis will still be actively prosecuted.<sup>198</sup> The penalties for trafficking are from three months to five years imprisonment and a fine of between 1000 to 10 000 francs. (A similar proposal is reported to be before the Luxembourg Parliament.)<sup>199</sup>

**Denmark.** Danish law makes a distinction between cannabis and other drugs.<sup>200</sup> In law, the possession and use of cannabis are offences. However, in practice, the possession and use of minor quantities are handled by a warning or a fine, if that. Citing Jepsen (1996)<sup>201</sup>, Lenton, et al. state that the Danish situation is best described as de facto decriminalisation of use and possession of minor quantities with quite minimal penalties for sale of small amounts. They suggest that this situation has been achieved by political direction and police practice rather than by actual legislation removing offences.

**France.** In law, France strictly prohibits (with criminal penalties) cannabis possession, use and supply, and no distinction is made in law between cannabis and other drugs. The legal penalties for use are between two months and one year imprisonment and/or a fine of between 500 and 25 000 francs.<sup>202</sup> There are, however, variations between districts in France (180 different districts) as to how rigorously these penalties are imposed. In big cities there may be more tolerance than in rural areas where cannabis use is often prosecuted.<sup>203</sup> In 1978, the Ministry of Justice instructed prosecution dealing with cases of use of cannabis leaf and resin (but not oil) to restrict action to a warning, and a recommendation that the user seek education or counselling.<sup>204</sup> (It has been recently reported that French authorities do not prosecute 95 per cent of cannabis possession cases.)<sup>205</sup>

**Germany.** At the Federal level, the possession and supply of cannabis is prohibited, and criminal penalties are specified in federal narcotics laws. However, in 1994 the German Constitutional Court, while upholding the constitutionality of the federal prohibitionist laws, argued that there was sufficient flexibility in the law to allow enforcement agencies the discretion to impose minimal or no penalties for personal possession and use. There is consequently a degree of variation between German states in how such offences are dealt with. In the northern state of Schleswig-Holstein, for instance, charges for possession of less than 30 grams are dropped, while in the southern state of Thuringen, charges are rarely dropped.<sup>206</sup>

**Italy.** Due to the outcomes of a 1992 referendum, the personal possession and use of cannabis in Italy is not a criminal offence, but is subject only to administrative sanctions, such as the suspension of driver's licence. The cultivation or supply of cannabis are still criminal offences. Between 1975 and 1990 in Italy, personal drug use was nonpunishable.

**Netherlands.** A distinction is made in law and practice between 'hard' and 'soft' drugs, the former being characterised as those that entail an unacceptable risk to health, and the latter involving less risk. Although cannabis related activities are an offence according to Dutch legislation, possessing, selling and growing small amounts of cannabis are, in practice, not prosecuted. They are not considered offences for detection, arrest or prosecution. The Netherlands also allows the supply of cannabis through 'licensed' and regulated coffee shops. The rationale for this government involvement in supply is to maintain a separation between the markets for 'hard' and 'soft' drugs, so people will not have to seek their cannabis from dealers who also supply harder drugs.

**Portugal.** It has been reported that a new law will come into effect in Portugal in July 2001 which will remove criminal penalties for the personal use of all drugs, hard and soft. This measure is designed to facilitate the access of drug users to treatment.<sup>207</sup>

**Spain.** Personal possession of less than 50 grams of cannabis or its derivatives is not a criminal offence, though it may attract administrative (civil) fines of between 500 to 50 000 points. Possession of amounts over 50 grams are deemed public health threats and are criminal offences carrying a fine and/or imprisonment.<sup>208</sup>

**Sweden.** All drug use, possession acquisition and trafficking are criminal offences under Swedish law. Offences are divided into three levels, distinguished by the quantity of drug involved: minor, simple and aggravated. Minor offences such as possession or use of small amounts of cannabis attract fine-based penalties which can be exchanged for counselling in some cases.<sup>209</sup>

**Switzerland.** Until recently, all drug use, possession, and acquisition was technically prohibited under Swiss law, with possession and sale carrying a possible maximum of five years imprisonment.<sup>210</sup> However, Swiss policy regarding cannabis possession, use and supply is being radically reassessed in the light of some recent referenda and government reports. The Swiss government has proposed legislation that will legalise the cultivation, sale and consumption of cannabis, (but subject these to government regulation).<sup>211</sup> The proposal has been made against the background of statistics indicating that in a population of 7 million, over 500 000 people are regular users of cannabis who collectively spend over US\$650 million a year on cannabis. Under the proposed legislation, strict rules will govern cannabis related activities: only Swiss grown cannabis can be sold (with quantities and prices to be determined); importation or exportation of the drug will be forbidden; and only Swiss residents will be able to buy the drug (sale to minors being prohibited). The Swiss government also intends to intensify its drug prevention policies. This legislative approach would be an example of a system of regulated availability.

**United Kingdom.** Possession supply and acquisition of cannabis are offences in the UK, with the maximum penalty for possession and/or acquisition being six months imprisonment and/or a fine of £400. Simple possession will usually result in a fine for a first offence or a caution/warning, although there are considerable variations across the UK in how offences are dealt with. It has been reported that discretionary guidelines on drug possession issued by the British Home Office allow officers to issue written warnings and make conditional offers of a fixed penalty to possession offenders. The definition of supply is broadly drawn, including the giving or sharing of drugs among friends.<sup>212</sup>

## **North America**

**Canada.** Canada's approach to cannabis related activities is governed by Federal law and would be described as prohibitionism with predominantly criminal penalties. Although the law treats cannabis as distinct from other drugs such as opiates and cocaine, simple possession can still be dealt with as a criminal offence (or as a summary offence). For possession of up to 30 grams of cannabis or one gram of cannabis resin, the offence must be dealt with summarily, and carries a maximum penalty of six months imprisonment and/or a fine of C\$1000.<sup>213</sup> Possession of larger amounts can still be dealt with summarily, with escalating penalties for subsequent offences. If dealt with as a criminal offence, simple possession can still attract penalties of up to five years imprisonment. Lenton et al. observe that Canadian judges can choose from a range of sentencing options including fines, imprisonment, probation, discharge or conditional discharge. Possession offences are rarely tried on indictment. A project piloting diversion for first time offenders has recently been conducted in Toronto, and police in Vancouver have indicated that they will only press charges for simple possession in the event of aggravating factors.<sup>214</sup>

**United States.** US federal law adopts a prohibitionist approach to cannabis related activities, where a first offender for possession can receive up to one year imprisonment and a fine of up to US\$10 000.<sup>215</sup> State penalties can vary considerably, however. In the 1970s, eleven states changed their criminal prohibitionist approach to cannabis possession to systems of prohibition with civil penalties.<sup>216</sup> Maximum penalties in these states for possession of up to (usually) one ounce, or 28 grams of cannabis, varied between up to US\$100 and US\$250. In nearly half of these states the civil penalties were limited to only first-time offenders.<sup>217</sup> The remaining US states still maintain criminal penalties, and it has been estimated that in 1998, 37 000 people were imprisoned in the US for cannabis offences.<sup>218</sup>

Between 1978 and 1982, 32 states passed laws acknowledging the therapeutic benefits of cannabis, and sought to make it available within medically supervised programs.<sup>219</sup>

## Endnotes

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1. The relevant Commonwealth statutes are *The Customs Act 1901*, *Narcotic Drugs Act 1967*, *Psychotropic Substances Act 1976*, *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*.
2. Stanbury Higgins, *Statistics on Drug Use in Australia 1998*, Australian Institute of Health and Welfare, 1999. (Sourcing data from the 1998 National Drug Strategy Household Survey).
3. *ibid.*
4. *ibid.*
5. *ibid.*
6. L. Moon, P. Meyer and J. Grau, *Australia's Young People: Their Health and Well-being 1999*, Australian Institute of Health and Welfare, 2000.
7. Stanbury Higgins, 1999, *op. cit.*
8. N. Donnelly and W. Hall, *Patterns of Cannabis Use in Australia*, National Drug Strategy Monograph Series, no. 27, Canberra, 1994.
9. T. Makkai and I. McAllister, *Patterns of Drug Use in Australia, 1985–95*, National Drug Strategy, 1998.
10. *ibid.*
11. C. Coffey, M. Lynskey, R. Wolfe and G. Patton, 'Initiation and Progression of Cannabis Use in a Population Based Australian Adolescent Longitudinal Study', *Addiction*, no. 95, 2000, pp. 1679–90. Only four per cent of those who used occasionally in the middle school years became daily users, however.
12. Australian Institute of Health and Welfare, *Drug Use in Australia and its Health Impact*, 1999. It has also been argued that cannabis use generally discontinues by the middle to late 20s. See W. Swift, J. Copeland and S. Lenton, 'Cannabis and Harm Reduction', *Drug and Alcohol Review*, no. 19, 2000, pp. 101–12.
13. T. Makkai and I. McAllister, 1998, *op. cit.*
14. A. Jablensky, J. McGrath, H. Herman, C. Castle et al., *People Living with Psychotic Illness: An Australian Study 1997–98*, National Survey of Mental Health and Well-being Report 4, Mental Health Branch, Commonwealth Department of Health and Aged Care, 1999.
15. L. Trimboli and C. Coumerlos, 'Cannabis and Crime: Treatment Programs for Adolescent Cannabis Use', *Crime Justice Bulletin*, no. 41, 1998, pp. 1–16.
16. T. Makkai and I. McAllister, 1998, *op. cit.*
17. *ibid.*
18. Doug Johnson, 'Age of Illicit Drug Initiation', *Trends and Issues in Crime and Criminal Justice*, no. 201, Australian Institute of Criminology, 2001.

19. Some argue that the association is most often due to a common set of underlying social factors such as low socioeconomic status, poor educational, income and career prospects, and a low investment in social values. See Eric Single, 'Options for Cannabis Reform', *Conference Proceedings: Regulating Cannabis: Options for Control in the 21st Century: International Symposium*, Regents College, London, 5 September 1998.
20. Paul Williams, 'Illicit Drug Use in Regional Australia, 1988–98', *Trends and Issues in Crime and Criminal Justice*, no. 192. Australian Institute of Criminology, 2001.
21. Australian Bureau of Criminal Intelligence, *The Illicit Drug Report 1999–2000*, 2001.
22. L. Moon, P. Meyer, and J. Grau, *op. cit.*
23. Natalie O'Brien, 'A Nation of Dope Smokers Revealed', *The Australian*, 20 June 2001. (Reporting on a study being conducted by Professor Ken Clements, director of economic research at the University of Western Australia.)
24. W. Hall and W. Swift, *The THC Content of Cannabis in Australia: Evidence and Implications*, Technical Report no. 74, National Drug and Alcohol Research Centre, UNSW, 1999.
25. An ounce of hydroponic cannabis (approximately 28 grams) can cost from \$200 to \$500.
26. Australian Bureau of Criminal Intelligence, *op. cit.*
27. D. McDonald and L. Atkinson, *Social Impacts of the Legislative Options for Cannabis in Australia, Phase 1 Research Report to the National Drug Strategy Committee*, Australian Institute of Criminology, 1995.
28. D. McDonald, R. Moore, J. Norberry, G. Wardlaw and N. Ballenden, *Legislative Options for Cannabis Use in Australia*, Monograph no. 26, 1994. Different classifications have been proposed prior and subsequent to McDonald et al.
29. McDonald et al., label this variety of prohibitionism *total prohibitionism*. That label, however, does not necessarily make the distinction intended. There are other forms of prohibitionism which do not involve criminal penalties (but civil or other forms of consequence) which are still totally prohibitionist to the extent that they legislatively prohibit or disallow all cannabis related activities—the penalties they apply are just less severe.
30. It is arguable that the Commonwealth could use its constitutional powers (especially sections 51(I) and (xxix)) to cover the field.
31. It should be noted that cautioning initiatives in these jurisdictions are not legislatively based.
32. The national drug policies that have operated in Australia since 1985 can be found at <http://www.aic.gov.au/research/drugs/strategy/index.html>
33. See, for example, J. P. Caulkins, and P. Reuter, 'Setting Goals for Drug Policy: Harm Reduction or Use Reduction?', *Addiction*, no. 92, 1997, pp. 1143–50; E. Single, 'The Concept of Harm Reduction and Its Application to Alcohol', *Drugs, Education, Prevention and Policy*, no. 4, 1997, pp. 10–15; E. Single, 'Defining Harm Reduction', *Drug and Alcohol Review*, no. 14, 1995, pp. 287–90; S. Lenton and R. Midford, 'Clarifying 'Harm Reduction?', *Drug and Alcohol Review*, no. 15, 1996, pp. 411–13.

34. There are a range of other forceful considerations in favour of harm reduction. For a presentation of the key considerations, see The Victorian Parliamentary Drugs and Crime Prevention Committee, 'Harm-minimisation: Principles and Policy Frameworks', *Occasional Paper no. 1*, Parliament of Victoria, 1998. Also, see J. P. Caulkins and P. Reuter, 'Redefining the Goals of National Drug Policy: Recommendations from a Working Group', *American Journal of Public Health*, no. 85, 1995, pp. 1059–63.
35. W. Swift, J. Copeland and S. Lenton, *op. cit.*
36. P. M. Beardsley and T. H. Kelly, 'The Acute Effects of Cannabis on Human Behaviour and Central Nervous System Functions', in H. Kalant, W. Corrigall, W. Hall and R. Smart, eds, *The Health Effects of Cannabis*, Centre for Addiction and Mental Health, Toronto, 1999, pp. 129–69.
37. W. Hall, N. Solowij and J. Lemon, *The Health and Psychological Consequences of Cannabis Use*, National Drug Strategy Monograph Series no. 25, 1994.
38. Andrew Johns, 'Psychiatric Effects of Cannabis', *British Journal of Psychiatry*, no. 170, 2001, pp. 116–22.
39. W. Hall and L. Degenhardt, 'Cannabis Use and Psychosis: A Review of Clinical and Epidemiological Evidence', *Australian and New Zealand Journal of Psychiatry*, no. 43, 2000, pp. 26–34; W. Hall and N. Solowij, 'The Adverse Effects of Cannabis', *Lancet*, no. 352, 1998, pp. 1611–16.
40. H. Thomas, 'Psychiatric Symptoms in Cannabis Users', *British Journal of Psychiatry*, no. 163, 1993, pp. 141–9.
41. C. Heather Ashton, 'Pharmacology and Effects of Cannabis: A Brief Review', *British Journal of Psychiatry*, no. 170, 2001, pp. 101–6; D. P. Tashkin, 'Cannabis Effects on the Respiratory System' in H. Kalant and W. Corrigall et al., eds, *op. cit.*, pp. 313–47.
42. M. Benson and A. M. Bentley, 'Lung Disease Induced by Drug Addiction', *Thorax*, no. 50, 1995, pp. 1125–7; T. C. Wu, R. T. A. Scott, S. J. Burnett, 'Pulmonary Hazards of Smoking Marijuana as Compared with Tobacco', *New England Journal of Medicine*, no. 318, 1998, pp. 347–51. Because of the typically deep and prolonged unfiltered inhalation of cannabis, it is estimated that there is a threefold greater amount of tar inhaled and one-third more tar retained, than in smoking a tobacco cigarette. However, users typically do not smoke nearly as many cannabis cigarettes per day as most cigarette smokers. So, the long-term effects of tar from cannabis consumption may not be as great as at first appears.
43. N. Solowij, *Cannabis and Cognitive Functioning*, Cambridge University Press, Cambridge, 1998; H. G. Pope and D. Yurgelun-Todd, 'The Residual Cognitive Effects of Heavy Marijuana Use', *Journal of the American Medical Association*, no. 275, 1996, pp. 521–7.
44. W. Hall and N. Solowij, *op. cit.*
45. A. Johns, *op. cit.*; W. Hall, 'Cannabis Use and Psychosis', *Drug and Alcohol Review*, no. 17, pp. 433–44; W. Hall and N. Solowij, *op. cit.*
46. W. Hall, *op. cit.*
47. A. Johns, *op. cit.*; W. Hall, *op. cit.*; W. Hall and N. Solowij, *op. cit.*

48. For example, J. C. Negrete, W. P. Knapp, D. Douglas, W. B. Smith, 'Cannabis Affects the Severity of Schizophrenic Symptoms: Results of a Clinical Survey', *Psychology and Medicine*, no. 16, 1986, pp. 515–20; A. Jablensky, N. Sartorius, G. Ernberg et al., *Schizophrenia: Manifestations, Incidence and Course in Different Cultures. A WHO Ten-Country Study*. Psychology and Medicine Monographs (supplement 20), 1991.
49. S. M. Stahl, *Essential Psychopharmacology*, Cambridge University Press, Cambridge, 1996.
50. W. Hall, op. cit.; W. Hall and N. Solowij, op. cit.; A. Johns, op. cit.
51. V. Peralta and M. J. Cuesta, 'Influence of Cannabis Abuse on Schizophrenic Psychopathology', *Acta Psychologica Scandinavia*, no. 85, 1992, pp. 127–30; L. Dixon, G. Haas et al., 'Acute Effects of Drug Abuse in Schizophrenic Patients: Clinical Observations and Patients' Self Reports', *Schizophrenia Bulletin*, no. 16, 1990, pp. 69–79; F. R. Schneier and S. G. Siris, 'A Review of Psychoactive Substance Use and Abuse in Schizophrenia: Patterns of Drug Choice', *Journal of Nervous and Mental Disorders*, no. 175, 1987, pp. 641–52.
52. Kathryn Elkins, 'The Cannabis and Psychosis Project', paper presented at the International Conference on Drugs and Young People, Melbourne, 4 April 2001.
53. Wayne Hall argues that if there is such a condition, it would be exceptionally rare. See W. Hall, op. cit.
54. A. Y. Tien and J. C. Anthony, 'Epidemiological Analysis of Alcohol and Drug Use as Risk Factors for Psychotic Experiences', *Journal of Nervous and Mental Disorders*, no. 178, 1998, pp. 473–80.
55. L. E. Hollister, 'Marijuana and Immunity', *Journal of Psychoactive Drugs*, no. 24, 1992, pp. 159–64.
56. W. Hall, N. Solowij and J. Lemon, op. cit. While some studies show that high doses of THC can reduce fertility in animals, the evidence relating to humans is limited and inconsistent. However, a recent study at the Eastern Virginia Medical School has been reported showing decreased fertility in human males and females in connection with THC. (*Sydney Morning Herald*, 16 December 2000, p. 3).
57. B. Zuckerman, D. Frank, R. Hingson et al., 'Effects of Maternal Marijuana and Cocaine Use on Fetal Growth', *New England Journal of Medicine*, no. 320, 1989, pp. 762–8. But again, there is conflicting evidence, and methodological questions about the compounding impacts during pregnancy of other factors such as undisclosed drug use (smoking, alcohol, other illicit drugs), as well as the fact that chronic illicit drug users typically differ in education and nutrition. See W. Hall and N. Solowij, op. cit.
58. P. A. Fried, 'Behavioural Outcomes in Pre-school Aged Children Exposed Prenatally to Marijuana: A Review and Speculative Interpretation', in C. L. Wetherington et al., eds, *Behavioural Studies of Drug Exposed Offspring: Methodological Issues in Human and Animal Research*, NIDA Research Monograph 164, US Government Printing Office, Washington DC, 1996; P. A. Fried, 'Prenatal Exposure to Tobacco and Marijuana: Effects During Pregnancy, Infancy and Early Childhood', *Clinical Obstetrics and Gynecology*, no. 36, 1993, pp. 319–36.



59. P. A. Fried, op. cit.
60. Though not as severe as opiate or alcohol withdrawal. D. R. Compton, W. L. Dewey and B. R. Martin, 'Cannabis Dependence and Tolerance Production', *Advanced Alcohol and Substance Abuse*, no. 9, 1990, pp. 128–47.
61. G. A. Weisbeck, M. A. Schuckit et al., 'An Evaluation of the History of Marijuana Withdrawal Syndrome in a Large Population', *Addiction*, no. 91, 1996, pp. 1469–78.
62. J. C. Anthony, L. A. Warner and R. C. Kessler, 'Comparative Epidemiology of Dependence on Tobacco, Alcohol, Controlled Substances and Inhabitants: Basic Findings from the National Comorbidity Study', *Clinical and Experimental Psychopharmacology*, no. 2, 1994, pp. 244–68.
63. W. Hall, M. Teeson, M. Lynskey, and L. Degenhardt, 'The Prevalence in the Past Year of Substance Use and ICD-10 Substance Use Disorders in Australian Adults: Findings from the National Survey of Mental Health and Well-being', *Addiction*, no. 94, 1999, pp. 1541–50.
64. W. Hall, N. Solowij and J. Lemon, op. cit.
65. F. S. Tennant, and C. J. Groesbeck, 'Psychiatric Effects of Hashish', *Archives of General Psychiatry*, no. 27, 1972, pp. 133–6.
66. W. Hall, N. Solowij and J. Lemon, op. cit.
67. T. Makkai and I. McAllister, op. cit.
68. T. Newcombe and P. Bentler, *Consequences of Adolescent Drug Use: Impact on the Lives of Young Adults*, Sage Publications, Newbury Park, California, 1988.
69. D. Fergusson and J. Horwood, 'Early Onset Cannabis Use and Psychosocial Adjustment in Young Adults', *Addiction*, no. 92, 1997, pp. 279–96; T. Newcombe and P. Bentler, op. cit.
70. M. Krohn, A. Lizotte and C. Perez, 'The Interrelationship Between Substance Use and Precocious Transitions to Adult Statuses', *The Journal of Health and Social Behaviour*, no. 38, 1997, pp. 87–103; D. Fergusson and J. Horwood, op. cit.
71. M. T. Lynskey, 'Cannabis Use Amongst Youth' in P. Dillon, W. Swift and L. Topp, eds, *Illicit Drugs: Current Issues and Responses*, Monograph no. 7, National Drug and Alcohol Research Centre, 1997; D. Fergusson and J. Horwood, op. cit.
72. J. Schedler and J. Block, 'Adolescent Drug Use and Psychological Health', *American Psychologist*, no. 45, 1990, pp. 612–30.
73. K. Yamaguchi and D. B. Kandel, 'Patterns of Drug Use from Adolescence to Adulthood: II—Sequences of Progression', *American Journal of Public Health*, no. 74, 1984, pp. 668–72; D. Kandel, E. Single and R. Kessler, 'The Epidemiology of Drug Use Among New York State High School Students: Distribution, Trends and Changes in Rates of Use', *American Journal of Public Health*, no. 66, 1974, pp. 43–53.; D. B. Kandel, K. Yamaguchi and K. Chen, 'Stages of Progression in Drug Involvement from Adolescence to Adulthood: Further Evidence for the Gateway Theory', *Journal of Studies on Alcohol*, no. 53, 1992, pp. 447–57; N. Donnelly and W. Hall, *Patterns of Cannabis Use in Australia*, National Drug Strategy Monograph Series no. 27, Australian Government Printing Service, Canberra, 1994.

74. The figure is 96 per cent in Australia, based on 1993 National Household Survey Data. See N. Donnelly and W. Hall, op. cit. In Amsterdam, 75 per cent of cannabis users do not report use of other drugs (based on 1990 and 1994 data). See P. Cohen and A. Sas, *Cannabis Use. A Stepping Stone to Other Drugs? The Case of Amsterdam*, Centre for Drug Research, University of Amsterdam, 1998.
75. And of those who do, few become regular hard drug users and even fewer addicts. See R. MacCoun, 'In What Sense (if any) is Marijuana a Gateway Drug?', *The FAS Drug Policy Analysis Bulletin*, issue 4, February 1998, <http://www.fas.org/drugs/issue4.htm#gateway>
76. N. Donnelly and W. Hall, op. cit. estimate that they are 30 times more likely to use heroin, than those who have never used cannabis.
77. S. Lenton, P. Heale, P. Erickson, E. Single, E. Lang and D. Hawks, *The Regulation of Cannabis Possession, Use and Supply*, National Drug Research Institute, 2000, p. 181.
78. See E. Single and D. Kandel, 'The Role of Buying and Selling in Illicit Drug Use', in A. Treibach ed., *Drugs, Crime and Public Policy*, Praeger, 1978, pp. 118–28.
79. Based on data from the 1993 National Household Survey. See N. Donnelly and W. Hall, op. cit.
80. Hall adds that it still remains to be determined whether this unexplained association is due to the operation of some factors such as a genetic vulnerability to become dependent on a variety of different drugs.
81. It is important to note here that the issue of whether cannabis should be made available for specifically medically controlled uses is distinct from that of how its general availability should best be controlled or regulated.
82. P. Robson, *Therapeutic Aspects of Cannabis and Cannabinoids*, British Journal of Psychiatry, no. 178, 2001, pp. 107–15.
83. Capsules of synthetic THC have been available for restricted medical use in the USA (as Dronabinol) since 1985. Similarly, Nabilone another THC synthetic has been licensed for prescription in the UK for treatment of nausea and vomiting.
84. [http://news.bbc.co.uk/1/hi/english/health/newsid\\_1234000/1234220.stm](http://news.bbc.co.uk/1/hi/english/health/newsid_1234000/1234220.stm)
85. NSW Government, *Report of the Working Party on the Use of Cannabis for Medical Purposes*, 2000.
86. *The Sydney Morning Herald*, 16 May 2001, p. 3.
87. Department of Human Services, Drug Policy Expert Committee, 2000, *Drugs: Meeting the Challenge*, <http://www.dhs.vic.gov.au/phd/dpec/stagetwo/execsumm.pdf>
88. Australian Bureau of Criminal Intelligence, *The Illicit Drug Report 1998–99*, 2000.
89. S. Lenton et al., op. cit.
90. W. Loxley, 'Cannabis, Amphetamines and the Risk of Blood-borne Diseases Among Injecting Drug Users in Perth', Paper presented at the AMPSAD Annual Conference, Sydney, 1993.

91. S. Maddox and S. Williams, 'Cannabis-related Experiences and the Rate of Cultivation: Would They Change Under a Policy of Decriminalisation?', *Drugs, Education, Prevention and Policy*, no. 5, 1998, pp. 47–58.
92. S. Lenton, M. Bennett and P. Heale, *The Social Impact of a Minor Cannabis Offence Under Strict Prohibition—The Case of Western Australia*, Curtin University of Technology, National Centre for Research into the Prevention of Drug Abuse, Perth, 1999.
93. Among others, S. Lenton et al., op. cit. have argued this, as have the Victorian Premier's Drug Advisory Council, chaired by David Penington. See *Drugs and Our Community*, Report of the Premier's Drug Advisory Council, Victorian Government, 1996.
94. C. De Launey, 'The Real Value of a Cannabis Plant. Report on a 1995 Survey of Cannabis Crop Growers in Northern NSW.' *Alternative Law Journal*, no. 21, 1996, pp. 127–30.
95. It might be thought that those who rely on themselves for cannabis, or others who grow their own, would always have a ready supply and would consequently use it more regularly. If that were true, there would appear more risk of developing heavier use, or at least those who are predisposed to such use would find it much easier to use. However, there is no substantive data concerning this, and the ready availability of cannabis from existing large-scale markets would suggest that users can already usually obtain cannabis regularly if they wish.
96. Alcohol and Drug Council of Australia, op. cit.; Criminal Justice Commission, *Report on Cannabis and the Law in Queensland*, Goprint, Brisbane, 1994; A. Brooks, C. Stathard, J. Moss et al., *Costs Associated with the Operation of the Cannabis Expiation Notice Scheme in South Australia*, Drug and Alcohol Services Council, Adelaide, 1999.
97. D. McDonald and L. Atkinson, op. cit.
98. S. Lenton et al., op. cit.
99. S. Lenton, A. Ferrante and N. Loh, 'Dope Busts in the West: Minor Cannabis Offences in the Western Australian Criminal Justice System', *Drug and Alcohol Review*, no. 15, 1996, pp. 335–41. It should be noted that WA has recently introduced a cautioning scheme, and that the cannabis offence rate in WA has decreased by 47 per cent between 1995–96 and 1998–99 (The Australian Bureau of Criminal Intelligence, *The Illicit Drug Report 1998–99*, 2000).
100. S. Lenton, M. Bennett and P. Heale, *The Social Impact of a Minor Cannabis Offence Under Strict Prohibition—The Case of Western Australia*, Curtin University of Technology, National Centre for Research into the Prevention of Drug Abuse, Perth, 1999.
101. Eric Single, op. cit.
102. Even when a conviction is not recorded for cannabis possession, cultivation or use, the mere involvement in the criminal justice system of people charged with these offences can have adverse consequences for them with respect to school education and public sector employment (even if there are no statistically significant differences in these impacts between different legislative approaches that involve possible contact with the criminal justice system). Jane Christie-Johnston, *The Impact of the Legislative Options for Cannabis on School Education and Public Sector Employment Opportunities in Australia*, The Social Impact of Legislative Options for Cannabis in Australia Working Paper no. 7, Australian Institute of Criminology, 1997.

103. Wayne Hall, for instance, argues that current use patterns produce only small to moderate public health risks. W. Hall, 'The Public Health Implications of Cannabis Use', *Australian Journal of Public Health*, no. 19, 1995, pp. 235–42.
104. This is true of overseas jurisdictions as well as Australia. According to the US National Household Survey on Drug Abuse, 1998, 20 per cent of young adult cannabis users reported symptoms of dependence, and three per cent were receiving treatment for it in 1998. In the US, the proportion of treatment admissions primarily for cannabis use doubled between 1992 and 1997 from six per cent to 13 per cent (*Treatment Episode Data Set, 1992–97*, Office of Applied Studies, US Federal Department of Health and Human Services, 1999). In the European Union, cannabis is generally reported as the main drug problem for presentation to treatment in an average of 10 per cent of admissions. (EMCDDA, 2000, op. cit.) In New Zealand, results from the 1998 National Drug Use Survey indicated that approximately five per cent of all cannabis users felt they needed some help in reducing their use. (A. Field and S. Casswell, *Drugs in New Zealand; National Survey, 1998*, Alcohol and Public Health Research Unit, University of Auckland, June 1999.) In the Netherlands in 1996, however, only a very small proportion of cannabis users (0.3 per cent) were treated at drug outpatient clinics. (Trimbos Institute, 1997).
105. T. Makkai and I. McAllister, op. cit. It was noted before also that teenagers are increasingly coming to start cannabis use at an earlier age. In 1993, 14 per cent of people surveyed indicated that they first used cannabis at 15 years old or less, and this increased to 18 per cent in 1995.
106. W. Swift, W. Hall and J. Copeland, 'Characteristics of Long-term Cannabis Users in Sydney, Australia', *European Addiction Research*, no. 4, 1998, pp. 190–7.
107. Doug Johnson, op. cit. No suggestion has been made, however, as to the basis or explanation for this association.
108. L. Trimboli and C. Coumerlos, op. cit.
109. Kathryn Elkins, op. cit.
110. A. Jablensky et al., op. cit.
111. A number of writers have suggested criteria, conditions or rules of thumb for analysing or measuring the acceptability of different legislative approaches to cannabis, most notably McDonald et al., and S. Lenton et al. The conditions specified here in the text, although ostensibly different, arguably incorporate or imply the central proposals of these major writers.
112. Importantly, legislation can also seek to enable behaviours that might serve to reduce cannabis harm.
113. Admittedly, there are limits to how fine-grained and discriminating the written specifications of a piece of legislation can be in capturing just those cases of cannabis related behaviour that will be sufficiently harmful or risky. Legislation is stated in terms of *types* of activity or behaviour, but cannabis harms are often context dependent, and it is not necessarily the case that all instances of some type of cannabis behaviour that can be harmful, will be harmful.

114. This can depend on how serious the harm is, and how 'risk averse' one is. Very cautious harm reduction legislators may argue that even when the vast majority of people engaging in some cannabis activity experience no harm, but only a very few, it is still better, all things being equal, to restrict everyone from engaging in the activity if this protects the few. More 'risk tolerant' legislators will argue that coercively restricting the harm-free activity of the great many is inconsistent with harm reduction, and other means besides coercive restriction should be sought to address the serious risk to the very few. Which strategy is appropriate will depend significantly on what costs are involved in legislating against a type of activity that is largely harmless, and whether these costs are favourable in relation to the harms that may be reduced by so legislating.
115. This is arguably implicit in the condition stipulated by McDonald et al. that an analysis of the effectiveness of a cannabis control regime should not be considered in isolation from its implementation and enforcement.
116. The benefits of properly exercised police discretion when intervening in cases of cannabis use and supply are argued for by Adam Sutton, 'Cannabis Law and the Young Adult User: Reflections on South Australia's Cannabis Expiation Notice System', *International Journal of the Sociology of Law*, no. 28, 2000, pp. 147–62. There is a danger, however, that too much police discretion may result in selective law enforcement, and may potentially overstep the boundaries of executive power and stray into judicial power.
117. Informal cautioning, for example, may be used by police in those instances they judge are not serious enough to warrant further action.
118. This may be especially beneficial for young people who might not otherwise voluntarily access information or health services.
119. Or if it took too much, or was just too difficult to effectively police. Efficiency is related to another hallmark of harm minimisation—effectiveness.
120. E. Single, op. cit.
121. Side effects can be helpful as well as harmful. For example, the law enforcement targeting of more harmful forms of use and acquisition/supply can provide incentives for people to shift to less harmful forms.
122. This is argued, for instance, by J. Strang and M. Farrell 'Harm-minimisation for Drug Misusers: When Second Best May be Best First', *British Medical Journal*, no. 304 1992, pp. 1127–9.
123. It may be too that some harm reduction outcome is in reality achievable, but only (or much better) through some other type of intervention, and not law enforcement or legislation. A legislative approach to cannabis that is harm minimising will be pragmatic in its awareness of what it can reasonably expect to achieve, and where its efforts are best directed (and often this only becomes apparent in the light of experience).
124. For example, see S. Lenton et al., op. cit., and S. Sutton, op. cit.
125. One useful way of focusing in on the legislative impacts is by comparing jurisdictions which have differing legislation but similar social, economic and cultural characteristics. Any differences in cannabis related harms that are revealed between those jurisdictions could then

be more confidently attributed to differences in legislative approach. Of course, the degree of confidence will depend on the closeness of the socio-cultural similarities in the jurisdictions being compared. The closer the background similarities, the more 'controlled' they are in the comparison, and the more confidence that legislative based differences (if any) are the relevant factor. Comparisons between legislatively different Australian states are particularly important in this respect. Comparisons between Australia and some overseas jurisdictions might also be instructive from time to time. However, the latter comparisons should have less evidentiary weight in view of the possibly lower degree of sociocultural similarity involved.

126. This issue of commensurability, and its impact on formulating and assessing approaches to drugs is addressed in some depth in Victorian Parliamentary Drugs and Crime Prevention Committee, *op. cit.*
127. This is argued by D. Hawks and S. Lenton, *op. cit.*
128. Important as it is to acknowledge this issue of commensurability, it should not be thought of as completely undermining the possibility of comparing harms and the capacities of different approaches to reduce them. As was said, there would be wide agreement about the relative weighting of many cannabis related harms, or at least, many of the harms central to assessing the effectiveness of different legislative approaches.
129. From the individual user's point of view, under conditions where all cultivation is criminally prohibited it would be better for the organised network to assume the risk of criminal penalties for cultivation than the user. Besides that, there would be few other sources. This is a 'perverse incentive' of the criminal prohibitionist system, and to the extent that it might act to increase the risks of harm to users and others, it might count as an outcome inefficiency of criminal prohibitionism.
130. S. Lenton, *Cannabis Offenders in the West Australian Criminal Justice System 1994–1996*, Curtin University of Technology, National Centre for Research into the Prevention of Drug Abuse, Perth, 1999.
131. S. Lenton, A. Ferrante and N. Loh, 'Dope Busts in the West: Minor Cannabis Offences in the Western Australian Criminal Justice System', *Drug and Alcohol Review*, no. 15, 1996, pp. 335-41.
132. S. Lenton et al., 2000, *op. cit.*
133. S. Lenton, A. Ferrante and N. Loh, *op. cit.* It is of interest to note also that between 1990 and 1995 in Western Australia, nine per cent of first time arrestees for possession/use were held in custody prior to appearing in court. This was as high as 16 per cent in 1990.
134. Including G. LeDain, *Final report of the Commission of Inquiry Into the Non-medical Use of drugs*, Information Canada, Ottawa, 1972; P. Erickson, *Cannabis Criminals: The Social Effects of Punishment on Drug Users*, Addiction Research Foundation, Toronto, 1980; P. Christie, *The Effects of Cannabis Legislation in South Australia on Levels of Cannabis Use*, Drug and Alcohol Services Council, Adelaide, 1991; S. Lenton et al., *op. cit.*
135. S. Lenton, A. Ferrante and N. Loh, *op. cit.*

136. In South Australia, in particular, there has been a significant (and unanticipated) rate of failure to expiate, which has been counter productive to the purposes of the civil system. (More on this under effectiveness and efficiency.)
137. Some of the diversionary programs are still trials, and none are legislatively based, suggesting they are not necessarily permanent.
138. A. Sutton, *op. cit.* It should be said, though, that in the ACT police have the discretion to divert re-offenders to counselling or rehabilitation. See J. Mundy, *op. cit.*
139. N. Donnelly, W. Hall and P. Christie, 'Effects of the Cannabis Expiation Notice Scheme on Levels and Patterns of Cannabis Use in South Australia, Evidence from the National Drug Strategy Household Surveys 1985–1995', *Drug and Alcohol Review*, no. 19, 2000, pp. 265–9.
140. R. Ali, P. Christie, S. Lenton, D. Hawks, A. Sutton, W. Hall and S. Allsop, *The Social Impacts of the Cannabis Expiation Notice Scheme in South Australia: Summary Report*. Commonwealth Department of Health and Aged Care, Canberra, 1999.
141. E. Single, 'The Impact of Marijuana Decriminalisation: An Update', *Journal of Public Health Policy*, no. 10, 1989, pp. 456–66; P. Blachly, 'Effects of Decriminalisation of Marijuana in Oregon', *Annals of the New York Academy of Sciences*, no. 282, 1976, pp. 405–15.
142. R. Johnson, *Trends in the Incidence of Drug Use in the United States, 1919–1992*, Substance Abuse and Mental Health Services Administration, Office of Applied Studies, Rockville, MD: US Department of Health and Human Services, 1996.
143. *National Household Survey on Drug Abuse*, Substance Abuse and Mental Health Services Administration, Rockville, MD.: US Department of Health and Human Services, 1999.
144. L. Johnston, J. Bachman and P. O'Malley, *National Survey Results on Drug Use from the Monitoring the Future Study, 1975–1995*, NHS, National Institute on Drug Abuse, Washington, D.C., 1996.
145. D. Weatherburn and C. Jones, 'Does Prohibition Deter Cannabis Use?', *Contemporary Issues in Crime and Justice*, no. 58, NSW Bureau of Crime Statistics and Research, 2001.
146. S. Lenton, M. Bennett and P. Heale, *op. cit.*
147. N. Donnelly, W. Hall and P. Christie, *op. cit.*
148. Survey conducted by the Centre for Behavioural Research in Cancer, 1996, reported in S. Lenton et al., *op. cit.*
149. S. Lenton, A. Ferrante and N. Loh, *op. cit.*
150. National Drug Strategy Household Survey 1998.
151. *ibid.*
152. ABCI, *The Illicit Drug Report 1994–95*, 1996, p. 29.
153. Recruitment may not be so difficult, either, particularly if a substantial financial reward is offered by the organised network, and the only penalty upon detection for the individual grower is \$150.
154. A. Sutton, *op. cit.*, p. 158.

155. R. Ali and P. Christie, *Report of the National task Force on Cannabis (National Drug Strategy Monograph)*, AGPS, Canberra, 1994.
156. P. Christie, *Cannabis Offences Under the Cannabis Expiation Notice Scheme in South Australia*, Commonwealth Department of Health and Aged Care, AGPS, Canberra, 1999.
157. Where a guilty plea was entered and the court appearance privately funded (and \$1982 in the case of a not-guilty plea funded by legal aid). Criminal Justice Commission, *Report on Cannabis and the Law in Queensland*, Goprint, Brisbane, 1994. The estimated cost of issuing a civil infringement notice for the same sort of offence in 1999 was \$32.73. P. Christie, op. cit.
158. ABCI, *The Illicit Drug Report 1997–98*, op. cit.
159. S. Lenton, M. Bennett and P. Heale, op. cit.
160. This was argued in *Drugs and Our Community*, Victorian Premier's Drug Advisory Council, Victorian Government Publishing Service, 1996.
161. Particularly among some sections of the police force in SA, and other states. *The 7.30 Report*, 16 May 2001.
162. W. Hall, N. Solowij and J. Lemon, op. cit.
163. R. Humeniuk, A. Brooks, P. Christie, R. Ali and S. Lenton, *Social Impacts and Characteristics of Offenders Under the Cannabis Expiation Notice Scheme in South Australia*, Drug and Alcohol Services Council, Adelaide, 1999. Also, R. Sarre, A. Sutton and T. Pulsford, *Cannabis, The Expiation Approach*, Attorney-General's Department, Adelaide, 1989.
164. A. Sutton, op. cit., p. 155.
165. *ibid.*
166. A. Sutton and E. McMillan, *A Review of Law Enforcement and Other Criminal Justice Attitudes, Policies and Practices Regarding Cannabis Laws in South Australia*, Commonwealth Department of Health and Aged Care, Canberra, 1999.
167. S. Lenton et al., op. cit., have recently made another proposal that seeks to by-pass some of the difficulties of the civil system, particularly in relation to supply and the separation of markets. The proposal recommends that the supplying of small amounts of cannabis should attract only civil penalties rather than criminal ones.
168. See, for example, A. Wodak and R. Owens, *Drug Prohibition: A Call for Change*, University of New South Wales Press, 1997.
169. PDAC, 1996, op. cit., recommendations 7.1, 7.2. and 7.3, 7.8. It was also proposed that previous convictions for possession and use of cannabis be expunged. Despite recognising that there had been no evidence to change views, the (Penington chaired) Drug Policy Expert Committee did not recommend any changes to existing Victorian law in its 2000 report.
170. Even if all cannabis use was harmful to the user, there is still question (in liberal democratic societies at least) as to whether the law should really be in the business of deterring self-harm.



For one of the first, and perhaps most compelling, discussions of this view, see John Stuart Mill's essay, *On Liberty*.

171. R. MacCoun and P. Reuter, 'Evaluating Alternative Cannabis Regimes', *The British Journal of Psychiatry*, no. 178, 2001, pp. 123–8.
172. *ibid.*
173. *ibid.*
174. W. Hall, 'Reducing the Harms Caused by Cannabis Use: The Policy Debate in Australia', *Drug and Alcohol Dependence*, no. 62, 2001, pp. 163–74.
175. D. Weatherburn and C. Jones, *op. cit.*
176. Mert Daryal, 'Prices, Legalisation and Marijuana Consumption', Economic Research Centre, Department of Economics, University of Western Australia, 1999.
177. R. MacCoun and P. Reuter, *op. cit.*
178. A summary of Australian state legislation relating to illicit drugs can be found at: <http://www.aic.gov.au/research/drugs/context/legislation.html>
179. *Drugs, poisons and Controlled Substances Act 1981*.
180. Section 76 of the *Drugs, Poisons and Controlled Substances Act 1981*.
181. L. Atkinson, 'Cannabis, Law Enforcement and the Criminal Justice System: an Overview of Five Jurisdictions', in D. McDonald and L. Atkinson, *op. cit.* (cited in S. Lenton et al.).
182. *Drug Misuse and Trafficking Act 1985*.
183. Jane Mundy, 'Cannabis Cautioning', *Connexions*, August–October 2000, pp. 18–23.
184. L. Atkinson, 1995, *op. cit.*
185. A Bill allowing for Dutch-style 'cannabis cafes' in NSW is also to be introduced in the NSW Parliament by the NSW Greens MLC Lee Rhiannon.
186. *Misuse of Drugs Act 1981*.
187. *Drug Misuse Act 1986*.
188. Jane Mundy, *op. cit.*
189. *Controlled Substances Act 1984*.
190. In South Australia, minors cannot be dealt with under CENS. However, they may be subject to formal and informal cautioning, family conferences, or referrals to the Youth Court under the *Young Offenders Act 1993*.
191. Until 1999, the plant limit in SA had been 10, but this was reduced by the SA government because of concerns that organised 10-plant growers were forming consortiums and exporting cannabis on a large scale to other Australian states.
192. The *Controlled Substances Act* states that a prosecution is not invalidated if a CEN is not issued. Also, some offenders and offences are excluded from the CENS. For instance, minors

cannot be issued with a CEN, and the definition of 'simple cannabis offence' excludes offences that are committed in public places, or offences involving cannabis oil.

193. *Drugs of Dependence Act 1989*.
194. *Drugs of Dependence Act NT 1990*.
195. Though, it is suggested by some that treaty proscriptions concerning cannabis are aimed primarily at large-scale trafficking, and not small quantity individual use. See, for example, New Zealand Drug Policy Forum, *Alternative Systems of Cannabis Control in New Zealand*, July 1997. Also, see the Commonwealth Attorney-General's Department submission to the Queensland Criminal Justice Commission, 24 February 1994. Article 3.2 also qualifies its suggestion of criminalisation by words like 'subject to (a country's) constitutional principles and basic concepts of its legal system'.
196. European Monitoring Centre on Drugs and Addiction (EMCDA), 2000.
197. Christopher Gatto, 'European Drug Policy: Analysis and Case Studies', 1999, [http://www.norml.org/laws/european\\_policy.shtml](http://www.norml.org/laws/european_policy.shtml)
198. *DrugNet Europe*, no. 28, The Bimonthly Newsletter of the European Monitoring Centre for Drugs and Drug Addiction, March–April 2001.
199. P. Ford, 'Europe Shifts out of Drug War Mode', *Christian Science Monitor*, March 2001.
200. S. Lenton et al., op. cit.
201. J. Jepsen, 'Copenhagen: A War on Socially Marginal People', in N. Dorn, J. Jepsen and E. Savona, eds, *European Drug Policies and Enforcement*, Macmillan, London, 1996.
202. S. Lenton et al., op. cit.
203. Tim Boekhout van Solinge, 'Cannabis in France', in Lorenz Bollinger, ed., *Cannabis Science. From Prohibition to Human Right*, Peter Lang GmbH, Frankfurt am Main, 1997.
204. C. Gatto, op. cit.
205. P. Ford, op. cit.
206. The Lindesmith Center, Drug Policy Foundation, 'De Jure and De Facto Regulation of Cannabis: A Selection of Current Policies Around the World', [http://www.soros.org/lindesmith/library/proceedings/ca.../world\\_cannabis\\_policies2.htm](http://www.soros.org/lindesmith/library/proceedings/ca.../world_cannabis_policies2.htm)
207. P. Ford, op. cit.
208. The Lindesmith Center, op. cit.
209. C. Gatto, op. cit.
210. S. Lenton et al., op. cit.
211. Helena Bachman, 'Just Say Yes: The Swiss Move to Legalise the Cultivation, Sale and Consumption of Marijuana', *Time Magazine (US)*, 16 March 2001.
212. C. Gatto, op. cit.; The Lindesmith Center, op. cit.
213. S. Lenton et al., op. cit.

214. The Lindesmith Center, op. cit.
215. *ibid.*
216. Oregon (1973), Alaska (1975), Maine (1975), Colorado (1975), California (1975), Ohio (1975), Minnesota (1976), Mississippi (1977), New York (1977), North Carolina (1977), and Nebraska (1978). In 1990 Alaska recriminalised cannabis possession, but is currently considering a referendum to legalise hemp.
217. S. Lenton et al., op. cit., (citing A. DiChiara and J. F. Galliher, 'Dissonance and Contradictions in the Origins of Marijuana Decriminalisation', *Law and Society Review*, no. 28, 1994, pp. 41–77.)
218. Chuck Thomas, 'Marijuana Arrests and Incarceration in the United States: Preliminary Report', Marijuana Policy Project, 1998, <http://www.mpp.org>
219. The Lindesmith Center, op. cit.