

NATIONAL DRUG POLICY: AUSTRALIA

**PREPARED FOR THE SPECIAL SENATE COMMITTEE
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NATIONAL DRUG POLICY: AUSTRALIA

INTRODUCTION

This paper provides a brief introduction to the national drug policy of Australia. It presents:

- Background information to Australia's drug policies;
- A review of the National Drug Strategy for the years 1985-2003;
- A review of the cannabis decriminalization measures that have been adopted in some Australian states;
- The Australian legislation with respect to illicit drugs;
- The costs associated with illicit drug use in Australia; and
- Statistical data related to drug use, drug-related offences, Australians' attitudes towards drug use and drug legalization, and drugs and health.

This paper forms part of a series of country pictures being prepared by the Parliamentary Research Branch of the Library of Parliament for the Special Senate Committee on Illegal Drugs.

BACKGROUND TO AUSTRALIAN DRUG POLICY⁽¹⁾

Control of illicit drugs has been a global concern since the International Opium Commission, known as the Shanghai Conference of 1909. An Opium Conference at the Hague in 1911 drafted the first treaty which attempted to control opium and cocaine through worldwide

(1) For a detailed account of the history of Australia's drug laws, see: Desmond Manderson, *From Mr. Sin to Mr. Big: A History of Australian Drug Laws*, Oxford University Press, Sydney, 1993.

agreement, by means of the 1912 Hague Opium Convention. By the terms of the Convention, the parties agreed to limit the manufacture, trade and use of opiate products to medical use, to co-operate in order to restrict use and to enforce restrictions efficiently, to penalize possession, and to prohibit selling to unauthorized persons. From 1920, the Hague Convention was the responsibility of the League of Nations and since 1946 it has been administered by the United Nations.

The second International Opium Convention was concluded in 1925 and came into force in 1928. This Convention established a system of import certificates and export authorizations for the licit international trade in narcotic drugs. A Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, signed in Geneva in 1931, introduced a compulsory estimates system aimed at limiting the world manufacture of drugs to the amounts needed for medical and scientific purposes. The *Paris Protocol 1948* ceded to the World Health Organization the power to determine which new drugs should be treated as “dangerous drugs” for the purpose of the 1931 Convention. The *Single Convention on Narcotic Drugs 1961* consolidated and further extended control over the international and domestic drug trades. It sought to limit the possession, use, trade, distribution, import, export, manufacture and production of drugs exclusively for medical purposes. It also combated drug trafficking through international cooperation. The Single Convention was instrumental in prompting a major rewriting, updating and extension of legislation at state level. The *Convention on Psychotropic Substances 1971* further extended international controls to include a broad range of synthetic behaviour- and mood-altering drugs.⁽²⁾

Australian drug laws, like those of many other countries, closely followed the development of these international drug treaties. The Australian Government ratified the Hague Convention in 1914 and used it as the basis for extending import controls to a range of substances apart from opium. In the 1920s, Australia prohibited the importation and use of cannabis for non-medical purposes, in accordance with the requirements of the 1925 Geneva Convention on Opium and Other Drugs which was the first such convention to cover cannabis.

(2) For a summary of international efforts to control illicit drugs see: John McFarlane, “Drug Trafficking in South-East Asia: Security Issues,” in Geoffrey Stokes, Peter Chalk, and Karen Gillen, eds., *Drugs and Democracy: In Search of New Directions*, Melbourne University Press, Carlton South, Victoria, 2000, pp. 51-55.

Up until the latter part of the 1960s, few law enforcement resources were devoted to policing the drug laws. This was due, in large part, to there being relatively little use – or public awareness – of illicit drugs. By the early 1970s, however, there was an upsurge in the levels of use of illicit drugs. A number of studies reported an increase in the use of cannabis and heroin.⁽³⁾ The increase in heroin dependence during the early 1970s corresponded with a marked increase in property crime. It was widely assumed that these developments were linked in some way.

The growth in the illicit drug market created lucrative opportunities for organized crime to become involved in the production and distribution of drugs such as cannabis and heroin. A critical event in this context was the murder of anti-cannabis campaigner Donald Mackay in 1977. This led directly to the establishment in New South Wales of the Royal Commission of Inquiry into Drug Trafficking in 1979 (the Woodward Commission) and, at the federal level, contributed to the decision to set up the Australian Royal Commission of Inquiry into Drugs (the Williams Inquiry), also in 1979.

The drugs initiatives which found favour during the 1970s and early 1980s generally involved raising maximum penalties, creating additional offences, making offences easier to prove, establishing new investigative bodies such as the National Crime Authority, significantly increasing the powers and technology available to law enforcement agencies to detect drug offences, providing for the confiscation of profits, and investing more resources in drug law enforcement. The Woodward Commission, the Williams Inquiry and the Stewart Royal Commission of Inquiry into Drug Trafficking (1983) all offered “more and better law” and improved enforcement as the primary solutions to the problem of illicit drug use.

A change in some of the attitudes towards illicit drug use started in relation to the use of cannabis. In the main, cannabis was little known or used in Australia until the 1960s. Nevertheless the drugs legislation which was introduced in most of the States and Territories towards the end of the 1800s and early 1900s (primarily concerned with the smoking of opium by Chinese people) provided a framework for the prohibition of cannabis. The first Australian controls on cannabis use were introduced in Victoria in 1928 in legislation which penalized the unauthorized use of Indian hemp and resin. This was followed by corresponding legislation in

(3) For a summary of these reports and the evolution of Australian drug laws generally see: David Brereton, “The History and Politics of Prohibition,” in *Drugs and Democracy*, *supra*, pp. 89-93.

the other jurisdictions. The penalties relating to cannabis cultivation, possession and use were generally quite severe during the 1960s and 1970s.⁽⁴⁾

The impetus for reform of the cannabis laws in South Australia (see “Cannabis Decriminilization in Australia” below) came out of the recommendations contained in the 1979 report of the South Australian Royal Commission into the Non-Medical Use of Drugs.⁽⁵⁾ The Royal Commission recommended, *inter alia*, that minor cannabis consumption not be treated as a criminal offence. In making such a recommendation the Royal Commission was able to cite several overseas jurisdictions, including ten states in the USA, which had taken such a step with apparent success.

NATIONAL DRUG STRATEGY⁽⁶⁾

A. The National Campaign Against Drug Abuse (1985 – 1992)

The inception of the National Campaign Against Drug Abuse (NCADA) in 1985 was a watershed in Australian drug policy and introduced a focus on public health and harm minimization. The NCADA emphasized that drug use should be treated primarily as a health issue. The decision was made deliberately to situate the program within the Federal Department of Health rather than the Federal Attorney General’s Department, due at least in part to the emergence of HIV/AIDS. But the program from the start involved a strong partnership between the Commonwealth (or federal government), States and Territories. It also intended to foster a partnership between health and law enforcement in a comprehensive strategy involving an integrated approach to licit as well as illicit drugs.

One of the major initiatives undertaken was to disseminate information to households throughout Australia about major illicit and licit drugs. A significant part of the campaign was the Drug Offensive which used mass advertising and sponsorship of cultural and sporting events to convey messages about illicit drugs but also about alcohol and tobacco. The

(4) For a history of the laws relating to cannabis in Australia see: McDonald *et al.*, *Legislative Options for Cannabis Use in Australia*, Commonwealth of Australia, 1994, available online at: <http://www.druglibrary.org/schaffer/Library/studies/aus/cannabis.htm>.

(5) South Australian Government, Royal Commission of Inquiry into the Non-Medical Use of Drugs South Australia 1979, *Final Report* (Chairperson: Sackville).

(6) For an outline of the National Drug Strategy from 1985 to the present see: <http://www.aic.gov.au/research/drugs/strategy/index.html>.

philosophy of harm minimization includes the strategies of supply, demand and harm reduction. The mission of Australia's drug strategy is to improve health, social and economic outcomes by preventing the uptake of harmful drug use and reducing the harmful effects of licit and illicit drugs.

B. The National Drug Strategy (1993 – 1997)

A further principle underlying the new drug strategy was that reliable data, new approaches and evaluation of effort were required. As part of this new effort, the Ministerial Council on Drug Strategy (MCDS) commissioned two independent evaluations of the NCADA to assess progress and make appropriate recommendations. After these two evaluations, one released in 1988 and the other, *No Quick Fix*, in 1992, the campaign was relaunched as the National Drug Strategy (NDS). Incorporating the recommendations from the two evaluations, the National Drug Strategy continued to stress the importance of harm minimization principles. Some of the goals of the Strategy were to:

- Minimize the level of illness, disease, injury and premature death associated with the use of alcohol, tobacco, pharmaceutical and illicit drugs;
- Minimize the level and impact of criminal drug offences and other drug-related crime, violence and antisocial behaviour within the community;
- Minimize the level of personal and social disruption, loss of quality of life, loss of productivity and other economic costs associated with the inappropriate use of alcohol and other drugs; and
- Prevent the spread of hepatitis, HIV/AIDS and other infectious diseases associated with the unsafe injection of illicit drugs.

The strategic plan identified six specific concepts which were to underpin the development and implementation of drug policy: harm minimization; social justice; maintenance of controls over the supply of drugs; an intersectoral approach; international cooperation; and evaluation and accountability.

Overall responsibility for the broad policy direction and operation of the NDS rests with the MCDS, which comprises both health and law enforcement ministers from each State and Territory as well as from the Commonwealth government. The council meets

annually. The National Drug Strategy Committee (NDSC) provides administrative support for the MCDS. It is mandated to develop proposals for the NDS, implement the NDS, develop policy proposals relating to licit and illicit drugs and liaise with other governmental agencies on matters relating to the NDS. It consists of one health and one law enforcement representative from each jurisdiction. The MCDS and NDSC develop national policies and directions which individual jurisdictions then implement as appropriate within their social, political and economic environments.

C. Report on the National Drug Strategy (1997)⁽⁷⁾

In 1997 a report evaluating the National Drug Strategy (1993-1997) was produced. This report, entitled *The National Drug Strategy: Mapping the Future*, lauded the NDS for a unique combination of features which had brought it international attention and acclaim:

- The NDS recognizes the complexity of drug issues and the need to provide front-line health professionals and others dealing with drug problems with a wide range of options based on the concept of harm minimization. These range from abstinence-oriented interventions to programs aimed at ameliorating the consequences of drug use among those who cannot be reasonably expected to stop using drugs at the present time;
- The NDS adopts a comprehensive approach to drugs which encompasses the misuse of licit as well as illicit drugs. Policies and programs to address the problems of illicit drugs, alcohol, tobacco and pharmaceuticals all fall under the aegis of the NDS;
- The NDS approach to drugs stresses the promotion of partnerships – between health, law enforcement, education, nongovernmental organizations, and private industry; and
- The NDS attempts to address drug issues in a balanced fashion. This refers to the appropriate balance of effort between the Commonwealth, States and Territories, a balance between supply and demand reduction strategies, and a balance between treatment, prevention, research and education.

(7) See Eric Single and Timothy Rohl, *The National Drug Strategy: Mapping the Future*, A Report commissioned by the Ministerial Council on Drug Strategy, Canberra, April 1997. Available online at: <http://www.health.gov.au/pubhlth/publicat/document/mapping.pdf>.

Contrary to the fears of many that harm minimization policies might lead to increased public acceptance and use of illicit drugs, the evaluation found that there was no discernible trend in the use of drugs such as heroin, amphetamines and cocaine, although there was some increase in marijuana use. The NDS was also found to have contributed to the success of the National HIV/AIDS Strategy in reducing the spread of HIV, Hepatitis C and other infectious diseases among intravenous drug users.

Some concerns with the NDS were addressed in the report. One was confusion concerning the meaning of harm minimization. A second was an often confusing array of strategies, advisory committees and working groups on drug-related issues. A third concern was the relative lack of attention to accountability for results. A fourth concern was that nongovernmental organizations were not playing a sufficient role in the NDS. A fifth concern was that day-to-day management of the NDS was fragmented into different offices and there was a high staff turnover.

In order to address these concerns and give the NDS a new sense of purpose, the evaluators proposed the following seven-point plan:

1. Strengthen National Drug Strategy partnerships and expand them to the local level. The cornerstone of the NDS was the promotion of a strong partnership between health and law enforcement. The NDS should now expand the partnerships to nongovernmental organizations and extend the network of health, law enforcement and nongovernmental partnerships to the local level.
2. Establish a dedicated National Drug Strategy unit with the capacity to assist the Ministerial Council for Drug Strategy (MCDS) and the National Drug Strategy Committee (NDSC) in providing leadership and an enhanced ability to properly manage the NDS.
3. Train mainstream health, law enforcement and community officials to effectively minimize drug-related harm.
4. Improve the cost effectiveness of treatment, prevention and research. A significant increase in the number of treatment and prevention programs subject to systematic outcome evaluation was recommended. High priority should continue to be given to research and prevention programs targeted at youth and other high-risk groups.
5. Improve the ability to monitor the performance of the NDS and make new developments in prevention, treatment and research more readily available to health care practitioners, law

enforcement officers and the public at large. To do this, the evaluators recommended that an Australian National Clearing House on Drugs be created. This body would create an inventory of drug programs and develop an electronic network of key resource centres for front-line professionals.

6. Enhance the involvement and effectiveness of law enforcement in preventing drug-related harm. Police and courts should continue to give increasingly higher priority to the enforcement of trafficking offences versus possession offences.
7. Redirect cost-shared funding used for ongoing services to the development and dissemination of new programming. There should be secure funding for ongoing specialized services required to deal with drug problems, such as residential and non-residential treatment. NDS funds are only a small part of the total amount of money spent by the Commonwealth and States and Territories for the prevention and/or treatment of drug abuse. They should not be used to fund ongoing services, but rather as a catalyst to develop more effective responses to drug problems in Australia.

D. The National Drug Strategic Framework (1998/99 – 2002/03)⁽⁸⁾

The National Drug Strategic Framework maintains the policy principles of the previous phases of the National Drug Strategy and adopts the recommendations of *Mapping the Future: An Evaluation of the National Drug Strategy 1993-97*. Its focus remains on harm minimization and reflects the desire that a nationally coordinated and integrated approach to reducing the harm arising from the use of licit and illicit drugs, including alcohol, tobacco and pharmaceutical drugs, should continue for another five years. The NDS Framework continues to seek a balance between supply-reduction, demand-reduction and harm-reduction strategies, emphasizing the need for integration of drug law enforcement and crime prevention into all health and other strategies aimed at reducing drug-related harm. It also continues the emphasis on evidence-based practice. All supply-reduction, demand-reduction and harm-reduction strategies should reflect evidence-based practice, which is based on rigorous research and evaluation, including assessment of the cost-effectiveness of interventions. Best practice takes

(8) For further details see: Ministerial Council on Drug Strategy, *National Drug Strategic Framework 1998-99 to 2002-03: Building Partnerships*, Prepared for the Ministerial Council by a joint steering committee of the Intergovernmental Committee on Drugs and the Australian National Council on Drugs, Canberra, November 1998. Available online at: <http://www.health.gov.au/pubhlth/nds/resources/publist.htm>.

into account the preferences of individual clients, their families and the wider community. This is related to the emphasis in the NDS on social justice. Patterns of drug-related harm show that particular communities and population groups are more affected than others. Strategies for tackling drug-related harm not only must target the particular drug or drugs causing problems but must also be developed with regard to the broader context of the needs of and problems facing the affected community. Levels of employment, health (including mental health) status, homelessness, remoteness, recreation opportunities, cultural considerations, family support, community development, and access to services must all be taken into account.

The coordinating body for national policies and programs remains the MCDS. Some of the objectives of the Framework are the following:

- Increase community understanding of drug-related harm;
- Reduce the supply and use of illicit drugs in the community;
- Prevent the uptake of harmful drug use;
- Reduce the level of risk behaviour associated with drug use;
- Reduce the risks to the community of criminal drug offences and other drug-related crime, violence and anti-social behaviour;
- Reduce the personal and social disruption, loss of quality of life, loss of productivity and other economic costs associated with the harmful use of drugs;
- Increase access to a greater range of high-quality prevention and treatment services; and
- Promote evidence-based practice through research and professional education and training.

This next phase of the NDS places emphasis on extending the partnership between health and law-enforcement agencies to take in a broader range of partners, as recommended in *Mapping the Future*. Thus the Intergovernmental Committee on Drugs, which consists of health and law-enforcement officers from each Australian jurisdiction, is expanding to include officers from the portfolios of customs and education. The MCDS will now be supported by the Australian National Council on Drugs, consisting of people with relevant expertise from the government, non-government and community-based sectors to provide policy advice. These bodies will develop a series of National Drug Action Plans which will specify priorities for reducing the harm arising from the use of licit and illicit drugs, strategies for taking action on these priorities, and performance indicators.

E. The National Illicit Drug Strategy (1998 –)⁽⁹⁾

In November 1997 the Australian government launched the National Illicit Drug Strategy “Tough on Drugs” as the next major phase of the National Drug Strategy. Its implementation began in 1998. The Strategy encompasses a range of supply reduction and demand reduction measures at a total cost of AUD \$516 million. Funding for the Strategy is split between demand-reduction strategies, which are being implemented by the Department of Health and Aged Care and the Department of Education, Training and Youth Affairs, and supply-reduction strategies, which are being implemented by the Attorney-General’s Department, the Australian Federal Police and the Australian Customs Service. \$213 million has been allocated for a range of supply reduction measures to intercept more illicit drugs at borders and within Australia. Law enforcement efforts include funding for 10 new Federal Police anti-drug mobile strike teams to help dismantle drug syndicates within Australia as well as increased funding for the Australian Customs Service to enhance its capacity to intercept drug shipments.

The remaining \$303 million has been allocated for demand reduction initiatives which cover five priority areas:

1. Treatment of users of illicit drugs, including identification of best practice.
2. Prevention of illicit drug use.
3. Training and skills development for front line workers who come into contact with drug users.
4. Monitoring and evaluation, including data collection.
5. Research.

In conjunction with the new strategy, the Intergovernmental Committee on Drugs has been established to provide policy advice for government ministers on a full range of drug-related matters.

In June 1999, Commonwealth, State and Territory health and law enforcement Ministers agreed on a national approach to the development of a drug diversion initiative. This is designed to support the diversion of illicit drug users from the criminal justice system into

(9) For further details on the National Illicit Drug Strategy see the Australian Department of Health and Aged Care Website: <http://www.health.gov.au/pubhlth/strateg/drugs/illicit>.

education and treatment. Diversion involves a graduated series of interventions appropriate to the seriousness of the offence and the circumstances of the offender. Diversion is not considered appropriate for trafficking offences. Drug-involved offenders can be cautioned on the streets and provided with treatment referral information if their offence is possession of a small quantity of drugs. They can be sent for assessment or directly to treatment rather than prison, as long as the offence is not serious and they do not pose a threat to society. Courts and correctional systems can also use commitment or referral to community-based treatment as an adjunct to probation or parole from prison. There is also treatment within correctional facilities and corrections-operated or funded therapeutic communities and halfway houses.⁽¹⁰⁾

F. Assessment of the National Drug Strategy (2001)⁽¹¹⁾

In May 2001, Professor Eric Single appeared before the Special Senate Committee on Drug Policy to present his evaluation of the NDS in Australia. He reiterated much of what his 1997 report *Mapping the Future* had already stated. He pointed out the unique combination of features which have brought the Australian National Drug Strategy international attention and acclaim. Based on the concept of harm minimization rather than the need to eliminate drug use, the NDS recognizes the complexity of drug issues and the need to provide front-line health professionals and others dealing with drug problems with a wide range of options. These options range from abstinence-oriented interventions to programmes aimed at ameliorating the consequences of drug use among those who cannot reasonably be expected to stop using drugs immediately. The goals, strategies, guiding principles and performance indicators for the NDS are established by a National Drug Strategy Committee. This committee consists of high-level civil servants from health and law enforcement ministries of each state and territory as well as their counterparts from the federal government. This shared decision-making has been seen as a strength of the NDS since it enhances government co-operation and ensures a high level of visibility for the drug strategy.

(10) For further information see: Ministerial Council on Drug Strategy, *National Action Plan on Illicit Drugs, 2001 to 2002-03*, Prepared by the National Expert Advisory Committee on Illegal Drugs, Canberra, July 2001. Available online at:
<http://www.health.gov.au/pubhlth/nds/resources/publist.htm>.

(11) For further information see: Eric Single, *The Australian Experience and its Implications to Canadian Drug Policy*, Presentation to the Special Senate Committee on Drug Policy, May 14, 2001. Available online at:
<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/presentation-e/single1-e.htm>.

The Australian NDS has adopted a comprehensive approach to drugs that encompasses the misuse of licit as well as illicit drugs. Australia's approach to drugs stresses the promotion of partnerships – between health, law enforcement, education, nongovernmental organizations, and private industry. The NDS also attempts to address drug issues in a balanced fashion. This means a balance is attempted in the effort made by the federal government, states and territories, a balance between supply and demand reduction strategies, and a balance between treatment, prevention, research, and education. A sound research infrastructure has been established by the creation of national research centres that are now among the world's leading institutions on alcohol and drug research.

Professor Single noted that the Australian government had followed up on a number of the recommendations he had made to improve the NDS. For example, the NDS was renewed for five years, funding was increased, a specialized NDS unit was created within the Commonwealth Ministry of Health, and action plans were developed with regard to other recommendations. He concluded that the NDS has led the world through its innovative approach towards harm minimization and the partnership between public health and police.

CANNABIS DECRIMINILIZATION IN AUSTRALIA⁽¹²⁾

While the National Drug Strategy provides a general framework for responses to drug problems, drug offences and the associated penalties in Australia are a matter of state and territorial jurisdiction. Some Australian states and territories have adopted cannabis decriminilization measures while others have not.

The first Australian jurisdiction to adopt cannabis decriminilization measures was South Australia. Reform of the cannabis laws in South Australia came with the introduction of the *Controlled Substances Act Amendment Act, 1986*.⁽¹³⁾ This amendment proposed a number of changes to the *Controlled Substances Act, 1984*, including the insertion of Section 45a

(12) For further details on this topic see: Eric Single, Paul Christie and Robert Ali, "The Impact of Cannabis Decriminilisation in Australia and the United States," *Journal of Public Health Policy*, 21,2, Summer, 2000, pp. 157-186. Available online at:
<http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/presentation-e/single-e.htm>.

(13) For further information on the Cannabis Expiation Notice scheme in South Australia see: Paul Christie, *Cannabis Offences Under the Cannabis Expiation Notice Scheme in South Australia*, Department of Health and Aged Care, Canberra, May 1998. Available online at:
<http://www.health.gov.au/pubhlth/publicat/document/mono35.pdf>.

(*Expiation of Simple Cannabis Offences*). This represented the adoption of a new scheme for the expiation of simple cannabis offences, such as possessing or cultivating small amounts of cannabis for personal use, or possessing implements for using cannabis.

The Cannabis Expiation Notice (CEN) scheme came into effect in South Australia on 30 April 1987. Under this scheme, adults coming to the attention of police for “simple cannabis offences” could be issued with an expiation notice. Offenders were able to avoid prosecution by paying the specified fee or fees (ranging from AUD \$50 to AUD \$150) within 60 days of the issue of the notice. Failure to pay the specified fees within 60 days could lead to prosecution in court, and the possibility of a conviction being recorded. Underlying the CEN scheme is the rationale that a clear distinction should be made between private users of cannabis and those who are involved in dealing, producing or trafficking in cannabis. This distinction was emphasized at the introduction of the CEN scheme by the simultaneous introduction of more severe penalties for offences relating to the manufacture, production, sale or supply of all drugs of dependence and prohibited substances, including offences relating to larger quantities of cannabis. The CEN scheme was modified by the introduction of the *Expiation of Offences Act, 1996* which now provides those served with an expiation notice the option of choosing to be prosecuted in order to contest being given the notice. Previously those served with a notice had to let the payment of expiation fees lapse in order to secure a court appearance to contest the notice. In choosing to be prosecuted, however, people issued a notice have their alleged offence converted from one which can be expiated to one which still carries the possibility of a criminal conviction. For a more detailed description of the cannabis laws in South Australia, see Appendix A.

The Australian Capital Territory (in 1992) and the Northern Territory (in 1996) introduced similar expiation schemes. Victoria implemented a system of cautions for minor cannabis offenders in 1998 and Western Australia has followed with a similar scheme. The changes made in the law are not technically “decriminalization” measures as cannabis possession remains a criminal offence in all Australian jurisdictions. What has been changed is the reduction in the penalty for possessing small amounts of cannabis for personal use to something less than imprisonment.⁽¹⁴⁾

(14) For a fuller discussion of the legislative possibilities concerning cannabis see: McDonald *et al.*, *Legislative Options for Cannabis Use in Australia*, *supra*.

The impact of the implementation of an expiation system for minor cannabis offences is best seen in South Australia which has been the subject of a number of evaluation studies. The South Australian Cannabis Expiation Notice (CEN) system began in 1987. The main arguments for an expiation system were the potential cost savings and the reduction of negative social impacts upon convicted minor cannabis offenders. Implicit in the latter view was the belief that the potential harms of using cannabis were outweighed by the harms arising from criminal conviction.

None of the studies upon levels and patterns of cannabis use in South Australia⁽¹⁵⁾ have found an increase in cannabis use which is attributable to the introduction of the CEN scheme. Cannabis use did increase in South Australia over the period from 1985 to 1995 but this was so throughout Australia, including in jurisdictions with a total prohibition approach to cannabis. In fact, the largest increase in the rate of weekly cannabis use across all Australian jurisdictions occurred in Tasmania, a criminal prohibitionist state, between 1991 and 1995.⁽¹⁶⁾ A comparative study of minor cannabis offenders in South Australia and Western Australia concluded that both the CEN scheme and the more punitive prohibition approach had little deterrent effect upon cannabis users. Offenders from both jurisdictions reported that an expiation notice or conviction had little or no impact upon subsequent cannabis and other drug use. However, the adverse social consequences of a cannabis conviction far outweighed those of receiving an expiation notice. A significantly higher proportion of those apprehended for cannabis use in Western Australia reported problems with employment, further involvement with the criminal justice system, as well as accommodation and relationship problems.⁽¹⁷⁾

In the law enforcement and criminal justice areas, the number of offences for which cannabis expiation notices were issued in South Australia increased from around 6,000 in 1987/88 to approximately 17,000 in 1993/94 and subsequent years. This appears to reflect the greater ease with which police can process minor cannabis offences and a shift away from the

(15) Single, Christie, and Ali, *supra*, Notes 3, 11, 12, 18, 19, and 50. See also Maurice Rickard, *Reforming the Old and Refining the New: A Critical Overview of Australian Approaches to Cannabis*, Department of the Parliamentary Library, Information and Research Services, Research Paper No. 6 2001-02, 2001, p. 29. Available online at: <http://www.aph.gov.au/library> (listed under Research Papers).

(16) Rickard, *supra*, p. 30.

(17) National Drug Research Institute, Curtin University of Technology, *The Regulation of Cannabis Possession, Use and Supply*, A discussion document prepared for The Drugs and Crime Prevention Committee of The Parliament of Victoria, Perth, Western Australia, 2000, p. xxxiv.

use of police discretion in giving offenders informal cautions to a process of formally recording all minor offences. Substantial numbers of offenders still received convictions due to their failure to pay expiation fees on time. This was due in large part to a poor understanding by cannabis users of the legal consequences of not clearing expiation offences and due to financial difficulties. Most CENs are issued for less than 25g of cannabis and half of all CENs issued were received by people in the 18 to 24 year old age group.⁽¹⁸⁾

There has been strong support by law enforcement and criminal justice personnel for the CEN scheme. The scheme has proven to be relatively cost-effective and more cost-effective than prohibition would have been. The total costs associated with the CEN scheme in 1995/96 were estimated to be around AUD \$1.24 million while total revenue from fees and fines was estimated to be around AUD \$1.68 million. Had a prohibition approach been in place, it is estimated that the total cost would have been around AUD \$2.01 million, with revenue from fines of around \$1 million.⁽¹⁹⁾

A report on the CEN scheme⁽²⁰⁾ noted that it appeared to have numerous benefits for the community, not the least of which were cost savings for the community as a whole, reduced negative social impacts for offenders, and greater efficiency and ease in having minor cannabis offences dealt with, associated with less negative views of police held by offenders. Yet the rate of expiation of notices has remained low, compared with other types of infringement notices, at around 45%. In addition to the provision of more payment options for offenders and more detailed information on the financial and legal consequences of non-payment, other suggestions have been made to improve the CEN scheme. A system involving a more graduated scale of expiation fees, including lesser fees for offences involving very small amounts of cannabis, could result in higher rates of expiation. Other suggestions which may reduce the effect of net-widening under an expiation approach are: inclusion of a provision for some form of cautioning for certain categories of minor cannabis offences; and dropping the offence of possession of equipment for using cannabis, as it is a very common offence under the CEN scheme and is mostly detected in the context of CENs being issued for other cannabis offences.

(18) *Ibid.*, p. xxxiii.

(19) Rickard, *supra*, p. 33.

(20) Robert Ali *et al.*, *The Social Impacts of the Cannabis Expiation Notice Scheme in South Australia*, Department of Health and Aged Care, Canberra, May 1998. Available online at: <http://www.health.gov.au/pubhlth/publicat/drugs.htm>.

Related to decriminilization efforts is a recognition of the potential medical benefits of the use of marijuana. A recent report commissioned by the New South Wales Government recommended the introduction in that state 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.⁽²¹⁾ A 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.⁽²²⁾

LEGISLATIVE FRAMEWORK

A. Introduction

Under Australia's federal structure, criminal law – and responsibility for enforcing drug laws – is primarily the responsibility of State Governments. The Commonwealth, through its participation in a number of international treaties and conventions, has played a critical role in the development of the current framework of drug laws in Australia. The direct legislative and enforcement responsibilities of the Commonwealth, however, have largely been restricted to controlling the entrance of illicit drugs into the country through the operation of the *Customs Act 1901*.

Three international treaties on illicit drugs have been ratified by Australia. These are: The Single Convention on Narcotic Drugs (1961) and the Protocol (1972); The Convention on Psychotropic Substances (1971); and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). The obligations in these treaties are carried out in three pieces of federal legislation: the *Narcotic Drugs Act 1967*; the *Psychotropic Substances Act 1976*; and the *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*. The key feature of the treaties is that signatories are obliged to establish control

(21) New South Wales Government, *Report of the Working Party on the Use of Cannabis for Medical Purposes*, August 2000. Available online at:
<http://www.druginfo.nsw.gov.au/druginfo/reports/canrep1.pdf>.

(22) Victoria Department of Human Services, Drug Policy Expert Committee, *Drugs: Meeting the Challenge*, November 2000. Available online at:
<http://www.dhs.vic.gov.au/phd/dpec/stagetwo/execsumm.pdf>.

systems that prohibit the availability of controlled drugs, including cannabis, except for scientific or medical use. There are varying interpretations as to the extent to which the treaties require cannabis use or possession to be sanctioned. However, it is clear that non-incarcerative, and non-criminal, sanctions, do not violate treaty obligations. Thus, expiation schemes do not violate Australia's treaty obligations. An additional element of the 1971 Convention on Psychotropic Substances is that treatment and rehabilitation are acceptable alternatives to punishment for cannabis related offences.⁽²³⁾

B. The Drug Laws in Australian Jurisdictions

The law relating to illicit drugs is made and enforced in Australia on a state and territory level. It varies markedly between jurisdictions but its structure is broadly similar. The key legislation from each jurisdiction is as follows:

New South Wales:	<i>Drug Misuse and Trafficking Act 1985; Drug Court Act 1998</i>
Victoria:	<i>Drugs, Poisons and Controlled Substances Act 1981</i>
Queensland:	<i>Drugs Misuse Act 1986; Drug Rehabilitation (Court Diversion) Act 2000</i>
Western Australia:	<i>Misuse of Drugs Act 1981</i>
South Australia:	<i>Controlled Substances Act 1984</i>
Tasmania:	<i>Poisons Act 1971</i>
Northern Territory:	<i>Drugs of Dependence Act 1990</i>
Australian Capital Territory:	<i>Drugs of Dependence Act 1989</i>
Commonwealth:	<i>Customs Act 1901</i> <i>Narcotic Drugs Act 1967</i> <i>Psychotropic Substances Act 1976</i> <i>Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990</i> ⁽²⁴⁾

(23) *The Regulation of Cannabis Possession, Use and Supply, supra*, pp. 95-104.

(24) To access the Australian illicit drugs legislation by jurisdiction see:
<http://www.aic.gov.au/research/drugs/context/legislation.html>.

Each Act creates, in one form or another, the basic offences of possession, use, cultivation, production and trafficking, supplying and selling. The Acts also contain lengthy schedules, derived from various international conventions, listing which drugs are prohibited, and defining various amounts, such as “trafficable” and “commercial” quantities. These quantities are used to determine maximum penalties for sentencing purposes.

The typical maximum penalties for the more serious offences, such as trafficking in “commercial quantities,” are in the range of 25 years to life, although most jurisdictions apart from Queensland set lower maximums for offences involving cannabis. Most Acts provide for persons who have been found guilty of simple possession and/or use offences to receive a term of imprisonment, but it is very uncommon now for this penalty to be imposed. Particularly for the less serious offences, there is often a very substantial gap in sentencing between the “law on the books” and the “law in practice.” For example, in Queensland, where the offence of possession carries a notional maximum penalty of 15 years imprisonment and a maximum fine of AUD \$300,000, the standard penalty applied in the Magistrates Court – where the overwhelming majority of possession charges are heard – is a fine of a few hundred dollars, often with no conviction being recorded.⁽²⁵⁾

Since 1987 in South Australia, 1992 in the Australian Capital Territory, and 1996 in the Northern Territory, people detected committing “minor” cannabis offences have been able to avoid a court appearance altogether by paying a relatively modest “on-the-spot” fine. While cannabis possession is still prohibited, it is sanctioned by a civil, not a criminal, penalty. In addition, Victorian legislation provides for the imposition of pre-conviction bonds for first offenders charged with minor drug offences (*Drugs Poisons and Controlled Substances Act 1981*, s. 76). First offenders are given a bond, and no conviction is recorded if the bond conditions are complied with. But in Victoria, New South Wales, Tasmania, Queensland, and Western Australia all cannabis possession, use and supply is criminally prohibited with criminal penalties being imposed. In addition, in all jurisdictions the penalties imposed for commercial dealing are still very substantial, especially for offences at the upper end of the scale.

In the civil prohibitionist jurisdictions, the offences attracting a civil infringement notice include possession of small amounts of cannabis plant (up to 100g in South Australia, 25g in the Australian Capital Territory, and 50g in the Northern Territory) and cultivation of cannabis

(25) For a discussion of Australian drug legislation see: David Brereton, “The History and Politics of Prohibition,” in *Drugs and Democracy*, *supra*.

plants (up to three in South Australia, five in the Australian Capital Territory, and two in the Northern Territory). 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. “Drug Courts” have been established in four Australian jurisdictions – Queensland, New South Wales, South Australia, and Victoria. In Queensland and New South Wales these “diversionary” courts have been established by legislation while in South Australia and Victoria they operate on a less formalized basis.⁽²⁶⁾ For a more detailed description of the legislative approaches in Australian jurisdictions, see Appendix B.

A notable feature of Australian drug laws is the use of provisions which contravene the long-established principle that the burden of proof in criminal cases should be on the prosecution to prove each element of the offence beyond reasonable doubt. For example, the *Drugs Misuse Act 1986* (Queensland) contains a “deeming provision” for the offence of possession. This means that, if a prohibited drug is found on someone’s premises, this will be regarded as conclusive evidence that the drug was in the possession of the occupier, unless he or she can persuade the court that they “neither knew nor had reason to suspect that the drug was in or on that place” (s. 57(c)). Another example is s. 235 of the Commonwealth *Customs Act 1901*. This provision requires a person who has more than a certain quantity of drugs in his or her possession to prove, on the balance of probabilities, that he or she did not intend to engage in commercial dealings in relation to those drugs. If the person cannot prove this, they will be sentenced on the basis that they had an intention to traffic.

Another aspect of Australian drug laws to note is the wide range of powers which are available to police and other law enforcement bodies to detect and investigate drug offences. Under the Queensland *Drugs Misuse Act 1986*, for example, police have had the power in relation to any quantity of any illegal drug to: stop, search, seize and remove motor vehicles; detain and search persons; order internal body searches; and enter and search premises with or without a warrant (s. 18). In addition, for offences such as drug trafficking, Queensland police are empowered to apply to a court to have listening devices installed on private premises.

(26) For further details on Australian drug courts see:
<http://www.aic.gov.au/research/drugs/context/courts.html>.

For law enforcement bodies operating at the federal level, and in most states other than Queensland, telecommunications interception powers are also available for the investigation of serious drug offences under the Commonwealth *Telecommunications (Interception) Act 1979*. When law enforcement agencies were first given access to these powers during the 1980s, the powers were made available primarily for the purpose of tackling the problem of organized drug trafficking.

Over the last decade, most jurisdictions have also passed confiscation of profits legislation which can be used to attack the assets of drug traffickers and producers. In most cases this action can be taken only after the person has been convicted, but in New South Wales a confiscation order can be made without requiring a conviction, where the Supreme Court is satisfied that “it is more probable than not” that the person has engaged in drug-related activities (*Criminal Assets Recovery Act 1990*).

ADMINISTRATION

A. Public Costs

In financial terms, Commonwealth and State Government expenditure in response to illicit drugs in 1992 was estimated at AUD \$620 million. Of this sum, 84% was allocated to law enforcement, 6% to treatment, and 10% to prevention and research. Commonwealth and state expenditure on methadone programs has been estimated at AUD \$30 million per year. In 1991, Australian expenditure on needle syringe programs was estimated at AUD \$10 million. It is likely that expenditure on needle syringe programs in Australia doubled between 1991 and the turn of the century.⁽²⁷⁾

Based on various more recent estimates, it is likely that more than AUD \$200 million is spent annually in the health and social welfare sectors by governments as a direct or indirect result of the illicit drugs trade.⁽²⁸⁾ It is estimated that AUD \$450 to AUD \$500 million is the annual cost to the criminal justice system incurred by illicit drugs.⁽²⁹⁾ It is estimated that

(27) Alex Wodak, “Developing More Effective Responses,” in *Drugs and Democracy*, *supra*, p. 184.

(28) John Broome, “Impacts Upon Social and Political Life,” in *Drugs and Democracy*, *supra*, p. 117.

(29) *Ibid.*, p. 117. See also: Adam Sutton and Stephen James, “Law Enforcement and Accountability,” in *Drugs and Democracy*, *supra*, p. 163 where an estimate of AUD \$404 million is given for the annual cost to the Commonwealth, States and Territories of enforcing laws against illicit drugs.

more than AUD \$312 million is raised each year by heroin users/dealers through property crime.⁽³⁰⁾ Law enforcement estimates suggest that drugs generate at least AUD \$2 billion annually within Australia. In addition, it has been suggested that a significant proportion of the estimated AUD \$3.5 billion laundered in and through Australia each year can be attributed to illicit drugs.⁽³¹⁾

The economic costs associated with the prevention and treatment of drug-related illness, loss of productivity in the workplace, property crime, theft, accidents and law enforcement activities are over AUD \$18 billion annually.⁽³²⁾

B. Social Costs

In a study of the social impacts of a conviction for a minor cannabis offence on first time offenders, a significant minority of the sample were shown to develop less favourable attitudes towards police and there was evidence that many respondents had experienced adverse consequences in terms of employment, further problems with the law, and problems in relationships and accommodation.⁽³³⁾

A cost of making cannabis illegal is that when cannabis users go to the existing illicit market to buy their cannabis, they are exposed to a range of other potentially more harmful illicit drugs which are available for sale. Another cost is the involvement of organized crime in large scale cannabis production and distribution in Australia. Finally, the illicit drug market generates a sizeable cash economy. It is not too surprising that some police officers become involved in corrupt activities such as drug use, drug dealing, protection of drug dealers, theft of drugs and/or money, and the presentation of false evidence in court.⁽³⁴⁾

(30) Broome, *supra*, p. 117.

(31) *Ibid.*, p. 118.

(32) This figure includes costs associated with the use of alcohol and tobacco. See Timothy Rohl, "Evaluating the National Drug Strategy," in *Drugs and Democracy*, *supra*, p.134.

(33) *The Regulation of Cannabis Possession, Use and Supply*, *supra*, p. 40.

(34) *Ibid.*, pp. 40-43.

STATISTICS

A. Use⁽³⁵⁾

The Australian Institute of Health and Welfare conducts a National Drug Strategy Household Survey (NDSHS) every 2-3 years. This survey has been conducted since 1985 with the seventh survey taking place in 2001. The last survey for which results are available took place in 1998.⁽³⁶⁾ 10,300 Australians aged 14 years and older participated in the NDSHS. Respondents were asked about their knowledge of drugs, their attitudes towards drugs, their drug consumption histories, and related behaviours.

The results from the NDSHS in 1998 indicate that approximately 46% of the Australian population had used an illicit drug at some time, while 23% of Australians reported using any illicit drug in the twelve months preceding the survey. Marijuana was the most common illicit drug used, with 39.1% of those aged 14 years and over having used the drug at some time in their lives and 17.9% having used it recently. Of those who had used marijuana, almost half had used in the past 12 months. The prevalence of lifetime use of pain-killers/analgesics (for non-medical purposes) was 11.5%, followed by hallucinogens (9.9%) and amphetamines (8.8%). Only 2.2% of the Australian population had ever used heroin, with 0.8% reporting recent usage. The prevalence of cocaine use was slightly higher, with lifetime use in 4.3% of the respondents and recent use in 1.4%. For a summary of illicit drug use in Australia, as taken from the 1998 NDSHS, see Appendix C.

In 1991, 32.5% of the population aged 14 years and over had tried marijuana. By 1998, this figure had increased to 39.1%. Other drugs that recorded increased use include cocaine, ecstasy/designer drugs, LSD/synthetic hallucinogens and heroin. The only drug to record any sustainable decline was barbiturates, with the number of those who had tried the drug falling substantially after 1991 but then stabilizing. For a summary of the trends in lifetime use of illicit drugs in Australia, see Appendix D. For a summary of the trends in recent use of illicit drugs in Australia, see Appendix E.

(35) Megge Miller, and Glenn Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, May 2001. Available online at:
<http://www.aihw.gov.au/publications/phe/sdua00/index.html>.

(36) For detailed results of the 1998 NDSHS see: Pramod Adhikari and Amber Summerill, *1998 National Drug Strategy Household Survey: Detailed Findings*, Australian Institute of Health and Welfare (Drug Statistics Series No. 6), Canberra, October 2000. Available online at:
— <http://www.aihw.gov.au/publications/index.cfm/title/6243>

Statistics specific to Australian youth are gathered. The second national survey on the use of over-the-counter and illicit substances by secondary students was conducted in 1999. The survey collected data from 25,480 students aged 12-17 years from 434 secondary schools throughout Australia. According to the survey, substance use increased with age for all substances except for inhalants and steroids. Across all ages, the most common substances used were analgesics (for medical and non-medical purposes), with at least 95% of those surveyed reporting the use of this substance. Marijuana use was also relatively high, particularly among those aged 16-17 years, who were more likely than the general community to use marijuana (47% versus 39%). Overall, a similar number of male and female students had tried the substances surveyed. However, slightly more males (32%) than females (29%) had used marijuana, while slightly more females than males had used analgesics for any purpose (98% versus 96%). Apart from these two substances, lifetime and recent illicit substance use was similar for both males and females. For a summary of lifetime use of illicit drugs by secondary school students aged 12-17 years, see Appendix F. For a summary of illicit drug use in the past 12 months amongst secondary school students aged 12-17 years, see Appendix G.

B. Offences⁽³⁷⁾

Marijuana/cannabis is consistently the most common drug for which people are arrested in Australia, accounting for 70% of all illicit drug arrests in 1998-99. However, the number of persons arrested for either the possession or supply of marijuana has fallen sharply from almost 79,000 in 1995-96 to approximately 58,000 in 1998-99. A table providing figures for both arrests and notices (such as CENs) in Australia in 1997-98 is provided in Appendix H. Arrests for the possession or supply of heroin, amphetamines and cocaine, though, have increased steadily. The vast majority of illicit drug arrests (79%) are related to their consumption, rather than their provision or sale. However, the percentage of those arrested for consumption rather than provision differs depending on the drug involved. For a summary of the number and proportion of illicit drug arrests by type of drug in Australia, see Appendix I. For a summary of the number and proportion of total arrests involving illicit drugs, by consumer/provider status and drug type in Australia, see Appendix J.

(37) Miller and Draper, *supra*, pp. 53-58.

The most common drug-related offence for which people were imprisoned was dealing/trafficking drugs. Of the 1,663 people in prison in 1999 for drug-related offences, 78% were imprisoned for dealing/trafficking offences, with a further 11% imprisoned for possession/use of illicit drugs. The proportion of the total prison population imprisoned for drug-related offences has been steadily declining, from 11% in 1995 to 9% in 1999. People imprisoned for possession/use of drugs has remained stable over the past five years at 1%, while the proportion of those in prison for dealing/trafficking drugs and manufacturing/growing drugs is steadily decreasing. The number of cannabis offences per 100,000 population recorded throughout Australia fell by more than 1,000 between 1995-96 and 1998-99. For a summary of the numbers of prisoners where the most serious offence was drug-related, see Appendix K. For a summary of cannabis offences per 100,000 population, see Appendix L.

C. Attitudes to Drug Use and Drug Legalization

The regular use of illicit drugs was not considered to be acceptable amongst the vast majority of the respondents in the 1998 NDSHS. Males were more likely to accept regular illicit drug use than were females. Marijuana was the most widely accepted illicit drug, with 30.5% of males and 20.6% of females supporting regular use. Inhalants tended to be the least acceptable illicit substances, with only 1.7% of males and 0.3% of females finding regular inhalant use acceptable. For a summary of the acceptability of regular use of illicit and licit drugs amongst Australians, see Appendix M.

Support for the legalization of illicit drugs follows a similar pattern to that of the acceptability of regular illicit drug use. The legalization of marijuana was supported by 33.8% of males and 25.1% of females. By contrast, support for the legalization of heroin, amphetamines and cocaine was less popular. Only 7% of males and 5.1% of females supported the legalization of cocaine. Those who supported the legalization of heroin, amphetamines and cocaine were generally aged 20-29 and 40-49 years. For a summary of the support amongst Australians for the legalization of selected drugs by age group, see Appendix N.

D. Drugs and Health

In 1998, 1,023 deaths were related to the use of illicit drugs. In 1997-98 slightly over 200,000 hospital episodes were attributable to drug use. Of these, 7% were due to illicit

drug use. For a summary of the numbers of deaths attributable to drug use, by drug and cause of death, see Appendix O. For a summary of the number of hospital episodes attributable to drug use, see Appendix P.

Drug overdose deaths in Australia have increased significantly during the last thirty years. Opioid overdose deaths increased from six in 1964 (1.3 per million population aged 15-44 years) to six hundred in 1997 (71.5 per million population aged 15-44 years). This represents a 55-fold increase in the rate of opioid overdose deaths over this 33-year period. The proportion of all deaths attributed to opioid overdose increased from 0.08% in 1964 to 7.26% in 1997. Between 1991 and 1997, the number of overdose deaths in Australia doubled.⁽³⁸⁾ Figures for 1998 indicate that 87 deaths per million population could be attributed to an opioid overdose.⁽³⁹⁾ For a chart of opioid overdose deaths in Australia from 1988 to 1998, see Appendix Q.

Establishing and maintaining control of HIV infection among injecting drug users in Australia has been a major public health achievement. HIV prevalence was 0.2% among inmates received into Australian prisons between 1991 and 1997. This is about three times higher than HIV prevalence in the general community. As at least 50% of inmates in Australian prisons are serving sentences for drug-related offences, the sustained low prevalence of HIV among inmates is a very strong indicator that HIV prevalence (and incidence) remains very low among injecting drug-users in the community.⁽⁴⁰⁾

There is also growing evidence to suggest there is a substantial reduction in new infections of Hepatitis C among injecting drug users. The prevalence of Hepatitis C among drug users with a history of injecting for less than three years appears to be declining, suggesting that the number of new infections in this population is falling. Following the recognition of the magnitude of the HIV threat to Australia in the early 1980s, law enforcement officials have generally been very discriminating when policing in the vicinity of needle exchange and methadone programs.⁽⁴¹⁾

(38) Wodak, *supra*, pp. 188-189.

(39) See Miller and Draper, *supra*, p. 43.

(40) Wodak, *supra*, p. 192.

(41) *Ibid.*, p. 192.

APPENDIX A

The Cannabis Laws in South Australia

Source: Robert Ali et al., *The Social Impacts of the Cannabis Expiation Notice Scheme in South Australia*, Department of Health and Aged Care, Canberra, May 1998, pp. 55-60.

Controlled Substances Act, 1984

The Controlled Substances Act, 1984 proscribes the production, sale, supply, use, and possession of certain drugs of dependence and prohibited substances, including cannabis, and it proscribes the possession of drug paraphernalia. The introduction of this Act also brought in new penalties for large-scale trafficking. It introduced a greater degree of separation between offences involving cannabis and those involving other illicit drugs. In treating cannabis differently from other illicit drugs, the 1984 Act acknowledged the different level of harm that seemed to be associated with cannabis use compared with other illicit drug use. Under the 1984 Act, the maximum penalty for the possession, use, or cultivation for personal use of a small quantity of cannabis was \$500, while for any other drug of dependence, the maximum penalty was \$2,000 and/or two years imprisonment. The 1984 Act also provided for significant reforms in the way offences relating to the possession and use of all illicit drugs (other than cannabis) were dealt with, through the introduction of a drug-assessment panel as an alternative to criminal prosecution (Manderson, 1993).

Controlled Substances Act Amendment Act, 1986 – The Cannabis Expiation Notice Scheme

Further reform to the South Australian drug laws came with the introduction of the *Controlled Substances Act Amendment Act, 1986*. This amendment proposed a number of changes to the *Controlled Substances Act, 1984*, including the insertion of *Section 45a (Expiation of Simple Cannabis Offences)*. This represented the adoption of a new scheme for the expiation of simple cannabis offences, such as possessing or cultivating small amounts of cannabis for personal use, or possessing implements for using cannabis.

The Cannabis Expiation Notice (CEN) scheme came into effect in South Australia on 30 April 1987. Under this scheme, adults coming to the attention of police for "simple cannabis offences" could be issued with an expiation notice. Offenders were able to avoid prosecution by paying the specified fee or fees within 60 days of the issue of the notice. Failure to pay the specified fees within 60 days could lead to prosecution in court, and the possibility of a conviction being recorded.

Underlying the CEN scheme was the rationale that a clear distinction should be made between private users of cannabis and those who are involved in dealing, producing or trafficking in cannabis. This distinction was emphasised at the introduction of the CEN scheme by the simultaneous introduction of more severe

penalties for offences relating to the manufacture, production, sale or supply of all drugs of dependence and prohibited substances, including offences relating to larger quantities of cannabis.

Section 45a(5) of the *Controlled Substances Act, 1984* states that “the payment of an expiation fee shall not be regarded as an admission of guilt”. For most of the time that the CEN scheme has been operating (ie. until 1997), if an alleged offender wished to contest a matter in court for which an expiation notice had been issued, they had no option other than not to pay the expiation fee, and thereby receive a summons for failure to expiate (this has changed since early 1997—see next section). In doing so, they faced the possibility, if found guilty of the offence, of receiving a criminal conviction. It has been argued that this may have been a barrier to people wishing to challenge a cannabis expiation matter (Sarre, Sutton & Pulsford, 1989). Further, it has been suggested that the CEN system could be improved by removing the possibility of criminal conviction for those people who choose to contest a matter for which they have been issued a CEN.

There has been some debate as to whether the introduction of the CEN scheme in South Australia does in fact represent the decriminalisation of minor cannabis offences. Manderson (1993) believes that, with the CEN scheme, South Australia has indeed decriminalised small-scale cannabis use. It should be emphasised, however, that a criminal conviction for expiable cannabis offences remains a possibility if a person issued with an expiation notice fails to pay the expiation fine within the specified time, and the matter is subsequently dealt with in court. Sarre, Sutton and Pulsford (1989) prefer to view the South Australian approach as one that de-emphasises the criminal status of small-scale cannabis use, but stops short of decriminalising it. The National Task Force on Cannabis, in its paper on legal options for cannabis (McDonald, Moore, Norberry, Wardlaw & Ballenden, 1994) chose to avoid the problems and ambiguities associated with the word “decriminalisation” by referring to the South Australian model for dealing with small-scale cannabis offences (as also found in the Australian Capital Territory, the Northern Territory and various US states), as “prohibition with civil penalties”.

Expiation of Offences Act

Issues relating to the payment and administration of all expiable offences (including traffic, minor cannabis, and numerous other types of offences) were initially covered by the *Expiation of Offences Act, 1987*. Under this Act, offenders issued with expiation notices for minor cannabis offences had a period of 60 days in which to pay the fee or fees. The Act allowed for in-person or postal payments to be made, but full payment of expiation fees was required. The expiation notice form did not suggest alternative payment options (eg. partial payments over time).

Failure to pay expiation fees within the 60 day period resulted in a summons being issued to the offender. Thus, at this point the offence effectively changed from an expiable one, for which no criminal conviction would be recorded if the offence was cleared, to a non-expiable offence which carried a likelihood of criminal conviction. On receipt of the summons, an offender could choose to plead guilty in writing, or to appear in court in person. Court proceedings involving CEN fee defaulters would be dealt with by Justices of the Peace. In most cases, fines would be imposed which were similar in magnitude to the

expiation fees, with the addition of court costs (Christie & Ali, 1995). These outcomes would be irrespective of whether the offender pleaded guilty in writing or appeared in court in person.

In 1996, the *Expiation of Offences Act, 1996* was passed, and brought in changes to the way in which all expiable offences are dealt with, including minor cannabis offences. The types of minor cannabis offences and the expiable amounts of cannabis involved remained unchanged. The new expiation notice forms outline a range of options for offenders in how they can deal with the offence. The new Expiation Act provides for alternative payment options for offenders, including paying expiation fees in instalments, and clearing fees through community service. With these options, an application to the Registrar of the Magistrates Court must be made, pleading financial hardship. Instalment payments can only be applied for if \$50 or more is owed in expiation fees, and community service is only available if \$150 or more is owed, and the offender cannot pay by instalments.

The new Expiation of Offences Act also dealt with the problem of alleged offenders having to let payment of expiation fees lapse in order to secure a court appearance to contest a matter for which they had been issued a CEN. Under the new Act, the expiation form includes an option whereby the offender can choose to be prosecuted, and thereby dispute the allegation that they committed an offence. In doing so, they still run the risk of being found guilty and receiving a criminal conviction. In this regard, the new Act has dealt with one of the two issues raised by Sarre, Sutton and Pulsford (1989) as barriers to disputing expiation offences: while people issued with CENs can now actively choose prosecution as an option, in doing so, the offence converts from one which can be expiated to one which still carries the possibility of conviction.

Another change under the new Expiation of Offences Act is that if the total amount of expiation fees payable is \$50 or less, the offender now has 30 days to pay (rather than 60, as under the previous Expiation of Offences Act). If the amount of fees is greater than \$50, the offender has 60 days to pay. Furthermore, the new Expiation of Offences Act introduced a different approach to dealing with offenders who do not pay the total of expiation fees within the prescribed time period, and do not choose an alternative payment option. Rather than be issued with a summons to appear in court, such offenders are now sent a reminder notice, which incurs an additional reminder fee. Continued failure to pay the outstanding expiation fees then results in an automatic conviction being recorded, without the issuing of a summons and subsequent court appearance. In such cases, the offender is convicted with the unpaid fees becoming the fine, and court costs being added.

The rationale behind the introduction of the new *Expiation of Offences Act, 1996* was partly based on considerations of social justice, such that people who are in financial difficulties might not be disadvantaged by being more likely to default on expiation fee payments, and thereby obtain criminal convictions. It may have been hoped that the new system would improve the rate of expiation and improve revenue raising, particularly for cannabis offences, where the rate of expiation had been at under 50% for a number of years. In addition, the different procedures for dealing with fine defaulters, it could be argued, would be likely to

reduce workloads for courts administration staff and reduce court case-loads, thereby reducing costs.

The issuing of the new expiation notice forms by SA Police commenced in February 1997. At the time of preparation of the present report, reliable data on offences under the new system was not available. It is therefore too early to comment on how the introduction of the *Expiation of Offences Act, 1996* may have affected rates of expiation and court costs and workloads.

Expiable Offences under the CEN Scheme

Regulations under the *Controlled Substances Act, 1984* were made with the introduction of the Cannabis Expiation Notice scheme in 1987, which specified the types of expiable minor cannabis offences and their associated expiation fees. The expiable offences and fees are as follows (Drug & Alcohol Services Council, 1997):

- Possession of cannabis:
 - less than 25g\$50
 - 25g or more but less than 100g\$150
- Possession of cannabis resin:
 - less than 5g\$50
 - 5g or more but less than 20g\$150
- Smoking or consumption of cannabis or cannabis resin in a private place\$50
- Possession of equipment for smoking or consumption of cannabis or cannabis resin, whether in public or private:
 - if in connection with one of the above offences\$10
 - otherwise\$50
- Cultivation of cannabis plants:
 - 10 plants or fewer (provided the cannabis is for the grower's own use and not for sale or supply)\$150

If the quantity of cannabis being cultivated – for example, 10 very large plants – leads police to suspect that the grower is supplying others, a “commercial cultivation” charge may be laid, requiring prosecution in court. If the court is satisfied that the cannabis was grown solely for the grower’s own use, a maximum penalty of \$500 applies.

Expiation notices for cannabis offences can only be issued to persons aged 18 years or over.

It should be noted that when the CEN scheme first came into operation, expiable cannabis cultivation offences were defined as those involving small numbers of plants for non-commercial purposes. The terms “commercial purposes” and “non-commercial purposes” were not defined in the *Controlled Substances Act* (Sarre, Sutton & Pulsford, 1989). However, a prosecution could proceed against any person alleged to be selling or offering for sale any amount of cannabis to another

person, as such offences were clearly defined as non-expiable. Thus, police were able to effectively deal with small-scale cultivation offences through the CEN scheme, despite some ambiguity existing within the Controlled Substances Act regarding expiable quantities of plants under cultivation. In order to remove this ambiguity, the *Controlled Substances Act Amendment Act (No. 2), 1990* was assented to, and came into operation in September 1991. Among other things, this amendment clearly defined an expiable "simple cannabis offence" with regard to cultivation of cannabis plants as one involving no more than 10 plants. (In addition, for persons found guilty in court of cultivation of cannabis plants, but solely for their own use, the amendment defined 10 plants as the threshold number allowed to incur a maximum court-imposed fine of \$500; amounts above this number of plants could incur substantially greater penalties).

Non-expiable Cannabis Offences

Offences involving larger amounts of cannabis are not expiable under the CEN scheme, and are dealt with through the courts. Where large trafficable quantities of cannabis are concerned, the penalties set down are substantial.

It should be noted that certain types of offences, potentially involving only small amounts of cannabis, are non-expiable (e.g. offences involving possession or use of cannabis oil, and offences involving consumption of cannabis in a public place, including a motor vehicle). These have been deemed more serious, and requiring a court appearance.

- A person knowingly possessing 100 grams or more of cannabis or 20 grams or more of cannabis resin, or found to be cultivating more than 10 cannabis plants, is deemed to do so for the purpose of sale or supply to another, in the absence of proof to the contrary. If a court is satisfied that an amount of cannabis greater than 100 grams, or of cannabis resin greater than 20 grams is for personal use only, a maximum fine of \$500 applies, with the possibility of conviction.
- All offences relating to cannabis oil ("hash oil") are non-expiable. The charge of personal possession of cannabis oil may incur a penalty not exceeding \$2,000 or 2 years imprisonment, or both.
- Smoking or consumption of cannabis in a public place (including a motor vehicle) is a non-expiable offence, and carries a maximum fine of \$500.
- Cannabis possession and use by persons under the age of 18 years are dealt with under the *Young Offenders Act, 1993*, via a system of formal and informal cautions, family conferences or referrals to the Youth Court.
- Driving under the influence of cannabis is an offence under the *Road Traffic Act, 1961*, and penalties are the same as those for driving under the influence of alcohol.
- Offences relating to commercial cultivation, sale and supply are not expiable, and penalties are severe, having been increased both with the introduction of the CEN scheme, and in subsequent amendments to the *Controlled Substances Act, 1984*. The maximum penalties for trafficking in any amount of cannabis are as follows:

- cannabis: less than 10kg
- cannabis resin: less than 2.5kg
- cultivation of cannabis: < 100 plants
\$50,000 and/or 10 years imprisonment
- cannabis: 10kg or more
- cannabis resin: 2.5kg or more
- cultivation of cannabis: 100 plants or more
\$500,000 and 25 years imprisonment
- More severe penalties apply to the sale or supply of cannabis to children under 18 years of age, or to the possession of cannabis for the purpose of sale or supply to another person within a school zone (i.e. the grounds of a school, or within 500 metres of the school boundary). The maximum penalties which apply are:
 - cannabis: less than 10kg
 - cannabis resin: less than 2.5kg
\$100,000 and/or 15 years imprisonment
 - cannabis: 10kg or more
 - cannabis resin: 2.5kg or more
\$1,000,000 and 30 years imprisonment

APPENDIX B

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

Source: M. Rickard, *Reforming the Old and Refining the New: A Critical Overview of Australian Approaches to Cannabis*, Department of the Parliamentary Library, Information and Research Services, Research Paper No. 6 2001-02, 2001, pp. 42-44.

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

Victoria. Under Victorian legislation¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹ 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,¹⁸² 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)¹⁸³, and 90 per cent of those found guilty had a conviction recorded against them.¹⁸⁴

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.¹⁸⁵ 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.¹⁸⁶ 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).¹⁸⁷ 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.¹⁸⁸ 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).¹⁸⁹ Adults¹⁹⁰ 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).¹⁹¹ 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.¹⁹²

ACT. A similar infringement notice scheme has applied in the ACT since 1992 (the Simple Cannabis Offence Notice Scheme, or SCONS).¹⁹³ 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).¹⁹⁴ 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 C

Summary of Illicit Drug Use in Australia, 1998

Substance/behaviour	Drugs ever used	Drugs recently used ^(a)	Mean age of initiation
	(per cent)		(years)
Marijuana	39.1	17.9	18.8
Pain-killers/analgesics ^(b)	11.5	5.2	19.6
Tranquillisers/sleeping pills ^(b)	6.2	3.0	23.3
Steroids ^(b)	0.8	0.2	21.4
Barbiturates ^(b)	1.6	0.3	19.8
Inhalants	3.9	0.9	17.5
Heroin	2.2	0.8	21.7
Methadone ^(c)	0.5	0.2	22.1
Amphetamines ^(b)	8.8	3.7	20.0
Cocaine	4.3	1.4	22.2
Hallucinogens	9.9	3.0	18.4
Ecstasy/designer drugs	4.8	2.4	22.5
Injected illegal drugs	2.1	0.8	20.7
Any illicit drug	46.4	22.8	18.8
None of the above	53.6	77.2	

(a) Used in the last 12 months.

(b) For non-medical purposes.

(c) Non-maintenance.

Source: National Drug Strategy Household Survey 1998.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 18.

APPENDIX D

Summary of Lifetime Use of Illicit Drugs: **Proportion of the Population Aged 14 Years and Over, By Drug Type and Year,** **Australia, 1991 to 1998**

Substance/behaviour	1991	1993	1995	1998
	(per cent)			
Marijuana/cannabis	32.5	34.7	31.0	39.1
Steroids ^(a)	n.a.	0.3	0.6	0.8
Barbiturates ^(a)	5.2	1.4	1.2	1.6
Inhalants	3.4	3.7	2.4	3.9
Heroin	1.7	1.7	1.4	2.2
Amphetamines ^(a)	7.6	5.4	5.7	8.8
Cocaine	3.2	2.5	3.4	4.3
LSD/synthetic hallucinogens	7.8	7.3	7.0	9.9
Ecstasy/designer drugs	2.2	3.1	2.4	4.8
Injecting drugs	1.7	1.9	1.3	2.1

(a) For non-medical purposes.

Sources: National Campaign Against Drug Abuse Household Survey 1991, 1993; National Drug Strategy Household Survey 1995, 1998.

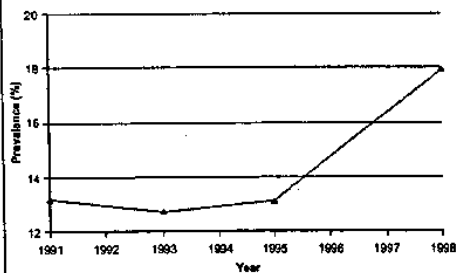
Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 20.

APPENDIX E

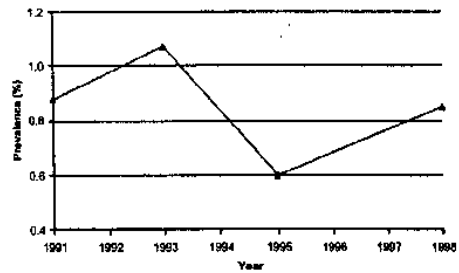
Illicit Drug Use in the Preceding 12 Months: **Proportion of the Population Aged 14 Years and Over, Australia, 1991 to 1998**

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 21.

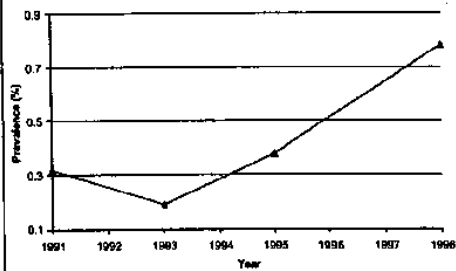
Marijuana/cannabis



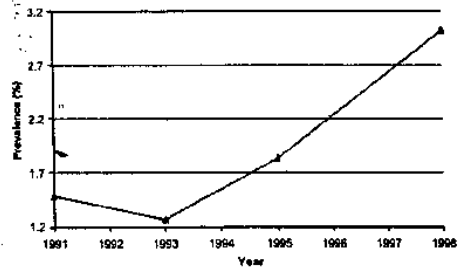
Inhalants



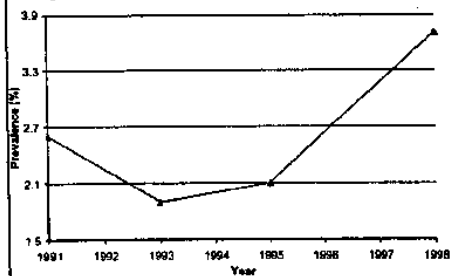
Heroin



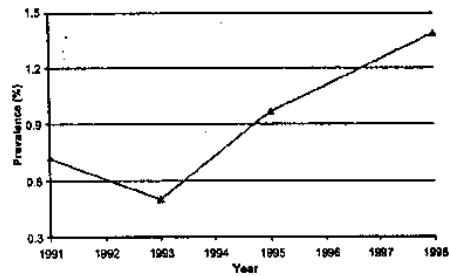
LSD/synthetic hallucinogens



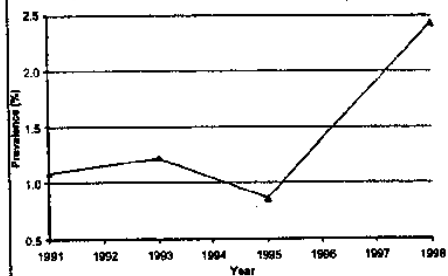
Amphetamines



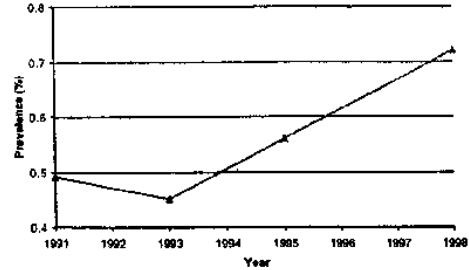
Cocaine



Ecstasy/designer drugs



Injecting drugs



Sources: National Campaign Against Drug Abuse Household Survey 1991, 1993; National Drug Strategy Household Survey 1995, 1998.

APPENDIX F

Summary of Lifetime Use of Illicit Drugs, Secondary School Students Aged 12-17 Years, Australia, 1999

Substance	Age						
	12	13	14	15	16	17	12-17
	(per cent)						
	Males						
Marijuana	11	20	30	42	47	53	32
Pain-killers/analgesics ^(a)	94	94	95	97	97	96	96
Tranquillisers ^(b)	16	18	17	21	20	22	19
Steroids ^(b)	4	4	4	3	4	3	4
Inhalants	32	30	28	23	19	17	26
Opiates ^(b)	3	3	5	4	5	7	4
Amphetamines ^(b)	4	6	7	8	12	13	8
Cocaine	3	4	4	4	5	6	4
Hallucinogens	3	4	7	8	12	15	7
Ecstasy/designer drugs	4	3	4	4	7	7	5
	Females						
Marijuana	7	17	28	38	44	50	29
Pain-killers/analgesics ^(a)	96	96	98	99	99	99	98
Tranquillisers ^(b)	11	14	17	20	25	22	18
Steroids ^(b)	3	2	2	1	1	1	2
Inhalants	37	32	30	26	17	14	26
Opiates ^(b)	2	4	4	4	4	4	4
Amphetamines ^(b)	2	4	7	8	9	11	7
Cocaine	2	3	4	4	3	2	3
Hallucinogens	2	3	6	8	9	9	6
Ecstasy/designer drugs	1	3	4	4	5	5	3

(a) For medical and non-medical purposes.

(b) For non-medical purposes.

Source: White, unpublished.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 47.

APPENDIX G

Summary of Illicit Drug Use in the Past 12 Months, Secondary School Students Aged 12-17 Years, Australia, 1999

Substance	Age						
	12	13	14	15	16	17	12-17
	(per cent)						
Males							
Marijuana	9	16	26	36	40	43	27
Pain-killers/analgesics ^(a)	90	90	92	94	93	91	92
Tranquillisers ^(b)	9	10	10	12	11	12	10
Steroids ^(b)	3	3	3	2	3	2	3
Inhalants	24	23	22	16	13	9	19
Opiates ^(b)	2	2	3	3	3	5	3
Amphetamines ^(b)	3	4	6	6	9	10	6
Cocaine	2	3	3	3	3	4	3
Hallucinogens	2	2	5	6	9	11	5
Ecstasy/designer drugs	2	3	3	4	5	6	4
Females							
Marijuana	6	13	23	30	35	37	23
Pain-killers/analgesics ^(a)	93	94	96	97	98	97	96
Tranquillisers ^(b)	6	9	10	12	18	14	11
Steroids ^(b)	2	1	1	1	1	1	1
Inhalants	27	26	24	18	11	7	20
Opiates ^(b)	1	3	3	3	2	2	2
Amphetamines ^(b)	1	3	6	6	7	9	5
Cocaine	1	3	3	3	2	2	2
Hallucinogens	1	3	5	6	7	6	4
Ecstasy/designer drugs	1	2	3	3	4	4	3

(a) For medical and non-medical purposes.

(b) For non-medical purposes.

Source: White, unpublished.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 48.

APPENDIX H

Cannabis Consumer and Provider Arrest Episodes by State and Territory 1997-98

Source: Curtin University of Technology, National Drug Research Institute, *The Regulation of Cannabis Possession, Use and Supply*, A discussion document prepared for The Drugs and Crime Prevention Committee of The Parliament of Victoria, Perth, 2000, p. 113.

Cannabis consumer and provider arrest episodes⁽¹⁾ by state and territory 1997-98

State/ Territory	Type of Offence	CONSUMERS ⁽²⁾		PROVIDERS ⁽²⁾		TOTAL
		n	%	n	%	n
VIC	Arrests	5857	64.5	3177	35.5	9034
ACT	Arrests	78	56.1	61	43.9	139
	SCONs ⁽³⁾	151	64.2	84	35.8	235
NSW	Arrests	12125	78.4	3335	21.6	15460
NT	Arrests	353	84.5	65	15.5	418
	DINs ⁽³⁾	200	92.2	17	7.8	217
QLD	Arrests	10350	79.5	2671	20.5	13021
SA	Arrests	1799	66.7	901	33.3	2700
	CENs ⁽³⁾	7969	74.1	2783	25.9	10752
TAS	Arrests	907	75.8	289	24.2	1196
WA	Arrests	7149	62.2	4338	37.8	11487
TOTAL	Arrests + notices	46938	72.6	17721	27.4	64659

(1) Where a person is charged with more than one offence at any one episode they are counted once only. Where charged with both provider and consumer offences the only the former is counted.

(2) As discussed in the text above the counting rule applied here probably underestimates the proportion of consumers to suppliers as all cultivation charges are counted as provider offences.

(3) These refer to the infringement notice schemes in each jurisdiction.

(Adapted from Australian Bureau of Criminal Intelligence, 1999)

APPENDIX I

Number and Proportion of Illicit Drug Arrests, By Type of Drug, Australia, 1995-1996 to 1998-99

Substance	Period			
	1995-96	1996-97	1997-98	1998-99
	(number)			
Cannabis	78,948	69,136	64,659	58,131
Heroin	7,105	7,140	10,366	14,341
Amphetamines & MDMA ^(a)	4,214	3,907	4,766	6,584
Hallucinogens	398	609	524	571
Cocaine	330	460	460	618
Steroids	70	71	71	86
Other	7,729	3,723	3,276	3,201
Total	98,794	85,046	84,122	83,532
	(per cent)			
Cannabis	80	81	77	70
Heroin	7	8	12	17
Amphetamines & MDMA ^(a)	4	5	6	8
Hallucinogens	—	1	1	1
Cocaine	—	1	1	—
Steroids	—	—	—	—
Other	8	4	4	4
Total	99	100	100	100

(a) MDMA is 3,4 methylenedioxymethylamphetamine.

Note: These figures cannot be taken directly as a measure of the number of illegal drug users or of the extent of illegal drug use for a variety of reasons. For instance, the number of arrests may depend upon the level of effectiveness of law enforcement activities and not an increase/decrease in the actual number of users.

Sources: Australian Bureau of Criminal Intelligence 1997, 2000.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 54.

APPENDIX J

Number and Proportion of Total Arrests Involving Illicit Drugs, By Consumer/Provider Status and Drug Type, Australia, 1995-96 to 1998-99

Substance	Consumer/Provider	Period			
		1995-96	1996-97	1997-98	1998-99
		(number)			
Cannabis	Consumer	58,359	49,305	46,938	46,925
	Provider	20,569	19,831	17,721	11,206
Heroin	Consumer	5,135	4,986	7,242	10,607
	Provider	1,970	2,154	3,124	3,734
Amphetamines	Consumer	3,118	2,702	3,349	4,976
	Provider	1,096	1,205	1,417	1,608
Hallucinogens	Consumer	276	407	378	462
	Provider	122	202	146	109
Cocaine	Consumer	198	198	282	358
	Provider	132	262	178	260
Steroids	Consumer	61	64	61	83
	Provider	9	7	10	3
Other	Consumer	6,653	3,071	2,524	2,419
	Provider	1,076	652	752	782
Total	Consumer	73,800	60,733	60,774	65,830
	Provider	24,994	24,313	23,348	17,702

Note: Providers are defined as those arrested for dealing/trafficking type of offences, while consumers are defined as those arrested for use/possession type of offences. Caution should be exercised when making comparisons between years due to variations in consumer/provider counting methodologies used.

Sources: Australian Bureau of Criminal Intelligence 1997, 2000.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 54.

APPENDIX K

Prisoners Where the Most Serious Offence was Drug-Related, by State and Territory, Australia, 1995 to 1999

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 55.

Year	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust ^(a)	Aust ^(b)
Possession/use of drugs										
	(number)								(per cent)	
1995	60	15	41	15	12	—	6	6	149	1.0
1996	56	13	77	—	11	—	2	3	160	1.0
1997	67	12	74	1	8	—	10	8	170	1.0
1998	46	27	86	1	3	1	9	7	173	1.0
1999	35	19	115	6	7	2	6	3	187	1.0
Deal/traffic drugs										
	(number)								(per cent)	
1995	901	187	93	115	51	3	5	1	1,351	8.8
1996	804	185	112	116	49	6	6	5	1,277	8.0
1997	753	176	139	116	58	6	5	8	1,256	7.6
1998	603	254	152	121	54	5	8	4	1,194	7.0
1999	618	262	170	166	65	2	12	12	1,297	7.1
Manufacture/grow drugs										
	(number)								(per cent)	
1995	139	2	25	7	14	—	1	7	194	1.3
1996	121	4	34	9	31	—	—	2	201	1.3
1997	114	10	35	13	24	—	1	2	198	1.2
1998	110	12	34	10	31	—	2	2	201	1.2
1999	114	11	25	10	18	1	—	—	179	1.0
Total										
	(number)								(per cent)	
1995	1,100	204	159	137	77	3	12	14	1,594	11
1996	981	202	223	125	91	6	8	10	1,638	10
1997	934	198	248	130	90	6	16	15	1,624	10
1998	759	293	272	132	88	6	19	13	1,568	9
1999	767	292	310	182	90	5	18	15	1,563	9

(a) The majority of ACT prisoners are held in NSW jails upon sentencing and are not separately counted in the Australian total.

(b) As a proportion of total prisoners.

Sources: Australian Bureau of Statistics 1997a, 1997b, 1997c, 1998, 1999.

APPENDIX L

Cannabis Offences per 100,000 Population, by State and Territory, Australia, 1995-96 to 1998-99

State/Territory	1995-96	1996-97	1997-98	1998-99
NSW	235	227	245	247
Vic	417	199	195	198
Qld	280	440	380	384
WA	780	713	634	329
SA	1,252	1,089	907	803
Tas	531	228	254	156
ACT	143	157	121	77
NT	205	370	336	362
Total	3,843	3,422	3,072	2,556

Source: Australian Bureau of Criminal Intelligence 2000.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 57.

APPENDIX M

Acceptability of Regular Use of Illicit and Licit Drugs: Proportion of the Population Aged 14 Years and Over, by Sex, Australia, 1998

Drug use activity	Males	Females (per cent)	Persons
Tobacco/cigarettes	42.1	38.2	40.2
Alcohol	67.8	54.8	61.2
Marijuana/cannabis	30.5	20.6	25.5
Pain-killers/analgesics ^(a)	10.6	8.6	9.6
Tranquillisers/sleeping pills ^(a)	7.3	3.8	5.5
Steroids ^(a)	3.9	0.9	2.4
Barbiturates ^(a)	2.7	0.7	1.7
Inhalants	1.7	0.3	1.0
Heroin	2.9	0.8	1.8
Methadone ^(b)	2.8	0.8	1.8
Amphetamines (speed/uppers)	4.6	1.6	3.1
Cocaine/crack	3.8	1.1	2.4
Naturally occurring hallucinogens	6.4	2.2	4.3
LSD/synthetic hallucinogens	4.5	1.4	2.9
Ecstasy/designer drugs	5.1	1.5	3.3

(a) For non-medical purposes.

(b) Non-maintenance.

Source: National Drug Strategy Household Survey 1998.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 22.

APPENDIX N

Support for the Legalization of Selected Drugs: Proportion of the Population Aged 14 Years and Over, by Age Group and Sex, Australia, 1998

Substance	Age groups						All ages
	14-19	20-29	30-39	40-49	50-59	60+	
	(per cent)						
	Males						
Marijuana/cannabis	38.2	49.6	41.4	37.3	21.6	12.9	33.8
Heroin	4.9	10.6	11.0	10.4	4.6	6.4	8.4
Amphetamines/speed	6.1	10.7	7.7	8.1	3.6	3.5	6.8
Cocaine	4.3	10.0	9.0	7.9	4.4	4.4	7.0
	Females						
Marijuana/cannabis	35.6	37.7	31.2	24.2	16.3	10.2	25.1
Heroin	4.6	6.1	8.4	6.1	6.5	5.2	6.2
Amphetamines/speed	4.2	5.3	6.6	3.9	3.7	4.3	4.8
Cocaine	4.4	5.3	6.7	4.6	4.2	4.8	5.1
	Persons						
Marijuana/cannabis	36.9	43.7	36.3	30.7	19.0	11.4	29.4
Heroin	4.8	8.4	9.7	8.2	5.5	5.7	7.3
Amphetamines/speed	5.2	8.0	7.1	6.0	3.7	4.0	5.8
Cocaine	4.4	7.7	7.8	6.3	4.3	4.6	6.0

Source: National Drug Strategy Household Survey 1998.

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 23.

APPENDIX O

Deaths Attributable to Drug Use, by Drug and Cause of Death, 1998

Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 38.

Substance and cause of death	Age group				Total
	0-14	15-34	35-64	65+	
Tobacco					
Direct smoking					
Cancer	—	—	1,829	5,713	7,542
Ischaemic heart disease	—	34	1,339	2,661	4,034
Chronic obstructive pulmonary disease	—	—	359	3,480	3,839
Other	76	46	505	2,849	3,476
Environmental smoking	23	—	10	95	128
Total tobacco	99	80	4,042	14,798	19,019
Alcohol					
Cancer	—	11	422	724	1,157
Alcoholism and alcoholic liver cirrhosis	—	44	583	300	927
Cardiovascular disease	—	—	—	—	—
Road injuries	15	273	130	22	440
Other	6	492	581	-1,908	-829
Total alcohol	21	814	1,230	-4,436	-2,371
Illicits					
Drug dependence					
Cannabis	—	—	—	—	0
Opiates	—	382	183	2	567
Cocaine	—	4	—	—	4
Amphetamine	—	2	1	—	3
Hallucinogens	—	1	—	—	1
Poisoning	—	—	—	—	0
Opiates	—	138	77	4	219
Psychostimulants	—	2	1	—	3
Hallucinogens	—	—	—	—	0
Suicide	—	103	32	—	135
Ante-partum haemorrhage	4	—	—	—	4
Low birthweight	2	—	—	—	2
Hepatitis B	—	1	9	6	16
Hepatitis non-A, non-B	—	2	16	16	34
AIDS	—	2	5	—	7
Infective endocarditis	—	1	—	—	1
Drug psychoses	—	—	—	—	0
Maternal drug dependence	—	—	—	—	0
Newborn toxicity	1	—	—	—	1
Road traffic accidents	2	12	8	4	26
Total illicit drugs	9	650	332	32	1,023
Total drugs	129	1,544	5,604	10,394	17,671

Source: Ridolfo & Stevenson 2001.

APPENDIX P

Hospital Episodes Attributable to Drug Use, by Drug Involved and Principal Diagnosis, Australia, 1997-98

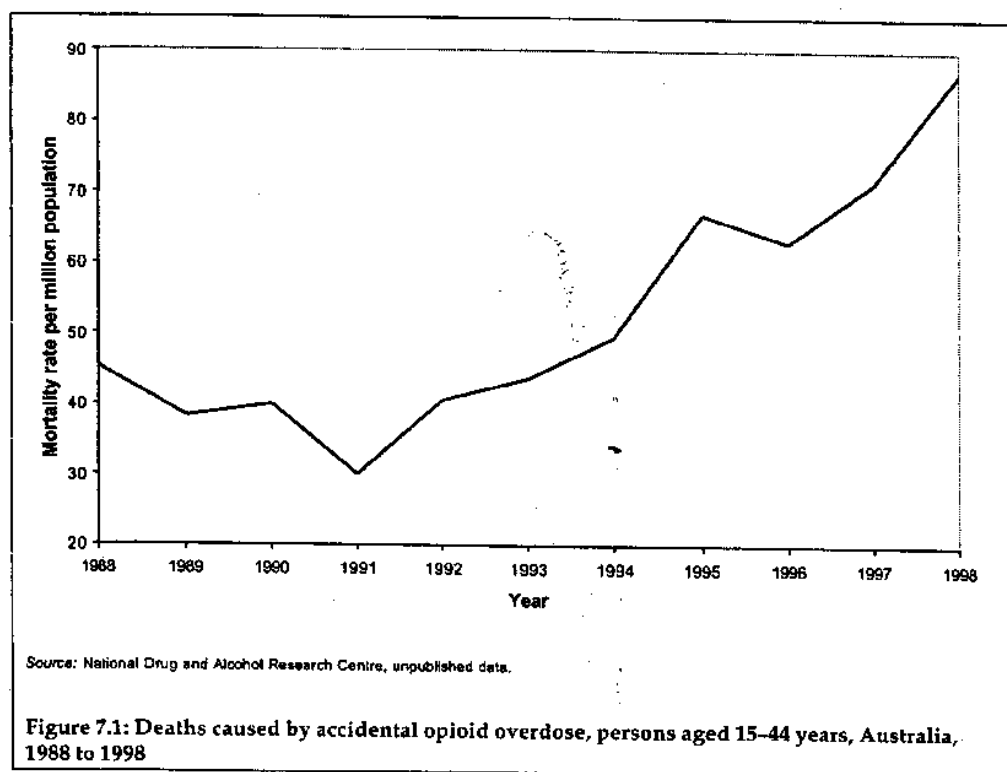
Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 39.

Substance and principal diagnosis	Age group				Total
	0-14	15-34	35-64	65+	
Tobacco					
Direct smoking					
Cancer	—	—	8,926	18,046	26,972
Ischaemic heart disease	—	398	25,762	10,960	37,120
Chronic obstructive pulmonary disease	—	—	5,899	22,370	28,269
Other	142	6,787	18,630	22,638	48,197
Environmental smoking	1,428	2	172	365	1,967
Total tobacco	1,570	7,187	59,389	74,379	142,525
Alcohol					
Cancer	—	113	3,078	2,849	6,040
Alcoholism and alcoholic liver cirrhosis	278	5,864	16,726	2,890	25,758
Cardiovascular disease	—	208	-7,622	-10,541	-17,955
Road injuries	410	3,711	1,442	283	5,846
Other	346	15,311	9,970	-2,284	-23,343
Total alcohol	1,034	25,207	23,594	-6,803	-43,032
Illicits					
Drug dependence					
Cannabis	—	574	71	7	652
Opiates	—	3,855	1,290	15	5,160
Cocaine	—	38	20	1	59
Amphetamine	—	362	47	—	409
Hallucinogens	—	50	6	—	56
Poisoning					
Opiates	—	1,219	375	15	1,609
Psychostimulants	—	327	56	—	383
Hallucinogens	—	146	31	1	178
Other psychotropic drug	—	122	116	29	267
Anabolic steroid	—	1	1	—	2
Ante-partum haemorrhage	—	549	78	—	627
Low birthweight	—	54	5	—	59
Hepatitis B	—	—	—	—	0
Hepatitis non-A, non-B	—	—	—	—	0
AIDS	—	3	1	1	5
Infective endocarditis	—	26	12	—	38
Drug psychoses	—	2,848	774	369	3,991
Maternal drug dependence	—	471	40	—	511
Newborn toxicity	—	—	—	—	0
Road traffic accidents	44	231	134	56	465
Total illicit drugs	44	10,876	3,057	494	14,471
Total drugs	2,648	43,270	66,040	68,070	200,028

Source: Ridolfo & Stevenson 2001.

APPENDIX Q

Deaths caused by accidental opioid overdose, persons aged 15-44 years, Australia, 1988 to 1998



Source: M. Miller and G. Draper, *Statistics on Drug Use in Australia 2000*, Australian Institute of Health and Welfare, Canberra, 2001, p. 43.