

HARM REDUCTION DIGEST 25

Pot, politics and the press—reflections on cannabis law reform in Western Australia

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Windows of opportunity for changing drug laws open infrequently and they often close without legislative change being affected. In this paper the author, who has been intimately involved in the process, describes how evidence-based recommendations to 'decriminalize' cannabis have recently been progressed through public debate and the political process to become law in Western Australia (WA). The Cannabis Control Bill 2003 passed the WA Parliament on 23 September. The Bill, the legislative backing behind the Cannabis Infringement Notice (CIN) Scheme, came into effect on 22 March 2004. This made WA the fourth Australian jurisdiction, after South Australia, the Australian Capital Territory and the Northern Territory, to adopt a prohibition with civil penalties scheme for minor cannabis offences. This paper describes some of the background to the scheme, the process by which it has become law, the main provisions of the scheme and its evaluation. It includes reflections on the role of politics and the press in the process. The process of implementation and evaluation are outlined by the author, foreshadowing an ongoing opportunity to understand the impact of the change in legislation.

GUEST EDITOR: RICHARD MATTICK

General comments on research and drug policy

Those committed to evidence-based drug policy need to operate with a long-term timescale. They cannot be concerned by a short-term lack of political support for implementing policy based on research findings, but they need to recognize that opportunities for policy change come and go, and they need to be ready to feed research findings into the policy process, both directly and through the media.

Unlike treatment research, which has a clear audience of potent 'agents of action' in the form of treatment service providers, the agents for implementing drug policy research (policy makers, legislators, politicians) are far less accessible. Typically, they are not seekers of research findings, they have limited expertise in how to read such findings and they are not, by their nature, 'research practitioners'. Furthermore, the levers of policy change, which research findings might be able to influence, are difficult to pull, and are subject to many other competing forces, not least of which is the political process. Implementation of policy change is rarely a smooth incline of improvement, but

rather hills and dales and long plains, where seemingly very little improvement happens. As a result, the impact of research on drug policy needs to be evaluated over a long time period.

Drug policy research operates in the political realm. It will be of no surprise to anyone that, in a democracy, politicians become concerned about how their decisions and actions are viewed by potential voters at the next election. However, while being dependent on public support many aspire to public service—to making a difference. This often requires longevity in government and/or great industry, particularly where there is a good risk of their tenure in government being foreshortened. Another thing, which had not been well understood by this author some years ago, is that politicians see 'evidence' as only part of the issue. Politics is about perceptions—a point reiterated to the author by politicians from each side of the political spectrum during the recent cannabis law debate in WA. The reality for drug policy researchers is that, at best, their research will be used by politicians to support their arguments when the research findings are consistent

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Received 27 January 2004; accepted for publication 15 February 2004.

with them, and will be ignored or criticized when the research suggests a contrary policy position.

Drug policy debates in the public realm are often polarized, due both to the nature of party politics and the role of actors at the extreme policy positions who one could caricature as ‘rabid legalizers and puritanical prohibitionists’. Unsurprisingly the media, which typically feeds on controversy, often seeks to emphasize this polarization in reporting drug policy issues. Clearly, this is one major downside of disseminating research findings through the media. There are other ways of influencing policy such as publication in academic journals and reports, making submissions, briefings and direct involvement in policy development and implementation through working parties and so forth. However, using the media is an important part of disseminating drug policy research in an attempt to make drug policy more evidence-based. In order to contribute evidence to the drug policy debate in the public realm, one first needs to get into the debate. All politicians and their advisers read newspapers; very few read research reports and scientific papers in refereed journals. There is no point in conducting policy research if no one who can make a difference knows about it or reads it. While many politicians will tend to ignore research that is not consistent with their own policy position, once research findings are in the media they might be disputed or derided, but they are harder to ignore. Thus, drug policy researchers need to be ‘media-savvy’. This means understanding how the media works, acquiring media training and being available and prepared to communicate clearly research findings in a way that is usable by the media.

Windows of opportunity for drug policy change

Kingdon (1984), cited in DiChiara & Galliher [1], noted that policy windows, which are the opportunities for action on given policy initiatives, open infrequently, and when they open they rarely stay open for long. He argued that many changes in public policy result from the appearance of these opportunities, despite their rarity (p. 43).

Drug law reforms can be *de jure*, involving changes to the legal statutes themselves, or *de facto*, where the laws remain unchanged but the way the law is enforced by police is altered by administrative instructions. Prohibition with civil penalties schemes are examples of *de jure* reforms, while prohibition with cautioning and/or diversion schemes are examples of *de facto* reforms. Reflecting on the flurry of cannabis ‘decriminalization’ in the United States during the 1970s when 11 states introduced such laws, DiChiara & Galliher noted that the narrow and tenuous policy window was limited and the viability of the ‘decriminalization’ policy was quickly supplanted by ‘*de facto* decriminalization’, suggesting

that explanations about whether such legislative changes occur need to consider ‘the national mood, political leadership, concerns of interest groups, especially law enforcement and drug users, as well as public opinion’ [1, p. 44].

DiChiara & Galliher argued that this contrasted with the demise of alcohol prohibition, where legal controls were placed on manufacture and distribution, but not on possession, and thus public use of alcohol in ‘speakeasies’ abounded, broadcasting the failure of prohibition policy. However, under cannabis prohibition both possession and use were prohibited and consumption took place largely in private, mostly by the young. Consequently, they argue, the failure of cannabis prohibition policy has been less publicly evident, allowing officials to persist in the illusion of the efficacy of such controls, even in the face of survey data showing widespread use. Furthermore, as cannabis was used largely by the young, it could be dismissed as the product of immaturity and youthful indiscretion [1, p. 71]. Similarly, in Canada, research suggested that a trend toward greater leniency in sentencing, a *de facto* reform, could remove some of the impetus for *de jure* cannabis law reform [2].

The West Australian example is interesting, in that *de jure* reforms have been enacted in a climate where, like most other Australian states (see Fig. 1), WA had ‘*de facto* decriminalization’ in the form of prohibition with cautioning and diversion to treatment for minor cannabis offences.

Necessary conditions for a successful scheme

Experience in drug policy research suggested some conditions that could be seen as necessary for the successful translation of a drug law reform scheme into *de jure* legislative change. These were that the legislative change should be:

- (1) *Supported by a clear majority of the general public.* Research in criminology suggested that public opinion was crucial in determining the effectiveness of laws [3–5]. Additionally, moral commitment to a particular law was one of the most powerful predictors of whether individuals would obey that law [6,7]. Australian research had found when the terms were explained, there was a high level (72–75%) of public support for applying prohibition with civil penalties for minor cannabis offences, but not so for legalization (37–55%) [e.g. 8,9].
- (2) *Survivable for politicians.* Those who are going to support the passage of the policy changes into law need to believe that to do this publicly will not constitute electoral suicide when they have to face the voters at the next election. Surveys

Prohibition with civil penalties (Infringement notices) schemes

SA (1987)	<100 g (\$150 fine); ≤ 1 non-hydro plant (\$150 fine); used bong (\$10–50 fine). 60 days to expiate. Adults only. Failure to expiate usually results in conviction.
ACT (1992)	Not >25 g (\$100 fine) or five plants (\$100 fine), 1 month to expiate. Adults and juveniles. Failure does not usually lead to conviction.
NT (1996)	<50 g (\$200 fine) ≤ 2 plants (\$200 fine), 28 days to expiate. Applies to adults only. Failure to expiate results in debt to state, not conviction.

Prohibition with cautioning and diversion to treatment

Tas (July 1998)	<50 g, plants excluded. Caution for first three offences.
Vic (September 1998)	<50 g, plants excluded. Up to two formal cautions, over 17.
WA (March 2000)	<25 g, plants excluded. Caution for first offence if attend education session.
NSW (April 2000)	<15 g, plants excluded. Ongoing State-wide trial. Up to two formal cautions.
Qld (June 2001)	<50 g, plants excluded. Mandatory assessment and brief intervention session.

Figure 1. Key features of current schemes for minor cannabis offences by jurisdiction. *As at December 2003.

showing high levels of public support for prohibition with civil penalties can have some salience in this regard.

- (3) *Supported by law enforcement.* It is important that the police department, who are required to enforce the law, support proposed legislative changes. While there may be individual officers who, like other members of the community, have a range of views on such matters, it is crucial that as an organization, police believe the laws are of sound intent and are workable and efficient from a practical, operational point of view. The experience in South Australia was that the way police implemented the scheme was critical to its effectiveness. Thus, the ease with which notices could be issued by police appeared to contribute to a significant increase in the number of people issued notices. This so-called net-widening increased the numbers at risk of criminal sanction for non-payment of fines, which had the unintended consequence of particularly disadvantaging those of limited financial means [10].
- (4) *Supported by cannabis users.* While many cannabis users will support full legalisation of cannabis use [e.g. 11], the vast majority of users will see civil penalties schemes as far more reasonable and just than schemes that apply strict criminal penalties.
- (5) *Supported by the evidence.* Like any drug, cannabis has the capacity to cause harm. However, its major health risks are likely to be among long-term, regular users [12]. Research indicates that most people who receive a

criminal conviction for a minor cannabis offence are otherwise law-abiding [13]. A cannabis conviction can have significant adverse impacts on employment, further involvement with the criminal justice system, relationships and accommodation; however, conviction fails to deter future cannabis use by many of those apprehended [14,15]. The social costs of a cannabis conviction are far greater than those under a civil penalties system where infringement penalties apply [16] but it appears that criminal rather than a civil penalty may be more likely to erode offenders' attitudes toward police [16]. Research has failed to show that removing criminal penalties for personal use has led to an increase in the number of regular cannabis users in the general community [17–20]. However, prohibition with civil penalty schemes have been found to be far less expensive on the public purse than strict criminal penalty schemes in terms of criminal justice resources [21,22]. The effectiveness of prohibition with civil penalties schemes depends to a great extent on the detail of how they are implemented. The SA scheme has been shown to have a low rate (45%) of people paying their fines by the due date [10,23], and there was reasonable evidence that organized crime had been syndicating cannabis cultivation under the expiable plant limit [24]. However, such problems can be addressed and, despite them, research suggests that overall neither the SA general public nor the police and the judiciary wanted to return to a criminal penalty scheme [25,26].

- (6) *Sustainable under the international drug treaties and conventions.* While some would argue otherwise, in this author's view any proposed model should be consistent with generally accepted interpretations of the international drug treaties and conventions. As a signatory to the three main conventions Australia is bound to have systems in place that prohibit the availability of certain drugs. While interpretations of these laws differ, most commentators [e.g. 27] agree that prohibition with civil penalty systems such as those in place for cannabis in 11 US states and SA, the ACT and NT are not in breach of the treaties. Also consistent with the treaties are *de facto* schemes such as prohibition with cautioning that operate in the other Australian jurisdictions and prohibition with an expediency principle schemes that operate for cannabis in Belgium, Germany, Denmark and the Netherlands [28]. The latter are consistent because the drug offences remain illegal on the statute, even though cases involving defined small quantities are not investigated or prosecuted by police.
- (7) *Subject to evaluation and review.* Any recommended scheme should be capable of being evaluated and subject to regular review and adjustment to increase the likelihood that it meets the goals that it was designed to achieve.

About cannabis—health effects and prevalence of use

Cannabis is the most widely used illicit drug in Australia, in many other Western countries, and probably world-wide [29–31]. It has been tried by many young adults in most European countries and by most young adults in Australia and the United States [29,32,33]. Like other drugs, it has the capacity to cause harm [30,34–36]. While most cannabis use is experimental and intermittent, the major health risks are more likely to be experienced among those using the drug regularly (daily or near daily) over several years or more [30]. The major public health burden associated with cannabis is likely to be associated morbidity rather than mortality, and at current population use rates the public health burden is probably low, and far less than that associated with alcohol or tobacco [33,37]. However, as the prevalence of heavy cannabis use increases and the age of initiation declines this burden is likely to increase [37,38].

Widespread cannabis use continues, despite the health risks of use and its almost ubiquitous prohibition. The question remains therefore as to what kind of legislative system will produce the least harm in the

community from the use of the drug directly, and the harms that stem from the system of regulation itself? At least six main legislative options had been identified including: total prohibition, legislative prohibition with an expediency principle; prohibition with civil penalties; partial prohibition; regulation; and free availability [39].

Background to the WA scheme

Some policy windows close and others open

In May 1999 NDRI published a monograph entitled *The Regulation of Cannabis Possession, Use and Supply* for the Drugs and Crime Prevention Committee of the Parliament of Victoria [40]. The report summarized the Australian and international literature on legislative options for cannabis and made recommendations as to the most viable and appropriate options for Victoria. The recommended model was one of prohibition with civil penalties which incorporated cautioning. However, while the report was being considered, an election was called by the Liberal Government and the process of cannabis policy review in Victoria was put on hold.

It was not until November 1999 that the new Victorian Labor Government appointed a Drug Policy Expert Committee, chaired by Professor David Penington, who had also headed the previous Government's Premier's Drug Advisory Council. Unfortunately, by the time the NDRI report was finally approved by the new government for release in April 2000, the Victorian cannabis reform policy window was probably closing, if not already closed. The new government appeared to go quiet on its drug law reform agenda in the wake of two events. A community consultation process on the proposed establishment of a supervised injecting facility had led to a great deal of community opposition that was extensively covered in the media. Also, there was a great deal of concern about the role of cannabis use in psychosis, following an international conference in Melbourne in February 1999. Furthermore, there was little support for a civil penalty scheme among senior Victorian police, who were happy with the scheme of prohibition with cautioning and diversion to treatment for minor cannabis offences which they had implemented state-wide in September 1998 after a trial in Broadmeadows [41]. As previously in the United States, it appeared that in Victoria the adoption of *de facto* decriminalization to some extent undermined further *de jure* reform.

Similarly, the introduction of the Cannabis Cautioning and Mandatory Education System in WA, where research had showed more than eight in 10 people facing court on cannabis possession received a criminal conviction [13], could be construed in part as an attempt to take the wind out of calls to introduce

cannabis law reform. In March 2000 the Liberal Government introduced the Cannabis Cautioning and Mandatory Education System across the state, after a 12-month trial in two police districts. The government sold its introduction of the pilot of the cautioning scheme as not being ‘soft on drugs’ because it was a change in the way cannabis law was enforced, without changing legislation itself [42]. The relevant Minister stated ‘we will not decriminalize cannabis’ [43]. Attempting to be consistent with the government’s ‘tough on drugs’ position, the primary aim of the WA cannabis cautioning scheme was to reduce the cannabis use of those detected and as such it aimed to ‘net’ as many cannabis users as possible [44]. Under this *de facto* reform first offenders apprehended with less than 25 g of cannabis or a used smoking implement could be given a formal caution for their first offence if they attended an approved cannabis education session. A caution could be given only to people with no prior convictions for drugs or crimes of violence.

However, while policy windows for *de jure* reform in WA and Victoria seemed to be closing in the face of *de facto* reforms and other factors, other policy windows were opening. One of these was that in 2000 the Western Australian branch of the Australian Labor Party (ALP), who at that time did not hold government, were formulating their drugs policy in preparation for an election the following year. Copies of the Victorian Monograph were made available to them to assist in this process. The following excerpt from their policy statement reflects influence of the results of the research on cannabis legislative options.

Given the prevalence of cannabis use throughout the community, and given that criminalizing its use apparently fails to provide any real deterrence, the adverse effects of continuing with this policy needs to be given serious consideration. If criminal penalties do not act as a deterrent but do have a range of negative effects, and if the community does not wish to have the personal use of cannabis legalised, the options of the civil penalty, or expanding the current Government’s cautioning system, may be acceptable and logical alternatives.

We propose a decriminalized regime which would apply to possession of 50 grams of cannabis or less and cultivation of no more than two plants per household. A person who admitted to a simple cannabis offence would be issued with a cautioning notice as a first offence, be required to attend an education and counselling session for a second offence or, in lieu of accepting that option, face a fine as civil offence, and be fined for any subsequent offence. Possession and cultivation of cannabis would not be legalised [45].

In February 2001, the ALP was elected to government in WA with this policy platform which included the intention to hold a Community Drug Summit and to ‘decriminalize’ cannabis. This happened despite the Liberal Party attempting to use the drug policy issue as an election winner. The Liberals placed a full-page advertisement in the newspaper the day prior to the election, which was the last day on which election advertising was allowed. The advertisement headed ‘Voter Drugs Warning’ stated:

Avoid the real risk of having Labor implement their plans to allow people to grow commercially viable quantities of marijuana in their home gardens and make heroin freely available to addicts... If Labor gets enough preferences and wins government they will implement all their plans to make drugs more available to more West Australian children and adults [46].

The WA Community Drug Summit

The new Government promoted their Community Drug Summit and approach to drugs as ‘evidence-based’ and through some of the processes before and during the Summit there was an opportunity to feed in research findings and literature reviews on legislative options for cannabis [47,48]. The WA Community Drug Summit was held on 13–17 August 2001. Unlike drug summits held elsewhere in Australia, the majority of delegates to the WA Community Drug Summit were members of the public. Consistent with some of the practices used for citizen juries it was decided to advertise for the 100 delegates. There were 80 delegate places from the general community and 20 places for people involved in illicit drug-related policy, service delivery or research. The summit’s delegates and invited speakers represented the full spectrum of opinions on drug policy. Overall, the summit was viewed as positive by many stakeholders. It provided a neutral ground for consideration of the issues and contributed to a balanced public debate where media reportage was more sophisticated and comprehensive than the often sensationalist treatment given to drug issues. The Summit concluded with 45 recommendations that were endorsed by the majority of delegates. This provided a useful public mandate to pursue some politically contentious policies, the first of these being cannabis law reform. The relevant recommendation passed by the 100 Summit delegates (72 for, 27 against, and 1 abstention) was:

Recommendation 39

For adults who possess and cultivate small amounts of cannabis the government should adopt legislation

that is consistent with prohibition with civil penalties, with the option for cautioning and diversion.

This should also address:

- Education for the public re the health risks of cannabis and the laws that apply to the drug.
- The evaluation and monitoring of the impact of this legislation on patterns of use, harms and the drug market.
- The re-affirmation of relevant responsibilities and legislation re preventing intoxication while driving, or operating machinery [49].

On 27 November 2001, the government released its response to the recommendations of the Drug Summit [50]. It accepted all but one (dealing with a supervised injecting facility) of the 45 recommendations. In addressing the cannabis recommendation in his media release the Premier of WA stated:

While the use of cannabis should not be condoned or encouraged, the Government accepts the view of the Community Drug Summit that small-time users should not carry the stigma of a criminal conviction for the rest of their lives. The possession of small quantities of cannabis for personal use will remain an offence and will continue to attract a fine but offenders will not receive a criminal record [51].

Ministerial Working Party on Drug Law Reform

The government set up a Ministerial Working Party on Drug Law Reform to provide advice on how the recommended cannabis and other drug law reforms could be implemented. The eight-member Working Party is chaired by a WA Law Society representative and includes representatives of the WA Police Service, a justice official, a medical practitioner, a representative from the new Drug and Alcohol Office and the author as the drug researcher appointed. The Working Party presented its report [52] to the Minister of Health at the end of March 2002, after which it was considered by Cabinet. On 25 May 2002 the report was released to the public.

Main features of the scheme

The government endorsed all the recommendations in the report for a scheme of prohibition with civil penalties for minor cannabis offences, but excluded hydroponic cultivation of cannabis plants from the infringement notice scheme and included possession of a used smoking implement as an offence under the scheme. The Cannabis Control Bill 2003 was introduced into the WA Parliament on March 20 2003 and

the amended Bill passed both Houses of Parliament on 23 September. While during its passage through Parliament there were a number of other amendments to the Bill which clarified the wording of clauses consistent with the intention of the scheme as laid out in the Working Party's report, there was only one amendment (described below) which constituted another substantial change to the structure of the scheme.

Compared to similar schemes elsewhere in Australia (see Figs 1 and 2), the amounts eligible for a notice in the CIN scheme are comparatively low and the fines comparatively high. The scheme differs from other Australian prohibition with civil penalties schemes in a number of ways. Unlike the SA scheme it: (1) provides support for police to charge people they believe are trying to flout the intentions of the scheme by using the infringement levels as a cover for dealing activities; and (2) limits the number of plants eligible for an infringement notice to two per household, to deter collective growing. In an innovation the WA scheme regulates sellers of smoking paraphernalia and hydroponics equipment.

The WA scheme aims to deal with the low expiation rates found in SA in two ways. First, those eligible for an infringement notice must supply evidence as to their identity (e.g. driver's licence) to facilitate follow-up of fine defaulters. Secondly, those given a notice will have the option to pay their penalty in full within 28 days, or complete a specified cannabis education session within the same period. The education option ought to be attractive to those of limited financial means, who appear to be a large proportion of those who fail to pay their fines in the SA scheme.

During the parliamentary debate an amendment was moved by the Liberal opposition to the effect that, if an individual had two notices within 10 years, then they should receive a criminal conviction. In response to this, an amendment was moved and passed with the support of Labor and the Greens, so that people receiving more than three notices in a 3-year period would not have the option of paying a fine to expiate the offence. Rather, they would be required to attend a specified cannabis education session or receive a criminal charge. Repeat offenders, who are often dependent on the drug, are more likely to respond to education and contact with a treatment service than they are to a criminal conviction.

Unlike the cannabis cautioning schemes currently in place in five Australian jurisdictions, the WA scheme aims to address the supply side of the cannabis market by moving cannabis supply away from large-scale, criminal suppliers by making cultivation of up to two non-hydro plants eligible for a notice. While some 90% of Australian users say they obtain their cannabis from 'friends' or relatives [53], in-depth studies of cannabis users apprehended for the first time find only a third

Principles and goals

The scheme recognizes that cannabis, like other drugs, has the capacity to cause harm. The scheme should:

- Not encourage use, nor patterns of use which may increase harm;
- Reduce the adverse social costs of being apprehended for a minor cannabis offence;
- Move cannabis supply away from large-scale, criminal, commercial suppliers;
- Free up the police and the courts to deal with more serious crimes.

Key features

- The possession of cannabis for personal use will remain illegal.
- Possession by an adult of up to 15 grams of cannabis would attract a penalty of \$100.
- Possession by an adult of more than 15 g but not more than 30 g of cannabis will attract a penalty of \$150.
- Possession by an adult of a used smoking implement would attract a penalty of \$100.
- Possession by an adult of not more than two non-hydroponic cannabis plants will attract a penalty of \$200. No more than two plants per household will be eligible for an infringement notice. Hydroponic cultivation of cannabis plants will not be eligible for an infringement notice but will be subject to criminal conviction.
- Offenders will be required to pay their penalty in full within 28 days, or complete a specified cannabis education session within the same period. Those who fail to do this will incur a debt to the state and be dealt with by the Fines Enforcement Registry.
- Those receiving more than two infringement notices within a 3-year period will not have the option of paying a fine. They will have to complete the education session or face a criminal charge.
- Juveniles will not be eligible for an infringement notice under the proposed scheme. Cautions currently apply for juveniles for some drug offences. It is recommended that the juvenile justice system have the option to require that, to be eligible for a caution, juveniles, and their families, receive appropriate counselling and support.
- Those eligible for an infringement notice must supply evidence as to their identity (e.g. driver's licence) to reinforce payment by the due date.
- Sellers and suppliers of materials that they know will be used for hydroponic cannabis cultivation may be prohibited from supplying hydroponic equipment for up to 2 years.
- Suppliers of smoking paraphernalia, such as water pipes or 'bongs' will be regulated. They will be required display information about cannabis, its health effects and the laws, and will not be permitted to sell to juveniles.
- Possession of cannabis resin (hash) or cannabis oil, which are more potent forms of cannabis, will not be eligible for an infringement notice.
- Police will lay criminal charges against those people who attempt to flout the intention of the scheme, for example by engaging in cannabis supply, even if they are only in possession of amounts otherwise eligible for an infringement notice.
- Comprehensive education will be provided for the general public, schoolchildren and cannabis users about the harmful effects of cannabis and the laws which apply to it, emphasizing the point that cannabis possession and use remains illegal.
- The scheme will be subject to ongoing monitoring and regular review to ensure that it meets its goals.

Figure 2. *Overview of the WA Cannabis Infringement Notice Scheme.*

claim they grow their own as their main source of supply [54,55]. There is considerable evidence of the involvement of criminal elements in large-scale cannabis supply in Australia [12]. This has been associated

with an overlap of the cannabis market with that for more harmful drugs and additional risks to the wider community due to measures used to protect crops and avoid detection [12].

In recognition of the limits of criminal law in deterring cannabis use, the government has committed to a comprehensive education campaign targeted at the general public, young people and cannabis users about the harms associated with use of the drug and the laws that apply to it. The changes to cannabis law exemplified in the Bill and the accompanying initiatives are summarized in Figure 2.

Politics, the process and the media

The following reflections on the politics, the processes of the legislative change and the role of the media attempt may help explain the constellation of factors which led to this *de jure* reform despite the recent *de facto* changes.

Politics

First, from a political point of view, the Labor Party had a mandate to introduce *prohibition with civil penalties* for minor cannabis offences when the policy was strongly supported at the Community Drug Summit after they won the election on a platform that explicitly included cannabis ‘decriminalization’.

Both the government and the Liberal Opposition became aware of the research that many in the community confused the term ‘decriminalization’ with ‘legalization’. As a result, while the government subsequently avoided using the term, and emphasized that cannabis use and cultivation would remain illegal under the proposed scheme [e.g. 56], the Opposition frequently used ‘decriminalization’ and said that the government scheme would ‘allow’ possession and cultivation of cannabis [e.g. 57].

From before the release of the Working Party’s report the Liberal Opposition attempted to make political mileage out of the issue. The Opposition leader and his drugs spokesperson conducted a media launch where they were photographed with 8 kg of bagged lawn clippings, which they claimed represented the amount of cannabis that could be grown in 1 year by two hydroponic plants [58]. The government subsequently excluded hydroponic cultivation from the scheme. Over the months of the parliamentary debate on the Bill, such tactics continued.

When the Bill was introduced into the lower house the Opposition Leader brought 30 1 g bags of what turned out to be dried parsley into Parliament and caused considerable uproar [59]. The Liberals failed to mention that under their own cautioning scheme, someone with 25 g of cannabis could have received a caution for a first offence. The Liberal Party also brought to Perth a social worker from Lambeth in the United Kingdom and arranged media and public events by her in an attempt to link problems with the

informal police warning scheme with the proposed prohibition with civil penalties scheme [60,61]. In the Upper House debate they called for all MPs to be drug-tested prior to the vote [62]. The Opposition leader vowed to make cannabis the defining issue of the next election, but a rally against the government’s cannabis reforms, that had been extensively promoted by a popular radio talkback host and was held on a stormy day on the steps of Parliament House, attracted fewer than 50 members of the public [60]. Particularly in the Upper House, where they held the balance of power, the Greens played a crucial role in supporting the government’s reforms and in important amendments such as those regarding the requirements regarding sellers of hydroponic equipment.

The Ministerial Working Party on Drug Law reform had been established by the Health Minister, Bob Kucera, a former policeman who with that background brought considerable credibility to the law reform issue. Also responsible for the Drug Summit, and the management of the cannabis Bill through the Lower House of Parliament, there was some concern when he lost the health portfolio in a cabinet reshuffle at the end of June 2003. He was replaced by the Attorney General, Jim McGinty, who in also being given the health portfolio saw the Bill through the remainder of the parliamentary process, while tackling the major tasks of responding to public concerns about health budget overruns and hospital waiting lists prior to the next state election, due to be held by February 2005. While there has been no suggestion that the former Minister’s performance on the cannabis issue contributed to the change in portfolio, the new Minister, substantially engaged in other matters, has not championed the drug issue as did his predecessor.

The process

The process of getting the proposed changes into law was a long one. The fact that after long hours of robust debate the working group was able to come to a consensus and develop a coherent set of practical, evidence-based policy recommendations within its timeline of 6 months is a testament to the industry and commitment of the members. Of necessity the proposed scheme was a compromise, and this is one of its key strengths as it has the support of the police, health, justice, legal and research stakeholders. Then the process of getting an endorsement by cabinet, having the Parliamentary Council draft the Bill, an iterative process itself, and then it being tabled and making its way through both Houses of Parliament and into law was one which involved even more work and good will from a host of people behind the scene. On

reflection, the joint contribution and calibre of people within government and its bureaucracy, and outside them, was a necessary condition for the successful passing of the legislative change by government. Similarly, while the press and public scrutiny of the reforms was robust and relentless, the process of parliamentary debate at times ponderous and disheartening, and the political deal-making and compromise at times frustrating, the resulting scheme has remained intact and evidence-based through it all. The evidence base of the scheme was a major strength. Both sides of politics were briefed on the scheme and the evidence behind it, and the data were conveyed to the public in working papers, press articles and interviews and in published letters to the Editor in both the daily and community newspapers.

The media

It was clear that most of the major media outlets saw themselves as having a key role in informing the public about arguments on all sides of the cannabis reform debate. As a result, despite the prevailing hunger for controversy, throughout most of the process most of the coverage in the press and electronic media was balanced and well informed, continuing the tradition that had been commenced with the media coverage during the Community Drug Summit. Journalists were open to detailed briefings about the background to the reforms. Interest groups such as the Coalition Against Drugs and the Australian Drug Law Reform Foundation were regular contributors to the debate through the electronic and print media, in particular through letters to the Editor. In the daily newspaper a small number of core reporters stayed with the story throughout, providing a depth of coverage that certainly contributed to an informed community debate. While a change in the paper's editorship found the reforms receiving mixed editorial support, the quality of the reporting on the issue elsewhere allowed the research evidence to continue to have an impact on the public debate on the reforms.

Implementation issues

Between passing of the laws and their proclamation on 22 March 2004 the work continued in development of the regulations, protocols and training supporting the implementation by police and the education schemes for the general public, young people, cannabis users and health and welfare professionals. The research evidence suggests strongly that the extent to which the scheme is a success will depend largely on how the scheme is implemented by police and the impact of the public education and non-legislative components of the scheme. Despite this, the Ministerial Working

Party had only limited capacity, as a body, to contribute to and monitor these processes, although as individuals, many members of the Working Party were involved in implementing various of these elements within their own departments.

Evaluation

The NDRI and The Crime Research Centre at the University of WA were successful in receiving initial funding from the National Drug Law Enforcement Research Fund (NDLERF) for the first year of a 3-year project to evaluate the impact on cannabis use and related harm of changes to cannabis law in WA. The project is innovative, as it is an a priori pre-post evaluation of change from prohibition with cautioning to prohibition with civil penalties. Most previous research, including that presented in this paper, has been *post-facto* and employed retrospective evaluations. The study consists of seven substudies, four of which will entail data collection before, and 18 months after, the proposed changes are implemented. This timeframe should allow for lags in implementing components of the proposed changes and the bedding down of these.

Importantly, the new research includes three domains not well addressed in the earlier research including a sample of regular (at least weekly) cannabis users who are likely to be the group whose use is most likely to be affected by any change in the law; impacts on the drug market, including price, potency, availability, source (self-supply, dealer-supply, etc.); and the impacts of legal changes for adult cannabis use on the cannabis use and attitudes of school children.

Data collection for the first wave of the two wave substudies is complete. The substudies address impacts of the legislative changes on: (i) the general public: cannabis use, attitudes, knowledge; (ii) frequent, at least weekly, cannabis users: use, attitudes, knowledge; (iii) the drug market: price, potency, availability, source (self-supply, dealer-supply, etc.); (iv) apprehended offenders: use, attitudes to the law and social impacts; (v) law enforcement: trends in activity; attitudes and practices; drug market perceptions; (vi) health effects: drug treatment-seeking, serious road injuries, psychosis and violence; and (vii) impacts on school students and teachers regarding students' use, attitudes and knowledge and effects of the proposed changes on drug education in the classroom. The NDRI evaluation will complement monitoring of the scheme conducted by the Drug and Alcohol Office of the WA Health Department.

Concluding comments

The effectiveness of the Western Australian cannabis law reforms and their implementation is yet to be

determined. However, the process of reform has been novel in that in contrast to the earlier North American examples, legislative or *de jure* reform has not been blocked by the adoption of *de facto* reforms. This paper suggests some explanations for this. The majority of the public were in favour of legislative change, and the public dissemination of the results of the social impact of a cannabis conviction contributed to making the adverse consequences of strict prohibition publicly evident. The policy window opened briefly when the then Labor Opposition, with a commitment to evidence-based drug policy, was reviewing its policy platform prior to the election. In this they distinguished themselves from the Liberal Government which had made *de facto* reforms by introducing a cannabis cautioning scheme, but pledged that they would not make *de jure* changes. When Labor won the election with a policy of cannabis 'decriminalization', they had a perceived mandate for *de jure* reform, which was reinforced by endorsement of the Community Drug Summit. The establishment of the Ministerial Working Party on Drug Law Reform brought together key stakeholders from within and outside government who had a commitment to evidence-based drug policy reform and the capacity to design a scheme which was practical and workable from an operational point of view. Public statements of support from the highest echelons of the WA Police Service was critical, as was the fortitude of those parliamentarians who supported the evidence-based scheme, despite the political risks. Finally, the position that most of the media took in wanting to contribute to an informed public debate rather than simply sensationalize the issue was crucial. It provided a setting for research evidence and the progress of the law reforms to be considered by the community while also allowing views across the spectrum of opinion to be aired and considered by the public, policy makers and legislators. It is yet to be seen whether the media will continue to take this stance as the scheme is implemented and the evaluation results emerge.

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