

Laws applying to minor cannabis offences in Australia and
their evaluation

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Published as: Lenton, S., McDonald, D., Ali, R., Moore, T. (1999) Laws applying to minor cannabis offences in Australia and their evaluation. *International Journal of Drug Policy*. 10(4), 299-303.

Introduction

Cannabis is the most widely used illicit drug in Australia. About 31% of Australians aged 14 years and over have ever used the drug while 13% have used it in the previous 12 months. During this same period, some 44% of males aged 20–29 years have used it (Australian Institute of Health and Welfare, 1999). However, while cannabis is not a harm free drug, many argue that the most probable public health risks of cannabis use itself are likely to be small to moderate because of the relatively small proportion of the population who are heavy users (Hall, 1995). In Australia, many recognise that the public health consequences of the application of the criminal law against cannabis users may be at least as significant as those of cannabis use itself (McDonald and Atkinson, 1995). As a consequence, a number of states and territories have adopted legislative and regulatory models incorporating either infringement notices or formal cautions for cannabis possession and use (Table 1). More than 70% of the Australian public believe that civil, rather than criminal penalties, should apply to minor cannabis offences (Bowman and Sanson- Fisher, 1994; Lenton and Ovenden, 1996).

Strict prohibition

Victoria (VIC), Queensland (QLD), New South Wales (NSW), Western Australia (WA) and Tasmania (TAS) all have maintained legislative systems of total prohibition of cannabis. Recent research in WA has shown that the majority of people who receive a criminal conviction for a minor cannabis offence are otherwise law abiding (Lenton et al., 1996) and that a conviction can have significant adverse impacts on employment, further involvement with the criminal justice system, relationships and accommodation but fails to deter cannabis use in many of those so convicted (Lenton et al., 1999).

Infringement notice systems

South Australia (SA; in 1987), the Australian Capital Territory (in 1992) and the Northern Territory (in 1996) have each adopted infringement notice systems whereby minor cannabis offences are dealt with by an ‘on the spot’ fine. The schemes differ in terms of the specific details of the offences, the levels of the fines imposed, the

consequences of failing to pay within the specified period, and other procedural factors. However, under each, a criminal conviction is not recorded if the fine is paid within the prescribed period. The Cannabis Expiation Notice (CEN) scheme in SA, the longest running Australian example of an infringement notice system, has been the most thoroughly evaluated. No conclusive evidence has been found for changes in levels or patterns of cannabis use among the general public or school students which might have been attributable to the introduction of the CEN system (Christie, 1991; Donnelly and Hall, 1994; Donnelly et al., 1995, 1999). However, evidence of ‘netwidening’ (Christie and Ali, 1995) confirmed earlier suspicions (Sarre et al., 1989) that more people seemed to be getting caught up in the legal system as a result of the procedural ease of issuing notices. Among other findings, the most recent evaluation of the CEN scheme confirms this netwidening effect and makes suggestions for improvement. It concludes that, while the deterrence effects are as poor as those of prohibition, the social costs to offenders and the economic costs of the system as a whole are substantially lower. Moreover, it finds high levels of support for the scheme among the general population, the judiciary and the police (Ali et al., 1999).

A key difference between the South Australian scheme and the newer infringement notice approaches used in the Australian Capital Territory (ACT) and the Northern Territory (NT) stems from treatment of those who fail to pay their fine. Whereas in SA, a person who fails to pay the prescribed penalty is virtually automatically charged with and almost certainly convicted of the underlying minor cannabis offence, in the ACT and the NT, his or her punishment is left at the discretion of police and prosecutors. In the ACT, punishment can include prosecution for the underlying minor cannabis offence. In the NT, on the other hand, the person is dealt with as a fine defaulter, i.e. as someone with a financial debt to the State. The result of these different approaches is that the automatic prosecution of defaulters in SA leads to substantial numbers of people receiving criminal convictions for minor cannabis offences; this consequence is far less likely in the other two jurisdictions.

Formal cautioning

Formal cautioning, the newest approach to minor cannabis offences in Australia, is being embraced by governments who see problems with the total prohibition approach but do not want to change the cannabis law in a way which could be construed as ‘soft on drugs’. In 1998 VIC and TAS introduced cautioning systems for cannabis use, and WA began a trial of a limited cannabis-cautioning scheme in two police districts. The Victorian scheme aims to provide an alternative to court proceedings and associated stigma, reduce the lag between offending and punishment, provide support, assistance and encouragement, and optimise informal communication between police and offender. In VIC, police can issue a caution for possession:use of less than 50 g of cannabis. The scheme applies to those 17 years and over, but not to people with prior drug offences. The person has to admit the offence and a caution cannot be issued to the same person on more than two occasions (Ditchburn, 1999). The pilot of the WA scheme is not yet complete. It differs from the Victorian model in that, in an attempt to be consistent with a ‘tough on drugs’ government position, its primary aim is to reduce the cannabis use of those detected. Thus, in addition to receiving a caution, individuals must also attend an educational intervention. Failure to comply results in a summons for the initial offence. An intrinsic assumption of the WA approach is that intervention with as many people as possible will have the greatest impact on cannabis use. As such it aims to ‘net’ as many cannabis users as possible. The WA system also differs from the Victorian scheme in that only one caution is permitted and it is only available to those over 18. In TAS, the system is at the discretion of the police officer and some offenders may be required to make a court appearance for potentially cautionable offences. In most states and territories, those under the age of 18 who commit minor cannabis offences are dealt with under cautioning schemes, children’s court panels or other general provisions which apply to juveniles.

Only preliminary pilot investigations of cautioning schemes have taken place. In VIC, the evaluation of the 6 months Cannabis Cautioning Program Pilot (CCPP) conducted by police in the Broadmeadows police district found that more than half of the offenders detected for possession:use of cannabis received a caution, and only about one in ten of these were re-arrested during the trial period. The majority of police officers who had

issued cautions had favourable attitudes to the scheme (Ditchburn, 1999). However, no information was provided on why a large minority of those detected for possession:use of cannabis had not been cautioned. Additionally, there was no follow-up of those cautioned to determine whether there have been adverse social consequences (such as further involvement with police), their attitudes to the scheme, and whether the caution had any impacts on their cannabis use. It is unclear whether receiving a caution for a minor cannabis offence is likely to increase subsequent attention from police and result in a snowballing involvement with the criminal justice system.

Conclusion

This brief review of the law and its enforcement relating to minor cannabis offences in Australia highlights the fact that a range of options exist for the control of cannabis in any nation. The options cover both the formal provisions of legislation and Government and police policies on its enforcement. An important insight from the Australian, drug policy evaluation research cited above has been that the way the laws are enforced by police, at least as much as the provisions in the statutes themselves, influences the social impacts of the various systems of cannabis control.

In Australia we are seeing a cautious movement towards the position advocated by the National Cannabis Task Force, which in 1994 recommended to all Australian Governments that ‘jurisdictions consider discontinuing the application of criminal penalties for the simple personal use or possession of cannabis, without compromising activities aimed at deterring cannabis use’ (Ali and Christie, 1994). This recommendation is based on the recognition that the law and its enforcement should not cause more harm than they set out to prevent or control.

**TABLE 1:
LOWEST SCALE OFFENCE FOR POSSESSION OF CANNABIS:
ALL AUSTRALIAN JURISDICTIONS AUGUST 1998**

Juris-diction	Quantity Threshold	Criminal Offence	Maximum Penalty
STRICT PROHIBITION			
WA	<25 plants <100 grams cannabis <20 grams cannabis resin <80 joints	Yes	\$2,000 fine or 2 years imp. or both. (implements \$3,000 fine or 3 years imp. or both) Trial of cautioning + education session for 1st offenders (from Oct 1998)
NSW	Cannabis leaf <200 grams	Yes	2 years imp. or \$2,000 fine or both
QLD	<500 grams, or where plants, the aggregate weight of the plants is <500 grams, 100 plants	Yes	15 years imp. and/or \$300,000 fine if dealt with on indictment; 2 years imprisonment and/or \$6,000 fine if dealt with summarily
INFRINGEMENT NOTICE SYSTEMS			
SA	(since 1987) <100 grams of cannabis <5 grams cannabis resin ≤ 10 plants	No, if expiated within 60days	Expiation amount - \$50 to \$150 fine . (over 18yrs of age only) Failure to expiate results in automatic conviction.
ACT	(since 1992) Not >25 grams or 5 plants	No, if expiated within 1 month	\$100 fine, if expiated (applies to juveniles & adults) Failure to expiate doesn't necessarily result in cannabis conviction
NT	(1995 amendments) Cannabis - <50g Cannabis resin - 10g ≤ 2 plants	No, if paid in 28 days	\$200 fine, if infringement notice paid (over 18yrs of age only) Failure to expiate is dealt with as fine default rather than cannabis offence
CAUTIONING SYSTEMS			
VIC*	(from September 1998) (cautioning state-wide) <50 grams of cannabis	Not for those cautioned	Up to two formal cautions (over 17yrs of age only)
TAS	(since July 1998) <50 grams of cannabis leaf	Not for cautioned first offenders	Formal cautioning for first offenders

* An adjourned bond option for first offenders has also been maintained in Victoria

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This article was published in *International Journal of Drug Policy*, 10(4), S., McDonald, D., Ali, R., Moore, T, Laws applying to minor cannabis offences in Australia and their evaluation, Pages No. 299-303, Copyright 1999, and is posted with permission from Elsevier

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