The Partial "Decriminalisation" of Cannabis: The South Australian Experience

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1. *Introduction*

This paper concerns itself with the introduction in 1987 of an "on-the-spot" fine system for certain ("expiable" cannabis[1] offences in South Australia, a scheme unique in Australia at the time. Despite a ripple of parliamentary protest during an unsuccessful attempt by the then State Liberal Opposition, early in 1990, to repeal the "cannabis expiation notice" (CEN) scheme, one can safely say that it has been employed in South Australia for seven years with little political, social or police disquiet.

I was involved with an Office of Crime Statistics' evaluation of the CEN scheme, published in September 1989 by the South Australian Attorney-General's Department.[2] This paper will look at the scheme itself and the results of the 1989 evaluation study commissioned by the government into the scheme's legal and social ramifications. I will not be addressing the health issues associated with cannabis use and the difficulties of using the law to proscribe activities which many believe are not harmful. Nor will I be tackling issues concerning whether or not the proscription of cannabis is unrelated to objectives of public health and safety, a view often present in the literature.[3] I will refer in passing both

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1 The term "cannabis" is used throughout this paper in preference to the term "marijuana". Marijuana is derived from the hemp plant *Cannabis sativa* and refers to the entire chopped and dried plant. The more potent "hashish" is the dried resinous substance that exudes from the flowering tops. Cannabis therefore is the more inclusive term.

2 Sarre, R, Sutton, A and Pulsford, T, *Cannabis: The Expiation Notice Approach*, Research Series C, No 4 (1989) Office of Crime Statistics, South Australian Attorney-General's Department.

3 Mitchell, C N, "Narcotics: A Case Study in Criminal Law Creation" (1991) in Gladstone, J, Ericson, R and Shearing, C (eds), *Criminology: A Reader's Guide* at 178 ff; Murray, G F, "The Road to Regulation: Patent Medicines in Canada in Historical Perspectives" (1988) in Blackwell, J and Erickson, P (eds), *Il-*

to the ongoing work of the National Task Force on Cannabis whose reports are due later this year and whose terms of reference from the Ministerial Council on Drug Strategy include such matters, and the recent report of the Queensland Criminal Justice Commission (CJC) into cannabis law reform.[4] The latter has prepared a careful report which calls for changes to Queensland's laws but stops short of recommending adoption of the South Australian model.

2. *The Proscription of Cannabis in Australia*

Cannabis is big business. According to police, cannabis with a value of $1 million is seized around Australia each week. Five years ago data from the Joint Committee on the National Crime Authority[5] reported that in 1989 approximately 780,000 Australians (about 5per cent of the population) had used the drug in the preceding 12 months. Furthermore they reported that there are approximately 226,000 (1.3per cent of the population) regular users in Australia, the estimated consumption is approximately 120,000 kilograms per year with an estimated annual turnover of approximately A$1.9 billion. It was becoming more and more obvious that the so-called "war" on drugs was not having any effect on cannabis consumption in Australia and the time had come to explore some other options to control its use and abuse. Indeed, the Fitzgerald Report[6] made the following observation:

> Attempts to stamp out the illegal drug trade have failed all over the world and have consumed more and more resources. There is no benefit in blinkered thinking. The starting point must be an acceptance that illegal drugs are established in the community and that the prohibition has not worked. Orthodox policy is quite unable to enforce the law. Priorities must be established for the use of the [limited] available resources. One thing is certain: the conventional method of giving the job to the police, on top of all their responsibilities, has failed all over the world and a new approach is needed.[7]

Indeed the Fitzgerald Report recommended that the Queensland Criminal Justice Commission undertake a review of the Queensland drug laws, and the Commission's response, specifically directed only at the legal options for dealing with small scale cannabis laws, was published in June this year.[8] The Commission recommends the creation of simple offences of possession and cultivation of small amounts of cannabis together with maximum statutory penalties that better reflect current community values and sentencing patterns. Furthermore, the Commission recommends, in certain circumstances, that a Court should have the power to not record a conviction against an offender and impose fines not exceeding $500. But it stops well short of an expiation notice approach, remaining uncon-

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licit Drugs in Canada: A Risky Business at 72–87.

4 Queensland Criminal Justice Commission (CJC), *Report on Cannabis and the Law in Queensland*, June 1994.

5 Australian Parliament, Parliamentary Joint Committee on the National Crime Authority, *The Extent of Illicit Drug Use in Australia* (1989).

6 Queensland Government, *Report of a Commission of Inquiry Pursuant to Orders in Council* (The Fitzgerald Report) (1989) at 186–196.

7 Quoted in Marks, R, "Prohibition or Regulation: An Economist's View of Australian Heroin Policy" (1990) 23 *ANZ J Crim* at 65.

8 Above n4.

vinced that the South Australian model overcomes the difficulties presented by, *inter alia*, Fitzgerald.

Contemporaneous with the work of the Criminal Justice Commission has been an ongoing research study by a group known as the National Task Force on Cannabis. At a meeting of the Ministerial Council on Drug Strategy on 15 April 1992 the then Minister for Justice, Michael Tate, called for more information on current cannabis consumption, health effects and demand and supply measures for influencing cannabis use in Australia. A month later a National Task Force on Cannabis was convened, designed to create a sound knowledge base rather than the development of a national policy.

I have been informed that four "technical" briefing papers are to be released in September, presenting:

i) A review of the literature on the health and psychological effects of different patterns and intensities of cannabis use;

ii) a review of the legislative options that exist for the control of cannabis use and the impact of such options on the community and on law enforcement;

iii) a profile on cannabis consumption patterns and

iv) an examination of public opinion on the acceptability of various legislative options and the possibility of educative interventions.

The terms of reference ask the Task Force to summarise the evidence on levels and patterns of consumption (together with socio-demographic correlates of identified patterns) and the health and psychological effects of consumption. Further they ask the Task Force to review the laws in the USA, the Netherlands, the UK and South Australia with a view to summarising the benefits of each of the legislative options and the feasibility of implementing each option. Finally they ask the Task Force to develop a report that presents cost-effective options for the control of cannabis consumption and the minimisation of harm arising from its use. They seek preferred legislative initiatives that would be required in order to ensure a uniform legislative approach within Australia. It appears to be the precise task that the Queensland CJC has been undertaking, and it will be interesting to compare the results.

3. *The South Australian Legislation*

The legislative vehicle which put in place South Australia's approach toward a range of cannabis offences was a new section — 45a — inserted into the *Controlled Substances Act* 1984 (SA). Read with the *Controlled Substances (Expiation of Simple Cannabis Offences) Regulations*, it introduced the Cannabis Expiation Notice (CEN) system, and defined the offences affected by the new procedures. These offences are not prosecuted in court. The details of the expiable offences, and the expiation fees, are contained in the report[9] although the 1990 amendments (above) need to be made to the 1989 report.

One of the principles underlying the expiation notice approach was that distinctions between private consumers of cannabis and large scale operators should be strengthened. So while section 45a(2) provided for the issuing of notices "on-the-spot" to adults alleged to

9 Above n2 at 4.

have committed a "simple cannabis offence", the penalties in other parts of the Act for serious offences — including circumstances in which a court is satisfied beyond reasonable doubt that the offender had been engaged in "commercially" oriented activities (section 32) — were in fact increased at the time of introduction of the CEN system. Indeed, in April 1990 the quantities beyond which the severe penalties came into effect were reduced to one-tenth their original level[10] making the "top-end" of the scale that much more draconian. Moreover in 1990, the fines were doubled and the prison sentences were increased by five years in cases where the offender possessed cannabis for sale or supply to persons under eighteen years of age or where the offence occurred in a "school zone", defined in the 1990 amendments as the area within, or within 500 metres of, the boundary of a primary or secondary school.

Finally, expiation notices are not issued to juveniles, that is, people under 18 years at the time of the offence. Juveniles are, generally speaking, still required to appear before the Youth Court (before 1 January 1994 called the "Children's Court") unless another diversionary route is taken (including the newly established family conference). Nor is consumption of cannabis in public (including use of cannabis in a vehicle parked publicly) an expiable offence. Such conduct renders an offender liable for a fine up to $500.

4. *What Are the Amounts?*

The definition of "simple cannabis offence" in section 45a (1987) was amended in 1990 to limit the scope of expiable offences and reduce the amounts of cannabis that can fall within the expiable parameters. A "simple cannabis" offender is now one who is in possession of less than 100 g of cannabis or less than 20g of cannabis resin. If one cigarette is approximately 0.5g, one would need to have fewer than, say, 200 cigarettes to qualify, (on current values less than $1 000 worth). The Regulations allow for the government to prescribe the number of cannabis plants beyond which cultivation is no longer an expiable offence. On September 26 1991, the regulation setting the number at 10 plants (irrespective of size) was brought into operation. These are the same amounts recommended by the Queensland CJC report[11] as being capable of being disposed of as (in their terms) "simple offences", although it is recommended that the maximum penalties in the cases of possession and cultivation be much higher (6 months and two years imprisonment respectively, and fines of $1 500 and $6 000 respectively) than in South Australia where the expiation fee is merely $150. Under the ACT legislation (*Drugs of Dependence Amendment Act* 1992) police have the option of issuing an expiation notice for a fine of $100 where amounts are less than 25g cannabis or fewer than 5 plants. The evidence is that police invariably choose the "notice" option.

Until 12 December 1991, offenders apprehended with more than these amounts were deemed "small scale" dealers (unless the offender could prove — on the balance of probabilities — that they were not). Small scale dealers were liable to incur penalties of up to $50,000 or 10 years imprisonment (or both). But by virtue of amendments to the legislation[12] there is now a further step in the penalties gradations: persons convicted of having more than the "simple" amounts but less than 20 plants, 2 kgs of cannabis or 500 g of

10 The 1990 amendments in South Australia were assented to 26 April 1990 (Act No 29 of 1990).

11 Above n5 at 93.

12 No 69 of 1991, section 16.

resin may receive fines of up to $2 000 or 2 years imprisonment or both. Over those amounts, convicted offenders will expect penalties in the range described above for "small scale" dealers, namely $50 000 or 10 years or both. Where much greater amounts are involved (the level is currently more than 100 growing plants, or more than 10 kgs of cannabis or 2.5 kgs of cannabis resin), the offender may be deemed a "large scale" trafficker, and face penalties of a fine of up to $500 000 and up to 25 years imprisonment. Some might say with that the incongruities between the ends of the penalties spectrum are more than a little unusual!

Simple cannabis offender	Expiation Fee
less than 25g of cannabis	$50
less than 100g of cannabis	$150
less than 5g of cannabis resin	$50
less than 20g of cannabis resin	$150
fewer than 10 plants (irrespective of size)	$150
consuming in private	$50

Small scale dealers

i) More than the "simple" amounts but less than 20 plants, 2 kgs of cannabis or 500g of resin
Penalty: $2 000 or 2 years imprisonment or both.

ii) More than i) but less than 100 plants or 10 kgs of cannabis or 2.5 kgs of cannabis resin
Penalty: $50 000 or 10 years imprisonment or both.

Large scale traffickers

If amounts more than ii) the offender is deemed a "large scale" trafficker
Penalties: $500 000 and up to 25 years imprisonment.

5. *"Decriminalisation"?*

The Government's legislative policy has sought actively to distinguish between serious and minor drug offences. Some commentators contend that South Australia has "decriminalised" minor cannabis offences. Use of the term "decriminalisation", however, can be deceptive, and for that reason is usually accompanied by quotation marks. In the United States the term usually refers to a situation in which the penalties have been reduced or where imprisonment has been abolished as an option rather than the removal of a criminal conviction and criminal penalties altogether.[13] The Netherlands *Opium Act* (1976) "decriminalised" cannabis use by allowing the Public Prosecutions Department a broad discretion not to prosecute in cases where prosecution would have no beneficial effect in reducing the risks involved. They use the term "normalisation" to refer to the passive acceptance of the general population to such a policy.[14]

In South Australia the term "decriminalisation" means something different again. While it does not mean that small-scale cannabis possession, cultivation or use no longer are criminal offences, they are no longer prosecuted nor penalised as though they were.

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13 Single, E, "The Impact of Marijuana Decriminalization" (1989) *J Pub Health Pol*, Winter 1989 at 456.

14 Van de Wijngaart, G F, "The Dutch Approach: Normalization of Drug Problems" (1990) 20(4) *J Drug Iss* at 667–70.

Section 45a(5) specifically notes that payment of the expiation fee is not an admission of criminal guilt. One commentator has preferred to use the term "civil offence" to describe the current situation.[15]

Perhaps the best summary from a legal point of view is that the South Australian government has embarked upon a prosecution policy which *de-emphasises* the criminal status of small scale cannabis use, but stops short of legalisation, a term which implies that there are no legal repercussions from the activity whatsoever.[16] Perhaps it is appropriate to refer to the *partial* decriminalisation because offenders rarely appear in court although it is possible that a magistrate will hear the matter if a charge is defended or where a recipient of a CEN fails to pay within 60 days. Indeed, the figures revealed by the Office of Crime Statistics report in 1989 suggested that nearly half (45 per cent) of CEN recipients were going to court anyway because of such a failure to pay the fine. Unless this issue is addressed (for example by allowing the fine to be converted into a Community Service Order or allowing time-payment), a major advantage of the scheme touted by its proponents and apologists (reduced court workloads) will appear to have been negated.

6. *The 1988 Evaluation*

The authors of the first evaluative studies of the cannabis "decriminalisation" statutes in four States of the USA in the mid-1970s chose to interpret the modest increases in the rates of self-reported use as "insignificant", thereby deeming the reforms "successful". But the very same data might well have been used to support a contrary conclusion.[17] Whether the South Australian scheme has been successful, is, of course, dependent upon one's choice of the range of criteria under examination. It is left to the reader to draw his or her conclusions from the Office of Crime Statistics study and the experience since 1987.

The results of the Office of Crime Statistics' 1987–88 evaluation were made public in South Australia in a report carrying the title: *Cannabis: The Expiation Notice Approach* in September 1989. No public comment was made then nor since about the methodological rigour of the evaluation. More surprisingly, there was little if any public concern expressed by anyone on its findings. The press ignored the release of the report, perhaps too pre-occupied with the repercussions of the fall of the Berlin Wall. I imagine that the public was, and is still, largely unaware of its existence. Moreover, there has been no political momentum for the adoption of any of the recommendations made by the evaluators in the five years since the publication of their report, recommendations that suggested that further work be conducted on the net-widening implications of the scheme, on the merits of efforts to decrease the high rate (45 per cent) of non-expiation and an amendment to the legislation to remove the possibility of a conviction in the event that a defended charge fails. The issue in South Australia has become rather politically stale.

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15 Carney, T, *Drug Users and the Law in Australia* (1987) at 135–6.

16 Deardon, I, Sutherland, N and Ransley, J, "Queensland Drug Laws: Reform?" (1991) 16(2) *Leg Serv Bull* at 61; Queensland CJC above n4 at xv.

17 Above n13 at 459.

7. *Methodology of the Evaluation Study*

The problems which beset evaluators are legion, and, in this analysis, difficulties emerged quickly. The Office of Crime Statistics evaluators were confronted with a lack of long term survey data on the patterns and trends of drug consumption in Australia, a problem which had plagued early American evaluations of cannabis reforms.[18] Moreover, only limited research resources were available. Despite these problems, a study was undertaken to monitor the critical first nine months of the implementation of the new procedures.

The Office of Crime Statistics initiated two studies. The first study was to ensure that plotted trends in the issuing of CENs were accurate, and that there were valid comparisons with data on offences detected under the previous legislation. Because numbers of detected cannabis offences can fluctuate sharply, a mathematical model was developed to assist this work.[19] Short-term and longer-term series were analysed by this first study. The short-term data related to all cannabis offences detected between May 1985 (when the *Controlled Substances Act* first was introduced) and January 1988 (nine months after CENs had become effective). Long-term data were taken from South Australian Police Department reports for the period 1971–87. The results of the first study provide the basis for an authoritative statement on whether trends and patterns in detected offences did, in fact, alter after the CEN system was introduced.

The second study was designed to cast light on the *meaning* of changes (if any) in detected cannabis offence-trends. Previous analysis of law-enforcement data by the Office[20] had shown that drug offences reported or becoming known to South Australian police rose significantly throughout the 1970s and early 1980s, without there being any evidence that consumption had risen to the same extent, or that the profiles of users had altered. A more plausible hypothesis simply was that shifts in law enforcement organisation and procedures had resulted in comparatively minor drug offences being more intensively policed. The CEN system had potential to alter the intensity of drug law enforcement. The Office needed independent data to help assess whether this was occurring.

To overcome this problem, the second study collected detailed profiles from SA Police Department files on the two groups of people whose offences were detected in corresponding nine-month periods *before* and after the CEN system was introduced. The principal unit of analysis was the *offence report*. By comparing gender, age, occupation and other characteristics of these individuals, and contrasting their profiles with what research had suggested about the backgrounds of cannabis users in general, the Office hoped to be in a better position to assess what, if anything, changes in police figures might mean. Only if the police offender data were broadly consistent with known findings on the demographics of cannabis users would it be at all plausible to argue that shifts in the figures meant that the extent of cannabis use itself had altered. If, on the other hand, persons issued

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18 Id at 456.

19 The full technical details of the model developed by Tim Pulsford, Project Officer for the original Office of Crime Statistics study, are presented in the second interim report of this project tabled in Parliament in November 1987 (Office of Crime Statistics, South Australian Attorney-General's Department, *The Cannabis Expiation System Monitoring Project: Second Interim Report, 30 November 1987* at A5), together with a detailed explanation of its development.

20 Office of Crime Statistics, South Australian Attorney-General's Department *Courts of Summary Jurisdiction* (1983) Crime and Justice Series A, No 5.

with CENs were a very atypical minority of cannabis users, a change in detected offence trends was more likely to be an artefact of enforcement policy.

Collection of these nine-month "before" and "after" profiles also allowed two other issues to be addressed. By comparing the locations of offences detected under the CEN system and the previous provisions, the Office of Crime Statistics evaluators could provide information of some relevance to the often made suggestion that CENs would encourage use or possession of cannabis in "sensitive" locations, such as schools.

8. *Conclusions:*

A. From the Long-Term and Short-Term Studies

In summary, the rate of police detections of minor cannabis offences continued to rise under the cannabis expiation system. However, the rate of increase (11 per cent) was less than the long term rate of increase (25 per cent) which had applied over the previous thirteen years of the former legislation, and was less than the rate (16 per cent) which applied over the first two years of the *Controlled Substances Act* 1984. Little significance was attached to this apparent slowing down in the rate of increase in cannabis offences detected, however, because the rates were all well within the normal variability apparent during similar short periods over the preceding fifteen years. It seems unlikely that trends in detected offences had any direct relationship with the introduction of the scheme. Any change in figures is more likely to be indicative of policing policy, and specifically the ease with which cannabis offences can be dealt with by police.

B. From a Study of the Profiles of Offenders

Data collected indicated remarkable consistency in the profiles of persons detected before and after CENs were introduced. Both groups, however, showed marked dissimilarities with user-survey data. In particular, far fewer females appeared in police statistics than should have been the case if these figures were representative of actual consumers. The "detected offender" data also contained an apparent disproportionality of Aboriginal users, users with criminal records and "lower status" (particularly unemployed) cannabis users. In light of these findings it seems that, as appears to be the case in the United States, current and future trends in detected offences in South Australia are unlikely to bear a strong relationship to actual cannabis use or possession in the community.

Findings also failed to support claims that there had been an increase in the detection of cannabis use or possession at "high risk" locales, such as schools. Furthermore, the claim that "at risk" groups would be more likely to consume cannabis with the introduction of the scheme appeared not to be supported by the evidence. Yearly surveys by the Drug and Alcohol Services Council (South Australia) support such a conclusion. Their evidence indicates that the percentage of students who had ever used cannabis remained relatively stable from 1986 to 1989. So too had the proportion of students — less than 6 per cent — who reported using cannabis on a weekly basis.[21]

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21 Neill, M, Christie, P and Cormack, S, *Trends in Alcohol and Other Drug Use by South Australian School-Children 1986–1989* (1991).

9. *Other Concerns Raised by the Evaluation*

Studies of alternatives to formal prosecution have often found that they can give rise to an actual increase in the number of people and range of behaviours that are subject to some kind of social control. One of the concerns of the researchers in the CEN study was to determine whether or not the legislation had precipitated this "net-widening" effect.

Generally, data collected in the course of this study indicated that offenders detected by police since the CEN system was introduced continued to be an unrepresentative sample of total users, and that disadvantaged groups — particularly unemployed people — were significantly over-represented. However, because there had not been any change in the characteristics or size of the group of cannabis users detected by police, it did not seem that net-widening had occurred. It was noted, however, that nine months is not long enough to be confident that net-widening will not take effect in the longer term. Further analysis of this trend is still required, particularly given the increasing numbers of CENs being issued by police (1987–1993 from 4 599 to 15 543, see above) and given the suspicion one might have that police now require less evidence of an offence before issuing the notice given that there is little likelihood of a court challenge.

Concern still remains that a CEN system pressures recipients who believe they are not guilty into paying fines rather than contesting the matter. People who decline to pay are confronted with several risks. Defending the charge may involve payment of solicitor's fees as well as the possible trauma and stigma associated with a court appearance. If found guilty, the defendant faces court fines (which may be similar to or higher than expiation fees), a victims of crime levy (at present four times the amount for an expiated offence) and the possibility of incurring a criminal record. To some extent, of course, these problems are inherent in any system that allows expiation in lieu of a court appearance. One reform option mentioned in the report was to amend the law to provide that there be no conviction recorded in the event that a person who contests a CEN is found guilty. However, no action has been taken by any government to act upon this recommendation.

Further, in reviewing unintended consequences, it was noted by the evaluators that the initial nine months of CENs had confirmed that people detected possessing or using small amounts of cannabis continued to be drawn from disadvantaged socio-economic groups, and that low-income people figured disproportionately among those prosecuted after failing to pay expiation fees. One objective in introducing an expiation system was to make the law bear less heavily on disadvantaged groups and ensure that persons committing simple cannabis offences should not be penalised by incurring a criminal record. The authors of the report argued, therefore, that serious consideration should be given to increasing publicity about the benefit of paying expiation fees rather than being prosecuted. This may lessen the impact of these laws on the economically disadvantaged. Again there has been no action on this recommendation.

When the CEN scheme was introduced, it was anticipated that it would bring about a significant decrease in defendants appearing before the courts. Reviewing the data from the initial nine months did not indicate that this was the case. As mentioned before, nearly half (45 per cent) of the recipients of a CEN fail to expiate. The report therefore argued that unless significant effort is made to increase the rate of expiations, the impact of CENs on court workloads may not be significant.

10. *Lessons in Evaluation*

One matter that governments *could* concern themselves with is the issue of further and better evaluation of drug legislation and policy. This would enable the best information to be provided for drug policy-makers, lest myths become confused with reality.[22] There has been a great deal of academic attention paid, in recent years, with different models of evaluation.[23] I would hope that future evaluations are designed to test a broad range of variables, not merely (for example) the numbers of drug users or the offences committed by them, the health and safety hazards associated with drug use, and the social and economic costs associated with enforcement. Rather, "learning" evaluation would review the conditions in which users live, their social marginalisation (if any), and their access to medical programs and social services that other members of the community generally may enjoy. For example, while many people recoil at the sight of drug "junkies" in the streets of Amsterdam, there is little doubt that their presence there enhances their ability to seek out a range of medical and social services that might be denied those who, because of their habit, are forced into seclusion, at a cost not only to themselves but to the common weal generally.[24] Furthermore, evaluations might examine the number of choices of lifestyles that drug users have available to them. Governments may even attempt to assess the loss of tax revenue by virtue of their drug proscription policies.

11. *Challenges to the South Australian Legislation*

In March 1990 two bills came before the South Australian Parliament, the *Controlled Substances Act Amendment Bill* (from the Opposition) and the *Controlled Substances Act Amendment Bill (No 2)* from the Deputy Premier. Both sought to modify the existing *Controlled Substances Act* with the former seeking to do away with the expiation notice system altogether. The first Bill increased penalties, but the move to dismantle the system completely was defeated. The Bill passed the House of Assembly[25] and the Legislative Council[26] in this modified form. The second Bill was introduced by the government to clarify definitions in the *Controlled Substances Act,* and to recast the penalty provisions of section 32. The Bill was passed, without undue acrimony, in the House of Assembly[27] and the Legislative Council.[28] Other than on these occasions, the scheme is virtually ignored in the South Australian parliament except where members question the reasons for the rise

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22 Mc Donald, D, Brown, H, Hamilton, M, Miller, M, and Stephenson. E, "Australian Drug Policies 1988 and Beyond — a drugs campaign evaluation" (1988) 7 *Aust Drug & Alcohol R* at 499–505.

23 Sarre, R, "Political Pragmatism versus Informed Policy: Issues in the Design, Implementation and Evaluation of Anti-Violence Research and Programs" (1991) in Chappell, D, Grabosky, P and Strang, H (eds), *Australian Violence: Contemporary Perspectives* at 263-85; Sarre, R, "The Partial 'Decriminalisation' of Cannabis in South Australia: Issues in the Evaluation of Reforms to Cannabis Legislation", above n* at 101–8; Sarre, R, (1994), "The Evaluation of Criminal Justice Initiatives: Some Observations on Models" in *J L & Inf Sci* (forthcoming).

24 Above n14 at 670–1; Van Vliet, H J, "Separation of Drug Markets and the Normalization of Drug Problems in the Netherlands: An Example for Other Nations?" (1990) 20(3) *J Drug Iss* at 467–8.

25 South Australian Hansard, 1 March 1990 at 514–15, 22 March 1990 at 778–80.

26 South Australian Hansard, 28 March 1990 at 905–6, 11 April 1990 at 1438.

27 South Australian Hansard, 22 March 1990 at 788–90, 27 March 1990 at 864–74.

28 South Australian Hansard, 28 March 1990 at 910–912, 3 April 1990 at 1043–45, 11 April 1990 at 1411–13 and 1436–39.

in the number of expiation notices issued by police[29] and to ask why cannabis expiation fees have not kept pace with increases in the CPI.[30]

12. *The Number of Notices Issued*

Having highlighted the difficulties associated with relying upon police data to determine trends in cannabis consumption, it is worthwhile to look at the figures from the *Annual Report* of the Commissioner of Police concerning the number of CENs issued since the scheme's inception. The figures are:

1987–88	4 599
1988–89	3 773
1989–90	5 697
1990–91	10 229
1991–92	14 353
1992–93	15 543

The revenue from the CENs was reported[31] as:

1987–88	$244 000
1988–89	$242 000

Bearing in mind that notices have increased 400per cent since then, one can assume that CENs generate around A$1 million per year in revenue.

It should be remembered that these figures cannot be an accurate measure of actual consumption nor the numbers of people involved, given that a CEN is issued in relation to each offence rather than each offender. The police have kept no statistical record of the recipient's demographics nor previous convictions or CENs which makes drawing conclusions (from police figures alone) about net-widening and recidivism difficult. Having said that, one important finding of the evaluation of the CEN scheme was that alternatives to existing data collections should be established. Trends in cannabis use among the general community cannot be inferred from police data. Indeed, said the authors of the report, speculation from law-enforcement figures can only be unproductive and unhelpful.

13. *Conclusion*

Much of the debate surrounding introduction of the CEN scheme concerned its alleged potential for increasing the extent and frequency of cannabis possession and use. Definitive answers on this issue would have required access to long-term survey data on patterns and trends in drug consumption. No jurisdiction in Australia could provide this type of information when the study was made, although in the last three years there have been moves to establish comparability between on-going State-based school surveys and to commence a national survey of drug use under the auspices of NCADA.[32]

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29 South Australian Hansard, 16 October 1990 at 1029.
30 South Australian Hansard, 24 August 1993 at 268.
31 South Australian Hansard, 28 March 1990, at 905.
32 As reported in, for example, Queensland CJC above n4 at A37–40.

However, it can be stated unequivocally that introduction of CENs did not lead, until 1988 at least, to any immediate change in the rate of detection of simple cannabis offences or in the type of people detected possessing or using cannabis. Nor do the data from surveys of use-patterns among school age populations in South Australia (including surveys into 1990) provide authoritative support for claims that introduction of the CEN scheme encouraged previous non-users to experiment with cannabis. Even if that were the case, one can never be sure that the change in the law has been a causal factor.

The South Australian scheme has worked essentially without opprobrium for seven years. While its early evaluation raised issues that have not yet been resolved, the scheme provides a workable model of "decriminalisation" should governments wish to move in that direction. The Queensland CJC remains unconvinced that the CEN system provides a workable future direction for that State. It will be interesting to see what the National Task Force on Cannabis concludes about its possible use as a model of drug law reform in other Australian jurisdictions.