



*The social
impacts of
the cannabis
expiation notice
scheme in
South Australia*

Summary Report

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The Social Impacts of the Cannabis Expiation Notice Scheme in South Australia

**Summary Report
Presented to the Ministerial Council
on Drug Strategy
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This page lists all published reports arising from the Cannabis Social Impacts Study

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- Christie, P. (1999). Cannabis offences under the Cannabis Expiation Notice scheme in South Australia.
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Executive Summary

This study aimed to compare the social impacts of the two main models found in Australia for dealing with minor cannabis offences: total prohibition, and prohibition with civil penalties. In addition, it sought to evaluate in detail the operation and acceptability of an existing expiation scheme for minor cannabis offences, South Australia's Cannabis Expiation Notice (CEN) scheme. One of the main questions underlying the investigation was whether the reduction in criminal penalties that accompanies an expiation approach might lead to differing social consequences for offenders and for the community as a whole.

Among the key questions for the research to address were:

1. Did the CEN Scheme affect the prevalence, incidence or pattern of cannabis use in South Australia?
2. Did the CEN Scheme reduce or increase law enforcement and/or criminal justice system costs?
3. How did the police go about enforcing the CEN Scheme?
4. What is the adverse impact of a criminal conviction for cannabis use or possession on the employment prospects of the person convicted?
5. Did the CEN Scheme increase the extent to which users grew their own supplies of cannabis?
6. What are the main reasons for the high rate of non-expiation of cannabis expiation notices?
7. What is the level of public understanding of the law concerning cannabis under the CEN scheme?

A number of separate research studies were formulated as part of the overall study plan. These were:

1. A statistical analysis of cannabis offences under the Cannabis Expiation Notice scheme in South Australia since 1987
2. A statistical analysis of cannabis offenders in the Western Australian criminal justice system from 1993 to 1995
3. A cannabis offender interview study, comparing the impact of civil penalties for minor cannabis offences in South Australia with the impact of conviction in Western Australia
4. A survey of peak employer groups to compare employment impacts in South Australia and Western Australia
5. A study of the effects of the CEN scheme on levels and patterns of cannabis use in South Australia
6. A population survey of public awareness, knowledge and attitudes regarding the CEN scheme in South Australia

7. A study of costs associated with the operation of the CEN scheme in South Australia
8. A review of law enforcement and other criminal justice attitudes, policies and practices regarding cannabis and cannabis laws in South Australia

The main findings of the study are as follows:

- The establishment of the Cannabis Expiation Notice (CEN) scheme in South Australia in 1987 has resulted in some degree of “net-widening”, in that the number of minor cannabis offences detected under the scheme increased about two and a half times between 1987 and 1996. This increase appears to be mainly due the greater ease with which a CEN can be issued under the scheme, compared to the procedures for an arrest and charge that would be required for a prosecution.
- Since the introduction of the CEN scheme, the rate of expiation of notices has remained low compared with other types of infringement notices, and fairly stable at approximately 45% for the last few years of operation of the scheme. The reasons for the low rate of expiation of cannabis offences are likely to relate to financial difficulty experienced by a substantial proportion of those detected for minor cannabis offences, as well as poor understanding amongst this group of the actual legal status of minor cannabis offences and the consequences of failure to pay expiation fees.
- Around 90% of those CENs which were forwarded for prosecution between 1991 and 1996 resulted in a conviction being recorded against the offender, because expiation fee payments were not made. This represents about 45% of all CENs issued over that period, and a large number of offenders for whom the conviction would have been avoided had they paid expiation fees on time.
- The rate of expiation of CEN offences may improve following recent changes to the way in which all expiable offences are administered under the *Expiation of Offences Act, 1996*. The provision to offenders of a range of payment options (eg. instalment payments, community service) which can be specified before an unpaid CEN matter is forwarded for prosecution may result in a higher proportion of CENs being expiated. In addition, the provision of clearer and more detailed information on the consequences (esp. conviction) of failure to pay expiation fees may help to improve expiation rates. Ongoing monitoring will be required to determine whether the new CEN forms and payment provisions bring about such changes.
- Around 5% of CEN matters are withdrawn before payment is made or prosecution is completed, most likely due to inadequate information being available to ensure a successful prosecution in the event of failure to pay expiation fees. A further proportion would be withdrawn or dismissed after court proceedings have been completed, involving cases where the offenders could not be located for follow-up regarding payment of fines.
- National population survey data indicate there has been a national increase in self-reported lifetime cannabis use between 1985 and 1995, with a greater degree of increase in South Australia than in the average of the

other Australian states and territories. However, the South Australian increase is unlikely to be due to the CEN system because: (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young adults aged 14 to 29 years in South Australia.

- Many minor cannabis offenders in both South Australia and Western Australia appear to be people who are otherwise law-abiding. Surveys of samples of cannabis offenders in both states found that the majority in both states had respect for police and the law in general. It was also found that their offence apprehension and subsequent arrest (WA) or issuing of a CEN (SA) had no impact on their patterns of cannabis or other drug use.
- Interviews with cannabis offenders found that negative employment consequences arising from a cannabis offence apprehension were more likely to be experienced by offenders in Western Australia compared to South Australia (eg. loss of job, missing out on a job opportunity). Those in the WA system were also more likely to report relationship problems, accommodation problems, and further involvement with the criminal justice system related to their first minor cannabis offence. In terms of impacts upon drug use and travel opportunities, no differences were found between offenders in both states. However, offenders in Western Australia were more likely than those in South Australia to have less favourable attitudes towards police following their cannabis offence detection.
- No differences were found in the self-reported attitudes of employers in both South Australia and Western Australia towards employing people with prior cannabis offences, there being a general lack of discrimination expressed against such offenders. This is somewhat at odds with the reported experiences of cannabis offenders in the two states. It was clear that cannabis offending is not an important part of employer screening in many employment areas, although employers in both states were concerned about the potential risks associated with cannabis intoxication in the workplace, and the long term effects of cannabis use on work performance.
- While there is a level of acceptance in the South Australian community of personal cannabis use among adults, activities relating to the commercial sale or supply of cannabis are not viewed favourably by the public.
- The general public in South Australia had a reasonable awareness of the CEN scheme in general, but retained a fair degree of confusion about the details of the CEN scheme and the consequences of being detected for various minor cannabis offences. There was also incomplete recognition of the possible health risks associated with long-term or heavy cannabis use. As many people issued with expiation notices are heavy consumers of cannabis, there is an opportunity to deliver health messages with a CEN at the time of issuing.
- Despite the fairly low rate of expiation and the apparent “net-widening” observed under the CEN scheme since its implementation in 1987, it would seem that the scheme is more cost effective for dealing with minor

cannabis offences than a prohibition approach based predominantly on prosecution and conviction. It might be expected that greater efficiencies could be achieved if the rate of expiation can be increased in the future, with a corresponding reduction in the number of CEN fee defaulters who receive convictions.

- There is clear and widespread support for the CEN scheme amongst South Australia law enforcement and criminal justice personnel. This support is based largely on the perception that the expiation approach provides a fair and cost-effective way of dealing with minor cannabis offences.
- Concern has been expressed by some South Australian police officers about the potential for exploitation of the CEN scheme by organised criminal syndicates who grow commercial quantities of cannabis in separate locations while operating within the expiable cultivation limit of 10 plants. In order to address this issue, it has been suggested that the CEN scheme be modified to reduce to maximum expiable number of plants under cultivation from ten to three or four.
- In addition to the provision of more payment options for offenders and more detailed information on the financial and legal consequences of non-payment, other suggestions have been put forward for possible changes to the CEN scheme in South Australia, which may be of interest to other jurisdictions considering the adoption of expiation systems for minor cannabis offences. A system involving a more graduated scale of expiation fees, including lesser fees for offences involving very small amounts of cannabis, could result in higher rates of expiation, especially where offences involve young people. Other suggestions which may reduce the extent of net-widening under an expiation approach, should that be deemed desirable, are: inclusion of a provision for some form of cautioning for certain categories of minor cannabis offence; and dropping the offence of possession of equipment for using cannabis, as it is a very common offence under the CEN scheme, and is mostly detected in the context of CENs being issued for other cannabis offences.

1. Introduction

1.1 Background

In 1994, the National Task Force on Cannabis presented a series of technical reports on cannabis to the Ministerial Council on Drug Strategy. Among the recommendations put forward by the Task Force was a recommendation that consideration be given by jurisdictions to removing criminal penalties for personal cannabis use offences. Furthermore, the Task Force recommended that further research be conducted evaluating the impacts of expiation systems for dealing with minor cannabis offences, as found in South Australia, the Australian Capital Territory, and more recently in Northern Territory (Ali & Christie, 1994).

Following on from the Task Force's recommendations, the Commonwealth Department of Health and Aged Care (formerly the Department of Human Services and Health) commissioned the first phase of an investigation which aimed to look in detail at the social impacts of the existing legislative options for cannabis in Australia. This research was coordinated by the Australian Institute of Criminology, and was completed in 1995 (McDonald & Atkinson, 1995). It presented analyses of the range of legislative approaches to minor cannabis offences found in Australia, based on readily available data. The first phase research identified gaps in the available data on minor cannabis offences in Australia, and offered recommendations for more detailed research which would permit more definitive evaluation of the various legislative approaches to minor cannabis offences operating in Australia. Emphasis was given to the importance of assessing the impacts of expiation systems for minor cannabis offences. The South Australian Cannabis Expiation Notice scheme was an obvious choice on which to base an evaluation of the expiation approach, as it was the first such system to be implemented in Australia.

Following the first phase research, the Commonwealth Department of Health and Aged Care invited tenders for the second phase of the project. The research brief initially called for a national study which looked at the full range of legislative approaches to minor cannabis offences which were operating in Australian jurisdictions, but with a particular focus on the expiation systems operating. With recognition of the substantial resources required to undertake such a broad-based research study, a consultation process ensued, which resulted in the formulation of a more focused research strategy. This involved an investigation which aimed to compare the social impacts of the two main models found in Australia for dealing with minor cannabis offences: total prohibition, and prohibition with civil penalties. Western Australia was chosen as an example of a total prohibition approach to minor cannabis offences, and South Australia, with its Cannabis Expiation Notice (CEN) scheme, was chosen as an example of prohibition with civil penalties. Using Western Australia as a comparison state to South Australia had the advantage of enabling access to high quality criminal justice data through Western Australia's Crime Research Centre. While the CEN scheme in South

Australia has been the subject of previous research studies (Christie, 1991; Ali & Christie, 1994; Donnelly, Hall & Christie, 1995; McDonald & Atkinson, 1995), none of those studies had involved such detailed investigations as were planned for the second phase of the Social Impacts Study.

The present report represents an overview of the main findings and conclusions arising from the second phase research into the social impacts of the legislative options for dealing with minor cannabis offences in Australia. The emphasis in the study has been on comparing the impacts of the expiation approach in South Australia with those of Western Australia's prohibition model. It is intended that this research will inform future debate and decision-making regarding the appropriateness of the models represented here, and suggest areas in which either approach can be improved in terms of operational efficiency and minimisation of negative impacts upon individual offenders and upon the community as a whole. The following sections provide a brief overview of previous research which aimed to evaluate aspects of the Cannabis Expiation Notice (CEN) scheme of South Australia, and an outline of the aims of the second phase research as a whole, and of the various research components which were formulated and undertaken by the research team.

1.2 Previous Research in Australia on Cannabis Expiation Systems

The Cannabis Expiation Notice (CEN) scheme in South Australia was the first infringement notice system for minor cannabis offences to be implemented in Australia, coming into operation in April 1987 (for more information on the cannabis laws in South Australia, and expiable offences under the CEN scheme, see Appendix 1). While it was introduced with no specific plan for evaluation of its effects, an early evaluation was carried out based on the first nine months of operation of the scheme (Sarre, Sutton & Pulsford, 1989). This study found that the introduction of the CEN scheme did not give rise to undue technical difficulties for law enforcement personnel. The report acknowledged that statistical data on the first nine months of operation of the scheme were not enough to base a definitive evaluation of the scheme on.

An important issue that was highlighted in this research was that a change to an alternative system to formal prosecution may actually lead to an increase in the number of people and the range of behaviours which are subject to some type of social control—“net-widening”. This study was not able to identify any such net-widening, as the nine month time period for the study was too short for such a consequence to become apparent. However, the researchers noted that they could not rule out net-widening as a longer term consequence. Another finding of this study that was of relevance to future research was that offenders of lower socio-economic status figured disproportionately among those who were prosecuted for failure to pay expiation fees. This was an important preliminary finding, and a suggestive area for investigation in the present study. Finally, the study showed that the CEN system at that time did not appear to have an impact on court workloads for minor cannabis offences. It had been anticipated that the court load of minor cannabis offence prosecutions would be reduced, but a lower than expected rate of expiation resulted in little change in the number of minor

cannabis offences appearing before the courts. The emergence of net-widening at a later stage could also contribute to this observation.

In 1991, the Drug and Alcohol Services Council released a report which focused solely on the possible effects of the CEN scheme on prevalence of cannabis use in the South Australian community, through the examination of population survey data (Christie, 1991). National Drug Strategy household surveys and state-based school surveys of drug use provided measures of cannabis use prevalence, from periods before and after the introduction of the CEN system, for South Australia as well as other states. This study found no conclusive evidence for changes in levels or patterns of cannabis use which might have been attributable to the CEN system. Donnelly and Hall (1994) updated and refined this research for the National Task Force on Cannabis, with similar results. A more detailed presentation of this research is to be found in Donnelly, Hall and Christie (1995). For the present study, it was possible to further update this research with more recent population survey data from the 1995 National Drug Household Survey. However, with all of these analyses, the potential problem exists of lack of statistical power to detect trend differences between jurisdictions.

The Phase I research which preceded the present study found, in the South Australian component (Christie & Ali, 1995), that there had been a substantial increase in detections of minor cannabis offences since the CEN scheme came into operation, from around 6,500 offences detected under the CEN scheme in 1987/88 to over 14,000 in 1991/92 (with a total offence rate of around 900 minor cannabis offences reported per 100,000 population). This was the net-widening phenomenon predicted by Sarre et al (1989) in their early evaluation report on the first nine months of operation of the CEN scheme. Given that the other studies concerned with trends in prevalence of cannabis use showed no evidence for a comparable increase in population rates of cannabis use in South Australia up until around 1993, the implication was that the increase in detections was related to other factors, such as changes in policing practices.

The Phase I research also showed that Western Australia has a well-developed criminal justice data collection system (Lenton, 1995). Western Australia provides a good example of a jurisdiction with a total prohibition approach to minor cannabis offences, with relatively high levels of enforcement; the offence rate for cannabis possession and use in WA was 271 per 100,000 of population in 1993, the third highest of the Australian jurisdictions having a total prohibition approach, and it had the highest per capita rates for possession and use of a smoking implement at 441 per 100,000 persons in 1993 (McDonald and Atkinson, 1995). Members of the Phase I research team in Western Australia (also part of the present project team) worked closely with the Crime Research Centre in the Phase I research to generate comprehensive profiles of cannabis offences and offenders in that state. The present study builds on that earlier collaboration.

While there has been a fair amount of speculation about the likely impacts of options other than prohibition for minor cannabis offences, there has not been a thorough documentation of the social costs of the current prohibition of cannabis which is in force in the majority of Australian jurisdictions. In addition, there has not been a detailed economic appraisal of the CEN scheme in South Australia which would permit reasonable conclusions to be drawn about the relative costs and efficacy of a prohibition approach. It should be pointed out that the expiation

approach for minor cannabis offences in place in the Australian Capital Territory (ACT)—the “SCON” system for Simple Cannabis Offence Notices—was originally considered for inclusion in the present research study, but resource limitations meant that the research group needed to confine its investigations to the CEN scheme in South Australia, which was felt to be representative of the “prohibition with civil penalties approach”. Further background information on the operation of the expiation system in the ACT can be found in the report of the first phase of research for the Cannabis Social Impacts Study (McDonald & Atkinson, 1995).

The following section outlines the aims of the second phase research study as a whole. This is followed in Section 2 by descriptions of the various research components which made up the second phase of the Social Impacts Study.

1.3 Overall Objectives and Aims of the Study

The original consultant’s brief for the second phase of research for the Cannabis Social Impacts Study identified a number of “questions of central importance” which the proposed research plan should be able to address. These issues were thought to be of particular importance to policy decisions relating to legislative approaches for dealing with cannabis use. The key questions identified in the consultant’s brief are primarily related to the operation and effects of the CEN scheme of South Australia, as it had been determined that a study based primarily on an evaluation of the impacts of the CEN scheme would be the most feasible and cost effective way to explore the impacts of an infringement notice approach. Implicit in the research requirements outlined in the brief was the need for a direct comparison of outcomes between the CEN scheme and a representative prohibition approach. The Western Australian system was thought to provide a suitable comparison, particularly because of the availability of detailed criminal justice data from that state.

The Commonwealth steering committee which formulated the project brief and terms of reference recognised that it would not be possible to obtain definitive answers on all issues that are of interest in a policy sense, nor would it be possible to examine all aspects of the social impacts of the various legislative options for cannabis use. While all of the key questions identified were amenable to investigation through the research carried out, they were in a sense indicative of a much wider range of questions which could be asked of the research. As work on the project progressed, numerous other issues emerged as being of potential importance to policy making in relation to cannabis, and will be highlighted later in this report. The key questions identified in the original consultant’s brief were:

1. Did the CEN Scheme affect the prevalence, incidence or pattern of cannabis use in South Australia?
2. Did the CEN Scheme reduce or increase law enforcement and/or criminal justice system costs?
3. How did the police go about enforcing the CEN Scheme?
4. What is the adverse impact of a criminal conviction for cannabis use or possession on the employment prospects of the person convicted?

5. Did the CEN Scheme increase the extent to which users grew their own supplies of cannabis?
6. What are the main reasons for the high rate of non-expiation of cannabis expiation notices?
7. What is the level of public understanding of the law concerning cannabis under the CEN scheme?

The full terms of reference (see Appendix 2) provide a more detailed outline of the issues identified for exploration in the second phase research project.

2. Outline of Research Components

In response to the research brief which was developed for the present study, the research team proposed a research design which incorporated a number of separate research investigations, all of which were to contribute to the task of providing a definitive evaluation of the legislative approach to minor cannabis offences found in South Australia in its Cannabis Expiation Notice (CEN) scheme. Important comparisons with a prohibition approach to minor cannabis offences were made possible by including some law enforcement statistics and interview data on cannabis offenders from Western Australia for a number of study components. The study components were as follows:

1. Cannabis Offences Under the Cannabis Expiation Notice Scheme in South Australia
2. Cannabis Offenders in the Western Australian Criminal Justice System 1994–1996
3. Comparison of the Impact of Civil Penalties for Minor Cannabis Offences With the Impact of Conviction: the Cannabis Offender Interview Study
4. Survey of Peak Employer Groups: Comparison of Impacts of Minor Cannabis Offences on Employment in South Australia and Western Australia
5. Effects of the CEN Scheme on Levels and Patterns of Cannabis Use in South Australia
6. Public Awareness, Knowledge and Attitudes Regarding the CEN Scheme in South Australia
7. Costs Associated with the Operation of the CEN Scheme in South Australia
8. A Review of Law Enforcement and Other Criminal Justice Attitudes, Policies and Practices Regarding Cannabis and Cannabis Laws in South Australia

In presenting the research components with their main findings in this report, it must be emphasised that the systems for dealing with minor cannabis offences in South Australia and Western Australia represent particular examples of their respective legislative approaches. The CEN scheme in South Australia is only one example of an expiation approach (or “prohibition with civil penalties”), and an important underlying assumption with all of the work undertaken for this project was that the observed impacts of the CEN scheme should be taken as applying to that particular implementation of an expiation approach. Different expiation schemes could well have significantly different outcomes, depending on the operational parameters of the system. A further corollary of this approach is that

the observed impacts of an expiation scheme such as the CEN scheme might be amenable to change, given modification of the legislative framework, or the operational and administrative procedures in place under the system.

It was with the above approach in mind that the research team developed the project research plan, comprising the study components listed above. The following sections provide more detail on the aims and methods utilised in each of the separate study components.

Study No. 1: Cannabis Offences Under the Cannabis Expiation Notice Scheme in South Australia

This study component was an analysis of minor cannabis offences dealt with under the CEN scheme and through the courts, based primarily on CEN data from South Australian Police, as well as data on offences before courts. Before the present study, only limited summary figures have been published on the operation of the CEN system each year in the South Australia Police Commissioner's Annual Reports. These data have been limited mainly to basic information on numbers of notices expiated in each financial year, in some cases broken down by type of expiable offence. For the first phase of research on the present project, the South Australian Police Statistical Services Section was also able to provide information on the total numbers of CENs issued in each year, allowing determination of expiation rates.

Aims:

- To describe trends in law enforcement activity in relation to minor cannabis offences in South Australia, through the examination of numbers of detections of minor offences under the CEN scheme;
- To examine the types of minor cannabis offences for which CENs have been issued;
- To describe the characteristics of offenders under the CEN scheme, including comparison of offenders who expiated CEN fines with those who failed to expiate;
- To examine the rates of expiation for different minor cannabis offence types;
- To examine the extent of repeat offending under the CEN scheme, and compare rates of repeat offending among expiators and non-expiators;
- To examine the extent to which CEN offences might be withdrawn or cancelled due to incomplete information, and the degree to which non-expiators of CENs might be lost to follow-up through the prosecution process (e.g. through false or incorrect personal identification);
- To compare the penalty outcomes of conviction for minor cannabis offences with those arising from receiving and expiating a CEN for a minor cannabis offence.

Methods:

South Australian Police data on CENs were downloaded and collated for most years of operation of the system. These data were linked with relevant data on prosecutions, so that data on expiation fee defaulters could be analysed, and information on prosecution outcomes could be examined. The data linkages required considerable police time and resources, because expiation offence records are usually kept separate from criminal offence and prosecution outcome data. Detailed analyses were able to be performed on CEN data from the 1991/92 financial year up to the 1995/96 financial year. The Statistical Services section of SA Police conducted the substantial data management tasks, and provided the research team with detailed tables of summary data. Owing to the way in which criminal history data are stored, and the less reliable information relating to proof of identity for CEN offences generally, it was not possible to readily link information on prior criminal history with the CEN offence and prosecution outcome data for the substantial number of minor cannabis offences.

Study No. 2: Cannabis Offenders in The Western Australian Criminal Justice System 1994–1996

This component was formulated as an extension of the previously outlined study, to provide comparison data from Western Australia on minor cannabis offences under their prohibition model. The Western Australian data are presented as a separate study and technical report. Western Australia provided an ideal comparison for South Australia's CEN system, as it is a jurisdiction with a relatively high enforcement rate, and has readily available good quality data on criminal justice activity, through its Crime Research Centre. Data on persons whose first-time arrest was for a minor cannabis offence provide a useful comparison point for the data on CEN offences from South Australia. If found guilty, these first time arrestees receive a criminal record as a result of their conviction.

Aims:

- To describe the extent of offence detection/arrest for minor cannabis offences in Western Australia;
- To analyse offence outcomes and penalties for minor cannabis offence detections in Western Australia;
- To provide a basis for comparison of offence detection loads and offence outcomes between jurisdictions representing a prohibition approach to minor cannabis offences—Western Australia—and a civil penalty approach—South Australia.

Methods:

Criminal justice system data for Western Australia were generated and tabulated for the research team by the Crime Research Centre. Arrest data were organised by individual arrests and distinct persons, where a cannabis offence was the most serious offence.

Information was generated on number of cannabis charges per year and proportion of all drug charges involving cannabis. The demographic characteristics of offenders were examined, and offence type and extent of repeat offending were also analysed.

Study No. 3: Comparison of the Impact of Civil Penalties for Minor Cannabis Offences With the Impact of Conviction: the Cannabis Offender Interview Study

This was a major study component involving in-depth data collection from cannabis offenders in both South Australia and Western Australia. In this report, and in the associated technical papers, the findings are presented in three separate areas:

1. Interviews with South Australian offenders under the CEN scheme;
2. Interviews with Western Australian minor cannabis offenders;
3. Comparison of observed impacts for South Australian and Western Australian minor cannabis offenders.

Aims

- To explore the social impacts of receiving and expiating a CEN for a minor cannabis offence, and compare these with the impacts of receiving a conviction for a minor cannabis offence, due to failure to expiate a CEN fine, under the South Australian scheme;
- To explore the reasons for failure to expiate CEN fines in South Australia;
- To describe, assess and compare the formal (or official) and informal (or social) effects of arrest and criminal conviction, with particular reference to employment, on individuals arrested for simple cannabis offences in a representative “total prohibition” jurisdiction, Western Australia.

Methods:

An in-depth questionnaire was developed for use in face-to-face interviews with cannabis offenders in South Australia and Western Australia. In South Australia, three groups of cannabis users were recruited for the study, each with about 70 subjects:

1. minor cannabis offenders who were issued with a CEN and paid the expiation fee within the required time period;
2. minor cannabis offenders who had been processed through the court system because of failure to pay expiation fees arising from receipt of a CEN;
3. a group of cannabis users who had never been detected or convicted for a minor cannabis offence (as a control group, to allow examination of the effect of cannabis use itself, or being part of a cannabis-using culture, on social outcomes of interest).

In Western Australia, a group of around 70 subjects was recruited, consisting of convicted minor cannabis offenders. This group allowed comparison of the impacts of different legislative models on key outcomes of interest, particularly the effects of the enforcement strategies and associated penalties on employment status and opportunities.

For this study, subjects were chosen who had cleared their last CEN offence or received their last minor cannabis offence conviction at least 6 months and not more than 10 years prior to the interview date. Subjects were recruited principally through notices in targeted media outlets, flyers and through offenders' personal networks (i.e. "snowballing"). Some mass media recruitment was undertaken in Western Australia. Some matching was done between the groups recruited in South Australia and Western Australia in terms of age, gender, and other possible confounders, but this was limited due to the restraints on available subjects imposed by the recruitment strategies.

Once subjects had been screened for eligibility, appointments for interviews were made, to take place at a location suitable to the subject, eg. research and/or treatment service agencies, and public locations. An information sheet was read to subjects, outlining the nature of the project and their involvement. Issues of confidentiality were explained, and subjects were paid \$20 as compensation for their time spent in the interview. Written and/or verbal consent for the interview was obtained, and separate written consent was sought to confidentially access interviewees' criminal records to confirm their offending history. Subjects were informed that they could refuse to answer any questions, and terminate the interview at any time.

Interviews of subjects in the "offender" groups (SA and WA) took up to two hours, and included an audio-taped qualitative component. The qualitative component involved a description of the circumstances of the offence for which they received a CEN (SA only) or were charged for a minor cannabis offence (WA), their views on their dealings with the legal system, their experience in court (if relevant), and any examples of how the offence and its outcome (including conviction, if relevant) had affected their lives. Qualitative sections of the interviews were transcribed, and were used to provide illustrative examples of various offence outcomes (included in the full technical documents). The main part of the interview was structured and focused on items such as:

- Current demographic information (gender; date of birth; education; employment; family and living arrangements; income and postcode);
- Circumstances of cannabis offence detection (place, time, & date; what they were doing at the time; who they were with; recent alcohol and drug use at time of offence; reason for police presence; specific cannabis offences for which CENs were issued or arrests made; other concurrent offences; actions and demeanour of police). Subjects were also asked to rate how justly/fairly they believed the laws to be, and how justly/fairly they believed they were treated by police;
- Demographic characteristics at time of cannabis offence detection;
- For SA "expiator" group: offences and expiation fees payable, and whether these were paid within the 60 day expiation period;

- For SA “expiator” group: reasons for paying fines within expiation period;
 - For SA “non-expiator” group: reasons for failure to pay fines within expiation period (eg. inability to pay, already required to appear in court for other matter, etc.); whether they chose to respond to summons by pleading guilty in writing, or by appearing in court in person, and reasons for choice;
 - For SA and WA “convicted” groups: circumstances of court processing, including date and place of appearance, whether they had legal representation, legal aid or other support in court; subject rating of how justly/fairly they believed the court process was;
 - For subjects in SA “expiator” and SA/WA “convicted”:
- attitudes to police, legal system in general, laws relating to cannabis, likelihood of conviction if summonsed to appear in court for cannabis offence, extent to which they regard conviction as a serious and detrimental outcome;
 - impact of expiated offence or conviction on social relationships (family, peers, employer), economic status (including work problems, loss of employment, restrictions on educational enrolment, accommodation, travel or career);
 - drug use history prior to and subsequent to first offence detection (including views on whether changes in use were due to deterrence effects following detection);
 - offending history (including cautions), subsequent offending and arrests;
 - sources of cannabis supply, knowledge and experience of cannabis market, including extent of home cultivation of cannabis plants;
 - knowledge of laws applying to cannabis;
 - self-perception as a criminal, extent to which they believe others perceive them as such and extent to which this may be related to cannabis offence, or other behaviours (including other drug use);
 - perceptions of seriousness of a variety of offences in comparison to cannabis offences.

The interviews with SA cannabis users with no history of involvement with the law were somewhat shorter in duration, covering:

- Current demographic information (gender; date of birth; education; employment; family and living arrangements; income and postcode);
- Drug use history, including cannabis, alcohol and other drugs;
- Sources of cannabis supply, knowledge and experience of cannabis market, including extent of home cultivation of cannabis plants;
- Knowledge of laws applying to cannabis;
- Perceptions of seriousness of a variety of offences in comparison to cannabis offences;

- Perceptions of whether their cannabis use has affected education and/or employment options, interpersonal relationships, financial status, or any other social/personal areas.

Study No. 4: Survey of Peak Employer Groups: Comparison of Employment Impacts in South Australia and Western Australia

This study component was conceptualised as an extension of the interview study of cannabis offenders, in that it explored in greater detail the potential negative consequences on employment arising from being detected for a minor cannabis offence, and in particular receiving a conviction for a minor cannabis offence. It was formulated to complement the information from the interview study, by gathering information on the attitudes, knowledge and practices of employers in relation to cannabis use and cannabis offending.

Aims:

- To explore and compare the attitudes and practices of representative employers in South Australia and Western Australia with regard to employment of cannabis offenders;
- To examine whether employers might discriminate against prospective employees who might have had a prior cannabis offence - resulting in either conviction (WA) or expiation notice (SA).

Methods:

This study involved a telephone survey of about 50 peak employer groups in both South Australia and Western Australia. The interview sought information on:

- The range of attitudes and practices within different industry sectors towards minor cannabis offences, among representative samples of employers;
- Whether employers routinely asked job applicants about cannabis convictions or expiated minor cannabis offences;
- Whether employers conducted checks of prospective employees for prior cannabis offences;
- Whether employers would discriminate between applicants of equal competence on the basis of a cannabis offence history.

Study No. 5: Effects of the CEN Scheme on Levels and Patterns of Cannabis Use in South Australia

This research component entailed a comprehensive update on the possible effects of the CEN scheme on levels and patterns of cannabis use in South Australia, based on existing population drug use survey data. The study represents the most recent update of earlier work conducted by Christie (1991) for the Drug and

Alcohol Services Council (SA), Donnelly and Hall (1994) for the National Task Force on Cannabis, and Donnelly, Hall and Christie (1995).

Aims:

- To examine the possible effects of the introduction of the CEN scheme in South Australia on prevalence of cannabis use in that state, in terms of the proportions of the population who have tried cannabis, and who use cannabis on a weekly basis.

Methods:

As mentioned, this research component updates earlier work on trends in cannabis prevalence, by comparing rates of use in South Australia with rates observed in other Australian jurisdictions. The present analysis builds on earlier ones through the addition of population survey data from the 1995 National Drug Household Survey, thereby extending the total period of trend analysis from 1985 to 1995, covering five separate national surveys. The analysis of these data involved a comparison of self-reported cannabis use rates (ever and weekly use) in South Australia with those of other states, with particular attention given to examining possible differences in cannabis use trends between the jurisdictions. Thus, observed trends in cannabis use in South Australia are placed in context by comparison with trends elsewhere.

Aspects of cannabis use relating to intensity, amount, duration, acceptance and circumstances of use were not amenable to examination through this study component, due to the lack of relevant detailed information collected in population drug use surveys.

Multivariate statistical methods used in this research have been developed through the work on the earlier published studies of cannabis prevalence, and have been further enhanced for the present study. Logistic regression was used to test for trends in use, controlling for age and gender.

Study No. 6: Public Awareness, Knowledge and Attitudes Regarding the CEN scheme in South Australia

Australian data on cannabis use and related attitudes have been collected from the 1970's until the 1990's. Questions regarding attitudes to cannabis use and legislative approaches to cannabis have been included in the National Drug Household Surveys conducted for the National Drug Strategy. In 1993, an Australia-wide telephone survey which focused on public opinion regarding cannabis legislation was undertaken for the National Task Force on Cannabis (Bowman and Sanson-Fisher, 1994).

Being national surveys, these earlier investigations did not provide the opportunity to ask specific questions on knowledge and attitudes pertaining to the CEN system in South Australia. The present study was formulated to allow a more thorough investigation to be undertaken, based solely on a South Australian population sample.

Aims:

- To review and summarise the existing data pertaining to the social impacts of the CEN system, in terms of relevant indicators of public awareness, knowledge and attitudes regarding the cannabis laws in South Australia, with particular reference to observable changes over time;
- To add to existing information on public awareness of cannabis issues in South Australia, including knowledge and attitudes regarding cannabis laws, cannabis use, the safety of cannabis use, and the impact of the cannabis laws on youth, via the conduct of a telephone survey of the general public.

Methods:

A key component of the study was the conduct of a literature review of the data which already exists on the impact of the CEN system on levels of cannabis use, and on community attitudes and knowledge relating to cannabis use and legislative approaches in different Australian jurisdictions.

The main part of this study component involved the collection of new data from a sample of 605 members of the general public in South Australia aged between 14 and 70 years. A telephone survey methodology was adopted, as it offered an efficient and cost-effective means of collecting these data from the desired sample. The sample was drawn from a random selection of telephone numbers using electronic white pages. The sample was designed to be representative of the general population in terms of gender and age. However, it included an over-representation of respondents from non-metropolitan areas, so that there was sufficient statistical power to permit comparison of urban and non-urban responses. Up to three call backs were made to make contact with each household, and five to get a respondent identified by the nearest birthday method. Eligible respondents had to be permanent residents at that address. A gender ratio of 50:50 was set. All calls were made after hours and on the weekends. Refusals were not replaced by another subject from the same household. A 90% response rate was achieved among those whose eligibility could be determined.

The questionnaire was designed by the research team, and converted to the Computer Assisted Telephone Interviewing (CATI) system by a market research company which undertook the actual data collection. Closed questions with comprehensive response options were used where possible. Non-technical terms were used where possible, and explanations provided of special terms such as decriminalisation and legalisation. A number of the questions asked were derived from earlier surveys, so as to permit comparison with their conclusions.

Among the key areas covered by the telephone survey were:

- Prevalence and patterns of cannabis and other drug use (eg. frequency, intensity, amounts used, duration and circumstances of use);
- Attitudes towards cannabis and other drugs use (including relative acceptability of other drugs);
- Awareness of the laws regarding cannabis use (legality of possession, risk of detection for possession, and probable legal consequences of receiving a CEN);

- Attitudes towards the cannabis laws and knowledge of the laws (including the deterrence value of the CEN system, and impact of law enforcement on civil liberties);
- Demographic information.

Feedback on the pilot instrument was sought from key informants, including drug workers, police and researchers. Additionally, the questionnaire was shown to three people with strong views for or against cannabis to check for potential bias. The finalised CATI version of the instrument was piloted by the market research company prior to full data collection.

Study No. 7: Costs Associated with the Operation of the CEN Scheme in South Australia

Aims:

- To explore the economic costs associated with the operation of the CEN scheme in South Australia, including examination of the unit costs of detecting and processing offenders under the CEN scheme as compared to dealing with them through the courts.

Methods:

This study component utilised information from a number of sources to try and estimate the costs associated with the operation of the CEN scheme in South Australia. A unit cost approach to dealing with CEN offences was adopted. Priority was given to estimating the cost of the present system, as it was expected that currently available information would be more reliable than earlier data. From statistical information on numbers of offences for which CENs have been issued, expiated and prosecuted over the years, and from a variety of published and key informant sources, it was possible to derive estimates for the unit costs of dealing with minor cannabis offences under the CEN scheme, including those which are cleared by being expiated, and those which are not expiated and result in prosecution before the courts.

Among the outcome pathways for minor cannabis offenders that were considered important to estimate unit costs for were: (1) CEN offenders who expiated; (2) CEN offenders who failed to expiate and subsequently appeared in court; (3) CEN offenders who failed to expiate, pleaded guilty in writing, and did not appear in court, and (4) minor cannabis offenders who are charged with non-expiable offences (e.g. under 18 years of age, offences in public) and were dealt with via the courts. Furthermore, it was of interest to estimate the unit cost of imprisonment for those few offenders who might repeatedly fail to pay court-imposed fines relating to a minor cannabis offence, as well as other possible penalty management outcomes involving community service and payment by instalments.

It was assumed from experience with other relevant contemporary data sets that insufficient information would have survived from prior to the introduction of the CEN scheme in 1987 on which to project forward to the present day the costs under the former legislative arrangements. A rough costing of a prosecution

approach to dealing with minor cannabis offences was considered important for comparison, and was estimated by applying current information on the unit cost of processing a minor cannabis offender solely through the court system (e.g for a non-expiable minor offence) to an estimate of the expected number of offences which might have been detected in South Australia up until the present time, had the previous prohibition system remained in place.

The study aimed to distinguish costs from expenditures where possible, and take account of factors such as revenue from expiation fine payments. Consideration was also given to some of the intangible costs associated with the operation of the CEN scheme.

The analyses of unit costs focused on costing offences from the time of issue of a CEN. No attempt was made to account for the costs of police activity in detecting cannabis offences, as it was felt that there would be many factors which would make such costing unreliable (e.g. the extent to which police actively seek out minor cannabis offenders, vs degree of opportunistic detection of minor cannabis offences). Some analysis was conducted of the likely cost changes which would occur under the CEN scheme given increased rates of expiation of CEN fees.

Study No. 8: A Review of Law Enforcement and Other Criminal Justice Attitudes, Policies and Practices Regarding Cannabis and Cannabis Laws in South Australia

As an adjunct to the information provided by the other study components in the Cannabis Social Impacts Study, it was viewed as of key importance to enable police and other criminal justice professionals to provide input and advice on the ways in which the CEN system has been operating.

Aims:

- To examine attitudes, policies and practices regarding cannabis and the cannabis laws within the police/law enforcement sector, and within the magistracy and judiciary in South Australia.

Methods:

This study component involved two approaches:

1. Qualitative face-to-face interviews with key informants in the law enforcement, court and other relevant sectors in South Australia, to explore their attitudes and experience in relation to the operation of the cannabis laws and the CEN scheme in particular;
2. Focus group discussions with officials involved in the administration of the CEN scheme in South Australia.

Among the key informants and agencies identified for interview were the Chief Justice, the Chief Magistrate, the Office of the Director of Public Prosecutions, the National Crime Authority, police prosecutors, the officer in charge of the

Drug Task Force, Drug Task Force and regional detectives, police patrol officers, and personnel in the Correctional Services and Attorney-General's Departments.

Among the key issues identified for discussion in interviews and focus groups were:

- whether the CEN scheme was working effectively, or whether South Australia should revert to prosecuting minor cannabis offenders;
- whether the CEN scheme had resulted in outcomes not anticipated when the relevant legislation was enacted in 1987;
- respondents awareness or perceptions of cannabis market dynamics, and whether these had changed during the period of operation of the CEN scheme in South Australia;
- whether aspects of the CEN scheme legislation, regulations and operational procedures now needed to be amended or updated; and
- whether police, other criminal justice personnel and the public had adequate understanding of the CEN scheme.

3. Results

Study No. 1: Cannabis Offences Under the Cannabis Expiation Notice Scheme in South Australia

Since the introduction of the Cannabis Expiation Notice (CEN) scheme in South Australia in April 1987, the number of minor cannabis offences for which CENs have been issued has increased, from 6,231 expiable offences in the 1987/88 financial year to a peak of 17,425 offences in 1993/94. In financial years 1994/95 and 1995/96, the numbers of CENs issued have dropped slightly to 17,170 and 16,321 CENs issued respectively. The overall increase in detected minor cannabis offences (or “net-widening”) appears unrelated to prevalence of cannabis use, which has changed only slightly over the same period (see Study No. 5, “Effects of the CEN Scheme on Levels and Patterns of Cannabis Use in South Australia”, page 31). The net-widening is likely to be related to changes in SA Police procedures relating to detecting minor cannabis offences, such that more operational police are available for this work, and the work involved in issuing a CEN will be much less than that required under a prohibition model, where more formal prosecution procedures must be undertaken. It may also be related partly to a shift from greater use of police discretion in giving cautions for some minor cannabis offences to the formal system of issuing CENs for all minor offences detected.

In the first few years of operation of the CEN scheme, the rate of expiation of issued CENs was around 55%. However, as the scheme continued, and the numbers of CENs issued increased, the rate of expiation dropped to around 45% in 1991/92, and the rate has remained close to this level since then. This rate is substantially lower than for other types of expiable offences, such as traffic infringements. Of those CENs which were not expiated, the vast majority were forwarded for prosecution. No data were available in the present study to allow assessment of expiation rates after the beginning of 1997, when new procedures for administering all expiable offences in SA (including traffic) came into effect.

A relatively small number of CENs which were not expiated (1% of all CENs issued) were withdrawn before being forwarded for prosecution. Additional CENs would be withdrawn or dismissed at a later stage in processing, up to court prosecution, with the total identified as being around 5%. However, it needs to be highlighted that a further but undetermined proportion of CEN matters may be left unresolved some time after court prosecution, because of difficulty in locating the offenders - some such offenders would have provided false identifying information at the time of apprehension. The present study was unable to obtain a reliable estimate of this proportion lost at later stages of processing; however, it might be assumed that a substantial number of those matters involving false identifying information would have been withdrawn prior to or during the prosecution process (thus contributing to the %5 identified as having been withdrawn).

The data do not provide clear answers as to why the rate of expiation of CEN offences has been as low as it has. However, it may well be due to financial hardship experienced by cannabis offenders, particularly younger offenders and those who may have received multiple CENs over time. Also, as it is probably more difficult for police to verify proof of identity at the time a CEN is issued to an offender, compared to other types of offence (eg. traffic offences, where registration information can be used for follow-up) there may be more CEN matters lost to follow-up.

The most common offence for which CENs have been issued is possession of equipment for using cannabis, accounting for 38.4% of all CENs issued between 1991/92 and 1995/96. Possession of less than 25 grams of cannabis accounted for a further 36.4% of CENs issued. When possession of up to 100 grams of cannabis and up to 20 grams of cannabis resin are included, all possession offences accounted for 41.4% of all CENs issued. Cultivation of up to 10 plants accounted for 19.9% of CENs issued. For this study, no information was available on number of plants seized in cultivation offences. Rates of expiation for the different offence types ranged from about 33% for possession of equipment offences (where it was the sole offence) to nearly 53% for cultivation offences. This suggests that cultivation offences are taken more seriously by offenders. Alternatively, it could be that those who are detected for cultivation offences are less likely to be experiencing financial hardship. The rates of expiation for the different offence types have not varied substantially over the years.

According to available data, 49% of all CENs issued involved single offences, and a further 40% were issued in a situation involving two simultaneous CEN offences. Most of these would be equipment offences in conjunction with another offence. The numbers of multiple-offence episodes are likely to be underestimated by the data, because of inability in some cases to match CEN data records from the same occasion for the same person.

The average value of an issued CEN is \$70.25, while the average value of CENs expiated is \$74.35, and of CENs forwarded for prosecution, \$67.77 (CEN fees generally range between \$50 and \$150, although a possession of implements offence, when in conjunction with another offence, carried a \$10 fee). The higher average value for those expiated suggests that there may be greater recognition among offenders detected for expiable offences viewed as more serious (eg. cultivation) that it is in their interests to clear the matter quickly by paying expiation fees, rather than letting them lapse and have the matter go to court.

Overall, between 1991/92 and 1995/96, about 87% of CENs have been issued to males, and the expiation rates for males and females are comparable. With respect to age groups, 51% of CENs were issued to offenders aged 18 to 24 years, 90% of whom were males. With increasing age level, the rate of expiation increased, from around 43% for 18 to 24 year olds, to 65% for offenders aged 45 years and above. According to the legislative requirements of the CEN scheme, CENs can not be issued to persons under 18 years of age. A small number of CENs, accounting for 1% overall, were issued to offenders under 18 years of age. It is unclear whether these were issued in error, or whether age information has been incorrectly recorded (around 68% of these are later withdrawn).

The issuing of CENs showed some geographical variation, with the highest rates of issuing occurring in the inner city area of Adelaide, Port Adelaide, the inner northern suburbs of Blair Athol and Kilburn, and the far southern suburb of Sellicks Beach. In general, the far northern and southern suburbs, as well as the inner western, northern and north western suburbs had the highest CEN issuing rates, as well as the highest absolute numbers of CENs issued.

Cultivation offences account for a larger proportion of CENs issued among older age groups. Only 12% of CENs issued to 18 to 24 year olds are for cultivation, whereas 56% of CENs issued to persons 45 years and older were for cultivation. While the absolute number of cultivation offences is not the greatest for the 45 years and older group, the higher proportions of cultivation offences among older offenders may reflect a group of people who have remained involved with a cannabis subculture, are perhaps more heavy users, and are more serious about growing cannabis for their own use.

There is some variation in the number of CENs issued by day of week, with the greatest numbers being issued on Fridays, Saturdays and Sundays. When CEN issuing is examined by month, a much greater degree of variability becomes evident. There is a twofold variation annually in numbers of CENs issued, between the period around July to October when it is lowest, to around March in each year, when CEN issuing is highest. This clearly coincides with the period when cannabis in cultivation would be reaching maturity and being harvested. When the monthly pattern of CEN issuing was broken down by offence type, cultivation offences by far showed the greatest variation; for the total period 1991/92 to 1995/96, there were 420 minor cultivation offences detected in the month of July, compared with a peak of 2,886 cultivation offences in the month of March.

Among the CENs withdrawn before being expiated or forwarded for prosecution, the offence of possessing equipment for using cannabis is over-represented, while cultivation offences are under-represented. This suggests that, after issuing CENs for equipment offences, police may find it more difficult to sustain a charge if the matter proceeds to prosecution, perhaps because of doubts about whether the equipment had in fact been used for consuming cannabis. On the other hand, it may be relatively easier for police to ensure that a cultivation offence is brought to completion, perhaps because of a greater perceived level of seriousness attached to this offence.

Most matters involving unpaid CENs which are prosecuted result in a conviction being issued by the court; the proportion has remained fairly constant, and has ranged from 88% in 1995/96 to 94% in 1993/94. Overall, there have been 37,470 convictions issued for unpaid CENs, accounting for 46% of the total number of CENs issued. In contrast, only about 2% of CENs prosecuted (or 1% of the total issued) resulted in no conviction being recorded. It should be pointed out that an unknown proportion of these convictions would be in cases where the offender had given false identifying information, and in such cases, the offender may have thereby avoided legal sanction for non-payment of a CEN. Most of those who receive conviction for failure to expiate CEN fees would receive a court-imposed fine of similar magnitude to the original expiation fee, with the addition of court costs and levies (which would add about \$100 to the amount payable).

Of unpaid CENs forwarded for prosecution, about 3% were withdrawn prior to charges being laid. This represents a further 2% of all CENs issued, in addition to the 1% withdrawn or cancelled before being forwarded. Once charges have been laid, some unpaid CEN matters may still be withdrawn, either prior to or as a result of a court hearing. This accounts for a further 2% of all CENs issued. Thus, in total, around 5% of all CENs issued are formally recorded as having been withdrawn, dismissed or cancelled. There are unknown numbers which may have been cancelled at a later stage, through loss to follow-up. The statistics utilised for the present study provided data on court outcomes, but no information was available on the extent to which court-imposed penalties were successfully completed. Thus, of those convicted for failure to pay expiation fees, it could not be determined how many would have paid their court-imposed penalties, or have had warrants issued for failure to pay fines. The loss to follow-up at these later stages could not be ascertained.

In addition, while community service was very rarely imposed by the court as a penalty in CEN fee default cases (less than 1%), there may have been greater numbers who had court-imposed fines converted to community service orders at a later date, but the extent to which this occurred could not be obtained from the data available for this study. This extends to the numbers of CEN offenders who might eventually receive imprisonment for failure to expiate a CEN and then fail to pay subsequent court fines; while this number is likely to be very small, it could not be obtained for this study.

Some analysis of repeat offending under the CEN system was undertaken. The findings must be interpreted cautiously, as difficulties were encountered in matching records from individuals who might have offended on separate occasions; for this study, identification of repeat offenders required matching of records based on name and date of birth. If this information varied in any way across time, matching could not be done. Thus, it is likely that the information on extent of repeat offending under-estimates the true amount, but the degree to which this is so could not be determined. The giving of false identifying information by offenders, as well as data entry errors or mis-spellings in recording names, could have contributed to under-estimating the degree of repeat offending.

Around 8-9% of all CENs issued in any given year were to offenders who had received two CENs in that year. When the five year period from 1991/92 to 1995/96 was considered, the number of offenders with two separate CENs issued was 5,304, representing 10,608 offences, or 13% of all CENs issued over the period. Within the same five year span, there were 1,470 offenders identified who had been issued three CENs. The numbers of offenders who had greater than three CENs issued over the five years decreased markedly as the number of repeat offences increased. Very few offenders were identified as having more than ten CEN offences within the five years. Overall, 7,730 repeat offenders accounted for a total of 19,765 offences for which CENs were issued over the five year analysis period, representing 24% of all CENs issued.

While the overall proportions of CENs expiated and forwarded for prosecution due to non-payment have remained roughly equal over time, the repeat offender data show that repeat offenders feature more prominently among those who failed

to pay expiation fines. For the five year analysis period, there were 2,256 repeat offenders identified among CENs expiated, accounting for 5,039 offences. The average number of repeat offences per offender was 2.2 for the expiator group. In contrast, among the prosecuted group, there were 4,468 repeat offender accounting for 11,747 offences, with an average of 2.6 offences per offender. Thus, it would appear that a greater load of matters forwarded for prosecution is comprised of a smaller number of offenders who repeatedly fail to expiate CEN fees. While a detailed demographic profile of this group could not be generated from the data available for this study (which was limited to information recorded on CEN forms), one would expect that the repeat offenders who are prosecuted are experiencing a greater degree of financial hardship, and may have other social problems, some of which may be related to greater levels of cannabis use, all of which could reduce the likelihood of them clearing expiation fees and court-imposed fines.

Study No. 2: Cannabis Offenders in The Western Australian Criminal Justice System 1994–1996

This study provides statistical information on the processing of persons charged with cannabis related offences through the criminal justice system in Western Australia (WA) for the period 1994 to 1996. The analyses represent an extension of those conducted for the first phase of the Cannabis Social Impact study, which covered the period 1990 to 1993 (Lenton, 1995; Lenton, Ferrante and Loh, 1996).

Arrest data

From 1994 to 1996 there were 23,898 cannabis related charges in Western Australia, which were brought against 9,240 persons. These comprised 12% of all charges issued and 82% of all drug charges, down from 89% in the period 1990–1993. Just under half (46%) of the cannabis charges were for possession/use, 33% were for possession of implements, 10% were for make/grow offences, and 7% were for trafficking. The proportion of possession and use charges which were cannabis related declined from 90% in 1990 to 71% in 1996. This was likely due to a growth in the use of other drugs over the period. During 1996, for 13% of the apprehensions or arrests for possession/use of cannabis, the person was held in custody prior to their court hearing.

The majority of cannabis possession/use offences from 1994 to 1996 were committed by males (85%), non-Aboriginals (93%), and adults (92%). Juveniles comprised a slightly larger proportion (10%) of those arrested for a possessing a smoking implement than for possession of cannabis itself (8%). Young adults (18 to 21 years of age) comprise 28% of all possession/use cannabis charges.

From 1990 to 1995 there were 12,913 distinct persons charged with cannabis possession and use as their most serious offence, and for 44% of these this was their first arrest. Women comprised 23% of first-time arrestees, Aboriginals 2% and juveniles 13%. From 1990 to 1995, 9% of first time arrestees charged with cannabis possession/use as their most serious offence were held in custody prior to appearing in court, but this decreased from 16% in 1990 to 5% in 1995. Twelve months after initial arrest, 11% of first time arrestees charged with cannabis

possession/use as most serious offence had been re-arrested. By 24 months this figure had risen to 28%, and by 36 months was 30%. As at 31 December 1995, 59% of first-time cannabis users arrested in 1990 had not been re-arrested for any offence. Data aggregated for the period 1984 to 1996 suggests that the majority of most serious second offences committed by those first time arrestees charged with possession/use cannabis are relatively minor, 25% being driving a vehicle under the influence of alcohol or drugs, 18% for another possess/use cannabis offence, 4% for other minor drug offences and 4% for make/grow cannabis. Younger first-time cannabis users were more likely to be re-arrested than older offenders.

Court data

There were 22,247 cannabis related charges finalised in the lower court over the period 1993 to 1995, which comprised 9% of all charges and 84% of all drug charges finalised in the lower court. In 1995, just under half (47%) of the cannabis charges finalised were for possession/use, and 32% were for possession of implements, which respectively comprised 51% and 18% of distinct persons appearing before the lower court on cannabis-related charges. The vast majority (99%) of possession/use charges finalised from 1993 to 1995 resulted in a conviction, and of these, 92% resulted in a fine and 1% resulted in a custodial sentence. Over the period 1993 to 1995 males were responsible for 85% of all possession/use charges finalised in the lower court and Aboriginals only 6%. One in six (16%) of possession/use charges heard in the lower courts were against 18 to 20 year olds, with 75% of adults so charged being under 30 years of age.

There has been a decrease in the number of people jailed as a result of fine defaulting, where the offender's most serious offence was possession and use of cannabis. For example, in 1994, 41 of the 43 who were jailed with possession and use of cannabis as their most serious offence were jailed for fine default. In 1996 there were 3 such persons jailed, one of which was for fine default. This change appears to have occurred due to the introduction in WA of the Fines Enforcement System for non-payment of fines, where those who do not pay fines can have goods seized, complete a community penalty or have their motor drivers licence suspended rather than be placed in custody.

Study No. 3: Comparison of the Impact of Civil Penalties for Minor Cannabis Offences With the Impact of Conviction: the Cannabis Offender Interview Study

This study involved interviews with samples of cannabis offenders from South Australia and Western Australia. The findings of this study component are presented in three parts: two separate summaries of the findings from the South Australian and Western Australian samples respectively, and a summary of the comparative analyses that were conducted on the combined SA and WA data.

1. Interviews with South Australian offenders under the CEN scheme

The majority of the 202 respondents recruited for this study were Australian, non-aboriginal males in their twenties. Most were single, had no children, and lived with their partners, family or friends. The majority were heavy users of cannabis, although there was only a small degree of other drug use (excluding alcohol). In

this sample it appeared that cannabis use was not indicative of poly-drug use. There were significant differences in rates of use between those who had received a CEN (n=133) and those who did not (n=69). Approximately 70% of respondents who had received a CEN used cannabis on a daily basis, compared with 50% of respondents who had not received a CEN. Accordingly, heavier use of cannabis may be a risk factor for receiving a CEN.

It appears that the sample used for this study was biased towards heavier users of cannabis, which may be due to the recruitment methods employed. That is, advertisements were not placed in mainstream media, but rather community and street magazines, and university flyers. Furthermore, those who expiated their CENs were the most difficult to recruit, which may also be due to the recruitment methods employed. It is possible that 'expiators' as a group are less involved in a cannabis-using subculture than 'non-expiators', and less likely to agree to talk about their cannabis offences.

The main source of supply of cannabis for 75% of the sample was a third party, whereas 25% reported their main source was cultivation of their own plants. Twenty percent both grew and purchased cannabis. Of those that grew and had sold cannabis (45% of the total sample), 80% said that the profit contributed to between 1% and 25% of their income, suggesting that most people were growing for personal use, including family and friends, rather than commercially.

Two thirds of respondents were issued their CENs in a public place, the remainder in a private residence. Privately apprehended respondents were most likely to receive their CENs for possession of cannabis and cultivation. Moreover, it appeared police were aware that cannabis was on the property prior to the apprehension. In contrast, apprehension occurring in public places tended to be random and appeared to be opportunistic. These respondents were most likely to receive CENs for possession of cannabis and/or implements for using cannabis.

Of those who had dry cannabis seized, 75% were found with three grams or less (an average J-bag). Of those who were apprehended for cultivation, 50% had five or fewer plants, and 70% had ten or fewer plants. Once again, this suggests that the majority of these users were not involved in commercial criminal activity, and were more likely to possess or cultivate cannabis for personal use. It is possible that some respondents may have been involved in sale and supply of cannabis from cultivation of an expiable number of plants, thereby exploiting the CEN scheme. A modification to the current penalty scheme for cannabis may be advantageous, incorporating a 'graded' penalty scale for possession of both wet and dry cannabis.

Seventy five percent of respondents who were issued CENs felt that police had been 'reasonable' to some degree when the CEN was issued, however there were some complaints about police behaviour. Overall, 80% reported that their attitude towards the police had not changed as a result of the CEN incident. Of those who reported a change in attitude, the net change tended to be in a negative, rather than positive direction.

Respondents who had expiated mostly reported that they did so to avoid court and a criminal record. The majority of respondents who failed to expiate reported that it was because of financial constraint. Similarly, many of the respondents who did not expiate, underestimated the amount they would ultimately have to pay. Their costs

were significantly greater than the expiators due to heavier fines and court costs. In addition, three quarters of the non-expiators were not aware that they would get a criminal record if they did not expiate, suggesting that those who expiated may have had a better understanding of the consequences of not expiating.

There was no change in the rate of cannabis or other drug use following respondents' receipt of CENs. This suggests that receiving a CEN does not deter continued cannabis use, although as mentioned earlier, this sample seems to be biased towards heavier users of cannabis who may have been more resistant to change. Most respondents said they continued using cannabis because they enjoyed it, and did not view its illegality or criminal status as important.

In the time between receiving their CEN and the study interview, respondents appeared to be actively involved in looking for work. This suggests that neither their cannabis use, or their CEN, had a negative effect on seeking employment. The majority of respondents reported that receiving a CEN had no major effect on maintaining their employment, although a small proportion (around 5%) thought they may have lost their job because their employer found out about their CEN. There is some suggestion that some CEN offenders may have incorrectly thought that they had to include CEN offences when providing information about their criminal history to prospective employers. In general, receiving a CEN did not appear to have a negative impact on employment.

Over half of all respondents interviewed said that paying the CEN had caused them financial hardship. Moreover, the majority felt the fine they received was unreasonable, unjust, too harsh and did not match the seriousness of their offence. They also reported that they believed decriminalisation of cannabis had not resulted in an increase of cannabis use, and thought that personal use should be legal. Respondents also believed that strong drug laws do not deter illicit drug use.

Overall, most of these respondents were law-abiding, apart from their cannabis use. They did not view personal cannabis use as criminal or illegal, although over half believed that commercial sale and supply of cannabis should be a criminal offence.

Many of the respondents had erroneous beliefs concerning the law and cannabis. Around one half thought that private use was legal, while one third believed that possession of cannabis (100 grams or less) was also legal. Approximately two thirds knew that paying a CEN would not result in a criminal record, although two thirds were also unaware that they would get a criminal record if the fine were not paid by the due date. Moreover, two thirds were not aware that the result of not expiating would be a court summons and additional court costs.

2. The social impact of a minor cannabis offence under strict prohibition—the case of Western Australia

Sixty-eight Western Australians who received a criminal record not more than 10 years prior as a result of a conviction for a simple (minor) cannabis offence were interviewed for approximately 2 hours to ascertain their experiences of the arrest and court process and its subsequent impact on their lives.

The sample was 72% male, and the average age at interview was 27.4 years. Three quarters of the sample said they were in employment of some kind. On average, respondents had been using cannabis for 11.4 years, and 82% had used

the drug in the four weeks prior to interview. Most had friends who used cannabis. On average, respondents were interviewed about four years after their conviction. The sample was comparable in terms of sex and age at arrest with the population of West Australians convicted of cannabis possession and use as their first and most serious offence.

Average age at arrest was 22.7 years. When arrested, 47% were in a private dwelling, 25% were in a vehicle and 18% were in a public place. Most (71%) were charged with possession of cannabis, 53% with possession of a smoking implement and 23% with minor cultivation offences. Half were under the influence of cannabis when arrested.

While 73% said that police were lawful during the arrest and 41% said that they were respectful, 33% said that police were hostile and 57% were intimidated by police during the incident. In most cases attitudes towards the police were not changed by the incident, however, a large minority of respondents said that they developed less favourable attitudes. For example, 49% were less trusting of police and 40% were less respectful of police as a result of the incident

The vast majority (87%) of the sample said the arrest and conviction had not resulted in them reducing their use of cannabis, and 18% were more discreet about their use. Only three respondents said that they stopped smoking for fear of another conviction, four had stopped using for other reasons, and two said that they defiantly smoked more as a consequence of their conviction. Most continued to use despite their conviction because they enjoyed it (62%), didn't see it as a criminal activity (41%), saw it as victimless (25%), or disagreed with the cannabis laws (22%).

The majority of respondents 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% believed that they were a law abiding person, and 81% believed that most laws are worth obeying. Yet 90% believed that cannabis use should be legal, and 84% did not believe that strong drug laws deter illicit drug use. A minority (21%) continued to see themselves as a criminal as a result of their cannabis conviction.

Most (78%) of the sample regarded cannabis as a safe drug, and 82% did not believe that cannabis decriminalisation would markedly increase the number of people using the drug. Most saw cannabis as less harmful than alcohol (87%) and tobacco (69%).

Most (87%) had made at least one job application since conviction and 76% of these had been asked by a prospective employer whether they had a criminal record. A third (32%) had at least one negative employment consequence related to their cannabis conviction. Nineteen percent were unsuccessful in at least one job application, 16% said that they had lost at least one job, and 9% had stopped applying for some jobs as a result.

One in five (20%) respondents identified at least one negative relationship event which they believed was related to their cannabis conviction. Family disputes (16%) were the most common negative relationship consequence, followed by stress in a primary relationship (6%). Eleven (16%) identified at least one

negative impact on their accommodation. Eight (12%) changed their accommodation as a result of the conviction, three losing work-provided accommodation when they lost their jobs as a result of the conviction.

A third (32%) identified at least one negative involvement with the criminal justice system related to their cannabis conviction. In 19% of cases respondents believed their criminal record led to further enquiries from police.

Only 7% identified at least one negative impact of their cannabis conviction on their capacity to travel overseas. Three had a visa application to Canada or the USA rejected, one was interrogated at the Canadian border, and another cancelled their trip. A further 9% were very concerned about future restrictions on travel. It appeared that the time from conviction to interview was too short for travel effects to be evident in a larger number of respondents.

3. Infringement versus Conviction: The Social Impacts of a Minor Cannabis Offence Under a Civil Penalties System and Strict Prohibition in Two Australian States

Sixty-eight South Australians who had received a Cannabis Expiation Notice (CEN) and the same number of West Australians who received a criminal record not more than 10 years previously as a result of a conviction for a simple (minor) cannabis offence were interviewed for approximately 2 hours to compare their experiences of the CEN and/or conviction, and their subsequent impact on their lives.

Despite their transgression of the cannabis laws, the majority of both groups saw themselves as largely law abiding and had respect for the role of police as law enforcers and the rule of law in general. The majority of both groups also shared a lack of support for punitive drug laws, had a high level of support for cannabis use being legal, and slightly more than a third of each group supported commercial supply of cannabis remaining illegal.

The majority of both groups had positive views regarding cannabis. Most thought that it was a safe drug and that the benefits of cannabis outweighed the harms. Most saw it as much less harmful than a range of other substances including alcohol and tobacco.

Seventy-five percent of the WA group and 41% of the SA expiator group stated that the reason for police attention was that they were suspicious that the respondents were in possession of cannabis. Thirty-six percent of the WA group and 8% of the SA expiator group said that police had a search warrant at the time of apprehension, and 49% of the WA sample compared to 19% of the SA expiator group said they were in a private dwelling when they were apprehended by police.

Respondents in both groups were equally likely to report that they were friendly, respectful and cooperative toward the police when they were arrested or issued with their CEN. But 49% of the WA group, compared to only 18% of the expiators, said that they had become less trusting of police, and 43% of the WA group, compared to 15% of the SA expiators, were more fearful of police as a result. The greater loss of trust in the WA sample appeared in part due to the greater number of that group who were apprehended in a private residence, but did not appear to be due to other possible confounders.

The WA group were more likely to report negative employment consequences. While 32% of WA respondents identified at least one negative employment consequence related to their cannabis conviction, only one (2%) of the expiators identified one consequence that was related to their CEN. This difference did not appear due to possible confounders. Nineteen percent of the WA group said they had not got at least one job applied for, 16% had been sacked from at least one job, and 9% had stopped applying for jobs when they believed or knew that they were likely to be asked whether they had a criminal record. On average, employment consequences for the WA group occurred 8 months after conviction.

There was a significant difference between the groups in terms of negative relationship consequences of conviction or CEN. Only 5% of the SA expiator group identified any negative relationship consequences of their CEN, while 20% of the WA group identified at least one negative relationship event related to their cannabis conviction. This result appeared in part due to the greater number of the WA group who were apprehended in a private residence, but was not due to other possible confounders. Among the expiators, 3% described family disputes, and 2% said a friendship ended as a result. Among the WA group, 16% identified family disputes, 6% stress in a primary relationship and 3% family estrangement. The first relationship consequence occurred, on average, 8 months after the CEN and 5 months after the arrest.

There was a significant difference between the groups in terms of negative accommodation consequences of conviction or CEN. None of the respondents in the SA expiator group identified any negative accommodation consequences but 16% of the WA sample did so. These included a change of accommodation (12%), and loss of work accommodation (4%) associated with loss of job due to the conviction. Once again, accommodation differences appeared related to the impact of arrests which took place in a private residence which occurred in a greater number of cases in the WA sample, but did not appear to be due to other possible confounders. Residential consequences occurred on average 3 months after conviction.

There were no differences between the SA expiator and WA groups regarding the extent to which they, or others who knew them, saw themselves as a criminal as a result of the incident. In both groups, only a minority said they saw themselves as a criminal as a result of the incident.

There were no significant differences between the groups regarding the impact of the CEN or conviction on respondents' drug use. Both the CEN and the cannabis conviction appeared to have very little impact on subsequent use. For example, 91% of the SA expiator group and 71% of the WA group said that their cannabis use was not at all affected by their apprehension one month after. The vast majority of each group said that if they were caught again they would not stop using the drug. These data suggest the application of the civil or criminal law did not reduce the cannabis use of the vast majority of these samples.

There was a difference between the groups regarding subsequent criminal justice consequences and this did not appear to be due to possible confounders. Although none of the respondents in the SA expiator group identified any negative episodes of involvement with the criminal justice system which they thought were in some way related to their CEN, 32% of the WA sample identified at least one such consequence

related to their conviction. These included further police enquiries or questioning (19%), being found guilty of a non-cannabis related offence (13%) or another minor cannabis offence (9%). On average these consequences occurred 14 months after conviction. It may be that such events are a result of the computer access to offenders records that the WA police have, rather than the conviction *per se*.

There was no significant difference between the groups in terms of negative travel effects of conviction or CEN. None of the expiators and five of the WA sample (7%) identified at least one negative travel consequence and a further 9% of the WA group were very concerned about this possibility in the future. It appeared that the time from apprehension to interview may not have been long enough for travel effects to be evident in a large enough number of the convicted sample to result in a significant result, as 41% of the WA sample were interviewed within 38 months of conviction, yet the average duration to the first travel consequence was 39 months.

Study No. 4: Survey of Peak Employer Groups: Comparison of Impacts of Minor Cannabis Offences on Employment in South Australia and Western Australia

Review of the literature relating to employer groups' attitudes, practices and policies with regard to cannabis use and cannabis offending among employees revealed that very little has been published on this issue. Australian research conducted on cannabis in the workplace has focused solely on determining the prevalence of use (usually outside of work hours).

A telephone survey was conducted of a sample of representative employers who are prominent or leading organisations in their respective industry, to examine whether a minor cannabis conviction is an employment issue for peak employers. Separate samples were drawn from South Australia (an example of a jurisdiction with a "civil penalty" approach to minor cannabis offences) and Western Australia (an example of a total prohibition approach). It was surmised that there may be differences in the extent of employer discrimination against cannabis users and/or offenders between these states, precisely because of the differing legal systems.

Fifty South Australian (SA) employers and forty Western Australian (WA) employers from a diversity of industrial groups participated in the telephone survey. There were differences between the two samples in the types of industries represented, with the Western Australian sample having a higher proportion of mining organisations in the sample. It needs to be highlighted that the samples of employers are likely to over-represent large employers and under-represent smaller employers. Furthermore, a potential for bias exists, in that non-respondents to the survey may have differing attitudes to cannabis use than those employers who were interviewed.

A high proportion of the SA and WA samples had a formal policy on alcohol and other drugs (AOD), were attached to an employee assistance program (EAP), had an occupational health and safety committee or representative, and reported having had a workplace AOD incident in the few years prior to the interview.

Less than half of the SA and WA employers requested job applicants to specify any criminal offences, and even less conducted a formal criminal record check. Not a single organisation that conducted a record check, or requested job applicants to report a criminal record, reported that they ever checked specifically for a minor cannabis conviction.

Employers across both states demonstrated a moderate degree of knowledge of their respective state's minor cannabis laws, and there were no differences between the state samples in this regard. Employers in both states had similar views overall about how severe the laws and penalties for minor cannabis offences in the community should be, with a substantial proportion of all employers stating that the personal use of cannabis should be illegal but not a criminal offence.

Responses to a series of hypothetical situations were consistent with employers' opinions about their state's minor cannabis laws. Employers reported a lesser propensity to discriminate against a job applicant with a minor cannabis conviction compared to a job applicant with a major criminal offence record (eg. involving cannabis dealing, assault, or car theft). There were few state differences in responses to these hypothetical situations. Around half of all employers also suggested that they would not take action if they heard through the grapevine that a member of staff had committed a minor cannabis offence outside of work hours, with the reason frequently given that an employee's private life was of no concern to the organisation when it involved the personal use of cannabis.

In conclusion, important findings arising from this study are:

- employers, on the whole, appeared less likely to discriminate against an employee or job applicant with a minor cannabis offence or conviction compared to a person with a more serious criminal conviction;
- there were no marked differences between an “expiation state” (SA) and a “prohibition state” (WA) in terms of the reported attitudes and practices of employers with regard to minor cannabis use and offending among employees and job applicants;
- there was a substantially greater degree of concern amongst employers interviewed in both states about potential intoxication with cannabis in the workplace, and the associated safety implications;
- overall, respondent employers located in two states with different legislative systems for minor cannabis offences did not perceive such offences among employees as a significant employment issue.

Study No. 5: Effects of the CEN Scheme on Levels and Patterns of Cannabis Use in South Australia

Between 1985 and 1995, the adjusted prevalence rates of ever having used cannabis increased in SA from 26% to 36%. There were also significant increases in Victoria (from 26% to 32%), Tasmania (from 21% to 33%) and New South Wales (from 26% to 33%). The increase in South Australia was significantly greater than the average increase throughout the rest of Australia. The remaining states, however, differed in rates of change, with Victoria and Tasmania having

similar rates of increase to South Australia. There was no statistically significant difference between SA and the rest of Australia in the rate of increase in weekly cannabis use. The largest increase in weekly cannabis use occurred in Tasmania between 1991 and 1995, where it increased from 2% to 7%.

South Australia also did not show a greater rate of change than the rest of Australia in lifetime cannabis use among young adults in the 14 to 29 year age group, the age group with the highest rates of initiation of cannabis use.

The survey data indicate there has been a greater increase in self-reported lifetime cannabis use in South Australia between 1985 and 1995 than in the average of the other Australian states and territories. However, this increase is unlikely to be due to the CEN system because: (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young adults aged 14 to 29 years in South Australia.

Study No. 6: Public Awareness, Knowledge and Attitudes Regarding the CEN Scheme in South Australia

Of a sample of 605 residents of South Australia interviewed via telephone survey, 39% reported ever having used cannabis, and 34% reported having the opportunity to use cannabis in the previous 12 months. These percentages were higher than reported in the earlier 1995 National Drug Household Survey (Commonwealth Department of Health and Family Services, 1996). However, more regular consumption of cannabis, defined as use within the previous 12 months, was no greater than found in the 1995 survey, with approximately one third of those who had ever used doing so in the prior 12 months.

The fortnightly use of cannabis was viewed as acceptable by 34% of the sample, compared to less than 5% who thought the monthly use of other illicit drugs was acceptable. Nonetheless, the majority of respondents (77%) believed that cannabis is associated with health problems and with social problems (71%). Twenty two percent believed cannabis was associated with some health benefits and 70% felt that it had some legitimate medical uses. The risks associated with cannabis use were perceived to increase with the frequency of use, with 65% stating that daily use was associated with a “great risk”. Furthermore, 57% of respondents believed cannabis to be very or moderately addictive.

Despite these views, 65% of the sample felt that many people use cannabis without experiencing serious problems, and roughly 50% felt that cannabis use did not necessarily lead to the use of other illicit drugs.

Teenage use was disapproved of by 77% of the sample, while 90% agreed that driving ability would be diminished if the driver was affected by cannabis.

Positive attitudes towards the use of cannabis were associated with ever having used cannabis, continuing to use cannabis, being acquainted with cannabis users, and being categorised as having voted left-wing in the last state election. Youth, residence in the metropolitan area, post-secondary education and drinking alcohol at least once a week were less consistently associated with positive attitudes toward cannabis.

Whereas only 17% of respondents knew of the “CEN scheme”, 76% expressed a familiarity with the “on-the-spot fine scheme”. A reasonable knowledge of the legal status of the non-expiable offences (that is, that they are illegal) contrasted with some confusion about the legal status of expiable offences, with 24% thinking that possession of less than 100 grams of cannabis was legal, and 53% believing that growing 3 plants was legal. A large percentage of respondents said that they did not know the legal status of each of these offences.

This confusion was further highlighted when respondents were asked about the consequences of offences: only 40% knew that the two expiable offences involved some legal consequence. A higher percentage knew that the non-expiable offences involved some legal consequence. Only 3.3% of the sample had received a CEN.

While 80% felt that using cannabis for medical purposes should be legal, the vast majority thought that growing 15 plants, selling 25 grams for profit, possession of less than 100 grams by a juvenile and driving while affected by cannabis should remain illegal. Opinion was evenly divided as to whether the expiable offences of possessing of less than 100 grams of cannabis or growing 3 cannabis plants should be legal.

Those having no religious commitment, having used cannabis or continuing to use cannabis, and using alcohol at least once a week were found to be more liberal in their attitudes towards the legal status of cannabis. However, even among those supporting the continued illegal status of cannabis-related activities, the majority felt that a fine was the appropriate penalty for currently defined expiable minor offences.

On the question of whether respondents would wish to maintain the CEN scheme, render it more lenient or make it more restrictive, 43% were in favour of the status quo, 38% favoured making it stricter and 14% were in favour of making it more lenient. Those who believed either that the law should remain the same or become less strict were more likely than those who felt it should be more strict to have ever used cannabis, to continue to use cannabis at least once a year or to consider religion unimportant to their everyday life.

Of particular interest were the perceptions of the consequences of receiving a CEN. Whereas 40% felt that the level of other drug use in the general community had increased, 43% felt that the level of cannabis use in the general community had remained the same, and 32% felt that its use in public places had remained the same. Forty seven percent however felt that the level of cannabis use by teenagers had increased.

Respondents were equally divided as to whether or not they thought that public education might deter cannabis use. However, 69% of the sample disagreed with the idea that public education would promote cannabis use.

Of the respondents surveyed, 78% agreed with a suggestion to reduce the maximum number of plants for which a CEN could be issued from 10 to 3.

As was found to be the case in relation to the use of cannabis, more liberal attitudes toward cannabis-related laws were found to be associated with ever having used cannabis, continuing to use at least once a year, knowing someone

who uses, expressing no religious commitment, consuming alcohol at least once a week and voting “left-wing” at the last state election.

While a number of comparisons were made between the results of this survey and those conducted earlier, the different survey methods employed, the time period between the surveys and the possibility that South Australians are more candid in discussing their own drug use preclude any conclusions being drawn as to whether South Australian use and attitudes towards use diverge from the national profile.

Study No. 7: Costs Associated with the Operation of the CEN Scheme in South Australia

The Cannabis Expiation Notice (CEN) scheme in South Australia, as with all law enforcement schemes, has associated costs and benefits. Some of those costs and benefits are less tangible than others, including some of the social impacts which are the focus of the Cannabis Social Impacts Study as a whole. It was the aim of this particular study component to make an attempt to estimate some of the more tangible monetary costs associated with the operation of the CEN scheme.

The costs to the state include the costs of issuing and processing CENs through infringement notice procedures regularly used by police, referral of non-expiated matters for prosecution and court processing, and the costs associated with enforcing court-imposed penalties for convicted minor offenders. Costs to the individual offender relate to the monetary value of the fees, fines and levies associated with offences detected, possible legal advice costs, and potential social impacts of conviction or police intervention upon employment, relationships and other areas.

Expenditures by the state have been used as a proxy measure of the economic costs to society. Fixed costs associated with infrastructure necessary to operate the law (eg. police stations, court facilities, etc.) were not included in the cost estimates for the CEN scheme, because of the difficulty of quantifying the relatively minor allocation which would be for the CEN scheme. Expenditure estimates largely involved personnel time consumed in the tasks of law enforcement and processing of CEN offences. On-costs were added for personnel costs, but no allowances were made for maintenance costs or consumables, because of difficulty in quantifying this factor, and because it was assumed to be relatively minor.

For the present study, unit cost estimates were developed for a number of potential penalty outcome pathways under the CEN scheme. Costs of issuing CENs were estimated from the time a CEN was actually handed to an offender; no allowance was made for the costs associated with detecting the offences, as these costs were considered very difficult to quantify, and subject to wide variation, depending on police resources targeted at offence detection for minor cannabis offences. Furthermore, a substantial but unknown proportion of CEN offences would have been detected opportunistically or in the context of other investigations, making costing of detection more difficult.

The unit cost of issuing a CEN under the CEN scheme, including police time in issuing the notice, entering data onto computer, and other administrative tasks, was estimated to be \$32.73. This was also taken to be the unit cost of a finalised

expiated CEN, as handling of full expiation payments was taken as adding a negligible amount to this cost. If community service was granted as a payment option before a CEN became a fine default matter, substantial additional cost was added for managing the community service order, raising the unit cost to \$257.73.

Additional costs were associated with managing CEN matters which remained unpaid, and had to be prosecuted. For example, a CEN which was not expiated, and resulted in a court hearing and conviction was estimated to cost \$51.82 from the time of CEN issue to finalisation by full payment. If such a case was cleared by community service, the unit cost was \$276.82. If payment of court fines was not made, costs increased as further criminal justice processing ensued, including the issuing of warrants. Where non-payment of court-imposed fines resulted in a warrant being issued, the unit cost for cases which were eventually payed in full was estimated at \$90.75. Where such cases were cleared via community service, the unit cost was \$315.74, and if it was cleared by imprisonment, the unit cost was \$601.74.

A model for the annual cost of the CEN scheme was generated, based on the figures for the 1995/96 financial year in which 16,321 CENs were issued, with 7,165 being expiated (a 44% expiation rate). It should be highlighted that the total cost estimated for the model is based on approximations of the proportions of offenders within the various final outcome pathways. Police and court data available for this study related to processing and initial court-imposed outcomes, ie. they gave no indication of the proportions of court-imposed fines which were actually paid, or converted to community service at a later date, or required warrants being issued and served for non-payment of court fines. Thus, rough approximations of such outcomes (including imprisonment) were used. For the purposes of the model comparisons carried out in this study, these approximations were adequate.

For the 16,321 CENs issued in 1995/96, with a 44% expiation rate, the total cost was estimated to be \$1.24 million. Revenue from CEN fees, fines and costs was estimated to have been \$1.68 million for that year.

Further models were calculated, based on estimated costs for a notional CEN scheme in which the expiation rate was 10%, 20% and 30% higher than the 44% observed rate over recent years. With a 10% increase in expiation rate (ie. to 54%), the total cost was estimated at \$1.11 million; with a 20% increase, \$0.98 million; and for a 30% increase, \$0.86 million. These models showed clearly that improving the rate of expiation reduces costs; this is mainly due to the low costs associated with expiated notices.

When likely revenue from fees, fines and levies for these models is calculated, the total annual amount declines slightly: \$1.60 million for an expiation rate of 54%; \$1.52 million for a 64% rate; and \$1.45 million for a 74% rate. However, the total surplus of revenue over expenditure is higher for the higher expiation rates, resulting in greater savings to the state. It remains unclear the extent to which expiation rates can be improved to realise these greater savings. With recent changes to the way expiation offence fees can be handled (with the implementation of the *Expiation of Offences Act, 1996*), expiation rates may increase for CEN offences, but cost savings may not be realised if community service is more widely used.

As it was not possible to reliably cost the prohibition approach which existed in South Australia before the CEN scheme was introduced, and it was not possible to obtain truly comparable costs from another jurisdiction which had a total prohibition approach to minor cannabis offences, a model was generated which estimated the cost of prohibition of minor offences in South Australia, had the CEN scheme not been introduced. In generating this model, allowance was made for net-widening under the CEN scheme, such that it was assumed that around 7,500 minor cannabis offences would have been detected in SA in the 1995/96 financial year, rather than the 16,321 CEN offences detected. Even with this allowance, the total cost of the prohibition approach was estimated to be \$2.01 million, while revenue from fines and levies was estimated to be \$1.0 million. These models suggest that an expiation scheme such as the CEN scheme, even with a relatively low rate of expiation, has much greater potential for cost savings to the state than does a prohibition scheme for minor cannabis offenders.

Study No. 8: A Review of Law Enforcement and Other Criminal Justice Attitudes, Policies and Practices Regarding Cannabis and Cannabis Laws in South Australia

Through twenty-eight intensive one-to-one interviews and four focus group discussions, the research team obtained intensive feedback from forty-nine people involved in administration of South Australia's cannabis laws. Respondents included the Chief Justice, the Chief Magistrate, a representative from the Office of the Director of Public Prosecutions, the National Crime Authority, police prosecutors, the officer in charge of the Drug Task Force, Drug Task Force and regional detectives and police patrol officers. Discussions also were held with personnel in the Correctional Services and Attorney-General's Departments.

Major findings are as follows.

1. Should South Australia retain the CEN scheme or revert to prosecuting minor cannabis offenders?

Virtually all respondents considered that it would be better for South Australia to continue to issue expiation notices for minor cannabis offences rather than to revert to a system of prosecutions. Reasons for maintaining this view differed, however. Police, who constituted the majority of interviewees, put emphasis on the convenience and cost-effectiveness of CENS. Issuing a CEN eliminated time spent on court attendance, and also significantly reduced administrative burdens associated with storage of court exhibits. Individual users still could be deterred from cannabis use by being given CEN on several different occasions for repeat offences.

By contrast, members of the judiciary and others respondents working outside the enforcement system tended to favour expiation because it provided a way for users to avoid stigma and other adverse social consequences associated with a court conviction.

2. Was the CEN scheme having any unintended consequences?

Respondents agreed that expiation had improved police and court efficiency. However quite a number of police argued that there also had been some unintended consequences. In particular, Drug Task Force and regional detectives argued that individuals and syndicates may be exploiting provisions which specified that cultivation of up to ten plants should be dealt with by means of an expiation notice. In their view, the advent of hydroponics and techniques for cloning female plants meant that it was possible for commercial crops to be grown, while staying within the ten plant limit. Some respondents argued that organised crime had become involved in coordinating small scale cultivations. When requested, the Police Department and the National Crime Authority produced some intelligence evidence that this was occurring. The Director of Public Prosecution's office confirmed that it would be difficult to prosecute successfully individuals or groups conspiring to exploit the CENS system by organising small cultivations in several different locations.

3. Did aspects of the CEN legislation and regulations now need to be amended?

Respondents who were members of the judiciary or from the Office of the Director of Public Prosecutions could not see any cause for major change to legislation or regulations relating to the CEN scheme (as primarily embodied in the Controlled Substances Act, 1984). Several police - particularly those in the Drug Task Force or working on drug-related special investigations or as regional detectives - argued that the maximum number of plants for which a CEN could be received should be reduced from ten to three or four. They argued that the legislators clearly intended that notices should only be issued in instances where cannabis was being cultivated for personal use. It was argued that, particularly with current growing techniques, people cultivating cannabis for their own personal use should not require more than three or four plants.

4. Did police, other criminal justice personnel and the public adequately understand the CEN scheme in South Australia?

Respondents from the law enforcement sector stated that introduction of the expiation system seemed to have caused some confusion within the general public. A number of people detected for possession, use or cultivation of small quantities of cannabis now were under the impression that this was legal. Police and other justice officials demonstrated good understanding of technical aspects of the expiation laws. However, operational law enforcement officers were reluctant to contemplate exercising greater discretion in the issuing of notices (for example, only issuing a CEN if this was likely to achieve some public benefit), and had not thought about ways of using expiation notices to reshape cannabis markets (for example, to drive out organised crime elements by flooding some locations or groups with notices).

From reviewing law enforcement and other criminal justice attitudes and practices, the general conclusion is that, despite initial opposition from the Police Association and some concerns expressed by the Police Department, the expiation notice approach now enjoys general support. One major source of concern was that, because cultivations of up to ten plants can be dealt with by

means of expiation, some individuals and groups may be exploiting the system for commercial purposes.

One way of dealing with this problem may be to reduce to three or four the maximum number of plants for which a CEN can be issued. Alternatively, however, police could give consideration to improving intelligence systems, so that individuals or groups exploiting the CEN system for commercial purposes could be 'driven out of the market' by being served with repeated notices. Jurisdictions which took the latter course would still leave scope for the genuine 'amateur' cultivator, who may be unable to obtain sufficient yield from a small number of plants.

4. Discussion

As has been observed in other research on the CEN scheme in South Australia, it appears that there has been a degree of net-widening under the scheme since its implementation in 1987. However, the economic analysis carried out for this project suggests that the net-widening has not resulted in greater costs to the state. Furthermore, the expiation approach in South Australia may well be more cost-effective than a prohibition approach, despite net-widening and the fairly low observed rate of expiation.

One of the tasks of this research was to investigate whether there might be a difference between an expiation and a prohibition approach in terms of the observed social costs for offenders and society as a whole. The fairly low rate of expiation of CEN offences observed in South Australia up to 1996 (around 45%) has suggested that financial hardship among a substantial proportion of offenders may be a contributing factor. Sarre, Sutton and Pulsford (1989) noted the low rate of expiation in their initial evaluation of the CEN system. They found that people detected for minor cannabis offences tend to be drawn from lower socio-economic groups, and that they figured disproportionately among those prosecuted for failing to pay expiation fees. The present study provides further support for this view, from interviews with offenders, and from published data (eg. the confirmation that there has been a much greater representation of repeat offenders, who tend to avoid paying fines, amongst non-expiators compared with expiators). While in this study, it was not possible to fully characterise the non-expiator group and compare it with the expiator group because of limited demographic information available on CEN forms, there is suggestive evidence from other research components that financial hardship is a factor for minor cannabis offenders, particularly younger offenders. It remains to be seen whether the recent enactment of the new *Expiation of Offences Act, 1996* has an impact on rates of expiation and court loads for minor cannabis offences.

Both the Western Australian and South Australian samples of cannabis offenders interviewed for this project displayed some negative impacts arising from cannabis offence detection and processing, including financial difficulties. The WA group was more likely to report negative employment consequences from offence detection (32% in WA vs 2% in SA). While such consequences are based on the offenders' self-reported perceptions of whether consequences were related to a cannabis offence, the findings indicate an apparent and noteworthy difference between the jurisdictions in terms of a significant area of social impact.

In contrast, from the separate survey of employer groups conducted for this project in WA and SA, it emerged that most employers in both states reported that they were not concerned by employees' prior offences or convictions for minor cannabis offences, but were more concerned about the negative consequences possibly arising from cannabis intoxication in the workplace. These differences between offender and employer perceptions of employment consequences could be due to a number of factors. A bias in the employer study could have been introduced by an

over-representation of large employers and under-representation of smaller employers. Furthermore, non-respondents to the survey may have had more conservative attitudes to cannabis use than those employers who were interviewed, thereby biasing the employer study findings towards more accepting views. Nonetheless, the employer study demonstrated that cannabis offences seem not to be especially singled out when employers conduct criminal record checks.

The survey of cannabis offenders also showed significant differences in other areas of social impact, with the SA sample experiencing fewer negative impacts than the WA group in terms of relationship consequences and effects on accommodation status. There was also a difference between the SA and WA groups regarding subsequent criminal justice consequences, with none of the respondents in the SA expiator group identifying any negative episodes of involvement with the criminal justice system which they thought were in some way related to their CEN, while 32% of the WA sample identified at least one such consequence related to their conviction. It may be that this finding is partly related to differences in ease of access to criminal history information on offender records which police have in WA, such that they are able to more readily identify prior offenders than in SA.

In other respects the offender groups in the two states did not differ greatly, with no differences found in terms of the extent to which they saw themselves or others saw them as a criminal, as a result of the incident. There were no differences between the groups regarding the impact of the CEN or conviction on their drug use, with both the CEN and the cannabis conviction groups reporting very little impact of offending on subsequent drug use. There was also no significant difference between the groups in terms of negative travel effects of conviction or CEN.

The majority of both the SA and WA offender groups saw themselves as largely law abiding, and had respect for the role of police as law enforcers and the law in general. The majority of both groups also shared a lack of support for punitive drug laws, had a high level of support for cannabis use being legal, and had positive views regarding cannabis. Most thought that it was a safe drug and that the benefits of cannabis outweighed the harms. Most saw it as much less harmful than a range of other substances including alcohol and tobacco. This finding, combined with the observation of a relatively poor knowledge in the general community in South Australia about the health consequences of heavy or long-term cannabis use, and the relatively heavy cannabis use amongst offenders, suggests a possible avenue for harm reduction through providing CEN offenders with health risk information at the time of a CEN being issued.

There were differences between states in reasons for police attendance and location of cannabis offence detection. More offences in SA seemed to result from opportunistic detections, with fewer being detected in private dwellings. This seems to accord with the net-widening phenomenon observed from the published data, where changes to police practices associated with the implementation of an expiation scheme seem to result in a greater number of offences detected in the context of routine police work.

While both the SA and WA groups were equally likely to report that they were friendly, respectful and cooperative toward the police when they were arrested or

issued with their CEN, higher proportions of the WA group reported that they had become less trusting and more fearful of police. This is likely to be due in part to the greater number of WA offenders who were apprehended in a private residence, and the greater perceived intrusiveness of such apprehensions.

With regard to the South Australian CEN scheme, the low rate of expiation has been a cause for concern since the first evaluation study conducted by Sarre, Sutton and Pulsford (1989). Besides the inability to pay expiation fines, another suggested reason was that many CENs may be issued in the context of other charges being made, requiring the offender to appear in court, and thereby reducing the incentive to pay expiation fees. The present study was not able to provide a clear answer to this question, owing to the way in which CEN data are stored, and the problems in linking CEN offence data to criminal record data. The concern has also been expressed that this factor could lead to doubling up of court appearances for CEN fee defaulters who were required to appear in court for other offences. Again, the extent of this could not be determined. However, with the recent changes to handling of all expiable offences under the *Expiation of Offences Act, 1996*, this doubling up effect would not occur, as expiation fee defaulters now receive automatic convictions if they fail to respond to a payment reminder notice, without the need for a court appearance.

Another possible reason for failure to expiate notices in past years might relate to individuals who, at the time of being issued with CENs, give false identifying information. The exact extent of this problem could not be determined, but is probably not as great as was thought. Statistics obtained from SA Police for the present study showed that a fairly small percentage of CENs issued would be withdrawn or cancelled by police before being cleared or forwarded for prosecution (around 1%). After unpaid CENs were forwarded for prosecution, a further proportion would be deemed unsuitable for prosecution and withdrawn. The reasons for such matters being withdrawn would most probably relate to incomplete information being recorded on CEN documentation to enable prosecution to proceed. Among the CEN matters withdrawn at various stages, there would be an unknown proportion that had false identifying information recorded on them. Then, for those cases where a summons was sent out, a proportion would involve offenders who had given false addresses or other identifying information, making it impossible to proceed with the matters any further. Further research is needed, examining final outcomes from court proceedings (ie. after any further defaulting on court-imposed fines, issuing and serving of warrants, and completion of subsequent penalties, including imprisonment) in order to gain a more complete picture of the extent of CEN offences which are not resolved, and the degree to which false information may contribute to follow-up losses.

The *Expiation of Offences Act, 1996* (which came into effect from early 1997), besides having a likely effect on the expiation rate for cannabis offences, provides more information to recipients of notices on the consequences of failure to pay expiation fees. This provision alone may contribute to improving expiation rates, as well as improving the perceived fairness of the system. The need for more detailed information on the financial and legal consequences of non-payment of CENs was highlighted by respondents in the SA offender interview study. Furthermore, earlier research on knowledge and attitudes regarding cannabis laws (Bowman & Sanson-

Fisher, 1994), as well as the community attitudes survey conducted for this project, have shown that aspects of the CEN scheme are not well understood in the South Australian community. There may be scope for expanding upon information provided to offenders on CEN forms, perhaps by providing offenders with a detailed information sheet at the time of receipt of a CEN.

The observation that the 45 years and over group is the one for which cultivation offences account for the highest proportion of total CENs issued suggests that cannabis cultivation is more of an activity for older people involved in the culture of cannabis and its use. While the majority of cultivators issued with CENs are in the 25 to 34 year age group, it does seem that older people who remain involved with a cannabis using culture (and hence are at risk of detection by police, by whatever means) are more likely to be involved with cannabis cultivation as compared with just using cannabis. It should be emphasised that some of this observed variation in the proportion accounted for by cultivation offences at each age level may be explained by a possible detection bias associated with age; younger people involved with a cannabis using culture may be exposed to greater risk of detection due to the circumstances in which they use the drug, which in turn may mean that the younger groups are more likely to be detected for possession and use offences, rather than cultivation offences.

A related observation was the trend towards higher rates of expiation of cultivation offences among older age groups. As mentioned elsewhere, higher rates of expiation among older offenders generally may reflect a greater awareness of the consequences of failure to pay CEN fees. Furthermore, older offenders are probably less likely to have trouble paying CEN fines. The fact that this trend is mainly evident for cultivation offences, and not possession/use offences, reinforces the notion that cultivation may be perceived by offenders as more serious than possession of cannabis, and therefore results in a greater likelihood of being cleared. Indeed, it could be argued that police also view cultivation offences as more serious than possession offences, as larger total weights of cannabis can be expiated in plant form than as dried cannabis in someone's possession; there is thus greater potential for small commercial amounts to be held by cultivators of cannabis plants than by those who just hold "possession" amounts. This situation may contribute to older cannabis cultivators in particular wishing to clear their offences by paying expiation fees on time.

The present study was not able to shed light on the extent of home cultivation of cannabis which might involve the use of hydroponic techniques. The data on offences issued by month showed a clear cyclic variation in the numbers of CENs issued at different times of the year, particularly for cultivation offences, where such offences were almost six times as numerous in March as in the lowest period around July. It may be that a high proportion of plants in cultivation detected by police at around this time of year are being grown in assisted environments, perhaps with hydroponic techniques, as the winter months are not as conducive to growing mature cannabis plants out of doors. The extent of this cannot be readily gauged from the published data.

It is important to note that none of the data on cannabis offences under the CEN scheme available for the present study gives any indication of the potency (ie. THC content) of dried cannabis seized in possession offences. Furthermore, no data are available on the potency of cannabis plants found in cultivation,

including whether plants found might be higher potency strains such as “skunk”. An interesting area for research would be to analyse the potency of cannabis plants seized at different times of the year, with comparisons of potency for different growing methods.

The implications of cannabis potency for cannabis markets and the health of cannabis users are somewhat unclear. Offence data do not shed light on what cultivators of expiable numbers of cannabis plants might do with the material they grow, including whether they keep all of what they grow for themselves, give some away to friends, or try to sell some of it. While the interviews conducted with cannabis offenders in SA showed a degree of plant cultivation among the group, with a minority involved in small scale sale of home-grown cannabis, there were insufficient sample numbers to make judgments on average potency of home-grown cannabis in South Australia.

The data presented in this report have shown that a reasonable proportion of CENs issued have been withdrawn at various stages of processing. Among the CENs issued, a small proportion (about 1%) have been cancelled or withdrawn before failure to pay expiation fees became an issue. CENs which have not been expiated are examined by the prosecutions section of the SA Police, for determination to be made on whether a prosecution can successfully proceed. The limited reliable data available showed that 3–4% of CENs forwarded for prosecution (or 2% of CENs issued) would be withdrawn by police at this stage in processing, before charges were laid. The exact reasons for individual CENs being withdrawn at this point are not recorded, but it is likely that many relate to problems in ascertaining the correct identity or contact details of the offenders, or with there being insufficient evidence to allow a successful prosecution to proceed. Such problems are not unexpected in a system where a simple expiation matter can, if left unpaid, convert to a drug offence which requires a greater standard of evidence to support it, and the assumption of guilt on the part of offenders. The percentage of matters withdrawn before charges are laid, it could be argued, is fairly low, given the difficulties faced by police in proving identity of offenders in certain situations where cannabis offences are detected, such as at parties, or when offenders are visitors at the place of detection. Even so, there may be scope for enhancing police training, or revising police operating procedures in this area, in order to maximise the potential for later prosecution of unexpiated CENs. This could include increasing the application of proof of identity requirements in situations where detected offenders do not have proof of identity at the time of offence detection.

The finding that well over 90% of prosecutions relating to failure to pay CEN fees resulted in convictions for the offenders is a cause for concern in terms of adverse social consequences. As discussed, substantial numbers of CEN offenders have failed to pay expiation fees on time since the CEN scheme began operation, and the reasons for the low rate of expiation are probably varied. Whatever the reasons, the low rate of expiation means that large numbers of offenders have exposed themselves to the risk of receiving a conviction for a minor cannabis offence, in a system that, it could be argued, was designed to remove or reduce that risk of conviction. For the five years from 1991/92 to 1995/96, a total of 37,470 convictions for unpaid CEN matters were handed down; these represent 46% of all CENs issued over that period.

In presenting these findings relating to convictions handed down for CEN matters which were not cleared by expiation, it should be emphasised that a small proportion of such cases would be left unresolved because of false or insufficient information being available to adequately identify an offender. This would most likely be a relatively small number in addition to the 5% of CEN offences identified as withdrawn or dismissed for various reasons

As the rate of conviction for offenders who failed to expiate CENs is so high, the differences between the offence types in the proportion of conviction outcomes were minor. Cultivation offences had the lowest proportion of offenders who received no conviction (1.2%), and the highest proportion of convictions being given (95.2%), reinforcing the perception that cultivation offences overall may be viewed by courts as being more serious than cannabis possession offences.

It is also of concern that many convictions for CEN offences may have resulted from individuals who did not pay CEN fees on time because they faced financial difficulty, or who had let CEN matters lapse because they misunderstood the consequences of failure to expiate CEN fees (ie. that an unexpiated CEN offence effectively converts to a drug offence, with the attendant risk of conviction). As discussed earlier, the new *Expiation of Offences Act, 1996* may to a large extent address the problems of CEN offenders facing difficulty paying expiation fees, through the provision of more payment options which can be chosen if financial hardship can be demonstrated. Another suggestion that has been raised is that there be a greater range of expiation fee amounts, so that offences involving very small amounts might incur a lower fee, thereby improving the likelihood of expiation. Furthermore, the new CEN forms may improve the level of understanding the consequences of failing to pay. However, the new Expiation Act has not removed the possibility of conviction for unpaid expiation fines. The introduction of automatic conviction processes for CEN offenders who do not pay fines or specify an alternative method for clearing the matter may mean that a small group of CEN offenders will receive convictions more readily than under the older Expiation Act (eg. those who receive CENs in the context of other offences). It is too early as yet to comment on what effect the new Expiation Act will have on rates of expiation of minor cannabis offences, and the risk of receiving a conviction after being issued with a CEN.

The analyses conducted for this study using SA Police data showed that community service orders were infrequently imposed as the main penalty accompanying conviction for CEN offences which remained unexpiated. Despite this, there would be a greater number of CEN offenders who at some time after their court matter has been dealt with apply to have their court-imposed fines converted to community service orders. Unfortunately, it was beyond the scope and resources of this study to obtain figures on these later outcomes following on from court processing of offenders. Such an analysis could be carried out by the Courts Administration Authority, but would require additional funds and more time than was available to the researchers for the present study. Similarly, a reliable analysis of CEN-related fee defaulters receiving imprisonment as a result of failure to pay court-imposed fines could not be undertaken within the present study, as the available data sets would require considerably more work to enable thorough tracking of expiation offenders through to imprisonment.

The data provided by SA Police for this study allowed a fairly rudimentary picture to be gained of the extent of repeat offending for expiable cannabis offences. There are methodological difficulties that need to be acknowledged in assessing the extent of repeat offending under the CEN scheme, and these largely relate to the difficulties in identifying separate CEN offence incidents for the same unique individuals. Identifying separate CEN offences from separate occasions involving the same person involves carrying out computer matching on name and date of birth data. It is not known how many repeat offenders might have been missed through this process. It can be said that those repeat offenders identified in the study will be an under-representation of the actual numbers of such offenders; furthermore, the figures generated will under-estimate the true numbers of repeat offences for each repeat offender.

It should also be recognised that the numbers of repeat offenders identified, and the numbers of separate offences found for each repeat offender, will depend on the period over which data records have been analysed. For this research, analyses were conducted on the extent of repeat offending within each financial year, and also within the total five year period for which complete data were available, from 1991/92 to 1995/96. Had adequate records been available for a longer period, perhaps going back as far as the beginning of the CEN system in 1987, the extent of repeat offending found within the data would have no doubt been higher.

It was noteworthy that close to 25% of all CEN offences issued over the five year analysis period were verified as being issued to repeat offenders (offenders who had been issued with more than one CEN over the five year analysis period, from 1991/92 to 1995/96). This is a substantial proportion, and as mentioned above, will be an underestimate of the full extent of repeat offending. Most repeat offenders had been issued with two CENs on different occasions, and within any given year, around 8 – 9% of all CENs issued were to people who had two CEN offences within the year. For the entire five year study period, around 13% of all notices issued went to individuals identified as having two separate offences. Also, a substantial number of repeat offenders had had three CENs issued within the five year period, accounting for a further 5 – 6% of all CENs issued. As would be expected, fewer individuals had larger numbers of repeat offences for which CENs were issued. It could be argued that heavier and longer-term users of cannabis, those who choose to cultivate cannabis plants for their own use, and those who are more involved with a cannabis-related subculture, will be more likely to be detected repeatedly over time. Age of offenders will be a factor in the risk of repeat offence detection, in that older users of cannabis (who have maintained some degree of ongoing use) will have had a longer period of exposure to police detection.

When repeat offenders are divided into those for whom repeat offences were expiated, and those for who repeat offences were prosecuted, it emerges that the majority of repeat offenders tend not to expiate CENs. While precise reasons for this cannot be ascertained from the data, repeat offenders are probably more likely to be known to police, and have other social problems which make their payment of expiation fees on time less likely.

When population survey data on levels of cannabis use are considered, it appears that the CEN scheme has had little impact. Data from national drug use surveys of the general community indicate that there has been a greater increase in self-reported lifetime cannabis use in South Australia between 1985 and 1995 than in the average of the other Australian states and territories. However, this increase is unlikely to be due to the CEN system because: (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young adults aged 14 to 29 years in South Australia. It is also possible that part of the observed increase in self-reported lifetime use in South Australia can be attributed to a greater willingness of people to admit to cannabis use in a population household survey, compared to jurisdictions with a total prohibition approach to minor cannabis offences

A final area of significant inquiry in the present study involved the opinions about the CEN scheme of law enforcement and criminal justice personnel working in South Australia. Senior officials involved in dealing with the CEN scheme in the SA Police and other departments have generally agreed that the CEN scheme should remain in place, and that it provides an efficient way of dealing with minor cannabis offences. It was also highlighted as providing advantages for offenders, through avoiding the stigma associated with criminal conviction. A significant concern was raised by some senior police, regarding the potential for exploitation of the expiable cultivation offence limit of 10 plants. It was argued that some commercial cannabis cultivation enterprises were spreading their operations, in order to keep individual site plantations at 10 plants or fewer, while maximising the yields through sophisticated cultivation techniques. It has been proposed that this problem can be readily dealt with by reducing the maximum number of plants expiable under the CEN scheme from ten to three or four. An alternative approach might be to maintain the ten plant limit, and try to impact on organised cultivation groups in other ways, such as police utilising the provision under the law, allowing commercial cultivation charges to be laid if the quantity of cannabis under cultivation or the circumstances lead them to suspect a commercial operation. Another suggestion that has been put forward is that, where police suspect that a commercial operation is taking advantage of the expiation provisions, police use the expiation scheme to repeatedly issue CENs for cultivation offences. This would require additional surveillance efforts, but continued seizure of plants and growing equipment may have a significant impact on these groups, and may be easier for police to sustain as a strategy for putting an end to their operations.

From the foregoing discussion, it has emerged that the CEN scheme in South Australia appears to have numerous benefits for the community, not the least of which are cost savings for the community as a whole, reduced negative social impacts for offenders, and greater efficiency and ease in having minor cannabis offences dealt with, associated with less negative views of police held by offenders. While there have been problems identified with the administration of the CEN scheme over time, it appears that the purported adverse effects associated with some unintended consequences of the CEN scheme are less problematic than previously thought. A good example is that, while net-widening

has occurred under the system, it does not appear to have adversely affected court loads and costs. However, the effect of net-widening on offenders is less clear, as there is likely to be a small group of repeat offenders for whom repeated detection and prosecution may place them in greater financial hardship. One of the more telling findings from this study is that a significant number of CEN offenders will ultimately still receive a conviction as a result of an expiable offence, with the associated stigma and potential consequences. It remains to be seen whether modification of the CEN scheme, as has been already done to some extent via the changes to the administrative and payment procedures for expiable offences in South Australia, will result in fewer minor cannabis offenders receiving convictions.

5. Summary and Conclusions

1. The establishment of the Cannabis Expiation Notice (CEN) scheme in South Australia in 1987 has resulted in some degree of “net-widening”, in that the number of minor cannabis offences detected under the scheme increased about two and a half times between 1987 and 1996. This increase appears to be mainly due the greater ease with which a CEN can be issued under the scheme, compared to the procedures for an arrest and charge that would be required for a prosecution.
2. The majority of offences for which CENs have been issued in South Australia relate to the minor offences of possession of less than 25 grams of cannabis, possession of equipment for consuming cannabis, and cultivation of no more than 10 plants. Most CENs for equipment offences are issued in conjunction with another minor cannabis offence.
3. Since the introduction of the CEN scheme, the rate of expiation of notices has remained low compared with other types of infringement notices, and has remained fairly stable at approximately 45% for the last few years of operation of the scheme. The reasons for the low rate of expiation of cannabis offences are likely to relate to financial difficulty experienced by a substantial proportion of those detected for minor cannabis offences, as well as poor understanding amongst this group of the actual legal status of minor cannabis offences and the consequences of failure to pay expiation fees. In particular, there has been a fair degree of misunderstanding of the fact that failure to expiate a CEN can result in a criminal conviction being recorded against the offender.
4. Around 90% of those CENs which were forwarded for prosecution between 1991 and 1996 resulted in a conviction being recorded against the offender, because expiation fee payments were not made. This represents about 45% of all CENs issued over that period, and a large number of offenders for whom the conviction would have been avoided had they paid expiation fees on time.
5. The rate of expiation of CEN offences may improve following recent changes to the way in which all expiable offences are administered under the *Expiation of Offences Act, 1996*. The provision to offenders of a range of payment options (eg. instalment payments, community service) which can be specified before an unpaid CEN matter is forwarded for prosecution may result in a higher proportion of CENs being expiated. In addition, the provision of clearer and more detailed information on the consequences of failure to pay expiation fees may help to improve expiation rates. Furthermore, these changes may bring about a corresponding reduction in the proportion of CEN matters which result in a conviction for the offenders. Ongoing monitoring will be required to determine whether the new CEN forms and payment provisions bring about such changes.

6. Around 5% of CEN matters are withdrawn before payment is made or prosecution is completed, most likely due to inadequate information being available to ensure a successful prosecution in the event of failure to pay expiation fees. A further proportion would be withdrawn or dismissed after court proceedings have been completed, involving cases where the offenders could not be located for follow-up regarding payment of fines. The exact proportion of CEN cases involving false or incomplete information could not be ascertained in the present study. There may be scope for addressing this issue by providing supplementary training of operational police in the issuing of CENs.
7. National population survey data indicate there has been a national increase in self-reported lifetime cannabis use between 1985 and 1995, with a greater degree of increase in South Australia than in the average of the other Australian states and territories. However, the South Australian increase is unlikely to be due to the CEN system because: (1) similar increases occurred in Tasmania and Victoria, where there was no change in the legal status of cannabis use; (2) there was no differential change in weekly cannabis use in South Australia as compared with the rest of Australia, and (3) there was no greater increase in cannabis use among young adults aged 14 to 29 years in South Australia.
8. Many minor cannabis offenders in both South Australia and Western Australia appear to be people who are otherwise law-abiding. Surveys of samples of cannabis offenders in both states found that the majority in both states had respect for police and the law in general. It was also found that their offence apprehension and subsequent arrest (WA) or issuing of a CEN (SA) had no impact on their patterns of cannabis or other drug use.
9. Interviews with cannabis offenders found that negative employment consequences arising from a cannabis offence apprehension were more likely to be experienced by offenders in Western Australia compared to South Australia (eg. loss of job, missing out on a job opportunity). Those in the WA system were also more likely to report relationship problems, accommodation problems, and further involvement with the criminal justice system related to their first minor cannabis offence. In terms of impacts upon drug use and travel opportunities, no differences were found between offenders in both states. However, offenders in Western Australia were more likely than those in South Australia to have more less favourable attitudes towards police following their cannabis offence detection.
10. No differences were found in the self-reported attitudes of employers in both South Australia and Western Australia towards employing people with prior cannabis offences, there being a general lack of discrimination expressed against such offenders. This is somewhat at odds with the reported experiences of cannabis offenders in the two states. It was clear that cannabis offending is not an important part of employer screening in many employment areas, although employers in both states were concerned about the potential risks associated with cannabis intoxication in the workplace, and the long term effects of cannabis use on work performance.

11. While there is a level of acceptance in the South Australian community of personal cannabis use among adults, activities relating to the commercial sale or supply of cannabis are not viewed favourably by the public.
12. The general public in South Australia had a reasonable awareness of the CEN scheme in general, but retained a fair degree of confusion about the details of the CEN scheme and the consequences of being detected for various minor cannabis offences. There was also incomplete recognition of the possible health risks associated with long-term or heavy cannabis use. As many people issued with expiation notices are heavy consumers of cannabis, there is an opportunity to deliver health messages with the notice at the time of issuing.
13. Despite the fairly low rate of expiation and the apparent “net-widening” observed under the CEN scheme since its implementation in 1987, it would seem that the scheme is more cost effective for dealing with minor cannabis offences than a prohibition approach based predominantly on prosecution and conviction. It might be expected that greater efficiencies could be achieved if the rate of expiation can be increased in the future, with a corresponding reduction in the number of CEN fee defaulters who receive convictions.
14. There is clear and widespread support for the CEN scheme amongst South Australia law enforcement and criminal justice personnel. This support is based largely on the perception that the expiation approach provides a fair and cost-effective way of dealing with minor cannabis offences.
15. Concern has been expressed by some South Australian police officers about the potential for exploitation of the CEN scheme by organised criminal syndicates who grow commercial quantities of cannabis in separate locations while operating within the expiable cultivation limit of 10 plants. In order to address this issue, it has been suggested that the CEN scheme be modified to reduce to maximum expiable number of plants under cultivation from ten to three or four.
16. In addition to the provision of more payment options for offenders and more detailed information on the financial and legal consequences of non-payment, other suggestions have been put forward for possible changes to the CEN scheme in South Australia, which may be of interest to other jurisdictions considering the adoption of expiation systems for minor cannabis offences. A system involving a more graduated scale of expiation fees, including lesser fees for offences involving very small amounts of cannabis, could result in higher rates of expiation, especially where offences involve young people. Other suggestions which may reduce the extent of net-widening under an expiation approach, should that be deemed desirable, are: inclusion of a provision for some form of cautioning for certain categories of minor cannabis offence (although such use of police discretion in the issuing of cautions may not be deemed desirable where full accountability in relation to all minor offence detections is required); and dropping the offence of possession of equipment for using cannabis, as it is a very common offence under the CEN scheme, and is mostly detected in the context of CENs being issued for other cannabis offences.

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Appendix 1

The Cannabis Laws in South Australia

Controlled Substances Act, 1984

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

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

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

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

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

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

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

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

Expiation of Offences Act

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

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

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

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

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

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

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

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

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

Expiable Offences under the CEN Scheme

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

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

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

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

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

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

Non-expiable Cannabis Offences

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

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

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

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

Appendix 2

Terms of Reference for the Cannabis Social Impacts Study (Second Phase)

As a further elaboration of the questions of central importance identified by the Commonwealth steering committee for the second phase research, the following terms of reference for the project were formulated:

The researchers will provide a report which:

1. provides comprehensive information and data on South Australian laws and enforcement activities relating to minor cannabis offences since the introduction of the Cannabis Expiation Notice (CEN) scheme in South Australia;
2. analyses the CEN scheme, with particular reference to its observable negative and positive impacts on:
 - prevalence and patterns of cannabis use;
 - the number of people coming into contact with the criminal justice system for cannabis related offences;
 - public understanding and knowledge of the law relating to cannabis use;
 - the amount of education undertaken to inform public understanding and knowledge of the law relating to cannabis use;
 - reasons for not expiating cannabis-related offences;
 - police practices and the influence of law enforcement attitudes and policies;
 - unit costs of enforcement (including the apparent low level of financial savings from expiation in South Australia compared with the high level reported from the USA);
 - employment prospects of cannabis users;
 - cannabis market dynamics (including personal cultivation/quality of supply, source of supply, price, availability, exploitation of personal cultivation laws by cannabis dealers and suppliers, etc).
3. identifies and analyses trends over time, to the extent possible, in each of the areas listed in item 2 above, since the introduction of the CEN scheme in South Australia.

4. considers arguments and information which either support or refute the following propositions:
 - a) the unintended negative consequences of the CEN scheme in place in South Australia, such as net-widening, can be significantly reduced by fine-tuning of the system;
 - b) the South Australian CEN scheme has, or will, result in significant economic savings;
 - c) the discontinuation of the application of criminal penalties for simple cannabis offences, as is the case in South Australia, has not, and will not, lead to greater prevalence or higher levels of cannabis use.