



LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

CANNABIS USE IN THE ACT

**Report No. 7 of the
Standing Committee on Health
and Community Care**

December 2000

Resolution of Appointment

The following general purpose standing committees be established to inquire into and report on matters referred to it by the Assembly or, after the Assembly's endorsement, matters that are considered by the committee to be of concern to the community.

... a Standing Committee on Health and Community Care to examine matters related to health and community care policy, planning and purchasing acute, community health and population health services, hospitals and any other matter under the responsibility of the portfolio minister.

Legislative Assembly for the ACT, *Minutes of Proceedings*, (1998), No. 2, 28 April 1998, pp 15 and 16.

Terms of Reference

Noting the reported effects on health of cannabis use and the ACT policy of harm minimisation, the committee will inquire into and report on:

1. the role of legal sanctions in addressing issues of individual cannabis use;
2. the impact of the use of Simple Cannabis Offence Notices in responding to individual cannabis use; and
3. any other related matter.

Committee Membership

Mr Bill Wood, MLA (Chairman)

Mr Harold Hird, MLA (Deputy Chair)

Mr Dave Rugendyke, MLA

Secretary: Mr David Skinner

Administrative Officer: Mrs Judy Moutia

Inquiry into Cannabis Use in the ACT

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SUMMARY OF RECOMMENDATIONS

Recommendation 1

The committee recommends that a formal, empirical evaluation of the Effective Weed Control program be conducted and that if this evaluation finds that the program performs well against a number of treatment goals then funding be increased to allow the program to be extended to meet the full range of community demand including the provision of self-help information and counselling.

Recommendation 2

The committee recommends that:

i) the Government develop public information and education programs aimed at informing the community at large (and more specifically potential cannabis users and existing cannabis users) about the potential health effects of the drug; and

ii) the Government develop best practice outreach services, treatment services and counselling services for chronic, heavy cannabis users (the group which is most at risk).

Recommendation 3

The committee recommends that the Government outline the goals of its policies in relation to cannabis along similar lines to the principles outlined in paragraph 3.6 of the committee's report, keeping in mind the importance of early intervention.

Recommendation 4

The committee recommends that:

i) the Government develop performance measures against which to judge the success of its policies in relation to cannabis and that ongoing monitoring and empirical evaluation is undertaken and used as the basis on which to make any changes to the policies; and

ii) the Government undertake a formal evaluation of the SCON scheme in the near future, at the appropriate time, to determine its efficacy.

Recommendation 5

The committee recommends that the government does not use the term decriminalisation to describe the SCON scheme and that it promotes the exact nature of the law regarding simple cannabis offences in a public information program.

Recommendation 6

The committee recommends that:

- i) the legislation be amended so that people under the age of 18 cannot be issued with a SCON for their first offence; and**
- ii) an education and cautioning system is established for juveniles who have been detected by police in relation to a simple cannabis offence.**

Recommendation 7

The committee recommends that in an effort to increase the rate of expiation for SCONs the Government examine the possibility of introducing a provision in the legislation for the cancellation of a person's drivers licence or motor vehicle registration if the fine is not paid within the prescribed period.

Recommendation 8

The committee recommends that the Government incorporate in the legislation a provision for people receiving a SCON to expiate the notice through community service.

Recommendation 9

The committee recommends that the provisions in the legislation which allow police to charge a person with a criminal offence for simple cannabis offences be removed.

Recommendation 10

The committee recommends that the *Drugs of Dependence Act* be amended to enshrine deeming provisions which clearly explicate what sort of situations and instances are deemed to be supply offences versus simple cannabis offences.

Recommendation 11

The committee recommends that the legislation be examined to assess the value of the following proposed amendments:

- i) the measure of 25 grams of cannabis be taken to mean 25 grams of dried female flowers or 'heads' exceeding 25 grams;**
- ii) the measure of 100 grams of cannabis used by police as grounds for a criminal charge as a default be taken to mean a quantity of dried female flowers or 'heads' exceeding 100 grams;**
- iii) should there be a desire to have provisions for charging a person with a criminal offence for the possession of leaf, male flowers and tips of cannabis, the weight for this amount of dried material should be considerably higher reflecting its low commercial value; and**

iv) uniform protocols for the measurement of cannabis are enshrined which reflect the spirit of this recommendation.

Recommendation 12

The committee recommends that the Government examine the inclusion of hashish and hash-oil in the legislation as types of cannabis for which SCONs would be issued.

Inquiry into Cannabis Use in the ACT

CHAPTER 1. BACKGROUND

1.1. On 8 December 1999, the committee resolved to inquire into and report on cannabis use in the ACT. In particular the committee tasked itself with examining the health effects of the drug and appropriate legal regimes for regulating cannabis use.

1.2. The impetus for the inquiry came from concerns expressed by some Members of the Assembly and some in the community who felt that current cannabis laws in the ACT were not effective in dealing with the use, possession and cultivation of cannabis. Specifically, there was a feeling that the current laws may have sent a tacit message to young people, in particular, that cannabis is a safe drug.

1.3. The inquiry was undertaken against the background of a Private Member's Bill that was before the Assembly which aimed to abolish the current Simple Cannabis Offence Notice scheme (SCON scheme) which operates in the ACT. Under the SCON scheme police can issue a non-court based infringement notice of \$100 to a person who has been found to have:

- Cultivated not more than 5 cannabis plants for personal use;
- Been in possession of not more than 25 grams of cannabis for personal use; or
- Self-administered cannabis¹.

1.4. If paid, the offence is expiated and no criminal conviction is recorded against the person. However, it must be noted that currently the issuing of infringement notices is done at the discretion of police who are still able to formally charge a person with a criminal offence. The SCON scheme has previously been described as decriminalisation of the drug. However, some members of the committee felt that the term decriminalisation is misleading as it connotes or even promotes the acceptability of the drug.

1.5. The Private Member's Bill introduced by Mr Rugendyke, a member of the committee, aimed to remove provisions from the *Drugs of Dependence Act* which allow SCONs to be issued, effectively, re-criminalising the drug. Under the regime police would have two options for dealing with somebody in possession or found to be cultivating small amounts of cannabis: 1) a caution or 2) formally charge the person with an offence who would then be required to appear before a court to face a criminal charge.

1.6. In terms of public attitudes to the legal status of cannabis it is interesting to note that a major Commonwealth study indicates that a majority of ACT residents believe that cannabis should be legalised. The *National Drug Strategy Household Survey* conducted in 1998 showed that 56.2 % of people in the ACT felt that cannabis should

¹ Submission 9, p 5.

be legal, with a further 16.4% believing that the drug should remain illegal but that criminal sanctions should not apply. This compares with only 14.5 % of people who felt that it should be a criminal offence².

1.7. Against this background the committee reviewed the available literature on the health effects of cannabis use and undertook an analysis of the various legislative regimes operating in Australian jurisdictions for regulating cannabis use, possession and cultivation.

1.8. The committee travelled to Adelaide and Perth to compare the two regimes operating there. The committee also attended the 18th International Federation of Non-Government Organisations Conference for the Prevention of Drug and Substance Abuse in Brisbane.

1.9. The committee placed advertisements in local newspapers calling for written submissions and subsequently received 18 submissions. They are listed in Appendix A.

1.10. The committee held three public hearings taking evidence from a range of community and government representatives. A list of organisations that appeared before the committee is included in Appendix B.

Scope of report

1.11. It is true to say that there is a ‘cannabis’ debate in Australia, a social discourse about what should be done, if anything, to ‘deal’ with citizens that use, cultivate or sell cannabis. The issue of cannabis use is also often caught up in larger public debates about the ‘drug problem’ generally. These debates have been popularly characterised in the media and by participants in the debate as being largely polarised, where a dichotomous proposition emerges that 1) drugs/cannabis should be completely legalised/decriminalised *or* 2) that the strictest criminal sanctions should apply to users and suppliers of all drugs. The committee has attempted to take a cautious path with regard to the issue of cannabis. The committee is concerned that drugs do take a terrible toll on users, their families and friends, and the community generally, and is to be discouraged by every means. However, it is equally concerned that public policy decisions do not have the effect of exacerbating the problem by applying unrealistic and excessively harsh prescriptions.

1.12. It is an understatement to say that much has been written about the legal status and health effects associated with cannabis use. The range of academic disciplines that have been applied to analyses of these two issues is also vast, with myriad legal, sociological, psychological, psychopharmacological, epidemiological, political science and public policy expositions widely available. This work has also been synthesised time and time again in parliamentary reports, science and public policy

² Commonwealth Department of Health and Aged Care (1998) *National Drug Strategy Household Survey* cited in Submission 9, p 13.

journals, and indeed in the popular press. In short, the public and its proxies in legislatures around Australia are not without an arsenal of information with which to inform their public policy conceptions about how to deal with the issue of cannabis use, possession and cultivation.

1.13. Against this background, while the committee did not wish to produce a report that duplicated previous studies and reports, the wealth of literature available made this a tall order and rather than re-inventing the wheel, the committee has relied considerably on other works. The committee decided to develop a streamlined report addressing two basic questions and they are: 1) what are the possible health effects of cannabis use?³ And 2) what is the most appropriate legal regime for dealing with people that use, possess or grow cannabis in the ACT? This committee has drawn on a range of literature, the submissions it received and on the encounters it had with academics, alcohol and drug workers and police officials in the ACT, South Australia and Western Australia.

1.14. Following an appraisal of the issues surrounding cannabis use, possession and cultivation, the committee formed the consensus view that cannabis is not a drug without associated harms. The committee found that there are significant health effects that can result from use of the drug. However, the health risks associated with cannabis use must be put in context and compared with the high incidence of alcohol and tobacco related morbidity and mortality. This is not to say that this should be the only basis on which to inform public policy formulation on the issue, but it is one consideration.

1.15. While it is true that there are negative health effects, or harms, associated with cannabis use, it became apparent to the committee that a legal regime in which a strict prohibition approach is enforced, also presents harms and negative effects for those people in the community that engage in cannabis use, possession and cultivation. It also presents significant costs to the community in terms of police expenditure, court costs, and the entanglement of criminal elements that inevitably become involved with cannabis cultivation and marketing under prohibition.

1.16. With regard to the legislative options for cannabis regulation, it is timely that a comprehensive monograph was recently produced by the National Drug Research Institute (NDRI) at the Curtin University of Technology, *The Regulation of Cannabis Possession, Use and Supply*. The committee's report draws on this work which was produced for the Drugs and Crime Prevention Committee of the Parliament of Victoria. It is an excellent explication of the many issues surrounding cannabis regulation and will, no doubt considerably inform policy makers right around Australia.

1.17. After an examination of the issues the committee decided that the SCON scheme should be retained but with a number of refinements aimed at improving the expiation

³ Including a brief overview of the claims benefits of cannabis use for medical purposes.

rate of SCONs, providing more effective interventions for young people and resolving the uncertainty that many in the community have with regard to the legal status of the drug.

1.18. Within the committee, there were differing views about some aspects of the direction that cannabis policy should take in the ACT. However, the committee reached a consensus that cannabis policy should not be excessively punitive for users, it should not have the effect of marginalising those ACT citizens by criminalising them. At the same time, the committee sees that improving the level of public information about cannabis' potential health effects and offering well-resourced abstinence and reduction programs will play an important role in dealing with the issue of problematic cannabis use.

1.19. As noted earlier in this section, there is a wealth of information available on the subject of the health and legal issues associated with cannabis. The committee considers that it is useful providing a bibliography of the literature pertinent to these issues so that those interested in the subject can better inform themselves. This is included as Appendix C.

CHAPTER 2. HEALTH ISSUES

2.1. This chapter outlines the various potential health effects associated with the use of cannabis. As noted earlier, the committee found that there are indeed significant health risks involved in cannabis use. However, the committee notes that the relationship between cannabis use and various health ailments is not yet clearly established. This report is not the place to assess the methodological rigour of various studies, nor will the committee apportion weight to the findings of particular scientific inquiries.

2.2. The committee does note some areas, however, that have been identified as being problematic in the quest to ascertain the health effects of cannabis use. In this regard, an excellent analysis of the health effects of cannabis use authored by Hall et al for the Commonwealth National Drug Strategy provides a number of caveats in its introduction. The committee considers that it is worth reproducing this section of the report in full as it clearly identifies the problems associated with an appraisal of the health effects of cannabis use.

The evaluation of the health hazards of any drug is difficult for a number of reasons. First, causal inferences about the effects of drugs on human health are difficult to make, especially when the interval between use and alleged ill effects is a long one. It takes time for adverse affects to develop and for research to identify such effects.

Second, in making causal inference there is a tension between the rigour and relevance of the evidence. The most rigorous evidence is provided by laboratory investigations using animals or in vitro preparations (e.g. cell preparations in a test tube) in which well controlled drug doses are related to precisely specified biological outcomes. The relevance of this evidence to human disease is uncertain, however, because many inferences have to be made in linking the occurrence of specific biological effects in laboratory animals to the likely effects of human use. Epidemiological studies of relationships between drug use and human disease are of greater relevance to the appraisal of the health risks of human drug use, but their relevance is purchased at the price of reduced rigour. Doses of illicit drugs over periods of years are difficult to quantify because of the varied dosages of blackmarket drugs and the stigma in admitting to illicit drug use. Interpretation is further complicated by correlations between cannabis use and alcohol, tobacco and other illicit drug use.

Third, appraisals of the hazards of drug use are affected by the social approval of the drugs in question. The countercultural symbolism of cannabis use in the late 1960s has introduced an unavoidable sociopolitical dimension to the debate about the severity of its adverse health effects. Politically conservative opponents of cannabis use justify continued prohibition by citing evidence of the personal and social harms of cannabis use. When the evidence is uncertain they resolve uncertainty by assuming that the drug is unsafe until proven safe. Complementary behaviour is exhibited by proponents of cannabis use. Evidence of harm is discounted and uncertainties about ill-effects of chronic cannabis use resolved by demanding better evidence, arguing that until such evidence is available individuals should be allowed to choose whether or not they use the drug.

Such evidential standards are rarely applied consistently. The politically conservative would reject a similar approach to the appraisal of health hazards of industrial processes. Similarly, proponents of cannabis liberalisation rarely apply the principles used in their

risk assessment of cannabis to the appraisal of health effects of pharmaceutical drugs, industrial processes, and pesticides. To guard against such double evidential standards we will be as explicit as possible about the evidential standards we have used, and attempt to be as even-handed as we can in their application⁴.

2.3. In drawing an analogy between the standards of proof in the legal system and that of science, Hall et al note that:

... scientists generally require something closer to the standard of “beyond reasonable doubt” than the balance of probabilities before drawing confident conclusions that a drug causes harm.

If we were demand that such a standard be met for the health effects of cannabis, this review would be exceedingly brief. Consequently, we will relax the criteria and indicate when the evidence permits a causal inference to be made on the balance of probabilities⁵.

2.4. Hall et al outline the following basic standards employed to attribute causal inference between the use of cannabis and a particular effect:

1. Evidence that there is a relationship between drug use and a health outcome provided by one of the accepted types of epidemiological research design (namely, case-control, cross-sectional, cohort, or experiment).
2. Evidence (usually provided by a statistical significance test or the construction of a confidence interval) that the relationship is unlikely to be due to chance.
3. Good evidence that drug use precedes the adverse effect (e.g. a cohort study).
4. Evidence either from experiment, or statistical or other form of control, which makes it unlikely that the relationship is due to some other variable which is related to both drug use and the adverse effect⁶.

The committee’s approach

2.5. The committee does not have the expertise to attempt such a rigorous examination of the health effects of cannabis use. Instead this chapter attempts to outline the areas that have been acknowledged as being likely health effects of cannabis use. For readers interested in a more thorough analysis, the committee recommends that they obtain a copy of *‘The health and psychological consequences of cannabis use’* by Wayne Hall and others as part of the monograph series for the National Drug Strategy⁷. The committee’s report draws heavily on this work by Hall and his colleagues. The committee also notes the work done by the ACT Legislative

⁴ Hall, Wayne et al (1994) *‘The health and psychological consequences of cannabis use’* Monograph No. 25 National Drug Strategy, p 5-6.

⁵ *ibid*, p 26.

⁶ *ibid*, p 26.

⁷ *ibid*. This can be accessed from <http://www.health.gov.au/pubs/drug/cannab2/cannabis.txt>. (NOTE: the page numbers used in these references are used to refer to the Internet document, not the paper copy).

Assembly's Select Committee on HIV, Illegal Drugs and Prostitution which has already produced a report on the issue of Marijuana, including its health effects⁸.

2.6. The committee notes that many submissions provided evidence on the health effects of cannabis. Largely, these submissions cited the evidence from other sources such as the work of Hall and his colleagues who themselves depended on other sources. Rather than depending on these tertiary resources, the committee has predominantly relied on the work of Hall et al, which it considers to be the most credible, comprehensive and even-handed Australian work on the subject of cannabis related health effects.

2.7. The committee also notes that there is a high degree of contention in the community on many of the health risks associated with cannabis use. The committee has been careful not to overstate or understate these risks and has relied on what it believes to be measured and rigorous evidence in this respect. The committee appreciates that many submitters to the inquiry and many in the community at large hold strong views about the legal status of cannabis. Noting the comments of Hall et al about the political imperatives that can underscore presentations on the health effects of the drug, the committee has had to be mindful of this as well. For this reason, rather than present some of the arguments put forward in this regard from both proponents of more liberal cannabis laws and those that who would like to see tougher laws, it has taken the view that the work of Hall and his colleagues at the National Drug and Alcohol Research Centre, which is funded by the Australian Commonwealth Government as part of the National Drug Strategy (formerly, the National Campaign Against Drug Abuse), is a fair and balanced assessment of the risks. The committee felt this was a justified stance as proponents of both competing positions tended to quote from this source when mounting their arguments. There also appeared to be a mutual respect between both groups for the work of Hall and his colleagues. The same could not be said for many other sources.

2.8. The committee wishes to thank Dr Hall and his colleagues for allowing the committee to use so much of their work.

Psychoactive and chemical properties of cannabis

2.9. *Cannabis Sativa* is a herbaceous annual plant belonging to the hemp family *Cannabaceae* of the nettle order, *Urticales*. A subspecies of this plant, *Cannabis Indica*, is the main source of the mildly hallucinogenic drug, often called marijuana⁹.

2.10. The cannabis plant contains over 60 cannabinoids or psychoactive compounds that produce the feeling of euphoria or high that users experience through ingestion of the drug. Research on human and animal subjects indicates that the principal

⁸ Select Committee on HIV, Illegal Drugs and Prostitution (1991) '*Third Interim Report – Marijuana and other Illegal Drugs*'.

⁹ *ibid*, p 17.

psychoactive compound in cannabis is the cannabinoid, delta-9-tetrahydrocannabinol or THC¹⁰.

2.11. In total there are 421 chemical compounds contained in cannabis including, 'nitrogenous compounds, amino acids, proteins, glycoproteins, enzymes, sugars and related compounds, hydrocarbons, simple alcohols, aldehydes, ketones, acids, fatty acids, simple esters, lactones, steroids, terpenes, non-cannabinoid phenols, flavinoidglycosides, vitamins and pigments'¹¹.

Types of cannabis and THC content

2.12. Cannabis can be found in many different forms, all with varying levels of potency. Preparations from different parts of the plant itself have different concentrations of THC. However, a range of other factors also determine potency.

2.13. Hall et al note that:

The concentration of THC varies between the three most common forms of cannabis: marijuana, hashish and hash oil. Marijuana is prepared from the dried flowering tops [heads or buds of the female plant] and leaves of the harvested plant. The potency of the marijuana depends upon the growing conditions, the genetic characteristics of the plant and the proportions of plant matter. The flowering tops and bracts are highest in THC concentration, with potency descending through the upper leaves, lower leaves, stems and seeds¹².

2.14. The extent to which THC levels can vary in different preparations of cannabis is considerable as the following table indicates.

Type of preparation	THC content
Leaves and stem	0.5-5%
Sinsemilla heads (seedless female flowers)	7-14%
Hashish	10-20%
Hash oil	15-50% ¹³

2.15. The most widely used form of cannabis is marijuana - the dried flowers and leaves of the plant. This is distinct from hashish and hash oil. Hashish or hash is made using a number of different methods, including rolling the thick THC-rich resin from the plant's flowers or by compressing the shredded flowers of the cannabis plant. Hash oil is made, 'by extracting THC from hashish or marijuana using an organic

¹⁰ Hall, Wayne et al op cit (1994), p 7

¹¹ Select Committee on HIV, Illegal Drugs and Prostitution op cit. p 17.

¹² Hall, Wayne et al op cit (1994), p 8.

¹³ *ibid*, p 2.

solvent, concentrating the filtered extract, and in some cases subjecting it to further purification'¹⁴. Hash oil is generally the most potent form of cannabis. For the purposes of this report, cannabis is used as a generic term to describe all the various preparations of the plant.

Claimed THC increases

2.16. There has been much comment in the media and in the drugs field recently about a purported rise in THC levels in modern day cannabis. Accompanying these claims is the assertion that there has been an increase in adverse health and psychological effects associated with cannabis use. Some media reports have suggested that THC levels may have increased by as much as 10 to 30 times in the last thirty years. This rise has been attributed to the advent of hydroponic growing methods and cloning techniques.

2.17. However, the committee notes that claims to this effect have not been verified by research in Australia as there is no legislative provision for testing of THC levels in seized drugs. Data is available, however, from the Marijuana Potency Monitoring Project in the USA, where testing of THC levels has been undertaken on seized cannabis for many years¹⁵.

2.18. The results of testing over this period indicate that there has been only a very small increase in the amount of THC content in cannabis.

2.19. A technical report produced by Wayne Hall and Wendy Swift for the National Drug and Alcohol Research Centre (NDARC) on THC content in Australia notes that:

The THC content of Australian cannabis products has *not* been *systematically* tested by any Australian police force over the period in which average THC content has been claimed to have increased, as there is no legislative reason for doing so. There is therefore no Australian data to support the claim that there has been a 10 to 30-fold increase in *average* THC content of cannabis in Australia.

The USA is the only country that has regularly collected data on the THC content of cannabis plants over the past several decades. Claims that this data indicated that the THC content of marijuana in the USA had increased between three to seven-fold from the early 1970s to the mid 1980s have been challenged by data from independent laboratories, and because such claims relied on the assumption that the samples from the middle 1970s were representative of cannabis consumed at that time. More recent data have failed to show a 10-30 fold increase in the THC content of seizures between 1984 and 1998. At most this series shows a small increase in THC content from 3.3% in 1980 to 4.4% in 1998¹⁶.

¹⁴ *ibid*, p 8.

¹⁵ Hall, Wayne and Swift, Wendy (1999) '*The THC Content of Cannabis in Australia: Evidence and implications*' NDARC Technical Report No. 74, p ii.

¹⁶ *ibid*, p ii

2.20. The report by Hall and Swift concluded that while there has probably been no major increases in the levels of THC in cannabis, it could be the case that there is an increased availability of the more potent forms of cannabis in Australia¹⁷. That is to say that there could be more high quality cannabis (more female flowers or heads) available than previously. It is possible that cannabis users are consuming more THC than they have in the past due to the prevalence of female flowers in the market.

How is cannabis administered?

2.21. Cannabis is predominantly administered in two ways: 1) it can be smoked, either through a water pipe known as a bong or in a hand-rolled cigarette, a joint; or 2) through oral ingestion of the drug in cookies, cakes or other cooked food preparations.

2.22. By far the most popular method of administering cannabis is through smoking the drug as this presents the more efficient means of getting the drug into the blood stream. Unlike oral ingestion, it is also possible for smokers to titrate their dose of the drug – adjusting the dose to accord the desired level of effect.

2.23. It should also be noted that tobacco is often added to cannabis in smoking preparations.

Cannabis and the brain

2.24. The report by Hall et al provides the following description of the manner in which cannabis operates in the brain:

Cannabis resembles the opioid drugs in acting upon specific receptors in the brain. In this respect it differs from alcohol, cocaine and other illicit drugs which act by disrupting brain processes. The determination and characterisation of a specific cannabinoid receptor has made it possible to map its distribution in the brain, and to demonstrate that its well-known psychoactive effects are receptor mediated. Very recently an endogenous brain molecule has been discovered which binds to the cannabinoid receptor and mimics the action of cannabinoids. It has been called “anandamide” from the Sanskrit word for bliss¹⁸.

Its discovery promises to stimulate a great deal of research which will improve our understanding of the role played by a cannabinoid-like system of the brain, and elucidate the mechanism of action of cannabis¹⁹.

2.25. The presence of arachidonylethanolamide, or anandamide, in the human brain is probably the key reason why cannabis is psychotomimetic, having the capacity to alter a person’s personality and consciousness. Other drugs like alcohol operate on the brain by subverting its normal processes, while cannabis affects particular messenger molecules which result in the changes to a person’s perception and cognition.

¹⁷ *ibid*, p 12.

¹⁸ *ibid*, p 7-8.

¹⁹ *ibid*, p 1.

2.26. The fact that cannabis is receptor mediated has given many scientists hope that medicinal applications will be found for various compounds in the raw plant.

Acute effects

Psychological

2.27. The feeling of euphoria - being stoned or high - is what attracts many people to the drug. Hall et al describes the experience in the following terms:

[the high is]... an altered state of consciousness which is characterised by a mild euphoria, relaxation, and perceptual alterations, including time distortion and the intensification of ordinary sensory experiences, such as eating, watching films, and listening to music. When used in a social setting the high is often accompanied by infectious laughter, and talkativeness²⁰.

2.28. However, people's immediate experiences of smoking cannabis vary. The committee notes that some users experience anxiety, dysphoria and panic reactions after consuming cannabis. These feelings are often experienced by people not familiar with the effects of cannabis. Hall et al note that these effects can, 'usually be prevented by adequately informing users about the type of effects they may experience, and once developed can be readily managed by reassurance and support'²¹.

2.29. In this regard, how a cannabis user will experience the effects of the drug depends on a range of factors including: the setting in which the drug is used; the user's expectations; whether or not other drugs are used concomitantly; the dosage administered; the method of administration; and the user's prior experiences with the drug²².

2.30. Hall et al note that psychotic symptoms, '... such as delusions and hallucinations, are very rare experiences that occur at very high doses of THC, and perhaps in susceptible individuals at lower doses'²³.

Heart rate and blood pressure

2.31. Within 15 minutes of smoking cannabis the rate of the heart increases 20 –50 per cent and lasts for up to three hours. A person's blood pressure also changes after consuming cannabis – it increases in the sitting position and is reduced in the standing position. Hall et al note that, 'these cardiovascular effects are unlikely to be of any clinical significance because tolerance develops to the effects of THC, and young, healthy hearts will only be mildly stressed'²⁴.

²⁰ Hall et al op cit (1994) p 11.

²¹ *ibid*, p 11.

²² *ibid*, p 40.

²³ *ibid*, p 40.

²⁴ *ibid*, p 11

Toxicity

2.32. Cannabis has a very low acute toxicity and there have been no deaths recorded as a result of poisoning from cannabis²⁵. This is stark contrast to alcohol, which is a toxic drug. Hall et al note that, ‘...there is a major health risk of acute alcohol use that is not shared with cannabis. In large doses alcohol can cause death by asphyxiation, alcohol poisoning, cardiomyopathy and cardiac infarct whereas there are no recorded cases of fatalities attributable to cannabis’²⁶.

2.33. However, the committee wishes to note that it may be the case that cannabis use could lead to increased accidents in the workplace or on our roads.

Chronic health effects

Respiratory problems

2.34. There is a strong case to support the idea that prolonged heavy cannabis smoking may have negative health impacts on the human respiratory system. Hall et al note that:

Cannabis smoke is similar in constitution to tobacco smoke, and contains a substantially higher proportion of particulate matter and some carcinogens (e.g. benzpyrene) than does tobacco smoke. Hence, the inhalation of cannabis smoke deposits irritating and potentially carcinogenic particulate matter onto lung surfaces. Cigarette smoking is known to cause diseases of the respiratory system, such as bronchitis, emphysema, and various forms of cancer affecting the lung, oral cavity, trachea, and oesophagus²⁷.

2.35. It is true that people who smoke cigarettes probably inhale more smoke than the average cannabis user inhales cannabis smoke but cannabis users are likely to inhale the smoke more deeply and hold it in for longer which allows more of the smoke’s constituents to be deposited on the surface of the lung²⁸.

2.36. Hall et al note that it has been difficult to establish the link between cannabis smoking and respiratory problems because many cannabis smokers also smoke cigarettes. Hall et al cite a number of studies which indicate adverse respiratory symptoms associated with cannabis smoking. One study conducted by Tashkin and colleagues looked at cannabis-only smokers, tobacco and cannabis smokers, tobacco-only smokers and non-smokers. Hall et al summarise the findings of the study in the following terms:

In the baseline observations of their cohort, Tashkin et al (1987) found significant differences in the prevalence of symptoms of bronchitis (such as cough, bronchitic sputum production, wheeze and shortness of breath) between all types of smokers (Marijuana smokers, Marijuana and tobacco smokers and tobacco smokers) and controls. There were no differences between cannabis and tobacco smokers in the prevalence of

²⁵ *ibid*, p 11

²⁶ *ibid*, p 4.

²⁷ *ibid*, p 69.

²⁸ *ibid*, p 69, 71.

these symptoms. Lung function tests showed significantly poorer functioning and significantly greater abnormalities in small airways among tobacco smokers (regardless of concomitant cannabis use) while marijuana smokers showed poorer large airways functioning than non-marijuana smokers (regardless of concomitant tobacco use). These findings suggest that “habitual smoking of marijuana or tobacco cause functional alterations at different sites in the respiratory tract, with marijuana affecting mainly the large airways and tobacco predominantly the peripheral airways and alveolated regions of the lung”²⁹.

2.37. In a follow-up study, the prevalence of bronchitic symptoms in a sub-sample of the original cohort was higher for all smokers compared to non-smokers. Another study of a sub-sample revealed that smokers (of all kinds) exhibited ‘more prevalent and severe histopathological abnormalities [tissue changes] than non-smokers’. Hall et al note that:

Many of these abnormalities were more prevalent in marijuana smokers, and they were most marked in those who smoked both marijuana and tobacco.

These findings were especially striking because they were observed in young adults who did not have respiratory symptoms, and they occurred at a younger age on average in marijuana than tobacco smokers, despite the fact that the marijuana smokers smoked less than a quarter as many “joints” as the tobacco smokers smoked cigarettes.

2.38. In assessing the range of literature on the subject of respiratory health effects of cannabis, Hall et al conclude that cannabis smoking probably causes chronic bronchitis and impairs the functioning of the large airways. Hall et al also conclude that there is suggestive evidence that chronic cannabis smoking brings about histopathological changes in the lungs which precede lung cancer. A cause of concern for Hall et al are reports of cancers in the aerodigestive tracts of young cannabis people who are heavy users of cannabis. Hall et al note that these cancers are rare for adults age under 60, even in those people who use tobacco and alcohol. Hall et al advocate case-control studies to determine the role that cannabis smoking may play in the development of these cancers³⁰.

Cardiovascular system

2.39. As noted earlier it is unlikely that there are any serious cardiovascular effects produced by cannabis in young healthy people. No pathological consequences in the cardiovascular system were evidenced in human subjects who underwent both acute and protracted administration of the drug³¹. As Hall et al note, ‘It seems reasonable to conclude ..., that among healthy young adults who use cannabis intermittently,

²⁹ Tashkin, D P et al (1987) ‘*Respiratory symptoms and lung function in habitual heavy smokers of marijuana alone, smokers of marijuana and tobacco, smokers of tobacco alone, and non-smokers*’. American Review of Respiratory Diseases, 135, p 209-216 cited in *ibid*, p 71.

³⁰ Hall et al op cit (1994) p 74.

³¹ *ibid*, p 66.

cannabis use is not a major risk factor for life-threatening cardiovascular events in the way that the use of cocaine and other psychostimulants can be³².

2.40. However, the story is quite different for people suffering from heart problems such as ischaemic heart disease, hypertension, and cerebrovascular disease. The following risks are probably associated with cannabis use in this group of people:

- because cannabis stimulates the heart's activity, there is an increased risk of cardiac arrhythmia;
- cannabis increases the heart rate of users which may bring on angina in patients with ischaemic heart disease and possibly increase the risk of cardiac infarction;
- cannabis has an analgesic effect (pain killing effect) which may lessen the awareness of chest pain which could result in delays in seeking treatment and increase the risk of fatal arrhythmias;
- smoking cannabis increases the level of carboxyhaemoglobin which decreases the amount of oxygen delivered to the heart, increases the work of the heart and may place a person at risk of atheroma (fat deposit) formation (THC-induced tachycardia (rapid heart action) also places more demands for oxygen on the heart at the same time as it is receiving less oxygen); and
- patients with hypertension or cerebrovascular disease may have an increased risk of stroke due to the acute variations in blood pressure brought about by cannabis use³³.

2.41. While it is certainly advisable that people with heart conditions of the type described do not use cannabis, Hall et al endorse the view of an expert committee of the National Academy of Science noting that, 'although the smoking of marijuana "causes changes to the heart and circulation that are characteristic of stress... there is no evidence... that it exerts a permanently deleterious effect on the normal cardiovascular system..."³⁴.

Carcinogenic features

2.42. Cannabis is a potentially carcinogenic drug.

2.43. In order to establish whether cannabis is a cancer causing substance, scientists have attempted to determine whether cannabis is mutagenic, that is, whether it is able to bring about mutations in human genetic material - cell mutations precede cancer. Various scientific studies have shown that while cannabinoids themselves are unlikely to have a significant mutagenic effect, there is reasonable evidence to suggest that the

³² *ibid*, p 66

³³ *ibid*, p 67

³⁴ National Academy of Science. (1982) '*Marijuana and Health*' Institute of Medicine, National Academy Press, p 72, cited in Hall et al p 68.

inhalation of cannabis smoke may bring about changes to human cells, and therefore, could be potentially carcinogenic³⁵.

2.44. Hall et al cite a study which found that some cannabinoids, including THC, can bring about cellular changes in test tube preparations including, ‘alterations to cell metabolism, and DNA synthesis and cell division’³⁶. However, this does not necessarily mean that humans will experience changes in their genetic material due to the presence of cannabinoids in their system. Hall et al note that, ‘The potential for cannabinoids to produce genetic change in humans or animals is unclear. There is, at most, mixed evidence that THC and other cannabinoids are mutagenic in standard microbial assays, such as the Ames test, and there is contradictory evidence on whether the cannabinoids are clastogenic, i.e. produce breaks in chromosomes’³⁷.

2.45. However, there is ‘stronger and more consistent evidence’ that the smoke from cannabis is mutagenic in test tube cell preparations and in live animals³⁸. Many of the carcinogens found in tobacco smoke can also be found in cannabis smoke. Hall et al suggest that if cannabis is cancer causing, it is more likely to be as a result of the carcinogens that it shares with tobacco than the presence of cannabinoids.

2.46. Hall et al note that:

If it is the non-cannabinoid components of cannabis smoke that are mutagenic, then any cancers caused by cannabis smoking are most likely to develop after nong-term exposure to cannabis smoke, and they are most likely to develop at sites which have the maximum exposure to that smoke, namely the upper aerodigestive tract and lung³⁹.

2.47. It follows that if cannabis smoke is carcinogenic due to the properties it shares with tobacco smoke, then the method of administration will have a bearing on the health risks associated with its use. On the face of it, oral ingestion of the drug would seem to be a less hazardous manner of administration – less damaging than the inhalation of cannabis smoke. This may have implications in terms of harm reduction and education in the user community.

Immune system

2.48. There is evidence that THC can impair animals’⁴⁰ immune systems, diminishing their bodies’ capacity to ward off disease, particularly bacteria and viruses. However, there is uncertainty as to whether this finding can be extrapolated to human health, as very high doses are required to produce the impairment in humans. In terms of

³⁵ *ibid*, p 59 and 65.

³⁶ *ibid*, p 59.

³⁷ *ibid*, p 59.

³⁸ *ibid*, p 12.

³⁹ *ibid*, p 60.

⁴⁰ Namely rodents - Wayne Hall and Nadia Solowij ‘*Adverse effects of Cannabis*’ *The Lancet*, Vol 352, November 14 1998. p 1611.

epidemiological investigation, there is no evidence that heavy cannabis users have higher rates of disease than other populations.

2.49. Hall et al note that, ‘given the duration of large-scale cannabis use by young adults in Western societies, the absence of such epidemics [immune-related epidemics such as AIDS] makes it unlikely that cannabis smoking produces major impairments in the immune system’⁴¹.

Reproductive systems

2.50. Animal tests have revealed that large doses of THC likely interfere with both male and female reproductive systems. Hall et al note that:

On the balance of probabilities, high doses of THC probably disrupt the male and female reproductive systems in animals by interfering with [the] hypothalamo-pituitary-gonadal system, reducing secretion of testosterone, and hence reducing sperm production, motility, and viability in males, and interfering with the ovulatory cycle in females⁴².

2.51. There is uncertainty about whether these effects can be extrapolated to humans. Hall et al note that, ‘Even if cannabinoids have such effects in humans, their clinical significance in normal healthy young adults is unclear. They may be of greater concern among young adolescents who are now more likely to use, and among males with fertility impaired for other reasons’⁴³.

Foetal development

2.52. It is certainly inadvisable to use cannabis during pregnancy as it may impair foetal development, resulting in babies with lower birth weights. There is also a possibility that use of cannabis during pregnancy may minutely increase the risk of birth defects although this is ‘far from certain’⁴⁴. However, Hall et al note that, ‘Prudence suggests that until this issue is resolved, we should err in the conservative direction by recommending that women not use cannabis during pregnancy, or when attempting to conceive’⁴⁵.

2.53. There is also evidence that suggests that infants that have been exposed to cannabis in the womb may experience behavioural and developmental problems for the first several months after birth⁴⁶.

2.54. The committee certainly supports a prudential approach and even though the jury is still out with regard to some of the health effects pertaining to cannabis use among pregnant women, it is wise to advocate complete abstinence from cannabis before and during pregnancy, and indeed after pregnancy for breast feeding mothers.

⁴¹ *ibid*, p 65.

⁴² *ibid*, p 80.

⁴³ *ibid*, p 80.

⁴⁴ *ibid*, p 80.

⁴⁵ *ibid*, p 81.

⁴⁶ *ibid*, p 81.

Amotivational syndrome

2.55. The notion of an amotivational syndrome first appeared in the literature in 1968. Today it has come to mean a condition in which a person loses interest in many aspects of their life and an opting out of what are considered by society to be important roles such as school, employment and social interaction. However, the evidence in the literature is quite equivocal on this issue. The recent (1999) *Cannabis Report of the Swiss Federal Drug Commission for Drug Issues (EKDF)* notes that:

Acute, reversible psychotic states have been documented in exceptional cases following cannabis use, but the existence of “the amotivational syndrome”, first documented in the literature in 1968, has never been confirmed. The term was used to describe the changes in attitude and personality, the neglect of appearance and general disinterest displayed by chronic users of cannabis, although nowadays it is considered to be obsolete and not typical of cannabis consumption (Huw 1993; [World Health Organisation] WHO 1997)⁴⁷

2.56. Hall et al also make mention of an amotivational syndrome:

there is no research evidence which unequivocally demonstrates that cannabis does or does not adversely affect the motivation of chronic heavy adult cannabis users. It has proved singularly difficult to provide better controlled research evidence which has permitted a consensus to emerge on the issue⁴⁸.

2.57. Noting the difficulty of appraising the validity of a cannabis related amotivational syndrome the Swiss Federal Drug Commission report notes that:

It is exceptionally difficult – if not impossible – to establish a direct and exclusive causality between speculative consequences of chronic cannabis use and the drug itself. For example, studies attempting to link dropping out of school at an early age with cannabis use have tended to show that it was in fact family background, the child’s relationship with its parents during its school years, social values, etc. which led the child to stop going to school (Hollister 1986)⁴⁹.

2.58. Hall et al’s concluding comments on the issue are:

The occurrence of a chronic residual state, or “amotivational syndrome”, in chronic heavy cannabis users is not well supported by research evidence. At best, a prima facie case has been made by clinical observations, that withdrawal, lethargy, and apathy occur among a minority of chronic, heavy users. This syndrome has proved difficult to study in the laboratory, difficult to distinguish from the effects of chronic intoxication (Negrete, 1988), and it so far [has] been impossible to rule out the confounding effects of pre-existing disease, malnutrition, personality disorder, and lifestyle⁵⁰.

⁴⁷ Swiss Federal Commission for Drug Issues (EKDF) (1999) *‘Cannabis Report of the Swiss Federal Commission for Drug Issues’* p 22.

⁴⁸ Hall et al op cit (1994) p 98.

⁴⁹ Swiss Federal Commission for Drug Issues op cit, p 22.

⁵⁰ Hall et al op cit (1994) p 169.

Mental health

Schizophrenia

2.59. There is no evidence to support the idea that cannabis use *causes* schizophrenia. However, a study of 50 000 Swedish military conscripts revealed that there is some evidence to suggest that cannabis use may worsen schizophrenic symptoms in susceptible individuals. In an article appearing in *The Lancet*, Wayne Hall Nadia Solowij note that:

There is an association between cannabis use and schizophrenia. A prospective study of 50 000 military conscripts found a dose-response relation between the frequency of cannabis use by age 18 and the risk of diagnosis of schizophrenia over the subsequent 15 years. A plausible explanation is that cannabis use can exacerbate the symptoms of schizophrenia, and there is prospective evidence that continued use predicts more psychotic symptoms in people with schizophrenia. A declining incidence of treated cases of schizophrenia over the period when cannabis use has increased suggests, however, that cannabis use is unlikely to have caused cases of schizophrenia that would not otherwise have occurred. This observation suggests that chronic cannabis use may precipitate schizophrenia in vulnerable individuals, an effect that would not be expected to change incidence⁵¹.

2.60. Christie and Chesher note that, ‘It should be noted that such studies cannot establish causality... because: (1) the authors did not establish a sequential or temporal link between cannabis use and admission for schizophrenia, (2) diagnosis was not reconfirmed and could in some cases represent toxic psychosis, (3) both cannabism and schizophrenia may result from a common predisposing condition, (4) schizophrenic breakdown may have been precipitated by other drugs, eg amphetamines, which were also used more frequently by cannabis subjects’⁵².

2.61. In assessing the literature on the subject Hall et al conclude that:

There is little support for the hypothesis that cannabis use can cause chronic psychosis which persists beyond the period of intoxication. Such a possibility is difficult to study because of the likely rarity of such psychoses, and the near impossibility of distinguishing them from individuals with schizophrenia and manic depressive psychoses who also abuse cannabis (Negrete, 1983).

... There is strongly suggestive evidence that chronic cannabis use may precipitate a latent psychosis in vulnerable individuals. This is still strongly suggestive rather than established beyond a reasonable doubt, because in the best study conducted to date (Andreasson et al, 1987) the use of cannabis was not documented at the time of diagnosis, there was a possibility that cannabis use was confounded by amphetamine use, and there remains a question about the ability of the study to reliably distinguish between schizophrenia and acute cannabis or other drug-induced psychoses.

⁵¹ Wayne Hall and Nadia Solowij op cit (1998) p 1614.

⁵² Christie, MacDonald J. and Chesher, Gregory b. (1994) ‘*The human toxicity of marijuana: a critique of a review by Naha and Latour*’ *Drug and Alcohol Review* 13: 209-216.

Even if the relationship between cannabis use and schizophrenia is a causal one, its public health significance should not be overstated. It is most likely to indicate that cannabis use can precipitate schizophrenia in vulnerable individuals, since the estimated attributable risk of cannabis use is small, and the incidence of schizophrenia has declined during the period in which cannabis use has increased among young adults⁵³.

2.62. The committee also wishes to note that it is aware of anecdotal evidence that some people with schizophrenia find cannabis reduces the intensity of their symptoms such as auditory hallucinations (hearing voices). The committee hears accounts of the many problems facing people suffering from schizophrenia in relation to self-medication using cannabis. However, it is difficult for the committee to assess the balance of positive and negative effects of such cannabis use.

2.63. A frontline health worker in ACT Community Care's Alcohol and Drug Program working with people who wish to cut down or abstain from further use, reinforced the view that cannabis use does not cause mental illness but may be a factor in exacerbating an existing condition. The health care worker noted that, 'We have got no evidence to suggest that cannabis use has caused that psychosis, and even in all the research and clinical evidence that is around, there is very little evidence to suggest that that is the case. There is evidence, however, to suggest that cannabis use has exacerbated or brought on the early onset of the mental illness, and there is no doubt that some of the people that we are seeing at the moment – they are identifying the fact that their cannabis use is exacerbating the symptoms of their mental illness'⁵⁴.

2.64. At any rate, the committee sees that those susceptible to mental illness should refrain from any cannabis use.

Cognitive impairment

2.65. Electrophysiological and neuropsychological studies have demonstrated that chronic heavy cannabis use may cause subtle impairment of, 'memory, attention, and the organisation and integration of complex information'⁵⁵. This impairment is more remarkable the longer that cannabis has been used⁵⁶.

2.66. However, in an article appearing in *The Lancet*, Wayne Hall and Nadia Solowij note that, 'The long-term heavy use of cannabis does not produce the debilitating impairment of memory, attention, and cognitive function that is found with chronic heavy alcohol use'⁵⁷.

⁵³ Hall et al op cit (1994) p 169-170.

⁵⁴ Transcript, uncorrected proof, 22 August 2000, p 7, Mr O'Connor.

⁵⁵ Hall, W and Solowij, N 'Adverse effects of cannabis' *The Lancet*, Vol 352, November 1998. p 1614.

⁵⁶ *ibid*, p 1614.

⁵⁷ *ibid*, p 1614.

Dependence

2.67. There is a lot of debate in the scientific community about whether cannabis can cause dependence in its users. Hall et al outline the chronology of thinking in the scientific community on the issue:

For much of the 1960s and 1970s the apparent absence of tolerance to the effects of cannabis, and of a withdrawal syndrome analogous to that seen in alcohol and opioid dependence, supported the consensus of informed opinion that cannabis was not a drug of dependence. Expert views on the nature of dependence changed during the late 1970s and early 1980s, when the more liberal definition of drug dependence embodied in Edwards and Gross's (1976) alcohol dependence syndrome was extended to all psychoactive drugs (Edwards et al, 1981). The drug dependence syndrome reduced the emphasis upon tolerance and withdrawal, and attached greater importance to symptoms of a compulsion to use, a narrowing of the drug using repertoire, rapid reinstatement of dependence after abstinence, and the high salience of drug use in the user's life. This new conception influenced the development of the Third Revised Edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (1987) (DSM-III-R), which reduced the importance of tolerance and withdrawal symptoms in favour of greater emphasis upon continued use of a drug in the face of its adverse effects⁵⁸.

2.68. Following this, the notion of drug dependence as conceived in DSM-III-R is said to occur if the three of the following nine criteria are present in a user for a one month period or longer.

1. The substance is often taken in larger amounts or over a longer period than the person intended;
2. There is a persistent desire or one or more unsuccessful efforts to cut down or control substance use;
3. A great deal of time is spent in activities necessary to get the substance (e.g, theft), taking the substance..., or recovering from its effects;
4. Frequent intoxication or withdrawal symptoms when expected to fulfil major role obligations at work, school, or home..., or when substance use is physically hazardous...;
5. Important social, occupational, or recreational activities given up or reduced because of substance use;
6. Continued substance use despite knowledge of having a persistent or recurrent social, psychological, or physical problem that is caused or exacerbated by the use of the substance;
7. Marked tolerance;
8. Characteristic withdrawal symptoms;

⁵⁸ Hall et al op cit (1994) p 105.

9. Substance often taken to relieve or avoid withdrawal symptoms⁵⁹.

2.69. In their work, Hall et al, undertake a review of much of the scientific literature on the notion of cannabis dependence. They conclude that there may be grounds to see cannabis as a substance which could cause a dependence syndrome under the criteria listed above. Hall et al note that:

...we conclude that there probably is a cannabis dependence syndrome like that defined in DSM-III-R which occurs in heavy chronic users of cannabis. There is good experimental evidence that chronic heavy cannabis use can produce tolerance and withdrawal symptoms, and some clinical and epidemiological evidence that some heavy cannabis users experience problems controlling their cannabis use, and continue to use despite the experience of adverse personal consequences of use. There is reasonable observational evidence that there is a cannabis dependence syndrome like that for alcohol, cocaine and opioid dependence. If the estimates of drug dependence from the ECA [Epidemiological Catchment Area] study [Robins and Regier, 1991] are approximately correct, cannabis dependence is the most common form of dependence on illicit drugs, reflecting its high prevalence of use in the community. The risk of developing the syndrome is probably of the order of: one chance in ten among those who ever use the drug; between one in five and one in three among those who use more than a few times; and around one in two among those who become daily users of the drug⁶⁰.

2.70. All this being said, Hall et al go on to say that:

Although cannabis dependence is likely to be a larger problem than previously thought, we should be wary of over-estimating its social and public health importance. It will be most common in the minority of heavy chronic cannabis users. Even in this group, the prevalence of drug-related problems may be relatively low by comparison with those of alcohol dependence, and the rate of remission without formal treatment is likely to be high. While acknowledging the existence of the syndrome, we should avoid exaggerating its prevalence and the severity of its effects on individuals. Better research on the experiences of long-term cannabis users should provide more precise estimates of the risk⁶¹.

2.71. The committee believes this is salutary advice.

Gateway drug hypothesis.

2.72. There has been some views expressed in the community that cannabis is a gateway to more serious drug use, this is often taken to mean that using cannabis will *cause* a person to use more dangerous drugs such as heroin or cocaine. The committee will deal with this hypothesis briefly.

2.73. The large disparity between cannabis use and use of harder drugs makes it unlikely that cannabis significantly contributes to a person's use of more dangerous drugs. In its submission, FFDLR cites a passage from a US Institute of Medicine paper on cannabis about the gateway theory:

⁵⁹ American Psychiatric Association, 1987, pp167-8 cited in *ibid*, p 106.

⁶⁰ Hall et al *op cit* (1994) p 116.

⁶¹ *ibid*, p 116.

Because it is the most widely used illicit drug, marijuana is predictably the first illicit drug most people encounter. Not surprisingly, most users of other illicit drugs have used marijuana first. In fact, most drug users begin with alcohol and nicotine before marijuana – usually before they are of legal age.

In the sense that marijuana use typically precedes rather than follows initiation of other illicit drug use, it is indeed a “gateway drug”. But because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common, and is rarely the first, “gateway” to illicit drug. There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs⁶².

2.74. Hall et al also comment on the notion of cannabis as a gateway or ‘stepping stone’ drug. Hall et al note that, ‘The view that cannabis use generally leads to the use of other illicit drugs is contradicted by the evidence...’⁶³. However, Hall et al offers a number of alternative hypotheses, noting that:

Cannabis use is largely a behaviour of late adolescence and early adulthood. Kandel’s research has shown that it has been initiated by the age of 19 in 90 per cent of those who ever used cannabis, and initiation is rare after 20 years. The frequency of its use peaks in the early 20s, when 50 per cent of males and 33 per cent of females reported using , and rapidly declines by age 23, with “the assumption of the roles of adulthood, getting married, entering the work force, or becoming a parent... that may be incompatible with involvement in illicit drugs and deviant lifestyles”. Hence, although those who use cannabis are more likely to use other illicit drugs than those who do not, it is more usual for cannabis use to decline in early adult life, with only a minority continuing to use regularly, or progressing to the use of more dangerous illicit drugs. Even in the case of the minority (about one in four) who progress to daily cannabis use, the majority cease their use by the mid to late 20s.

A better supported hypothesis is that cannabis use, especially heavy cannabis use, greatly increases the chances of progressing to the use of other illicit drugs. But even this type of relationship does not necessarily mean that cannabis use “causes” heroin use. As Kandel has stressed, the existence of sequential stages of progression does not “necessarily imply causal linkages among different drugs”. The sequences “could simply reflect the association of each class of drugs with different ages of initiation or [with pre-existing] individual attributes, rather than the specific effects of the use of one class of drug on the use of another”.

2.75. Hall et al also note as being a plausible hypothesis the notion of ‘selective recruitment’, whereby ‘deviant and nonconformist persons with a predilection for the use of intoxicating substances’ are those people more likely to use cannabis and drugs per se⁶⁴. That is to say that some people seek out drug experiences and while the first drug sought may be cannabis, this internal personal desire to experience the effects of drugs may lead to the use of other, more harmful drugs (not the fact that cannabis happened to be the first drug used).

⁶² US Institute of Medicine (1999) *Executive Summary, Marijuana and Medicine Assessing the Science Base* available at www.nap.edu cited in Submission 8, p 10.

⁶³ Hall, W et al op cit (1994) p 90.

⁶⁴ *ibid*, p 90.

2.76. Hall et al also examine the idea that a subculture in which drugs are widely accepted may have the effect of exposing cannabis users to a range of other drugs. Hall et al note that there has been, ‘little direct evidence on the drug subculture hypothesis’. However, Hall et al do note that, ‘The illegality of these activities confers on the use, possession and sale of cannabis a socialising and subcultural influence not possessed by the possession and use of the legal drugs’⁶⁵. This is to say that the fact that cannabis is illegal could create subcultural drug using cliques that would otherwise not exist. It is these cliques that may provide a socialising influence on young people and could conceivably place cannabis users in contact with users and marketeers of potentially more damaging drugs.

2.77. A witness before the committee from the Australian Drug Law Reform Foundation (ADLRF) compared the situation to a fruit market whereby a person seeking out one particular type of fruit will inevitably be exposed to other types of fruit which that person may consider buying. The same can be said of the drug subculture in which people using cannabis may be exposed to other drugs and those people who have a predilection for experimentation may choose to try more problematic drugs.

2.78. In its submission, FFDLR cite Hall and his colleagues, noting their conclusions on the notion of cannabis as a gateway drug:

On the available evidence, the case for a pharmacological explanation [ie that the drug, cannabis, caused users to progress to harder drugs] of the role of cannabis use in the progressions to other illicit drug use is weak. A sociological explanation [ie the social circumstances such [as] greater involvement with a drug using subculture and greater contact with others who have used other illicit drugs] is more plausible than a pharmacological one. The predictive value of cannabis use is more likely to reflect a combination of pre-existing personality and attitudinal traits that predispose the use of other intoxicants; and the effects of socialisation into an illicit drug subculture in which there is an increased availability of, and encouragement to use, other illicit drugs⁶⁶.

2.79. In evidence before the committee, the Chief Police Officer of the ACT supported the notion that sociological rather than pharmacological issues are probably more relevant to examining the idea of a cannabis as a gateway. The Chief Police Officer noted that:

My view is that the sociological impact of cannabis is a clearer case than the pharmacological dependence, and obviously, in the literature there is some conflict as to whether there is a dependence through cannabis use.

From a law enforcement perspective rather than a health perspective, my view in Canberra is that it is the sociological impact of cannabis use which inevitably seems to lead people into a group and into an environment where they then start to get access to heroin and other illicit substances⁶⁷.

⁶⁵ Hall, W et al op cit (1994) p 92.

⁶⁶ Hall, W et al op cit (1994) cited in submission 8.

⁶⁷ Transcript, 2 August 2000, p 15, Mr Bill Stoll.

2.80. This exposure to other drugs is largely the result of the operation of a black market, a market which is enabled by existing, punitive laws pertaining to cannabis. This is discussed later in the report.

2.81. The committee is not convinced that cannabis use is a gateway drug in terms of causation and considers that it would be unwise to formulate policy around this assumption. The committee believes that in determining cannabis policy it needs to be acknowledged that a range of factors come into play regarding people's decisions to use drugs. The mere fact that person has tried cannabis will not cause that person to move on to the use of other drugs.

Treatment options – Effective Weed Control

2.82. The committee's attention was brought to a group within ACT Community Care called Effective Weed Control. Run through ACT Community Care's Alcohol and Drug Program, Effective Weed Control is open to all cannabis users who wish to reduce their cannabis use or completely abstain from cannabis use. The program utilises a cognitive behavioural approach which looks to change people's understanding of their behaviour and change their thinking to help them change the behaviour itself. The program is run in groups although individual counselling is also available for those people who feel uncomfortable participating in a group setting. Cannabis users are also able to seek advice about their cannabis use over the telephone and information packs can be forwarded to enable users to undertake their own attempts to alter their cannabis use⁶⁸.

2.83. The committee was interested that the decision was made to operate the programs in community centres rather than alcohol and drug centres. The Clinical Supervisor of the program informed the committee that many people see their cannabis use in quite different terms to those people with alcohol and other illicit drug problems. Effective Weed Control noted that, 'We did not want to run them in health centres, we did not want to run them in the alcohol and drug centres, because there are many people who are not accessing those services, and will not access traditional alcohol and drug services for cannabis use problems and cannabis cessation, because they see it in a different light'⁶⁹.

2.84. The committee was interested to note that the voluntary nature of the program, the absence of moral judgements about drug use, and the credibility of the information provided were seen as being important to the program's success. The group noted that:

... what people were saying, when we got them to do their evaluations for the program, was that what they valued out of it was the fact we were presenting factual, unbiased information without any slant on it.

⁶⁸ Transcript, uncorrected proof, 22 August 2000, p 2-4, Mr O'Connor.

⁶⁹ *ibid*, p 5.

And one of the problems about this all the time is that cannabis tends to be very politicised drug, and we have got lots of people who want to push a barrow about this... Whether they are from one side of the scale or the other, whether it is the pro-legalisation or anti-, it does not matter. And that has tended to cloud a lot of treatment interventions and a lot of other issues about cannabis.

And when we had people come along to the last program, the one thing that... they were afraid of, was that they were going to get something shoved down their necks, in terms of a particular agenda, which we are very careful not to do. And the information we are presenting – it has got to be factual, it has got to be unbiased, and that is the only way you can do this. And in terms of intervention, I would say, we have got to people at the right level, and we have got to get them in the right way, and in the right sort of venues, if you like.

2.85. The committee sees that the aversion to having something ‘shoved down their necks’ is just part of human nature. The committee agrees that if programs such as this are to be successful, they must be level headed, non-dogmatic and accepting of the aspirations and worldviews of the people they aim to help. Too often, it seems, treatment can be construed by some in the community as a path to enlightenment and conversion where righteous educators attempt to bring users around to a particular ideological point of view rather than assisting users to find personalised strategies to reduce, abstain from or merely reassess the way that they use drugs.

2.86. The Effective Weed Control group noted that they had identified a number of risk groups associated with cannabis use, noting that, ‘If you look at cannabis use problems, there are risk groups – what we determine to be risk groups – for cannabis use. One of them is adolescence, one is people who are pregnant. Another one is people who have a predisposition or pre-existing illness of some sort – heart disease is one, and mental illness or early onset mental illness is another one’⁷⁰.

2.87. The committee notes that these risk groups are the ones identified in the literature as being those people who should certainly be advised not to use cannabis.

2.88. As noted earlier, many cannabis users add tobacco to their smoking mix. This is a particular problem as the nicotine in tobacco is highly addictive and may serve to reinforce a person’s dependence on the drug. Effective Weed Control informed the committee that it discussed concomitant tobacco use in the groups that it ran. Effective Weed Control noted in evidence that:

... the majority of people smoke tobacco... in the cannabis mix, even if they do not smoke tobacco separately... So for many of those people we draw from, nicotine is also an issue, and it is... particularly an issue for the people who also smoke tobacco, because what we find is that as they start to cut down the cannabis use, their tobacco intake increases.

And there is a number of reasons for that, there is a number of factors involved in that. One of them is the stress factor and one of them is an anxiety factor that has to do with

⁷⁰ *ibid*, p 6.

[the] withdrawal phase from cannabis, and one of them is the psychological, habitual factor, that people are used to responding in a certain way to all sorts of events: trauma, upsets, et cetera. An example of this may be that there is a bolus effect from tobacco. It hits you very hard, quickly, you feel good, the nicotine level drops, have a cigarette, you feel good, and you keep associating that with a process of feeling better, psychologically or emotionally, when things go wrong. So there is a sort of habit forming process that comes in, and that is a major factor in the people either stopping or cutting down the cannabis use as well⁷¹.

2.89. The committee was concerned by the comment that the service may have trouble meeting the extent of demand for the program. Effective Weed Control noted that, ‘Our problem may be if we keep up doing this [publicising the program] then we would be pressed to meet the demand, which I think is there. If we wanted to extend and consolidate this intervention then I think we would need additional funding, or we would need particular funding’⁷². The group also saw that more self-help information was important – ‘We need to produce some good resources to be able to aid people giving up cannabis, or cutting down, and we could do that with more resourcing. I guess the problem is that there has not been much around in Canberra as far as services are concerned, specifically for cannabis’⁷³.

2.90. The committee was informed that there has been limited evaluation of the program so far. The committee would like to see some empirical evaluation of the program over time to determine its efficacy in helping people reach their goals of reducing or abstaining from cannabis use. If the program is found to be effective, the committee endorses an increased allocation of funds to the group to cater for the full range of demand. The committee also endorses additional funding to allow more self-help information to be developed based on some of the grass-roots expertise of Effective Weed Control. The group pointed out that, ‘...One of the things we are getting out of the work we are doing is a good body of knowledge and information that I think can really inform some good resources, if we are able to develop them. I think there is a real need to do that at the moment, because one of the ideas that I have had is that we can write up some very good self help information and some very good resources that can be used in conjunction with people doing cannabis cessation groups like the ones we are running. To be able to do that would be fantastic’⁷⁴.

2.91. The committee was greatly impressed by the work undertaken by Effective Weed Control in meeting the needs of people with problematic cannabis use. In particular, the committee believes that the advertising of the program is in keeping with its target audience and includes a picture of a marijuana flower, psychedelic fonts and a modern layout. It gives the impression that the people running the course are familiar with the sub-culture of cannabis users and in touch with their vernacular and the nuances of their problems. This, to the committee, is one of the most important

⁷¹ *ibid*, p 6.

⁷² *ibid*, p 11.

⁷³ *ibid*, p 12.

⁷⁴ *ibid*, p 21.

elements of drug education and use reduction/abstinence programs – credibility in the user community.

2.92. Later in this report, the committee talks about the need to have more effective interventions for younger cannabis users (juveniles) via the SCON scheme and the committee sees that Effective Weed Control or a similar program may be a most useful program for young cannabis users to attend. The Clinical Supervisor of the program also saw value in this approach noting that, ‘I would say that one of the advantages, one of the possibilities, about the expiation system is that it does afford some value or some opportunity or possibility for primary and secondary intervention that we do not otherwise have for cannabis use...So it opens up a possibility that would not otherwise be there...’⁷⁵.

Recommendation 1

The committee recommends that a formal, empirical evaluation of the Effective Weed Control program be conducted and that if this evaluation finds that the program performs well against a number of treatment goals then funding be increased to allow the program to be extended to meet the full range of community demand including the provision of self-help information and counselling.

Patterns of use

2.93. The committee is of the view that the most serious health effects of cannabis use depend on the frequency, duration, quantity and quality of cannabis consumed. The notion that smoking a single joint will have permanently deleterious effects on a person is extremely unlikely. However, prolonged and excessive cannabis use is far more likely to result in adverse effects.

2.94. Various research has indicated that as many as 39% of the Australian population has tried cannabis at some stage throughout their lifetime⁷⁶. The rate of cannabis use among the 14-29 year-old age group is even higher with around 50% of those in this group having ever tried the drug as at 1995⁷⁷. Given the widespread use of the drug, the committee sees that education and information about the health effects is crucial for existing and potential users.

2.95. For readers interested in a more thorough analysis of cannabis usage patterns, the committee refers them to National Drug Strategy Monograph No. 27 *Patterns of cannabis use in Australia*.

⁷⁵ *ibid*, p 12.

⁷⁶ Lenton et al op cit (2000) p 7.

⁷⁷ *ibid*, p 9.

Medicinal use

2.96. A number of submissions to the committee presented views in relation to the medical use of cannabis for certain illnesses. Given, that the issue of medical use of cannabis is somewhat outside the committee's terms of reference, the committee will not explore the issue in depth. However, the committee acknowledges that there are significant issues that need to be addressed in this area.

2.97. A submission from the ACT Council of Social Services (ACTCOSS) outlined a number of illnesses and conditions where the use of cannabis has been argued to be effective as a treatment. ACTCOSS notes in its submission that while considerable anecdotal evidence abounds about the therapeutic benefits of cannabis, the paucity of scientific research of the benefits claimed means that, 'any results on the effectiveness of cannabis in treating illness should be treated as partial and tentative'⁷⁸.

2.98. The committee notes that the House of Lords Select Committee on Science and Technology, the United States Institute of Medicine and the Chief Health Officer of the ACT have indicated that there is a strong case for cannabis use for patients with certain conditions⁷⁹. The Chief Health Officer of the ACT noted that:

I agree that there is a strong case for cannabis use in certain conditions such as HIV/AIDS wasting syndrome, nausea and vomiting associated with cancer chemotherapy and some nervous conditions, spasms and multiple sclerosis diseases. It has certainly been my experience as an Infectious Disease Physician that patients who have acquired cannabis specifically for the purpose of wasting syndrome or nausea and vomiting have found it very helpful. It has also been my experience that in these instances people are already so ill that there is no issue to consider in regards to addiction or misuse⁸⁰.

2.99. The committee has included below the various conditions for which cannabis is claimed to have provided some therapeutic benefit.

- Chemotherapy-induced nausea and vomiting
- AIDS wasting syndrome
- Glaucoma
- Arthritis
- Multiple Sclerosis and spasticity
- Chronic Pain

2.89. Other views were also put to the committee about the limited value of cannabis as medicine. Of particular concern to some was that the route of administration –

⁷⁸ Submission 11, p 2.

⁷⁹ Submissions 9, p 4; submission 11, p 2.

⁸⁰ The Chief Health Officer of the ACT quoted in Submission 9, p 4.

smoking – was a particularly pernicious delivery method. A submission from Mr John Malouf, Australian Pharmacists Against Drug Abuse, notes that, ‘From a pharmacy perspective, I am doubly surprised that in the year 2000, serious consideration is being given to the medicinal use of any plant in its crude form, instead of a specific alkaloid contained in the plant or synthetic derivatives of it. In addition I am confounded that credibility is being given to the method of administration, namely smoking’⁸¹.

2.100. The committee agrees that the smoking of any substance brings with it respiratory problems and the potential for carcinogens to be deposited in the lungs and aerodigestive tract. The committee is aware, however, that there are aerosol and other inhalation-route technologies on the horizon which may be able to deliver the active compounds in a form which is not harmful to the lungs in the same way that smoking is⁸².

2.101. The committee did not form a view on the suitability of cannabis as medicine and sees that this issue should be dealt with thoroughly and empirically by experts who can best advise policy makers. The committee does not claim to have the requisite expertise.

Conclusions

2.102. The committee has drawn one clear message from the literature and that is that prolonged heavy cannabis use is likely to have some negative health consequences. The extent of negative health effects, if any, will vary depending on a number of factors including the genetic make-up of a particular individual (especially in relation to those with a genetic predisposition to cancer or psychosis), the frequency and duration of use, and whether other drugs such as alcohol and tobacco have been used concomitantly. Certainly chronic heavy cannabis use will bring with it increased risks of negative health consequences.

2.103. This message has implications for how the health policy aspects are considered by policy makers. In the committee’s view, we as a community must discourage the use of cannabis in the same way that we discourage tobacco use. It is not a completely benign or harmless drug. While the jury is out with regard to many of the health effects of cannabis, a cautious approach should still be applied and cannabis use should primarily be seen as a health related issue. The use by many cannabis smokers of tobacco in addition to cannabis also appears to be a risk factor and it would seem advisable to recommend to cannabis users that they do not mix tobacco with cannabis should they choose to use it. Also as noted earlier, evidence would also seem to suggest that by far the safer method of administration of cannabis is the oral route rather than the inhalation of smoke.

⁸¹ Submission 16, p 2.

⁸² From New Scientist, 21 February 1998

2.104. The committee sees that given cannabis use is primarily a health related issue, strategies need to be developed which set out to lessen the extent of any harmful effects from the drug. These strategies should be aimed at reducing the level of cannabis use generally - assisting people to voluntarily achieve abstinence or reduce their use of the drug. However, the committee accepts that people have been using drugs for millennia and this is unlikely to change. The committee believes that it is both unrealistic and dangerous to countenance the idea that drug use can be eradicated completely and policy prescriptions that are based on this assumption are also dangerous. For this reason, the committee sees value in looking at approaches which, rather than setting out to eradicate drug use, set out to mitigate the negative consequences of drug use. This approach in no way condones or endorses the use of drugs, it merely accepts that drug use occurs and that some people will never get to a position where they are drug-free. Following this, the primary goal of cannabis-related health policy and cannabis policy generally should be to diminish any damage associated with its use while discouraging potential and existing users from further use. However, the committee again notes that given 39% of the population has tried cannabis. It is a comparatively popular drug and all the discouragement in the world through whatever means will be unlikely to significantly alter patterns of use.

2.105. In this regard, Lenton et al note that:

Harm reduction rests on the assumption that at any one time many people who use drugs will be unable, or unwilling, to completely stop using, or even cut down their use of drugs.

For other users who want to stop or reduce their use of drugs, strategies such as drug treatment need to be offered. Either complete abstinence or a reduction in the level of use may be set as a treatment goal. It also needs to be noted that many who try to change their drug using patterns don't succeed at their first attempt.

Strategies should be available to all users which help them to reduce drug-related harm to themselves, their families and the general community. People can be helped to stay healthy and alive, whether or not they are trying to reduce or stop their drug use.

While we may not approve of a person's decision to use drugs, we should accept it as a fact.

Adopting a harm reduction approach does not imply support for or condoning of drug use. Governments which adopt a harm reduction approach acknowledge that where risky drug using behaviours continue to occur, they have a responsibility to implement public health and law enforcement measures to reduce the harm that individuals, families and the community as a whole may experience⁸³.

2.106. The committee understands that this is the current policy view of the Government and the committee supports this approach. However, the committee does have concerns that there may be some gaps in the treatment and counselling options

⁸³ Lenton et al op cit (2000) p 51

for cannabis users. The committee also sees that early intervention is a crucial tool for helping to address cannabis related problems in the community.

2.107. Following this the committee has a number of recommendations about the course which cannabis related health policy should be directed.

Recommendation 2

The committee recommends that:

- i) the Government develop public information and education programs aimed at informing the community at large (and more specifically potential cannabis users and existing cannabis users) about the potential health effects of the drug; and**
- ii) the Government develop best practice outreach services, treatment services and counselling services for chronic, heavy cannabis users (the group which is most at risk).**

Inquiry into Cannabis Use in the ACT

CHAPTER 3. ISSUES

3.1. This chapter outlines some of the arguments that are often put forward in relation to the legal status of cannabis.

3.2. On the weight of evidence, the committee was persuaded that simple cannabis offences should not be criminal offences. The committee formed the view that while cannabis does have a range of negative health and social effects associated with its use, the social harms caused by strict prohibition likely outweigh them.

3.3. Despite this, the position is often put that any loosening of cannabis laws will create the impression that cannabis use is acceptable or condoned by the community. Those venturing this point of view argue that use of the drug will increase as a result. However, the committee found that this flies in the face of evidence and this is explored further in the chapter.

3.4. The committee sees that there is also a role for improved education and information in relation to cannabis use, its health effects and the law. More innovative, properly targeted programs may have the effect of reducing the rates of use, not through punitive or coercive measures, but through awareness raising and provision of decision-enabling information.

3.5. The committee, while generally supportive of the SCON scheme which operates in the ACT, sees that there are some refinements that could be made to improve its efficacy. The committee outlines these proposals in this chapter.

Principles

3.6. Before embarking on a critique and analysis of the various legislative approaches for cannabis, the committee thought it worth while to outline a set of principles or parameters that a cannabis policy should abide. The notion of a cannabis policy is, in this report, taken to mean the legislative and bureaucratic policy provisions pertaining to cannabis use, possession and cultivation (especially in relation to simple cannabis offences). The committee considers that the following guiding principles should be incorporated as goals or aims of a cannabis policy.

1. The policy should not encourage drug use

Any policy measures should not have the effect of condoning or promoting the use of cannabis.

2. The policy should be cost-effective.

The public must ask itself how much it is prepared to spend on the execution of a cannabis policy. Recognising the finite nature of the ACT budget, the issue of prioritisation also comes about – in terms of expenditure, what importance does the community place on cannabis policy? When the policy is measured, the economic

costs expended in achieving the outcomes must be accurately measured to provide an indication to the community how much the implementation of a particular approach is costing tax payers.

3. The policy should increase awareness about the potential health effects of cannabis use in users and the community generally.

The committee accepts that people will always use drugs in our society but that people using drugs or considering using drugs must be accurately informed about the dangers that are associated with drug use. This awareness raising should be based on accurate and scientifically verified information, not mere assertion. It is important that any attempt to promote awareness of the health harms associated with cannabis use is credible and level-headed.

4. The policy should be applied uniformly and equally.

It is important that a policy does not allow excessive discretion in its application that may result in unequal treatment for various people found to have infringed the policy.

5. The policy should have the effect of reducing the involvement of organised crime.

A major goal of the policy should be to eliminate the involvement of criminal drug marketeers and the associated social harms caused by this involvement. This should not just be construed in terms of supply reduction through law enforcement efforts but should take into account the various economic imperatives that exist under different regimes.

6. The policy should openly state its goals and be empirically measured against the goals that it has set out to achieve.

It is critical that the outcomes of the policy are quantifiable and able to be compared with its stated aims. Using some basic performance measures and establishing those measures from the outset will encourage transparent and credible debate on the policy as it progresses, leading to informed and well-grounded decisions about possible changes. It seems that too often debates about policy issues of this type are characterised by assertion and emotive arguments. Providing an accurate and clear explication of the policy's goals and empirically measuring its success or failure against those goals will facilitate a more honest discourse.

7. The policy should be subject to review and refinement based on an evaluation of empirically derived data vis-à-vis stated goals.

The policy should be subject to basic continuous improvement measures.

8. The harms and costs caused by control measures in the policy should not outweigh the harms and costs prevented by them⁸⁴.

Social and financial costs are connected with both drug use *and* often the policies in place aimed at controlling drug use. This is a difficult area to operationalise but when all is considered, it is important that any policy in place for dealing with cannabis does not have more negative effects than the claimed benefits.

9. The policy should be formulated based on the best available scrutinised evidence⁸⁵.

The policy should be put together based on a rigorous assessment of the best available evidence and those formulating the policy should also rigorously scrutinise the credentials of those people putting forward the evidence.

10. The policy should to every extent possible have the effect of segregating the cannabis market from other illicit markets involving potentially more dangerous drugs such as heroin.

Recommendation 3

The committee recommends that the Government outline the goals of its policies in relation to cannabis along similar lines to the principles outlined in paragraph 3.6 of the committee's report, keeping in mind the importance of early intervention.

Recommendation 4

The committee recommends that:

- i) the Government develop performance measures against which to judge the success of its policies in relation to cannabis and that ongoing monitoring and empirical evaluation is undertaken and used as the basis on which to make any changes to the policies; and**
- ii) the Government undertake a formal evaluation of the SCON scheme in the near future, at the appropriate time, to determine its efficacy.**

Approaches to regulation of cannabis

3.7. Accepting that cannabis is not a harmless drug, public policy makers are confronted with how best to regulate the use, possession and cultivation of cannabis. The committee notes the work of the National Drug Research Institute and, in particular, its monograph, *The Regulation of Cannabis Possession, Use and Supply*.

⁸⁴ Principle 8 is drawn from submission 8, p 3.

⁸⁵ Principle 9 is drawn from evidence given by Friends and Families for Drug Law Reform in the public hearing.

This section outlines the current legislative regimes operating in the ACT, South Australia and Western Australia.

3.8. The NDRI Monograph outlines six different models for cannabis regulation. The committee considers that it is worth including the Institute's description of these approaches in full. However, the focus of this report will be on the approaches taken in the ACT, South Australia and Western Australia.

Total prohibition: All activity associated with the possession, use, growth, sale or supply of cannabis is considered criminal. Such a legislative system currently operates in Victoria, although since September 1998 cautions have been given for first and second offences (Victoria Police Strategic Development Departments 1998).

Legislative Prohibition with an Expediency Principle: Cannabis related activities are illegal. However, cases involving the possession or use of small quantities are not investigated or prosecuted by police. Examples of this system operate in Denmark and the Netherlands.

Partial Prohibition with civil penalties: Cannabis related activities are illegal, but criminal penalties do not apply. Instead, a civil penalty such as a fine is administered. Activities relating to large scale cultivation, sale or supply of cannabis remain subject to criminal penalties. Systems based on this model operate in South Australia, the Australian Capital Territory and ten states in the USA.

Partial Prohibition: Personal use activities are not illegal, while cultivation, sale and supply of commercial quantities of cannabis are prohibited. Examples of this model currently apply in Colombia, Spain and Switzerland. Furthermore, the legislative model recommended in the report of the premier's Drug Advisory Council (1996) most closely resembled partial prohibition.

Regulation: All cultivation, sale and supply of cannabis would be to some extent controlled by government regulation. Activity outside the regulated market remains illegal. In Australia it is this system that applies to currently licit drugs such as tobacco and alcohol. This system does not apply to cannabis anywhere in the world, although the retail sale of cannabis through *coffeeshops* in the Netherlands is subject to regulation.

Free Availability: No legislative or regulatory restriction would apply to the cultivation, sale, supply, possession or use of cannabis. It should be noted that there are very few commodities for which a system of free availability applies⁸⁶.

Western Australia

3.9. In Western Australia, strict prohibition still applies. A person caught with less than 25 plants, less than 100 grams of cannabis, less than 20 grams of cannabis resin or less than 80 joints faces criminal penalties. They are a \$2,000 fine or 2 years imprisonment, or both. Police have discretionary powers to charge a person but they are also able to issue a caution in some circumstances⁸⁷.

⁸⁶ Lenton, Simon et al (2000) '*The Regulation of Cannabis Possession, Use and Supply*' Monograph No. 3 National Drug Research Institute p xxviii, xxix.

⁸⁷ Submission 4, p 1.

The Cannabis Caution and Mandatory Education System pilot

3.10. The committee was advised that the Western Australian Police have trialed a cautioning and mandatory education scheme for people detected for simple cannabis offences. The twelve month trial which started in October 1998 was brought about in the belief that a formal cautioning program, ‘had the potential to provide a more meaningful intervention [than being charged and summonsed to court], with a greater and more positive impact on the individual concerned’⁸⁸.

3.11. The goals of the trial were:

- to achieve a more effective way of dealing with people caught in the criminal justice system for first time simple cannabis offences;
- to improve knowledge and attitudes regarding cannabis by offenders; and
- to improve police procedures, including a more streamlined process and more positive interaction with offenders⁸⁹.

3.12. The committee met with WA police officers involved in the trial who voiced strong support for the system over the existing measures for dealing with simple cannabis offences.

South Australia

3.13. In 1987 South Australia enacted its Cannabis Expiation Notice scheme (CEN), the first state or Territory to enact such legislation in Australia.

3.14. Under the South Australian Legislation, police are able to issue a person that has committed a minor cannabis offence with an infringement notice. No criminal conviction is recorded if the fine is paid within the prescribed timeframe. Juveniles in South Australia are not issued with CENs.

3.15. Lenton et al outline the scheme in the following terms:

Cannabis Expiation Notices are generally for the value of \$50 or \$150. Offences which attract the lower penalty are possession of less than 25 grams of cannabis, possession of less than 5 grams of cannabis resin and consumption of cannabis/cannabis resin in a private place. A \$150 fee is applicable in cases involving possession of 25 grams or more of cannabis (but less than 100 grams), possession of 5 grams or more of cannabis resin (but less than 20 grams) or cultivation of 3 or fewer cannabis plants for personal use (reduced from 10 plants in May 1999). Persons found in possession of a smoking implement in the absence of any other offence are only required to pay \$10. If another expiable offence is detected, a fee of \$50 applies⁹⁰.

⁸⁸ Letter to committee from Kevin Prince LL.B MLA, WA Minister for Police.

⁸⁹ *ibid* p 3.

⁹⁰ Lenton et al op cit (2000), p 128.

3.16. In 1995/96, approximately 45% of the notices issued were paid, this is a 5-10% drop in the number of fines paid compared to the rates of expiation earlier in the life of the scheme⁹¹. A number of reasons have been given for low rates of expiation and this is explored later in the chapter.

3.17. The committee is aware that the reason the plant limit was lowered from 10 to 3 was largely as a result of criminal syndicates that formed to market the drug interstate. The committee met with South Australian Police Officers from both senior and operational levels who informed the committee that a 'cottage industry' had blossomed under the 10 plant limit and that criminal elements had formed syndicates of growers who, when combined, were able to supply large crops of cannabis for the interstate market where prices are considerably higher. The police advised the committee that the advent of hydroponic growing and cloning techniques had substantially increased yields and enabled five separate crops to be harvested over the course of the year. It was put to the committee that a single grower could stay within the 10 plant limit at any one time and still produce 50 plants over the course of a year with average yields between one and a half to two pounds per plant. This equates to anywhere between 75 and 100 pounds of cannabis. Considering that cannabis can sell for around \$6500 per pound in NSW and \$9500 per pound on the Gold Coast, it was argued that the huge profits were encouraging the practice.⁹².

3.18. Given that the only penalty applicable for growers who kept under the 10 plant limit was a \$150 fine, there were very few disincentives in place to guard against profiteering from the illegal sale of the drug.

3.19. However, the committee gained the impression that following the lowering of the limit of plants to three, the police working in the area of cannabis were generally supportive of the manner in which the CEN policy operated. Officers argued that they would much prefer somebody growing their own cannabis than purchasing it, 'from the local pub', thus creating the criminal economic cycle.

3.20. The South Australia Police also made the point that they saw the cottage industry had bloomed primarily because the price of cannabis had remained high in the states where strict prohibition has prevailed. They saw that more uniformity in cannabis laws along the lines of South Australia and the ACT was one positive answer.

⁹¹ *ibid*, p 130.

⁹² However, it was acknowledged by the South Australian police officers that prohibition in NSW and Queensland had a significant impact on the pricing of cannabis which allowed the profiteering. It was suggested that uniformity of drug laws along the lines of South Australia's CEN system would be advantageous in this regard

ACT

The Simple Cannabis Offence Notice scheme (SCON scheme) which operates in the ACT allows police to issue a non-court based infringement notice of \$100 to a person who has been found to have:

- Cultivated not more than 5 cannabis plants for personal use;
- Been in possession of not more than 25 grams of cannabis for personal use; or
- Self-administered cannabis⁹³.

3.21. If paid, the offence is expiated and no criminal conviction is recorded against the person. However, it must be noted that currently the issuing of infringement notices is done at the discretion of police who are still able to formally charge a person with a criminal offence.

3.22. If the fine associated with the SCON is not paid within 60 days, the matter is referred to the police officer that issued the notice who then has the discretion to pursue the matter further or let the matter pass. Between 1993 and 1994, 56% of the notices issued by police were paid⁹⁴. The committee was concerned by the low rates of expiation and explores this issue later in the chapter.

3.23. Unlike the CEN system in South Australia, SCONs can be issued to juveniles. The committee believes that this is probably an inappropriate method of dealing with juveniles for simple cannabis offences and makes recommendations in keeping with this in the following chapter.

‘Giving the wrong message’ and patterns of use

3.24. In relation to the ACT SCON system and other expiation notice schemes, the claim has been repeatedly made that the absence of criminal sanctions could lead to the wrong message being promulgated about the acceptability of the drug, giving the impression that it is a safe drug. Proponents of this view often assert that this message could lead to an increase in use of cannabis. In his article, *Cannabis Policy and the burden of proof: is it now beyond reasonable doubt that cannabis prohibition is not working?*, Simon Lenton from the National Drug Research Institute, Curtin University of Technology, summarises the argument in the following terms:

Some politicians and senior bureaucrats often voice the notion that at all costs we need to avoid ‘giving the wrong message’ when publicly responding to calls for reform of cannabis and other drug laws; the argument being that reducing or removing penalties

⁹³ Submission 9, p 5.

⁹⁴ Wilson, C (1995) ‘*Cannabis offences in the Australian Capital Territory*’. In: McDonald, D and Atkinson, L (Eds) ‘*Social Impacts of the Legislative Options for Cannabis in Australia*’. Phase 1 Research Report to the National Drug Strategy Committee. Australian Institute of Criminology. cited in Lenton, Simon (2000) op cit, p 136.

will in some way condone use and lead to an increased number of users or increased rates of use among those who do use the drug⁹⁵.

3.25. However, research does not support this contention. A study conducted by Jill McGeorge, *The Effect of Decriminalisation of Cannabis on Patterns of Use Among University Students*, compared the patterns of use between students in the ACT and students in Victoria where criminal sanctions still apply. The study found that there was no significant increase in cannabis use among the ACT students after the introduction of the SCON scheme and that there was no significant difference in patterns of use between the Victorian and ACT students⁹⁶.

3.26. A study commissioned by Michael Moore's Office, *Cannabis in Canberra: Is it going to pot? A quantitative research project evaluating the decriminalisation of cannabis through the Drugs of Dependence (Amendment) ACT* also found that the use of cannabis did not significantly increase after the introduction of the SCON legislation. The study targeted cannabis users, ex-users, young people, health professionals including drug workers, college students, the police, parents, teachers, politicians and legal workers⁹⁷.

3.27. In relation to the study, the Government submission notes that:

The study found that the introduction of expiation notices in 1992 did not significantly change levels of cannabis use and that the factors more likely to influence cannabis use are age, peer groups, the physical effect of the drug and changes in the users financial circumstances and the drug's availability⁹⁸.

3.28. On the face of it, it appears that the introduction of a simple cannabis offence notice scheme has not had the unintended effect of encouraging use of the drug (in keeping with principle no. 1).

3.29. These findings are supported by a review of the literature undertaken by Simon Lenton. Lenton talks about the notions of specific deterrence and general deterrence. Specific deterrence is seen as, 'the dissuasion of law breakers from further offending', while general deterrence is described as, 'prevention of criminal activity by others, in this case the notion that the application of cannabis law is a deterrent to use for those who are not using'⁹⁹. Lenton's analysis argues that both general and specific deterrence through the continuation of prohibition do not work in relation to cannabis.

3.30. In relation to general deterrence Lenton notes that:

⁹⁵ Lenton, Simon (2000) '*Cannabis policy and the burden of proof: is it now beyond a reasonable doubt that cannabis prohibition is not working?*' Drug and Alcohol Review 19, 95-100.

⁹⁶ McGeorge, Jill (1994) '*The Effect of the Decriminalisation of Cannabis on Patterns of Use Among University Students*' cited in Submission 9, p 14.

⁹⁷ Submission 9, p 15.

⁹⁸ *ibid*

⁹⁹ Lenton, Simon (2000) *op cit*, p 96

the best measure of the effectiveness of general deterrence [preventing non-users from using cannabis through the law] is to compare surveys of rates of self-reported cannabis use before and after legal changes have occurred, or across similar locations with different cannabis laws¹⁰⁰.

3.31. Following this, Lenton cites a US study that looked at the effects of decriminalisation in 11 states since 1973, which found that when compared to prohibitionist states, states with decriminalisation did not have higher rates of cannabis use¹⁰¹.

3.32. The 1996 Drug Strategy Household Survey Report made a similar finding in relation to comparisons between the South Australia, the ACT and the Northern Territory (where the expiation notice schemes are in operation) and the other states (where total prohibition was in place). Lenton notes that:

The report concluded that the decriminalisation of cannabis did not consistently lead to higher rates of use, with SA among the lowest current users, and rates in the ACT behind both the NT and Western Australia (WA) in 1995¹⁰².

3.33. While some increases in use were reported in states with decriminalisation, so too did use increase in states with strict prohibition in place. In terms of regular, weekly use of cannabis, the biggest increase reported was in Tasmania, a prohibition state, which showed a 5% increase between 1991 and 1995¹⁰³. While South Australia (the state with the longest history of decriminalisation) reported an increase in people that had ever tried cannabis, higher rates of regular use were not indicated when compared to other states¹⁰⁴. It is also interesting to note that Western Australia with its strict prohibition regime had failed to deter a significant amount of its population from using the drug. The National Household Survey demonstrated that 37% of Western Australians aged 14 and over had tried cannabis and 16% had used it in the preceding 12 month period. Lenton notes that this equates to 500 000 Western Australians aged 14 years and above that had ever used the drug and over 200 000 who had used the drug in the previous year.

3.34. Lenton concludes that :

Together, this research evidence fails to show that cannabis prohibition has a measurable effect on the rates of cannabis use in the general population. If removing criminal

¹⁰⁰ *ibid.* p 96.

¹⁰¹ Single, EW (1989) '*The impact of marijuana decriminalisation: an update*' J Public Health Policy 10, p 456-66 cited in Lenton, Simon *op. cit.* p 96.

¹⁰² Commonwealth of Australia National Drug Strategy (1996) Household Survey –Survey Report 1995' cited in Lenton (2000) *op. cit.*, p 96.

¹⁰³ Donnelly N et al (1999) '*Effects of the Cannabis Expiation Notice Scheme on levels and patterns of cannabis use in South Australia: evidence from the National Drug Surveys, 1985-1995*' cited in Lenton, Simon *op. cit.* p 97.

¹⁰⁴ Ali, Robert et al (1999) '*The social impacts of the cannabis expiation notice scheme in South Australia: survey report*'. cited in Lenton, Simon (2000) *op. cit.* p 97.

penalties is ‘giving the wrong message’ to the general community then it seems that few people are listening.

3.35. It is also interesting to note that when compared to the Netherlands, where cannabis is openly sold in coffee shops, the rates of use are far lower than in either Australia or the United States where prohibition predominantly prevails. The following data compiled by Jane Maxwell from the Texas State University shows the large difference in prevalence of use of the drug between America and Australia versus the Netherlands. However, a submission from the Australian Drug Law Reform Foundation notes that there are methodological variances between the data which may, ‘make absolute comparisons difficult’¹⁰⁵.

Country	Ever used 1998 (1997 for the Netherlands)	Used in the last year 1998 (1997 for the Netherlands)
Netherlands (ages 12 years and over)	15.6%	4.5%
US (ages 12 and over)	34.1%	8.8%
Australia (ages 14 and over)	39.3%	17.9% ¹⁰⁶

3.36. In relation to specific deterrence, Lenton cites a Canadian study which showed that even users of cannabis that went to court for possession of the drug were not dissuaded from further use as a result of the criminal sanction imposed. In the study people were interviewed immediately after appearing before a court for minor cannabis offences about their intentions to use or not to use cannabis in the future. The study found that 53% of people indicated that it was ‘very likely’ that they would use cannabis again and 32% said it was ‘quite likely’¹⁰⁷. Follow-up occurred one year later and the results showed that the majority of the sample continued using cannabis. Lenton notes that:

At 1 year follow-up, intention to use was found to be a good predictor of actual use and specific deterrent effects were found to be similar to those at first interview. Although 8% reported no cannabis use in the past year, and 8% used it once a month or less, for the balance of the sample relatively moderate or high levels of use persisted¹⁰⁸.

3.37. A similar finding was made in relation to people that had been arrested in Western Australia for simple cannabis offences. Research undertaken by Lenton,

¹⁰⁵ Submission 6, p 2.

¹⁰⁶ Submission, p 16.

¹⁰⁷ Erickson P (1980) ‘*Cannabis Criminals: the social effects of punishment on drug users*’ Addiction Research Foundation cited in Lenton, Simon op cit p 98.

¹⁰⁸ *ibid*.

Bennett and Heale showed that one month after arrest, 85.3% of people had continued using cannabis throughout that month¹⁰⁹.

3.38. The study commissioned by Michael Moore's office indicated that people's decisions about their use of cannabis are not significantly affected by its legal status. The ACT Government submission to the inquiry notes that the law ranked seventh (12%) as a factor in changing people's use of cannabis after:

1. Getting older (30%)
2. Partner's influence (18%)
3. Availability (of cannabis) (18%)
4. Health concerns (17%)
5. Undesirable effects (16%)
6. Financial changes (13%)¹¹⁰

3.39. In evidence before the committee, the Australian Drug Law Reform Foundation cited a recent New York Times article in which the Justice Policy Institute is quoted as saying, "The Institute studied states with higher rates of imprisonment for drug offences to see whether that had a deterrent effect. It found the contrary - that states with higher incarceration rates also had higher rates of drug use"¹¹¹. The committee has examined a copy of this report, *Poor Prescription: The Cost of Imprisoning Drug Offenders in the United States*, and notes that one of the main conclusions it draws is that the severity of penalties for a range of drugs has very little impact on the prevalence of drug use. That is to say that the notion that 'getting tough on drugs' by way of harsher laws in no significant way contributes to the uptake and continuing use of drugs by citizens in that community.

3.40. The committee can only conclude that that the so-claimed deterrence effect of having criminal sanctions in place is not supported by the evidence – even with a considerable degree of imagination it would be difficult to support the notion of deterrence through prohibition. It simply appears that people's patterns of use of cannabis are not significantly impacted by the status of the law. Thus, the argument that the SCON scheme breaches principle number 1, by encouraging use of the drug through the absence of criminal sanctions, cannot be sustained. It is more likely that people make a decision about whether or not to use or continue using cannabis based on the perceived costs and benefits of the drug, taking into account health issues,

¹⁰⁹ Lenton, Simon; Bennet, Mike; Heale, Penny (1999) '*The Social Impact of a Minor Cannabis Offence Under Strict Prohibition – The Case of Western Australia*' National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology, p 52.

¹¹⁰ Submission 8, p 15.

¹¹¹ Transcript, 2 August 2000, p 4, Mr Peter Watney.

relationships, and the experience of ‘coming of age’. The fact that the Netherlands has far lower rates of cannabis use than Australia or the United States undermines the assertion that the wrong message is being sent by having more relaxed cannabis laws.

Prohibition – the social harms and social costs

3.41. Over twenty years ago, US President Jimmy Carter said that “penalties against the use of a drug should not be more damaging to an individual than the use of a drug itself; and where they are they should be changed”¹¹².

3.42. The committee is aware of compelling evidence on the social costs and social harms associated with the prohibition of cannabis. The weight of evidence is compelling enough to warrant a complete re-examination of cannabis related policy at a national level.

3.43. In a recent report, the Alcohol and Drug Council of Australia noted that:

ADCA believes that the greatest harms arising from cannabis use often result from the illegal nature of the drug. This is not to deny that the misuse of cannabis is associated with poor health outcomes. It is, however, almost impossible to think of any other law which has been broken as often as the prohibition of cannabis. It is incredible that 40% of the population have used cannabis at some stage in their lives, despite its illegal status in all jurisdictions¹¹³.

3.44. It is a true to say that a law that has been broken so often, for so long, by so many people must be seen by many as having fallen into disrepute.

Organised crime

3.45. It is an economic truism that when the availability of a commodity is restricted in its availability, the price of that commodity will necessarily increase. The case is no different when the commodity is cannabis and the means of restriction is the law. The real or true value of cannabis is extremely inflated under a system of total or even partial prohibition. What could potentially be produced for only 20 or so cents per kilogram actually ends up costing cannabis consumers \$25 per gram or almost 10, 000 times more under prohibition. It is for this reason and *no other* that organised criminals get involved in the trafficking and the marketing of cannabis.

3.46. The involvement of organised criminals in the importation/cultivation, distribution and marketing of cannabis is well known. It is also among the most negative consequences of prohibitive regimes. With organised criminals comes turf battles, violence, police corruption (as identified in the NSW Royal Commission into the NSW Police Service and the Fitzgerald Inquiry in Queensland), impure drugs, and the concurrent marketing of more dangerous drugs to cannabis users such as heroin,

¹¹² Submission 14, p 3.

¹¹³ ADCA (2000) ‘*Drug Policy 2000: A New Agenda for Harm Reduction*’ p 84.

amphetamines and ecstasy. The committee points out that there is no evidence of similar police corruption in the ACT.

3.47. Evidence from the Australian Bureau of Criminal Intelligence (ABCI) indicates that organised criminal elements are highly involved in the illicit cannabis market. In a 1998 report, the Bureau noted that the cultivation and sale of cannabis is a 'large scale industry' in Australia¹¹⁴. Italian organised criminal groups and organised motorcycle gangs have been identified as being heavily involved in the cultivation and supply of cannabis.

3.48. Summarising the ABCI report, Lenton and his colleagues note some of the negative activities associated with this organised criminal activity. Lenton et al note that:

The use of 'booby traps', armed guards and large, spring loaded animal traps to protect large outdoor crops was reported by the ABCI as fairly common. They also suggested that there was evidence that some criminal groups were recruiting people for specific tasks such as 'crop sitting' for cannabis plantations as well as renting premises and connecting utilities for indoor hydroponic crops in an effort to avoid detection as increases in electricity has been one of the ways that police have used to identify premises which are likely being used for cannabis cultivation¹¹⁵.

3.49. The committee notes that the Report by the Parliamentary Joint Committee on the National Crime Authority 1989 estimated that the size of the cannabis market was \$1.95 billion in 1989¹¹⁶. However, a forecasting paper produced by Access Economics in 1997 notes that:

The Cleeland Parliamentary Joint Committee report estimated illegal drug turnover in Australia at \$2.6 billion in 1988 for cannabis, heroin and cocaine. The calculations significantly underestimated the number of cannabis and heroin users. Mark's¹¹⁷ suggests a figure of \$6 billion would be more accurate giving a range of 0.9% to 1.9% of 1987-88 total output. These estimates would suggest a current turnover in these three drugs of \$4.6 billion to \$9.6 billion even assuming no growth in spending on illegal drugs relative to total output. Synthetic drugs such as ecstasy and amphetamine made up only 5% of money spent on illicit drugs in the US in 1991. Use in Australia may be slightly higher and is growing rapidly, but would not greatly change estimated spending. The midpoint of this range suggests Australian illegal drug trade turnover of 1.4% of output or around \$7 billion. This is consistent with international estimates of the size of the drug trade...¹¹⁸

3.50. Whatever the exact size of the cannabis industry in Australia it must be acknowledged that it is a billion dollar industry which represents a significant demand and supply market.

¹¹⁴ Lenton, Simon et al (2000) p 41.

¹¹⁵ *ibid*, p 42.

¹¹⁶ Advisory Committee on Illicit Drugs (1993) '*Cannabis and the Law in Queensland*' Discussion Paper, p55.

¹¹⁷ Marks R, '*The costs of Australian drug Policy*', The Journal of Drug Issues, Vol 22, No 3 cited in Access Economics, '*Economics Monitor – Short Term Forecasts October 1997*' p 15.

¹¹⁸ Access Economics, '*Economics Monitor – Short Term Forecasts October 1997*' p 15.

3.51. Warning on the dangers of ignoring such a powerful market force, the Australian Drug Law Reform Foundation point out that, ‘Following the collapse of communism a decade ago, there has been a greater recognition around the world of the high costs of ignoring powerful market forces. If the \$5 billion/year demand for cannabis is not supplied by legal sources, it will be supplied by other sources. More attention needs to be paid to the high social costs that arise from encouraging such a large and lucrative area for organised crime and the black economy. Just as citizens can expect to pay a high price for disobeying the law, the community pays a high price when legislators try to break the law of supply and demand’¹¹⁹.

A marketing nexus

3.52. It is in the interests of organised criminals to diversify their operations in an attempt to maximise profits. For this reason many criminals deal not only in cannabis but also heroin and other potentially more harmful substances. This creates a dangerous nexus whereby a person obtaining their cannabis from a drug dealer may also be exposed to more pernicious drugs. In some sense this is the real gateway that exists between cannabis and other drugs. It is not a result of cannabis use per se but the involvement of criminal marketeers who aim to make the most money possible out of their customers. Again, the committee notes the words of the Chief Police Officer of the ACT who stated in the public hearing that, ‘In my view, it is the move of regular cannabis users into a group of people where inevitably they get introduced to other drugs that perhaps is the greatest evil from a law enforcement point of view’¹²⁰. The comment was also made by the AFP that criminals are now marketing both cannabis and heroin to improve their profits. The Chief Police Officer noted that:

Obviously, there is still an entrenched involvement of organised crime in cannabis, large shipments of cannabis. I might just say that our liaison officers overseas and nationally within the AFP, and with the NCA as our partners, have seen in recent years a branching out, if you like, of organised crime traditionally associated with one product - for example, organised crime involved in heroin or organised crime involved in cannabis.

There has been a trend of those organised criminal groups to, in fact, be involved in anything that produces money. We have seen more recently, in recent years, a change to having a group, as a group, involved in both cannabis importation and growing, as well as heroin importation. So there has become a real mix of enterprise, if you like’¹²¹.

3.53. The Chief Police Officer of the ACT also made the point that the illegal nature of cannabis has meant that users come into contact with criminals when they purchase the drug. The Chief Police Officer noted that, ‘I think the danger is that, whatever, type of illicit drug, whatever quantity of illicit drug, by virtue of its very nature a lot of

¹¹⁹ *ibid*, p 2.

¹²⁰ Transcript, 2 August 2000, p 15, Mr Bill Stoll.

¹²¹ *ibid*, pp 23-24, Mr Bill Stoll.

people who would not be otherwise involved with criminals have to be involved in the criminal scene to be able to obtain the product.’¹²².

3.54. Lenton et al make mention of the nexus between cannabis and other drugs in their monograph, *The Regulation of Cannabis Possession, Use and Supply*. Lenton et al note that:

A number of authors have noted 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 (ADCA, 1993, Donnelly and Hall, 1994; Makkai and MacAllister, 1993). Data from a small number of Western Australian studies support this observation. In a study of convicted drug dealers Loxley (1993) reported that 59% of the 33 cannabis dealers said that the main reason for shortages of cannabis had been effective law enforcement against that drug. Furthermore, 15 of the 19 respondents who discussed the issue, said that cannabis buyers might be willing, or persuaded, to buy cheap injectable drugs, such as amphetamine, when they want to buy cannabis and found it too expensive or unavailable¹²³.

3.55. Lenton et al also cite a study by Maddox and Williams (1998) which looked at the intentions of cannabis users should cannabis be decriminalised. The study revealed that 43% of the 55 users sampled (43 % of whom were students), had purchased cannabis from dealers who also supplied other illicit drugs. 47% of this sample agreed to the statement that ‘one of the risks of buying cannabis was that it increases access to other illegal drugs’¹²⁴. Another study by Lenton, Bennet and Heale (1999) revealed that 49% of a sample group that had purchased cannabis in the preceding 12 months said that they had, ‘either been offered (39%), or asked for (33%), other drugs when they went to buy cannabis in the past year. Of these, 35% also purchased other drugs during that period and all but one of these (94%) had also asked for these other drugs in that period’¹²⁵.

3.56. Lenton et al argue that, ‘These results suggest that those purchasing cannabis in the black market were exposed to other drugs, and that many were offered drugs that they had not asked for. Although it was not possible to say from this data whether they had first been offered the drugs by a dealer prior to seeking them out and/or purchasing them’¹²⁶.

3.57. In a submission to the committee, Dr Adam Sutton, Senior Lecturer in University of Melbourne’s Department of Criminology, argues that separating cannabis from other illicit drug markets is of primary importance. In reference to a paper written by Dr Sutton for the International Journal of the Sociology of Law, Dr Sutton notes that, ‘Because cannabis is the illicit drug with which young Australians are most likely to experiment, it is highly desirable that markets and ‘supply

¹²² *ibid*, p 24, Mr Bill Stoll.

¹²³ Lenton *op cit* (2000), p 40-41.

¹²⁴ *ibid*, p 40-41.

¹²⁵ *ibid*, p 40-41.

¹²⁶ *ibid*, p 41.

networks' for cannabis be kept separate from supply networks for other illicit drugs (eg heroin)¹²⁷.

3.58. Law enforcement measures are important in this sense but so too are legislative and bureaucratic provisions which militate against the economic basis of the black market. The absence of criminal sanctions for the cultivation and possession of small amounts of cannabis for personal use would seem to be one way of reducing the need for those people who do use cannabis from having to source the drug from criminal sources where the cross-marketing of other potentially more hazardous drugs is common. It would seem less damaging in the committee's eyes that people using cannabis were able to grow their own supply rather than having to depend on these illicit markets. Hence the argument for a SCON or a caution.

3.59. In this regard, Dr Sutton notes that:

An expiation system such as is currently in place in SA and the ACT could be used to undermine organised crime's monopoly on cannabis production and distribution, and to ensure that markets and supply networks for cannabis were kept separate from markets for other illicit drugs... The key would be for law enforcement authorities to accept that some small-scale cultivations (especially if hydroponic) were for commercial rather than purely 'own' use purposes. Rather than attempting to eliminate every commercial production, however, police should concentrate their efforts on eliminating commercial producers who they believed to have organised crime connections. While not being actively encouraged, small scale cannabis cultivators and distributors could be tolerated as long as they had no organised crime connections, were not marketing drugs other than cannabis, were non-violent in their business methods and so on¹²⁸.

3.60. The committee sees some value in an approach of the type outlined. The committee supports the segregation of the cannabis market from other potentially more dangerous drug markets in line with principle 10 and believes that the current SCON scheme with a number of refinements will likely achieve this outcome to a considerable degree. However, in the spirit of principle no 6, the committee reiterates that an assertion such as this should be tested empirically. That is to say that if one of the goals is to reduce the involvement of organised crime and the disentanglement of cannabis from other drug markets, the policy should be evaluated to demonstrate whether or not this has been the case.

Social impacts on people convicted of simple cannabis offences under prohibition

Western Australian experience

3.61. In 1999, Simon Lenton and colleagues, Mike Bennet and Penny Heale, produced a report on some of the social impacts of cannabis prohibition in Western Australia. The report, *The Social Impact of a Minor Cannabis Offence Under Strict Prohibition*

¹²⁷ Sutton, Adam (2000) '*Cannabis Law and the Young Adult User: Reflections on South Australia's Cannabis Expiation Notice System*' International Journal of the Sociology of law, Vol 28, No 2 (June 2000) cited in Submission 3.

¹²⁸ Submission 3, p 1-2.

identified some undesirable impacts that the prohibition of cannabis can have on users.

3.62. The research project interviewed 68 West Australians who received a criminal record as a result of being convicted for a minor cannabis offence. The project was funded by the Commonwealth Department of Health and Family Services¹²⁹.

3.63. Lenton et al outline the following problems associated with the criminalisation of people caught using or possessing cannabis:

The consequences of having a criminal record may have [a] serious and long lasting impact on a person. Having a criminal record may adversely effect one's future or current employment, the capacity to practice many professions, and travel to countries which do not grant visas to persons with such records (eg Canada and USA). In the early 1970's in Canada it was noted by the Le Dain Commission (Le Dain Commission of Inquiry into the Non-Medical Use of Drugs, 1972) that the effects of criminal convictions on young people were "probably the most serious of the special costs in the application of the criminal law: (p. 293). The consequences of criminal conviction may include both the direct consequences described above as well as less tangible effects such as stigmatisation. The convicted person may perceive themselves as criminal or deviant which may result in an escalation of the disapproved conduct rather than its cessation¹³⁰.

3.64. In a similar vein and cited in Lenton et al, Christie notes that, 'The recording of a criminal conviction for experimenting with, using, or even cultivating small amounts of cannabis in private is a measure out of proportion to the seriousness of the offence, and leaves larges numbers of people with criminal records who might never otherwise have trouble with the law'¹³¹.

3.65. This widely reported study demonstrates that, on the whole, the conviction for a minor cannabis offence has significant negative effects on the individual concerned. A minor cannabis offence in Western Australia refers to the lowest category of cannabis offence which, as noted earlier, is the possession of less than 25 cannabis plants, less than 100 grams of cannabis, less than 20 grams of hash or less than 80 cigarettes containing cannabis. A person found to have broken the law in this regard is subject to a maximum penalty of \$2,000, 2 years imprisonment, or both. A person found in possession of cannabis related paraphernalia such as bongs or other items that may be used in connection with smoking, making or preparing cannabis has also committed a criminal offence under the WA legislation which is punishable by a fine no larger than \$3,000 or to a term not longer than 3 years. Lenton et al note that, 'All of these offences are criminal and conviction on any of them results in the offender acquiring a criminal record which can stay with them for the rest of their life, although after 10 years offenders may apply to have it expunged'¹³².

¹²⁹ Lenton, Simon et al (1999) *'The Social Impact of a Minor Cannabis Offence Under Strict Prohibition'* National Research Centre into the Prevention of Drug Abuse, p xi.

¹³⁰ *ibid*, p 2.

¹³¹ *ibid*, p 2.

¹³² *ibid*, p 1.

3.66. The study made the following findings as summarised below:

- the sample was 72% male and the average age at the time of the interview was 27.4 years;
- the average age at the time of arrest was 22.7 years;
- 47% were arrested in a private residence;
- 73% said that the police had been lawful during the arrest; 41% said that they were respectful; 33% said that police were hostile and 57% were intimidated by police;
- 49% were less trusting of the police and 40% were less respectful of police after the incident;
- 87% indicated that the arrest and conviction had not resulted in a reduction in their cannabis use; 18% were more discreet about their use of the drug;
- the majority of those interviewed were law abiding and had respect for the law and police in general, but not for the cannabis laws and their enforcement by police; the vast majority (85%) believed that police deserve respect for maintaining law and order, 88% stated a belief that they were a law abiding person; 81% believed that most laws are worth obeying; 90% believed that cannabis should be legal, with 84% believing that tough drugs laws do not deter people from using illegal drugs;
- 87% of the sample reported having made at least one job application; 76% of this group had been asked by a potential employer about the existence of a criminal record;
- a third of those interviewed reported that they had had at least one negative employment consequence as a result of their conviction; 19% were not successful in at least one job application; 16% reported that they had lost at least one job, and 9% had stopped applying for some jobs as a result;
- 20% of those interviewed reported that at least one negative relationship ‘event’ which they believed was related to their conviction for the cannabis offence;
- 16% of the sample indicated at least one negative impact on their accommodation; 12% changed their accommodation as a result of the conviction; and
- one third reported at least one negative involvement with the criminal justice system related to their conviction, with 19% believing that their criminal record had attracted further enquiries from police¹³³.

¹³³ *ibid*, p xi-xii.

3.67. This research demonstrates some of the significant adverse effects that can result from the imposition of a criminal conviction on a person.

3.68. In his article for the *International Journal of the Sociology of Law*, Adam Sutton notes that many policy makers are starting to identify the negative side effects of prohibition on those people found to have committed a simple cannabis offence. Commenting on the South Australian experience Sutton notes that:

Reviewing parliamentary debates surrounding the changes to South Australia's laws, it is clear that one of the primary objectives was to protect the interests of younger cannabis users. Even in the mid-80-s, experimentation with cannabis had become reasonably widespread... and the State's Minister for Health and other key government members were concerned that the consequences of criminal justice interventions against young adults found possessing or using cannabis could be disproportionate to the offence itself. Employment prospects could be hampered, and access to some careers (eg law enforcement, legal practice) barred altogether. By providing an avenue whereby adults detected possessing, using and even cultivating small amounts could pay a fine but avoid the stigma of conviction, the government argued that it had achieved a more appropriate penalty structure, without going against majority public opinion that cannabis production, distribution and use should continue to be illegal (Sarre et al. 1989)¹³⁴.

3.69. This is the position that the committee arrived at. The committee believes that an on-the-spot fine system, if properly implemented, offers the community-at-large a means of expressing its concerns about cannabis use without causing more damage to users.

Financial costs

3.70. In 1998-99, there were 58,131 cannabis arrests, representing 69.6% of the 83,524 arrests for all illicit drugs¹³⁵. The financial cost to the community in detecting, apprehending, and processing these offenders through the criminal justice system is vast. In a paper examining the recent Australian cannabis debate Wayne Hall notes that:

The expenditure of large amounts of police and judicial resources in arresting and processing cannabis offenders (estimated at \$329 million in 1991/92) is often identified as an additional social cost of cannabis prohibition¹³⁶.

3.71. It seems incongruous to the committee that this amount of money is expended on enforcement measures on a drug which 39% of the Australian population have used at some stage in their lives.

3.72. The Chief Police Officer of the ACT also acknowledged that resourcing is an issue that comes into play when making decisions about what level of action to take in relation to cannabis offences. The Chief Police Officer noted that:

¹³⁴ Sutton op cit cited in submission 3, p 2.

¹³⁵ Australian Bureau of Criminal Intelligence figures cited in Submission 14, p 2.

¹³⁶ Hall, Wayne '*The Recent Australian debate about the prohibition on cannabis use*' in *Addiction* (1997) 92 (9) p 1111.

... from a management point of view there is a resource issue. We could quite easily target, and we do on occasions, for purposes of refreshing people's awareness that it is still a criminal offence here in the ACT. We do target particular drug types over a period of time, but we could quite clearly use the majority of our resources in that sort of way if we did not have to prioritise the work that we do¹³⁷.

3.73. The sheer size of the cannabis industry in Australia makes it unlikely that cannabis demand and supply are capable of being significantly curtailed. It would indeed be an ambitious and costly exercise to attempt curtailment through more vigorous application of law enforcement measures. Even if a policy such as this were to be implemented, the sheer cost of enforcing laws which currently criminalises 40% of the population, would be enormous and unsustainable.

Refining the ACT SCON scheme

Re-branding the scheme

3.74. A view has been expressed that the term 'decriminalisation' has given many people the wrong impression of the legal status of cannabis. Many people in the community appear to be under the impression that possession and cultivation of small amounts of cannabis is legal, which is obviously not the case. In response to questioning about this from a member of the committee, the Chief Police Officer of the ACT noted that, 'I think there is a great deal of confusion [on the legal status of cannabis]. The real danger is that, of course, once you go beyond 25 grams—and I think this is the message that we continually try and get out to the public—it is not legal and it is simply an expiation process. The great danger, of course, is that once you go beyond 25 grams and beyond five plants into commercial quantities, you are still talking about penalties on our statute books of \$10,000 and, if it is above a certain limit, life in prison'¹³⁸.

3.75. The committee agrees that there has been much confusion in the community about the status of the law with regard to simple cannabis offences. The committee believes that there needs to be better marketing of the scheme and the consequences that arise from breaches of the law in this regard. The committee is more comfortable with the term, 'prohibition with civil penalties' or simply, the 'Simple Cannabis Offence Notice scheme', rather than 'decriminalisation'.

3.76. For this reason the committee urges that information provided by government agencies regarding the SCON scheme does not include the term decriminalisation. Where possible the government should take the opportunity to inform the community about the law as it stands now and into the future.

¹³⁷ Transcript, 2 August 2000, p 16, Mr Bill Stoll.

¹³⁸ *ibid*, p 20, Mr Bill Stoll.

Recommendation 5

The committee recommends that the government does not use the term decriminalisation to describe the SCON scheme and that it promotes the exact nature of the law regarding simple cannabis offences in a public information program.

Juveniles

3.77. The committee was concerned that the SCON system may not be the most appropriate means of dealing with people under the age of 18 who have been found to have committed a simple cannabis offence. The committee sees that young people may be better served by using the detection of a simple cannabis offence as an opportunity for early intervention and educating young people on the health effects and risks associated with cannabis use. The committee believes that it is not appropriate to issue a cannabis offence notice to a person under the age of 18 for their first offence. It is interesting to note that only 10 people under the age of 18 were issued with simple cannabis offence notices in 1999-2000.

3.78. The committee has doubts about whether the SCON scheme contributes significantly to any information/education or deterrence outcomes for young people. However, the committee also feels that there is little deterrence or information/education provided in states where strict prohibition applies.

3.79. For these reasons, the committee sees value in developing a best practice education program with explicit and measurable goals (in keeping with principle 6). The program should be developed in consultation with medical professionals, drug and alcohol workers and experts in the education, psychology and sociology fields and should be evidence based. Ideally, this program would include information and education about other drugs as well. After a formal evaluation, the committee sees that Effective Weed Control within ACT Health and Community Care may turn out to be a suitable model for a program of this type or it could indeed be extended to cater for young users who have been detected by police.

3.80. A formal cautioning process should also be developed alongside the education program to provide a sense of gravity to the offence. This approach is more in line with the consequences for people caught underage drinking and if implemented properly could serve as a superior education and information program.

3.81. In the public hearing, the Australian Federal Police Association also raised the issue of education for juveniles noting that, 'Not just having a SCON as a tool, but having a process where the police officer can, as part of our system where we have a matter of discretion, then put in another tool there. Perhaps if he [the policeman]

thinks, with a young juvenile, the best process is not to go ahead with a SCON, but to say, 'okay, maybe you should attend an education process'¹³⁹.

3.82. The committee sees that a program of this type is not suitable for adults caught using or possessing cannabis as there is a strong case that most adults are well aware of the health and legal ramifications of their actions and the SCON scheme is adequate for dealing with offences of this type.

Recommendation 6

The committee recommends that:

- i) the legislation be amended so that people under the age of 18 cannot be issued with a SCON for their first offence; and**
- ii) an education and cautioning system is established for juveniles who have been detected by police in relation to a simple cannabis offence.**

Low rates of expiation in the ACT

3.83. Of concern to some people in the community is the low rate of expiation for simple cannabis offence notices. As noted in the previous chapter, in the period 1993/94, 56% of the SCONs issued were actually paid¹⁴⁰. More recent figures show that under half of the offence notices issued were actually paid. In the committee's public hearing, the Australian Federal Police (AFP) noted that during 1999-2000, a total of 161 cannabis offence notices were issued. 52 or 30% of these notices were paid within the prescribed time period and 108 remained unpaid¹⁴¹. Since the introduction of the SCON scheme in the ACT there have been 1275 SCONs issued to July 30 1999. Of this number, only 667 had been paid (47% went unpaid).

3.84. The AFP also noted the gender and age profiles for those receiving cannabis offence notices in 1999-2000 (as of 6 July 2000) as the following table indicates:

Age Group	Male(s)	Female(s)	Total
14 or younger	2	0	2
15-17 yrs	7	1	8
18-25 yrs	60	15	75
26-35 yrs	37	6	43

¹³⁹ Transcript, uncorrected proof, 24 August 2000, p 2, Mr Le Lievre.

¹⁴⁰ Lenton et al op cit (2000) p 136.

¹⁴¹ Transcript, 2 August 2000, p 14, Mr Bill Stoll.

36-45 yrs	15	4	19
46+ yrs	4	0	4
No age identified	7	2	9
Total	133	56	160
Total for cultivating cannabis			32
Total for possessing cannabis			133 ¹⁴²

3.85. The AFP noted that there was some duplication of the fines as some people were issued with fines for both cultivating plants and possession of fewer than 25 grams. A last minute ACT Government submission to the committee notes that although no research has been carried out in the ACT as to what factors are involved in low expiation rates, anecdotal evidence suggests that, ‘it can be assumed to be a combination of lack of money, disorganised lifestyle and failure to follow up...’¹⁴³.

3.86. Assisting Drug Dependents Incorporated (ADDINC) argued that just because there are a large number of unpaid SCOns in the ACT, it does not follow that the law should be made harsher. In its submission, ADDINC notes that:

If, as has been reported in the media, there is a significant number of unpaid fines, this is an administrative matter requiring attention, not a reason to make the law more punitive¹⁴⁴.

3.87. This was also the view expressed by the Australian Federal Police (AFP). In evidence, the Chief Police Officer of the ACT supported the retention of the SCOn scheme but acknowledged that refinements were required in order to increase the rates of expiation. The Chief Police Officer noted that when fines go unpaid, it requires valuable police resources to follow-up the person, issue the summons and appear in court to give evidence. The Chief Police Officer noted that, ‘...I think it is a very worthwhile alternative of diversion and we clearly need to take some action to have a greater follow-up rate’¹⁴⁵. An operational police officer, Sergeant Rob Gilliland, also

¹⁴² Tabled paper number 1, tabled on 2 August 2000.

¹⁴³ Letter to the committee from the Minister for Health and Community Care, Michael Moore, 13 September 2000 p 2.

¹⁴⁴ Submission 7, p 1.

¹⁴⁵ Transcript, 2 August 2000, p 19, Mr Bill Stoll.

agreed that SCONs were a useful tool for police to have, even though they are not necessarily followed up¹⁴⁶. This officer also pointed out that it is an arduous and time consuming process following up an unpaid SCON and saw this as a problem for operational police.

3.88. The Chief Police Officer saw value in introducing some administrative processes that would see civil consequences come into play automatically if an offence notice is left unpaid for a certain period. One suggestion raised in this regard was that a person's drivers' licence or automobile registration could be withdrawn for defaulting on a fine. The Chief Police Officer noted that:

In relation to say, trafficking for instance, that attaches it as a civil debt to drivers' licences, registrations. What I would like to say is, that there has to be a better process than a person not paying [a] SCON then using a valuable police officer resourced to actually go to court, swear a summons, try and find the person again, serve the summons and then have a return date at court, they do not appear, then get a warrant. I think the better way, and it is a matter of policy, but certainly at a law enforcement level, this is my view, that we should have something which attaches automatically to the failure to pay...¹⁴⁷.

3.89. This approach seems far more sensible to the committee than the abolition of the scheme altogether. By abolishing simple cannabis offences police would have one of two options: 1) formally charge the person with a criminal offence; 2) caution the person. It would seem that if the first option is pursued, police resources will *always* be expended on following up the cases and dealing with court appearances and preparing a brief etc (defeating the purpose of freeing up police resources for more important policing activities). Under the second option there is no consequence at all for a mature adult offender (other than a stern word from a police officer). However, as indicated earlier in the report, cautioning may play a useful role for juvenile offenders.

3.90. Retaining the scheme with the added refinement of licence or registration cancellation presents both explicit consequences to offenders and at the same time frees up valuable police resources.

3.91. Police acknowledged that they consider a simple cannabis offence to be in the same order of seriousness as a traffic infringement and measures which see the cancellation of registration or a drivers' licence for defaulting on a SCON would be in line with measures currently in place for defaulting on a speeding or parking fine. The AFP noted that, 'The level of penalty matches certainly only the very lower order of exceeding the speed limit these days. There are substantial fines for greater speed'¹⁴⁸. The committee agrees and also notes that traffic offences such as speeding are certainly more serious offences as this behaviour has the capacity to endanger the

¹⁴⁶ *ibid*, p 19, Mr Gilliland.

¹⁴⁷ *ibid*, p 19.

¹⁴⁸ Transcript, 2 August 2000, p 22, Mr Bill Stoll.

life and safety of other citizens. Adult cannabis use is a consensual, victimless crime, in which the only harm that is likely to arise from it is to the person engaged in the practice, no one else.

3.92. The committee is aware that there is some support within the ACT Government for this approach. A letter to the committee from the Minister for Health and Community Care notes that, ‘from a public health perspective, this [drivers’ licence or registration cancellation] is preferred as individuals would face civil penalties, rather than enter the criminal justice system. Individuals would also face sanctions for the non-payment of fines, rather than for the original cannabis offence’¹⁴⁹. However, the Government did acknowledge some administrative complexities associated with this approach.

3.93. The committee sees that this approach if combined with the options of community service and diversion to treatment programs would be both effective and fair.

3.94. The committee believes that rather than scrapping what the AFP describes as a useful option, it would appear sensible to retain the scheme with the proposed change.

Recommendation 7

The committee recommends that in an effort to increase the rate of expiation for SCONs the Government examine the possibility of introducing a provision in the legislation for the cancellation of a person’s drivers licence or motor vehicle registration if the fine is not paid within the prescribed period.

Community service

3.95. Following on from the issue of low rates of expiation, the committee is also concerned that people who, for whatever reason, are unable to pay the fine can expiate the fine in another way. The committee believes that community service may be an appropriate alternative that does not discriminate against those people in the community who are financially disadvantaged.

3.96. It is certainly desirable to keep people who have received a simple cannabis offence notice away from the criminal justice system and the negative consequences that a criminal record can bring. Community service is a worthwhile means of ensuring that a person’s socioeconomic disadvantage does not result in unequal application of the law. This is in keeping with principle number 4.

¹⁴⁹ Letter to the committee from the Minister for Health and Community Care, Michael Moore, 13 September 2000 p 2.

Recommendation 8

The committee recommends that the Government incorporate in the legislation a provision for people receiving a SCON to expiate the notice through community service.

Consistency in the application of the law

3.97. A submission from ACTCOSS expressed concerns about the provision for police discretion under the current SCON scheme. ACTCOSS noted that:

Whatever the legal treatment of cannabis use in the Territory, the Council considers that, as an important matter of principle and justice, it be clear in its intent and consistent in its application. The Council does not believe it is appropriate to grant discretionary powers to police to issue cautions for cannabis offences. Such discretionary powers would open the door for arbitrary enforcement of the law and potentially different treatment for different members of the community. As a fundamental issue of justice, it is important that all members of society be provided equal treatment and protection under the law. The Council considers that any discretion in the treatment of cannabis offences must be exercised solely by the judiciary under a framework enacted by the Legislative Assembly¹⁵⁰.

3.98. In keeping with the principle outlined earlier, a cannabis policy should be applied uniformly and equally (principle no. 4). However, the committee realises that the exercise of discretion is an important part of day-to-day policing practice. The committee is aware that police are often required to exercise discretion in carrying out their duty, say for instance the issuing of a speeding fine.

3.99. This is discretion downwards – that is to say that as a default, a person caught speeding will be issued a ticket but if some extenuating circumstances are identified and validated by the police officer, the speeding ticket may need not apply. This is in stark contrast to current provisions of the *Drug of Dependence Act* whereby the default for a simple cannabis offence is an on-the-spot fine but police discretion is upwards whereby a criminal charge can also be entertained by a particular police officer. That is, that a more serious punitive effect can be brought to bare beyond a caution or a SCON.

3.100. Where possible, the law should best reflect the default policing practice which is cautioning or the issuing of a SCON, the discretion to charge is unnecessary unless some more serious offence has occurred. The decision about whether a more serious order of offence has actually occurred should be based on clear tests enshrined in law.

3.101. It is the view of the committee that the law as it currently stands could result in a situation whereby two people are treated very differently for the same offence, not by the law and not by the judiciary but by police. One person may end up receiving a fine, while another may face court and end up receiving a criminal conviction.

¹⁵⁰ Submission 11, p 7.

3.102. Even police in South Australia, where discretion is not granted, acknowledged that it could be the case that a decision about which course of action to take (fine versus charge) could depend on the mood of the police officer.

3.103. If there are concerns about particular aspects of the law in terms of determining whether a person's possession of cannabis is for personal use or for supply (more serious offences), then the law must provide the test for making that determination, not the police. This is not to say that police are incapable of making this determination, it is more that by introducing clear tests in the legislation, there will be certainty and consistency. This translates to a less problematic role for police in the enforcement of the law as well as instilling confidence in members of the community about how they can expect to be treated by the law.

3.104. The committee was informed that police currently have an administrative practice (ACT Policing Guideline for Best Practice) whereby if the sum total of material from a plant exceeds 100 grams (even if there are less than five plants) then the person is deemed to be in possession of a commercial amount of cannabis and they are formally charged with an offence and will have to appear before a court to face criminal charges.

3.105. Similarly if a person has kept within the 25 gram limit but has packaged the cannabis in 25 separate one gram packages or 'foils' then the person would be deemed to be supplying cannabis.

3.106. The committee does not have a problem with differentiating between possession for personal use versus possession with intent to sell or supply. However, these tests should not be administrative provisions exercised by police discretion but should be enshrined in the legislation. This is one of the most important foundations of the rule of law and it is good for the community and for police.

3.107. The committee would much rather see a situation whereby people under the 5 plant and 100 gram limit be issued a *SCON* and that the *Drugs of Dependence Act* be amended to include deeming provisions about what sort of situations constitute supply offences. Under this regime it would be the police's responsibility to see whether, *under the law*, a supply offence may have been committed, not relying on subjective whim or administrative policy to make this determination.

3.108. The committee can see no reason why the police should have this discretion – circumstances that warrant criminal charges should be explicated in the law, applied by police and substantiated through the judicial process. While police discretion is an immensely important element in law enforcement, it is not necessitated in this case and should not apply. It is not just a matter of providing certainty for the community but certainty for police too. The committee makes recommendations to this effect below.

100 gram limit

3.109. The committee also has concerns in relation to the administrative provision that possession of more than 100 grams of cannabis attracts a criminal charge despite the 5 plant limit not being exceeded. The claim was made by the police that possession of cannabis above the 100 gram limit is a commercial quantity. The committee agrees with this if the measure is taken to mean 100 grams of dried, female flowers. If the measure is taken to mean wet plant material including the stems and leaves, this position could not be supported as there is no commercial value in relation to the stem of a cannabis plant and an insignificant commercial value in relation to the leaf and tips of a plant. The committee would like to see the measure reflect the primary commercial product of the plant, namely the female flowers. This should be applied to the 25 gram limit as well.

3.110. Also, given that almost all of the weight of wet cannabis material is water, it is inappropriate to include this in the measure – exceedingly few people purchase wet cannabis as the product does not give a true indication of the amount of smokeable material (even should a person buy wet or undried cannabis on the street in the black market, it's value would be significantly less given the difficulty determining exactly how much smokeable material the wet product would yield). Similarly, it is not an accurate measure of commercial quantity for the purposes of law enforcement.

3.111. If provisions to charge people with criminal offences for the possession of the leaf, male flowers and tips are still seen as being desirable, a higher weight should apply – reflecting this material's low commercial value. This, in the committee's view is just common sense.

3.112. The Australian Federal Police Association also expressed concerns about the manner in which this measure is applied noting that, 'That 25 grams, I mean, is it dried matter? Or is it wet matter? I think it is most important that we be consistent in our approach... We should try to be as reasonably consistent'¹⁵¹.

3.113. One of the main thrusts of the 5 plant limit and the thrust of the SCON scheme generally is to prevent the criminalisation of people who are growing small amounts of the cannabis plant for personal use. If the 100 gram limit is taken to mean wet plant material of all types, it would not be viable for a person to grow plants at all as the limit would easily be exceeded by even the most modest plant. This defeats the purpose of the law as it stands and if applied in this way could bring about a move from users who grow their own cannabis to users who buy their cannabis on the black market. For all the reasons noted above, this is the worst possible result.

Plant limit

3.114. The committee considered making a recommendation to reduce the number of plants permitted under the Act (for the purposes of a SCON) from five to three. The

¹⁵¹ Transcript, uncorrected proof, 24 August 2000, p 3, Mr Le Lievre.

committee thought that reducing the number would militate against criminal syndication as happens in South Australia.

3.115. However, after further consideration, the committee came to the position that by having clear tests (in terms of dry-weights) in the legislation for supply/sale offences versus simple cannabis offences, the number of plants becomes irrelevant. It is of no consequence whether a person has one plant or five plants, it is the aggregate dry-weight of the plants (sans stems, leaf/tips, root-ball etc) that should be used to ascertain the seriousness of the offence.

3.116. Under the current regime, the plant number is quite arbitrary as a person could have eight seedlings weighing less than ten grams in total and, as a result, have to face a criminal charge as a default. Conversely, a person could have one plant that weighs 50 or 80 grams and receive a SCON as a default. Again, this presents significant uncertainty to the community generally and in the policing community about how the law will be applied in respect of cannabis possession and cultivation.

3.117. The committee sees that this inconsistency can easily be resolved by using dry weight measures as a consistent and fair means of grading the seriousness of the offence – whether it is a criminal matter or a civil matter.

3.118. The committee also sees that it is important to establish measurement protocols for law enforcement officers so that the weights are measured consistently and accurately.

3.119. The approach described clears up much of the ambiguity and uncertainty in the community about what constitutes a criminal charge versus a SCON. It also gives police a more useful framework for their enforcement of the law, clearing up some grey areas and providing clear tests about what action may be needed. In the committee's eyes, this is a far more reasonable framework for all concerned.

Recommendation 9

The committee recommends that the provisions in the legislation which allow police to charge a person with a criminal offence for simple cannabis offences be removed.

Recommendation 10

The committee recommends that the *Drugs of Dependence Act* be amended to enshrine deeming provisions which clearly explicate what sort of situations and instances are deemed to be supply offences versus simple cannabis offences.

Recommendation 11

The committee recommends that the legislation be examined to assess the value of the following proposed amendments:

- i) **the measure of 25 grams of cannabis be taken to mean 25 grams of dried female flowers or ‘heads’ exceeding 25 grams;**
- ii) **the measure of 100 grams of cannabis used by police as grounds for a criminal charge as a default be taken to mean a quantity of dried female flowers or ‘heads’ exceeding 100 grams;**
- iii) **should there be a desire to have provisions for charging a person with a criminal offence for the possession of leaf, male flowers and tips of cannabis, the weight for this amount of dried material should be considerably higher reflecting its low commercial value; and**
- iv) **uniform protocols for the measurement of cannabis are enshrined which reflect the spirit of this recommendation.**

Potency and the law

3.120. The committee understands that as the law currently stands, hashish and hash oil are not drugs which can attract a SCON - they are considered differently. The committee considers this odd given that these substances are merely different types of cannabis, albeit with a higher THC content. The committee believes that for the sake of consistency, it would be proper to apply the law in respect of SCONs to hashish and hash oil as well other types of cannabis. If deemed appropriate perhaps the threshold in terms of weight could be less than that of other types of cannabis, for instance 10 grams of hash or hash oil. At present there is no reasonable rationale as to why these forms of cannabis should be seen as any different from marijuana for the purposes of the law.

Recommendation 12

The committee recommends that the Government examine the inclusion of hashish and hash-oil in the legislation as types of cannabis for which SCONs would be issued.

Conclusion

3.121. In relation to prohibition, the question that policy makers must ask themselves is what purpose does the criminalisation of cannabis users serve? What are the benefits of criminalising these members of our community? Who benefits from the policy?

3.122. The committee believes that there are no good answers to these questions. As indicated, it appears that most cannabis users are otherwise law abiding citizens and despite the imposition of tough sanctions in some places, the rates of cannabis use appear to be only minimally affected (both up and down in places). That is to say that even when a person has received a criminal conviction, the deterrence effect is negligible. As discussed earlier general deterrence through the imposition of criminal

sanctions (detering the community at large from cannabis use) also appears to be insignificant.

3.123. If the desired outcomes of cannabis prohibition are to reduce use in the existing user community and in the general community (potential users), then it appears that the policy has failed. This in itself is grounds enough for a change in policy, however, the negative impacts on users is a compelling basis on which to shift the emphasis of cannabis related public policy away from a punitive approach.

3.124. If the stated goals of the policy have failed and the side-effects are deleterious to a significant portion of the population, we must begin to dramatically reassess the way the we, as a community, deal with the use, possession and cultivation of cannabis.

3.125. Given the prevalence of cannabis use in the Australian population, it is an interesting 'thought experiment' to note that those advocating tougher cannabis laws, laws which criminalise users, no doubt have family members, friends, colleagues and acquaintances that use or have used the drug. Pushing the tough line is advocating the criminalisation of these people too. The committee considers that the Canberra community has been lucky that the this sort of proposition has been rare in public debate.

3.126. The committee sees that bringing the proposed policy down to a personal level, the question must be asked of the proponents of this position: if you discovered your son or daughter; husband or wife, father or friend was using cannabis, would you see their criminalisation as being a positive intervention? Is this an answer to the person's problems (if any)? Is this the path that you would pursue in relation to your loved-one?

3.127. It is difficult to think that many would. The ACT community certainly doesn't seem to support this approach with 72.6 % of Canberrans believing that criminal sanctions should not apply to cannabis¹⁵².

3.128. Indeed, given the prevalence of cannabis use, it is probably only by virtue of good luck that many people in public life have themselves not received a conviction for using the drug earlier in their lives.

3.129. The committee was not impressed with characterisations of the debate which asserted a two valued evaluation of the issue - legalisation versus prohibition. Instead, the committee considers that cannabis should remain illegal but not criminal, just as speeding is an illegal activity which is not criminal (within certain limits of course).

3.130. Minor cannabis offences have been acknowledged by many, including the law enforcement community, as only being of a minor order of offence, akin to speeding.

¹⁵² Commonwealth Department of Health and Aged Care (1998) *National Drug Strategy Household Survey* cited in Submission 9, p 13.

In the same way that thresholds are applied in respect of different types of speeding offences (speeding which attracts a civil debt to the community, versus speeding which attracts a criminal charge for higher speeds), cannabis law should differentiate between possession and cultivation for personal use, versus possession and cultivation for profit.

3.131. The committee came to the position that the current regime operating in the ACT is, in the main, a good system. However, the committee saw that there were improvements that could be made to the scheme to ensure better rates of expiation, better information and education about the risks associated with cannabis use, better programs for heavy chronic cannabis users, an increased understanding about the nature of the scheme and more sensible application of the law as it stands.

Bill Wood, MLA
Chairman

December 2000

APPENDIX A: LIST OF SUBMISSIONS

1. Mr Michael Balderstone and Mr Andrew Kavasilas, Nimbin Hemp Embassy
2. Mr Wayne Hall, NDARC
3. Dr Adam Sutton, The University of Melbourne
4. Mr Kevin Prince MLA, Minister for Police WA
5. Ms Ann Symonds, Australian Parliamentary Group for Drug Law Reform
6. Mr Peter Watney, Australian Drug Law Reform Foundation Inc.
7. Ms Maureen Cane, Assisting Drug Dependents Inc.
8. Mr B McConnell, Families and Friends for Drug Law Reform (ACT) Inc.
9. Mr Michael Moore MLA, ACT Government submission
10. Dr John Anderson, Brain and Behaviour Centre
11. Mr Daniel Stubbs, ACTCOSS
12. Norman Marshall, Australian Drug Management and Education
13. Mr Tom Hallas
14. Dr Alex Wodak, President, Australian Drug Law Reform Foundation
15. Dr John Anderson, Brain and Behaviour Centre
16. Mr John Malouf, Australian Pharmacists Against Drug Abuse
17. Dr Alex Wodak, Australian Drug Law Reform Foundation
18. Mr Jim Mc Millan

APPENDIX B: WITNESSES BEFORE THE COMMITTEE

Public hearing - 2 August 2000

- The Australian Drug Law Reform Foundation
- The Australian Federal Police
- Families and Friends for Drug Law Reform
- ADDINC.

Public Hearing – 22 August 2000

- ACT Health and Community Care, Effective Weed Control
- Australian Drug Law Reform Foundation

Public Hearing – 24 August 2000

- Australian Federal Police Association

APPENDIX C: BIBLIOGRAPHY

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APPENDIX D: MR RUGENDYKE'S DISSENTING REPORT

I wish to present formal dissents to certain recommendations of this report.

My dissenting remarks are as follows:

Recommendation 9

I do not support the inclusion of this recommendation which in practice would remove discretion - a fundamental policing tool. The committee comments supporting this recommendation demonstrate a misunderstanding of the principles of discretion and an assumption that it prompts police to respond to situations in harsher rather than more lenient terms.

Discretion has always been utilised by police in the ACT. It is a crucial element and removing discretion would greatly diminish the capacity of police to do their job. In short discretion is a basic necessity and police need it to do their job properly. The fact police have applied discretion appropriately and responsibility is one of the reasons we have the best force in Australia.

If there were no discretion, a \$2 shoplifter would be treated in the same way as a \$500 shoplifter and this would clearly be an unacceptable situation. Police must have the capacity to determine what course of action to take on a case-by-case basis and take into account such factors as the scale of the offence and whether the person is a multiple offender. This is basic police work and it cannot be enshrined in legislation.

Classifying discretion as "upwards" or "downwards" is merely philosophical opposition. Discretion permits police to use their professional judgement and in many instances that will mean cautioning an offender rather than taking formal action. Limiting discretion to "upwards" or "downwards" compromises the ability to use discretion as discretion can, and is, applied in both directions.

I wholeheartedly support the use of discretion and oppose any attempt or suggestion to erode this basic policing tool.

Recommendation 10

The task of identifying the type of offence rests with the police officer. This is discretion in practice and cannot be enshrined in legislation. It is not practical to adopt this recommendation and I retain the confidence in the discretion system, as reflected in my dissenting remarks on Recommendation 9, to make the

appropriate judgement on supply offences versus simple cannabis offences.

Recommendation 11

This recommendation would only serve to complicate cannabis laws and confuse the public.

I support following the path of South Australia and decreasing the number of plants under a SCONs offence from five to three rather than adopt a cumbersome weights system.

One of the chief problems identified with the present system is that the community is confused about the status of cannabis. This proposal can only increase this problem.

It would also make it particularly difficult for police to enforce the cannabis laws, especially with determining the content and breakdown of cannabis products.

Recommendation 12

This recommendation conflicts with this committee's charter and with the object of the inquiry.

The will of the committee appears to be to protect imposing unnecessary harm on our young people yet this recommendation proposes to weaken the cannabis laws to put hashish and hash-oil under the same umbrella as SCONs. This is clearly unsatisfactory. This report states that these products have greater THC levels and that is not in the health interests of young people.

It is also widely accepted that hashish is a product utilised on a wide, commercial scale and not on a personal level, which is not in the spirit of the SCONs provisions.

Additional comments

Apart from the above dissenting remarks, I also submit the following additional comments.

It should be noted that strict prohibition has never been in operation in the ACT. Police have always had the ability to caution and, more importantly, cannabis has been decriminalised since 1992. In that period, and under the presiding harm minimisation policy, there is no evidence of a reduction in use of cannabis. In fact, there is evidence in the other direction.

An ACT Secondary Schools Survey showed an increase in marijuana use by Year 7 to 12 students between 1991 and 1996. Usage rates for Year 10 Students rose from 19% to 26% for females and from 24% to 30% for males. The National Drug Strategy Household Survey 1995 showed that the ACT had the second-highest rate of cannabis use in Australia for those who had ever used the drug (42%) and the second-highest rate for those who have used the drug in the last 12 months (16%).

I would like to place on the record my objections to the harm minimisation policy and my dismay that ACT Governments have not placed more attention and resources to harm prevention measures including education, rehabilitation and detoxification. Our ultimate goal should be to make as many people possible drug-free. Our education and rehabilitation measures are not up to the same standard as Sweden and I am advocating a step in this direction. While drug-use figures from the Netherlands have been quoted in this report, it should be mentioned that Sweden embrace different policy and boast a percentage of 9% of the population who try drugs in a lifetime – compared to more than 50% in Australia.

Witnesses to the inquiry have clearly stated confusion in the community has reigned since the decriminalisation of cannabis and this has promoted an element of complacency in regard to this drug. It is absurd that a review of cannabis policy has not been conducted under the harm minimisation banner and this has to be undertaken to correct this attitude in an expeditious manner.

Dave Rugendyke MLA

December 2000