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# THE CANNABIS CAUTIONING SCHEME THREE YEARS ON: AN IMPLEMENTATION AND OUTCOME EVALUATION

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**Joanne Baker and Derek Goh**

An evaluation commissioned by  
Drug and Alcohol Coordination, NSW Police



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Attorney General's Department

Level 8

St James Centre

111 Elizabeth Street

Sydney

Phone: (02) 9231 9190

Fax: (02) 9231 9187

Email: [bcsrc@agd.nsw.gov.au](mailto:bcsrc@agd.nsw.gov.au)

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Website: [www.lawlink.nsw.gov.au/bocsar](http://www.lawlink.nsw.gov.au/bocsar)

## PREFACE

With the development of the Illicit Drug Initiative of 1999, which forms part of a national framework for tackling illicit drug use, Australian State and Territory governments are increasingly emphasising the diversion of minor and first-time drug offenders from the traditional criminal justice system into education or treatment. The Cannabis Cautioning Scheme, along with the adult and youth Drug Courts, the Young Offenders Act and the Magistrates Early Referral into Treatment (MERIT), form part of the NSW Government's program of drug diversion initiatives.

The NSW Police commissioned the NSW Bureau of Crime Statistics and Research to conduct an independent evaluation of the Cannabis Cautioning Scheme in its first three years. This report presents the results of that evaluation. Both qualitative and quantitative research methods have been used to examine how well the Scheme was implemented and whether it achieved its intended aims. In conducting her evaluation, Joanne Baker was generously assisted by staff within the NSW Police. They provided valuable insights, not only into whether the Scheme has met its aims, but why it has met some of its aims and not others. The findings in the report highlight the difficulties involved in trying to divert minor and first-time cannabis users into treatment. Nonetheless they also suggest ways in which the Cannabis Cautioning Scheme could be improved.

Dr Don Weatherburn  
**Director**

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## EXECUTIVE SUMMARY

The NSW Cannabis Cautioning Scheme commenced in April 2000 and gave police the discretion to formally caution rather than charge adults detected for minor cannabis offences. Cautioned offenders are provided with information about the consequences of cannabis use and access to treatment and support services. The Scheme was amended in September 2001 with the introduction of a mandatory education session for persons cautioned on a second occasion. This evaluation examines the implementation and outcomes of the Scheme, particularly since it was amended in September 2001.

### STATISTICAL OVERVIEW

A total of 9,235 cautions have been issued in the first three years of the Scheme.

Most persons had been cautioned only once under the Scheme, with only 239 persons (3%) being cautioned on two occasions, and 187 of those persons receiving their second caution after the amendment was brought in.

Cautions had mostly been issued to young males, with half of all cautions issued to males aged 18 to 24 years.

Cautions were predominantly issued for possession (96%), rather than use or equipment offences, and mostly for very small amounts of cannabis, with over 75 per cent for amounts of 5g or less.

Large numbers of persons were still being charged for minor cannabis offences while the Scheme was operating, although many of these persons may not have been eligible for a caution. Cautions represented less than one-third of all legal actions for minor cannabis offences.

### HOW WELL WAS THE SCHEME IMPLEMENTED?

The Scheme, as a whole, appears to be operating reasonably well. Police are using their discretion to issue cautions, rather than charge minor cannabis offenders, and, on the whole, rely on the guidelines in deciding whether to issue a caution.

There were some operational concerns with the Scheme. Most of these related to difficulties issuing cautions in the field, as caution books, drug bags and weighing scales are accountable items and/or too bulky to be easily carried in the field. Problems accessing reliable procedures in the field with which to identify offenders also made it difficult to issue cautions in the field.

Complicated and time consuming drug destruction procedures were also an issue, although not a difficulty specific to the Scheme.

A lack of support for the Scheme in some Local Area Commands (LACs) was of concern as it had led to a preference for charging, over cautioning, and consequently low cautioning ratios in these LACs. Other factors including local policing strategies, the seriousness of the offenders detected in the area and the characteristics of the police in the LAC were also said to influence LAC cautioning ratios.

Second cautions were not working so well. The lack of training and communication provided on the amendment and the relative infrequency with which second cautions are issued meant that many police were unaware of the existence of second cautions or misunderstood how they operated.

As a result only about a quarter of second cautions were issued appropriately to offenders previously cautioned and on an official second caution notice. Most offenders were therefore not made aware of the requirement to complete the mandatory education session. The consequences for other offenders were far more serious, with at least one officer charging offenders rather than issuing second cautions because of a misunderstanding concerning the expiation requirement.

## **HAS THE SCHEME BEEN SUCCESSFUL IN ACHIEVING ITS OBJECTIVES?**

The Scheme appears to be successful in diverting minor cannabis offenders from the court system given the sheer volume of cautions issued, and the substantial decreases in the numbers of charges laid by police (6,679), charges dealt with by the court (5,241) and persons convicted by the court (2,658). Whether the Scheme is successful in keeping offenders out of court in the longer term remains unclear.

Whether the Scheme has been successful in assisting offenders to consider the legal and health implications of their cannabis use is also unclear. While all cautioned offenders have been provided with information about the legal and health consequences of their cannabis use, many key informants were sceptical about the impact this had on offenders, particularly in relation to the health effects. Less than one per cent of caution recipients had contacted the Alcohol and Drug Information Service (ADIS) help-line to seek advice or help for their cannabis use.

Introducing the mandatory education session for second caution recipients increased the rate at which offenders contacted the ADIS help-line to only 14 per cent. This was partly because many second caution recipients did not receive the official second caution and were not made aware of the requirement to contact ADIS. Even among those offenders who did receive the official second caution, however, the proportion contacting ADIS was still relatively low, at 43 per cent. It should be recognised, however, that many of the cautioned offenders do not believe they have a problem with cannabis use and may not actually be dependent on the drug.

The Scheme has also produced a number of unintended outcomes, including a degree of net-widening, whereby some offenders who would previously have been dealt with informally, were dealt with by way of cannabis caution under the Scheme. Other concurrent changes in policing, independent of the Scheme, including a move toward pro-active high visibility policing, the use of drug detection dogs, and a move away from the use of informal warnings due to fear of allegations of corruption, have also increased the number of people required to be dealt with under the Scheme.

While the Scheme has successfully diverted many Indigenous persons from court, it has not been as effective for Indigenous persons compared with non-Indigenous persons. Indigenous persons (11%) were much less likely than non-Indigenous persons (31%) to be cautioned under the Scheme, primarily because they failed to meet the eligibility criteria. As a consequence Indigenous persons have been diverted from the court system at a lower rate than non-Indigenous persons, somewhat increasing the degree to which Indigenous persons are over-represented in the court system.

## **IMPACT OF THE SCHEME ON THE CRIMINAL JUSTICE SYSTEM**

The Scheme appears to have produced substantial time and cost efficiencies for both the police and the Local Courts, in terms of the time saved at the time of drug detection and the time saved in not having to deal with the matters in court. Over the three years of the Scheme it is estimated that police have saved over 18,000 hours, or over \$400,000, and the Local Courts have saved at least \$800,000 and probably more than \$1,000,000.



## LIST OF ABBREVIATIONS

ADIS	Alcohol and Drug Information Service
BOCSAR	NSW Bureau of Crime Statistics and Research
CNI	Criminal Name Index Number
COPS	NSW Police Computerised Operational Policing System
EDO	Education and Development Officer
FCAN	Field Court Attendance Notice
DAC	Drug and Alcohol Coordination, NSW Police
LAC	Local Area Command
MCPES	Mandatory Continuing Police Education Scheme
MERIT	Magistrates Early Referral into Treatment
PSW	Police Service Weekly
SMITS	Six Minute Intensive Training Sessions

# 1. INTRODUCTION

The NSW Cannabis Cautioning Scheme commenced as a 12-month statewide trial on 3 April 2000. The Scheme gives police the discretion to formally caution rather than charge adults detected for minor cannabis offences.<sup>1</sup> Offenders can receive up to two cautions under the Scheme. The Scheme also provides cautioned offenders with information about the consequences of cannabis use, and access to treatment and support services.

After the initial 12-month trial period the NSW Government extended the trial until April 2003, in an amended form. This amendment introduced a mandatory education session on cannabis use for persons receiving a second caution and became effective on 1 September 2001. Subsequently, the NSW Government has extended the Scheme again on an indefinite basis.

Within NSW Police, Drug and Alcohol Coordination (DAC) is responsible for implementing, monitoring and evaluating the Scheme. DAC commissioned and funded the NSW Bureau of Crime Statistics and Research (BOCSAR) to conduct an independent evaluation of the implementation and outcomes of the Scheme, particularly since the Scheme was amended in September 2001. This report presents the results of this evaluation.

## BACKGROUND TO THE SCHEME

The Scheme arose, along with several other initiatives, out of the recommendations of the 1999 NSW Drug Summit.<sup>2</sup> The NSW Government supported the recommendation of the Drug Summit that ‘police powers to caution offenders be formalised and protocols be developed to govern prosecutorial discretion’ (NSW Government 1999, p. 69). A framework for the Scheme was provided and the Police Commissioner was directed to ‘issue guidelines for the exercise of police discretion under the Scheme’ (NSW Government 1999 p. 70).

The Scheme forms part of the NSW Government’s program of drug diversion schemes designed to divert first-time and minor drug offenders from the criminal justice system. The Scheme also falls under the Council of Australian Governments Illicit Drug Diversion Initiative of 1999, which is part of a national approach to tackling illicit drug use and emphasises the diversion of drug users into education, assessment or treatment.

The aim of the Scheme is to ‘provide for formal cautioning of adult offenders apprehended for minor cannabis offences. The aim will be to use police intervention to assist offenders to consider the legal and health ramifications of their cannabis use and seek treatment and support.’ (NSW Government 1999 p. 70). The NSW Police response to dealing with cannabis offences under the Scheme ‘is based on a harm minimisation approach’ (Centre for Curriculum and Continuing Education 2000, p. 8).

*Harm minimisation is an approach that aims to reduce the adverse health, social and economic consequences of alcohol and other drugs by minimising or limiting the harms and hazards of drug use for both the community and the individual, without necessarily eliminating use. The approach accepts that drug use is well entrenched in modern life and that it is unrealistic to expect that harmful drug use will ever be completely eradicated* (NSW Police Service 1996, p. 2, cited in Centre for Curriculum and Continuing Education 2000, p. 8).

## THE CONCEPT OF DIVERSION

Diversion of minor cannabis offenders from the criminal justice system is by no means a new concept. Under common law, the discretion already exists for police to informally warn, rather than charge, persons for committing an offence.<sup>3</sup> Diversion schemes had also existed in all other states across Australia, except Queensland, when the NSW scheme commenced. The earliest such scheme was a system of 'prohibition with civil penalties' and was introduced in South Australia in 1987. It was a system based on 'on-the-spot fines', with matters expiated on payment of fine. Failure to pay the fine could result in subsequent prosecution and conviction (Ali 2000). Similar schemes were later introduced in the Australian Capital Territory in 1992 (McDonald et al. 1994) and the Northern Territory in 1997 (*Misuse of Drugs Act 1997*). Each of these schemes now provides offenders with educational material and/or self-referral information.

Evaluation of the South Australian scheme demonstrated that it had reduced the level of harmful social consequences for offenders who expiated their offences and led to greater expediency for the police and the courts (Ali 2000). The scheme, however, had also produced a number of negative social outcomes. The expiation rate for the scheme has remained low (below 50%), with most of those persons failing to pay their expiation fees being subsequently prosecuted and convicted. Of particular concern was that many of those persons not paying their fines were from disadvantaged groups, were experiencing financial difficulties or were not aware of the consequences of non-expiation. The introduction of the option to pay fines in instalments, however, has not improved the situation greatly (Christie & Ali 2000). The scheme has also resulted in net-widening, with the number of fines issued having increased enormously since the scheme was first introduced. Christie and Ali argue this results from the greater expediency the scheme offers police.

In 1997 Victoria adopted a different approach to the South Australian model and introduced a system of cautions for minor cannabis offenders as a pilot in one district, whereby police were permitted to caution offenders on up to two occasions (Victoria Police, 1998). This scheme was later extended statewide in 1998 (Coumarelos et al. 2002). Similar types of cannabis cautioning schemes were subsequently introduced in Western Australia in 1998 (Penter et al. 1999) and Tasmania in 2000 (correspondence from Tasmania Police to DAC, 27 Aug 2001), in NSW in 2000 and in Queensland in 2001 (Hales et al. 2003). These schemes vary in terms of how much cannabis is permitted and how many cautions are permitted. The education or treatment sessions attached to these schemes vary in terms of whether they are optional or mandatory, whether they are delivered face-to-face or by telephone, whether they are arranged by the police or the offender, and whether non-attendance results in active follow-up of offenders and subsequent prosecution.

NSW is more restrictive than all other states in terms of the amount of cannabis permitted, allowing only 15g whereas most other states allow up to 50g. NSW however, permits more cautions than some states. Western Australia and Queensland, for example, permit only one caution. NSW and Victoria are the least assertive in terms of the education and treatment sessions. In Victoria the education session is voluntary, while in NSW the education session is conducted by telephone and is up to the offender to arrange. There is no active follow-up of offenders. In Western Australia, Queensland and Tasmania the education session is generally face-to-face and arranged by the police. Offenders who do not attend are actively followed-up and subsequently prosecuted for either the original cannabis offence or a lesser offence of contravening the direction of

a police officer. Western Australia has subsequently replaced their cannabis cautioning scheme with a hybrid model that gives offenders the option of expiating a Cannabis Infringement Notice by attending an education session or by paying a fine. The amount of cannabis permitted has been reduced to 25g.

To date the evaluation of these types of cannabis cautioning schemes has not been as comprehensive as that for the South Australian scheme, particularly in terms of the outcomes achieved by these schemes. An evaluation of the first 12 months of the initial Western Australian cautioning scheme, however, has shown some promising results, with evidence of reasonable attendance rates at the education session (78%) and relatively few caution recipients the subject of a summons to appear before court for failure to attend. There was also evidence that the education session had produced positive changes in the offenders' knowledge, attitudes and behaviour relating to their cannabis use (Penter et al. 1999). An evaluation of the Queensland scheme has also shown high attendance rates (81%) at the assessment session (Hales et al. 2003).

## KEY FEATURES OF THE ORIGINAL SCHEME IN NSW

Prior to the commencement of the Scheme in NSW, police had the option of either informally warning minor cannabis offenders or charging offenders and having the Court determine the matter. No information, treatment services or other structured intervention was available to offenders for their cannabis use.

The Scheme essentially introduces formal cautioning as a third option available to police for dealing with minor cannabis offenders. This affords police a formal, more accountable and transparent way for dealing with minor cannabis offenders. The Scheme also provides cautioned offenders with educational material and access to treatment and support services for their cannabis use.

Police are directed in the Scheme by a set of guidelines (the Cannabis Cautioning Scheme Guidelines). There is no legislative base for the Scheme. The Scheme covers the minor cannabis offences of possession and use of cannabis and the possession of equipment for cannabis use. Dried cannabis (leaf, stalk, seed, and head) only is permitted under the Scheme. Live cannabis plants, freshly cut cannabis, cannabis oil and cannabis resin are excluded.

A number of eligibility criteria apply to the Scheme –

- the offender must possess no more than 15 grams of dried cannabis and/or equipment for the use of cannabis
- the offender must be an adult
- the identity of the offender must be confirmed using normal checks
- sufficient evidence to prosecute the offender must exist
- the drug must be for personal use only
- the offender must not be involved in any other criminal offence at the time, for which a brief of evidence would be submitted
- the offender must have no prior convictions for drug, violent or sexual offences
- the offender must admit to the offence
- the offender must consent to the caution and sign the caution notice
- the caution must be appropriate.

The cautioning procedure requires police to seize and secure the cannabis and/or equipment, carry out a Criminal Name Index Number (CNI) check on the offender (for prior convictions) and establish whether they meet the eligibility criteria. If the offender is eligible and agrees to the caution, police issue a formal caution notice. The notice contains information about the legal and health consequences of cannabis use, as well as the phone number for the 24-hour dedicated Cannabis Cautioning telephone help-line run by the Alcohol and Drug Information Service (ADIS). ADIS is an existing agency of NSW Health that provides confidential information, advice, counselling and treatment on alcohol and drug use. Police are encouraged to point out the legal and health information and encourage the offender to contact ADIS. There is, however, no requirement for the offender to contact ADIS.

Under the original Scheme, offenders could only be cautioned on two occasions (subsequent occasions would result in a charge). The caution notice and procedures were the same regardless of whether it was a first or second occasion.

The guidelines for the Scheme provide police with a framework in which they can exercise their discretion and encourage them to caution those offenders who are eligible. Police do, however, retain the right to charge an offender if circumstances suggest this is more appropriate (if the demeanour or behaviour of the offender is judged to be aggressive, for example). Police also retain the discretion, under common law, to informally warn an offender, if formal action is not deemed necessary. Informal warnings do not, however, afford police the same degree of accountability that formal cautioning does. Cautions can also be later withdrawn if it is subsequently found that the caution was inappropriate, and more appropriate action can be taken.

## THE AMENDMENT TO THE SCHEME

In extending the Scheme for a further two years, the Government decided to amend the Scheme, by introducing a mandatory education session on cannabis use for persons cautioned a second time. This amendment was in direct response to the low rate at which cautioned offenders had voluntarily contacted ADIS for information, support or treatment for their cannabis use, in the first year of the Scheme (see Drug Programs Coordination Unit 2002, Coumarelos et al. 2002). While over 2,000 cautions had been issued in the first year, only 59 calls had been made to the dedicated cannabis cautioning help-line (NSW Police Ministry 2001).

The amendment became effective on 1 September 2001. The aim was to increase the number of cautioned cannabis offenders receiving health information, support and treatment for their cannabis use. The aim of the education session was ‘to improve the offender’s knowledge of the health, social, and legal ramifications of cannabis use, to motivate behaviour change and to encourage users to seek further help.’ (NSW Police Service 2001).

As described earlier, mandatory education sessions for cautioned offenders were already being trialled in the Western Australian scheme, and had just been introduced in the Tasmanian scheme. The Western Australian trial was showing some promising results with evidence of reasonable attendance rates at the education session and positive changes in the offenders’ knowledge, attitudes and behaviour relating to their cannabis use (Penter et al. 1999).

## KEY FEATURES OF THE AMENDED SCHEME

The Scheme essentially retained its original format. The first caution process remained the same, but the second caution process required modification. A new caution notice, 'the Second Caution Notice', was developed specifically for persons receiving a second cannabis caution. This notice contained details on the requirement to contact ADIS for the mandatory education session.

Additional eligibility criteria were required for persons receiving a second caution notice. In addition to the eligibility criteria for the first caution, the following three criteria also apply –

- the offender has previously been issued one caution under the Scheme
- the offender is required to contact ADIS within 14 days from the issue of the second caution to receive a mandatory telephone health education session on cannabis use
- the offender consents to the second caution and the mandatory telephone health education requirement.

There were also some important differences in the procedure for issuing a second caution. Police are now required to check for the existence of a first caution, in addition to prior convictions, when they conduct the CNI check on the offender. When issuing a second caution police are also required to return to the police station with the offender, to access the second caution notices, which aren't generally available in the field, and to explain the requirement that they contact ADIS within 14 days to complete the telephone education session.<sup>4</sup> Under the original Scheme, police were encouraged to issue the caution at the scene and to return to the police station only when absolutely necessary.

The second caution also introduced additional administrative requirements for both police and ADIS to monitor the offender's compliance with the mandatory education session. After issuing a second caution, police are required to send a copy of the second caution notice to DAC, which acts as a central contact point. ADIS are required to advise DAC on a fortnightly basis which persons have completed the mandatory education session. DAC then notifies the issuing officers whether or not the offender has complied with the Scheme requirement.

Failure to complete the telephone education session is placed on the offender's record on the NSW Police Computerised Operational Policing System (COPS) and is brought to the attention of the court if the offender is charged for any further offence. There is no requirement for police to actively follow-up non-compliant offenders.

The decision to avoid the active follow-up and prosecution of non-compliant offenders was in keeping with the diversionary intent of the Scheme and was intended to prevent any escalation of the offenders' involvement in the criminal justice system, particularly for disadvantaged groups. As we saw earlier, this was a problem with the South Australian scheme, where over half of the offenders had failed to pay their expiation fees. Most of these offenders were subsequently prosecuted and convicted. As a result, they experienced more negative employment, relationship, accommodation and legal consequences (Lenton et al. 2000). Disadvantaged groups, those who could not afford to pay the fine, and those not aware of the consequences of non-expiation were disproportionately affected. It was also considered neither practical nor cost-effective in NSW for police to actively follow-up non-compliant offenders, for what were initially minor offences, and which may have deterred police from issuing cautions in the first place.

As such, the NSW scheme and the Victorian scheme, are the only ones in Australia which can be considered to be diversionary in the true sense. While they still provide a form of sanction to offenders outside the court system, every attempt is made to prevent the escalation of minor and first-time offenders' involvement with the criminal justice system.

## THE EVALUATION

Within NSW Police, DAC is responsible for implementing, monitoring and evaluating the Scheme. DAC conducted earlier internal evaluations on the operation and outcomes of the Scheme in its first six months and first year of operation, when the Scheme was in its original format. These evaluations found that, on the whole, the Scheme was operating smoothly, with the support of the majority of police officers, although there were some operational concerns. These related to problems with issuing cautions in the field, which were due to difficulties estimating the weight of the drug without access to scales and lack of access to drug bags and caution books in the field. The discrepancy in the amount of cannabis for which adults could be cautioned for under the Scheme (15g) and juveniles could be cautioned for under the *Young Offenders Act 1997* (30g) was also a concern, although this discrepancy has subsequently been removed (Hansard 2001). The evidence also suggested that the Scheme had been successful in diverting minor cannabis offenders from the court system, although it may have produced 'a net-widening effect whereby some minor cannabis users who would ordinarily have received an informal warning prior to the scheme were dealt with by a cannabis caution under the scheme' (Coumarelos et al. 2002 p. 85). The evaluations also found the Scheme had been less successful in encouraging offenders to seek information and advice on their drug use, with only about two per cent of cautioned offenders contacting the dedicated phone line, and even fewer offenders receiving some sort of counselling, support or referral to treatment.

DAC commissioned and funded BOCSAR to conduct an independent evaluation of the implementation and outcomes of the Scheme, particularly since the Scheme was amended in September 2001.

This present evaluation extends the earlier DAC evaluations to the first three years of the Scheme (that is, the period from 3 April 2000 to 31 March 2003). It is also the first independent evaluation of the Scheme and the first evaluation to examine the Scheme in its amended form.

The purpose of this evaluation is to –

- inform relevant stakeholders about the operation and outcomes of the Scheme
- provide a basis for deciding on any necessary amendments to procedures, protocols or legislation.

The objectives of the evaluation are to –

- report upon the implementation and operation of the Scheme since the introduction of a mandatory education session for second cautions
- report upon the effectiveness of the Scheme in diverting cannabis users from the court system and towards treatment options
- provide a costing analysis (in terms of time and resources) for the Scheme
- identify options for changing procedures, protocols or legislation to improve the operation and outcomes of the Scheme.

## 2. METHODOLOGY

A range of methods were employed to carry out the evaluation. These included –

- a review of program documentation, materials and literature
- analysis of existing NSW Police (COPS), NSW Local Courts and ADIS data
- a series of interviews with 35 key informants drawn from NSW Police (32), NSW Police Ministry (1) and ADIS (2).

NSW Police key informants included Local Area Commanders, Education and Development Officers (EDOs), responsible for providing training to police on the Scheme, and operational police identified as having issued cautions under the Scheme, drawn from six Local Area Commands (LACs). The six LACs were selected to cover regional and metropolitan areas, and those with high, average and low cautioning rates. DAC staff were also included among NSW Police key informants.

Full details of the methodology are provided in the Appendix to this report.



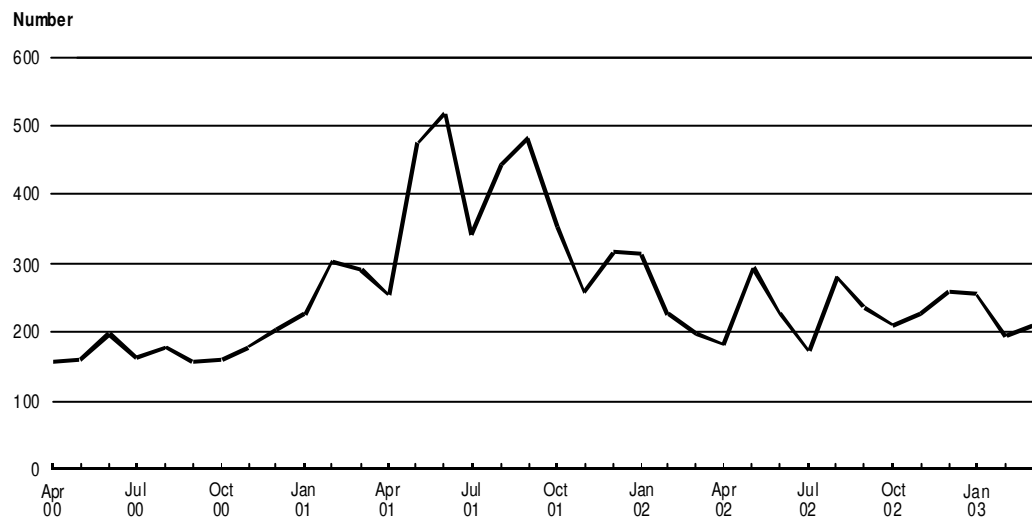
### 3. STATISTICAL OVERVIEW OF THE FIRST THREE YEARS OF THE SCHEME

In this section we provide an overview of the number of cautions issued, the number of charges laid and the number of persons contacting ADIS under the Scheme. Breakdowns of where cautions have been issued, whom they have been issued to and the offences concerned are also provided. The data in this section are drawn from the analysis of existing COPS and ADIS data.

#### HOW MANY CAUTIONS HAVE BEEN ISSUED?

In total 9,235 cautions were issued in the first three years of the Scheme. Figure 1 shows the number of cautions issued each month over the first three years. It can be seen that the number of cautions issued increased reasonably steadily after the Scheme commenced, and then began to increase quite dramatically in February 2001, and even more so in May 2001, peaking at 516 in June 2001. The number of cautions then began to drop off again in October 2001, and has remained at around 200 to 250 up until March 2003. There has been no upward or downward trend, however, in the monthly number of cautions issued over the entire three years.<sup>5</sup>

**Figure 1: Number of cautions issued in the first three years of the Scheme, April 2000 to March 2003**



The vast majority of cautions issued have been first cautions (97%). Only 239 (3%) were second cautions (that is, persons receiving two cautions as identified by their CNI, not necessarily persons receiving an official second caution). Table 1 shows the numbers of first and second cautions issued in each year of the Scheme. A large number of cautions were issued in the second year of the Scheme.

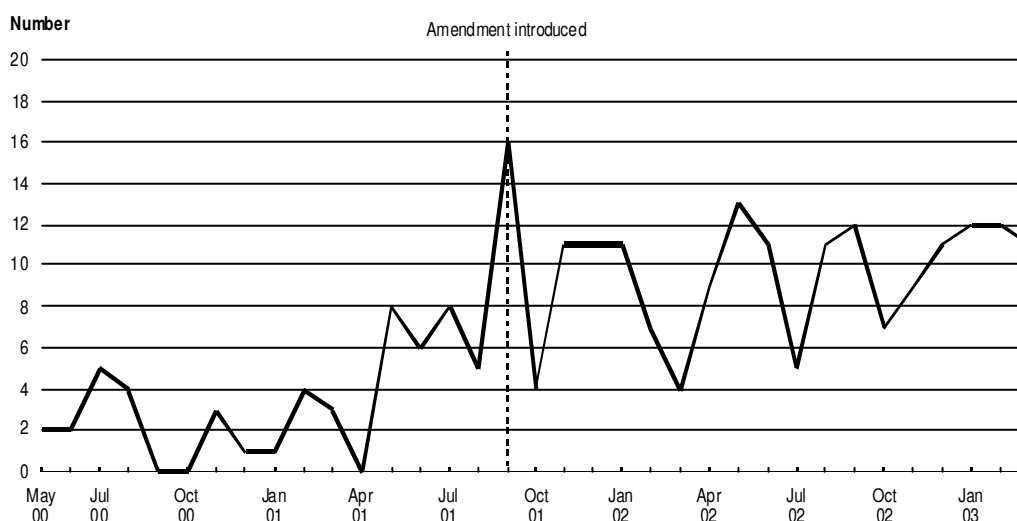
Figure 2 shows the number of second cautions issued each month over the first three years. There has been an upward trend in the number of second cautions issued each month since the Scheme commenced. Twenty-five second cautions were issued in the

**Table 1: Number of cautions issued in each of the first three years of the Scheme**

<b>Cautions</b>	<b>First year (Apr 00 – Mar 01)</b>		<b>Second year (Apr 01 – Mar 02)</b>		<b>Third year (Apr 02 – Mar 03)</b>		<b>Total</b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
First cautions	2,325	98.9	4,071	97.8	2,600	95.5	8,996	97.4
Second cautions	25	1.1	91	2.2	123	4.5	239	2.6
<b>Total</b>	<b>2,350</b>	<b>100.0</b>	<b>4,162</b>	<b>100.0</b>	<b>2,723</b>	<b>100.0</b>	<b>9,235</b>	<b>100.0</b>

first year of the Scheme, increasing to 123 in the third year of the Scheme. Given that the likelihood of an individual receiving a second caution increases over time, this upward trend is not unexpected. Since the amendment to the Scheme in September 2001, which brought in official second cautions, 187 persons have received two cautions. The trend in the number of second cautions issued each month since the amendment, however, has remained stable.

**Figure 2: Number of second cautions issued in the first three years of the Scheme, May 2000 to March 2003**



## HOW MANY CHARGES HAVE BEEN LAID?

In total 22,259 charges have been laid for cannabis use, possession or equipment offences in the first three years of the Scheme, with 7,680 laid in the first year, 7,769 laid in the second year and 6,810 laid in the third year. It should be noted that some of these charges may have been laid against offenders who were not eligible to be cautioned, as they were detected in possession of more than 15g of cannabis, had prior convictions or concurrent charges, or the police did not consider a caution appropriate under the circumstances, for example. Unfortunately, it is not possible to readily ascertain through COPS whether or not the offenders were eligible to be cautioned.

**Figure 3: Number of charges laid for minor cannabis offences in the first three years of the Scheme, April 2000 to March 2003**

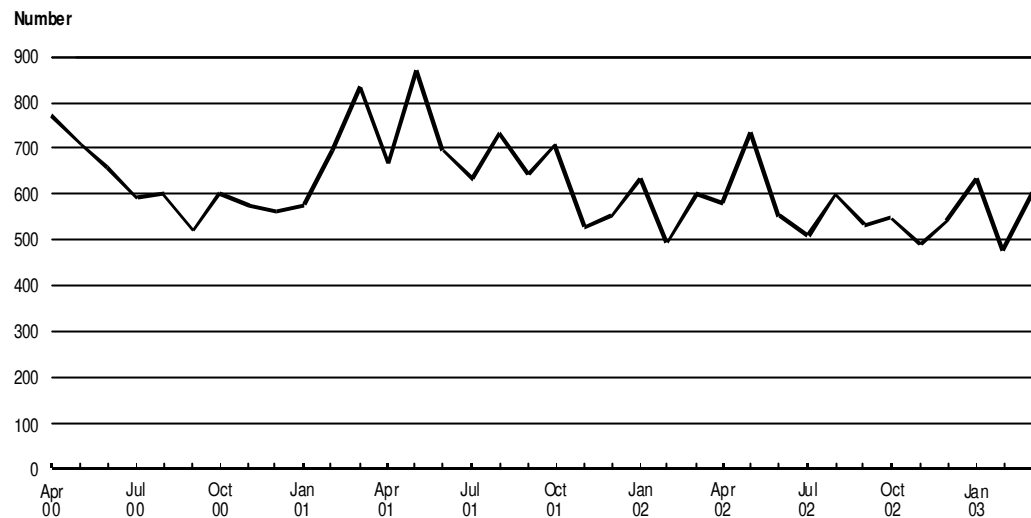


Figure 3 shows the number of charges laid each month over the first three years of the Scheme. The number of charges laid follows a slightly different pattern to that for cautions, decreasing initially after the Scheme was first introduced, and then increasing about the same time as cautions did in February 2001. Charges then began to decrease again in June 2001, slightly earlier than cautions began to decrease, and remained at a lower level up until March 2003. The overall trend in the monthly number of charges laid has been downward over the three years of the Scheme.

## HOW HAVE CAUTIONS AND CHARGES BEEN USED ACROSS DIFFERENT POLICE REGIONS?

The use of cautions has varied across the state, with the greatest use of cautions being in the Metropolitan regions. Table 2 shows the breakdowns of cautions, charges and caution ratios, respectively, by police region in each year of the Scheme. The caution ratio is the proportion that cautions represent of all formal legal actions (i.e. cautions and charges).

It can be seen that the Inner Metropolitan and Greater Metropolitan police regions had both the highest volume of cautions issued and the highest cautioning ratios across each of the three years of the Scheme.

Use of cautions has been much lower in the non-Metropolitan regions. The Northern region, in particular, had a higher total number of formal actions for cannabis offences than any other region, but had one of the lowest cautioning ratios.

Despite the variation in the amount of cautioning across the state, the use of cautions was greatest in the second year of the Scheme in all five police regions. Both the volume of cautions and the cautioning ratios were highest in the second year of the Scheme across each of the five regions.

Within the five police regions the use of cautioning varied considerably. Tables 3 to 7 show the total number of cautions and charges and the cautioning ratios for the LACs within each of the five police regions for the entire three years of the Scheme.

**Table 2: Numbers of cautions, charges and cautioning ratios issued by police region, in each of the first three years of the Scheme**

<i>Region</i>	<i>First year (Apr 00 – Mar 01)</i>	<i>Second year (Apr 01 – Mar 02)</i>	<i>Third year (Apr 02 – Mar 03)</i>	<i>Total</i>
<b>Cautions</b>				
Inner Metro	804	1,644	813	3,261
Greater Metro	532	1,148	903	2,583
Northern	501	666	568	1,735
Southern	309	471	303	1,083
Western	194	220	128	542
NSW total <sup>a</sup>	2,350	4,162	2,723	9,235
<b>Charges</b>				
Inner Metro	1,316	1,479	1,191	3,986
Greater Metro	1,628	1,954	1,627	5,209
Northern	2,399	2,188	2,200	6,787
Southern	1,454	1,226	1,005	3,685
Western	874	911	774	2,559
NSW total <sup>a</sup>	7,680	7,769	6,810	22,259
<b>Caution ratio</b>				
Inner Metro	37.9	52.6	40.6	45.0
Greater Metro	24.6	37.0	35.7	33.1
Northern	17.3	23.3	20.5	20.4
Southern	17.5	27.8	23.2	22.7
Western	18.2	19.5	14.2	17.5
NSW total <sup>a</sup>	23.4	34.9	28.6	29.3

<sup>a</sup> Note that the NSW Total includes a small number of cautions and charges, for which the region was missing or the region was not classified (eg. Water Police).

As we have just seen, the Inner Metro region, as a whole, had a high volume of cautions issued and a high cautioning ratio. This was generally the case in all LACs within the region, although there was some variation. A few LACs (Kings Cross and City Central in particular), had issued large volumes of cautions, while other LACs (particularly Botany Bay, Rose Bay and The Rocks) had issued very few cautions. All LACs in this region had a caution ratio above the state average, with the caution ratio particularly high (over 50%) in Rose Bay, Newtown, Eastern Suburbs, City Central, North Shore and Ashfield. Kings Cross, with the highest total number of formal actions for cannabis offences in the region, also had a reasonably high cautioning ratio at 47.5 per cent.

The Greater Metro region, as a whole, had a high volume of cautions issued and a high cautioning ratio, but this was not the case in all LACs within the region. Some LACs, (particularly Blacktown), had issued large volumes of cautions, while other LACs (particularly Hawkesbury), had issued very few cautions. Only about half the LACs in this region had a caution ratio above the state average. Ku-ring-gai, Gladesville and Eastwood had particularly high cautioning ratios (over 50%), while Parramatta and Hawkesbury had very low cautioning ratios (under 15%). Blacktown, with the highest total number of formal actions for cannabis offences in the region, had one of the higher cautioning ratios at 49.4 per cent.

**Table 3: Use of cautioning among LACs within the Inner Metro region, in the first three years of the Scheme**

<i>LAC</i>	<i>Number of cautions</i>	<i>Number of charges</i>	<i>Cautioning ratio</i>
Rose Bay	37	26	58.7
Newtown	218	156	58.3
Eastern Suburbs	149	119	55.6
City Central	340	284	54.5
North Shore	86	74	53.8
Ashfield	109	95	53.4
The Rocks	48	53	47.5
Kings Cross	860	950	47.5
Harbourside	65	79	45.1
St George	104	134	43.7
Leichhardt	65	84	43.6
Miranda	122	172	41.5
Surry Hills	238	339	41.2
Eastern Beaches	105	157	40.1
Marrickville	66	102	39.3
Manly	72	114	38.7
Sutherland	79	132	37.4
Burwood	83	142	36.9
Redfern	153	265	36.6
Hurstville	83	148	35.9
Botany Bay	34	65	34.3
Campsie	67	135	33.2
Northern Beaches	78	161	32.6
<b>Total</b>	<b>3,261</b>	<b>3,986</b>	<b>45.0</b>

The Northern region had issued fewer cautions and had a lower cautioning ratio than the Metropolitan regions and this was generally the case for all LACs within the region. Tweed-Byron had issued a large volume of cautions, while other LACs (particularly Hunter Valley) had issued very few cautions. All LACs in this region (with the exception of Brisbane Waters) had a caution ratio below the state average. Cautioning ratios were particularly low (under 15%) in Richmond, Coffs-Clarence, Hunter Valley and Lower Hunter. Tweed-Byron, with the highest total number of formal actions for cannabis offences in the region, also had one of the higher cautioning ratios in the region, though this was still below the state average at 28.2 per cent.

The Southern region had issued fewer cautions and had a lower cautioning ratio than the Metropolitan regions and this was generally the case with all LACs in the region. Most LACs had issued relatively few cautions and had a cautioning ratio below the state average. The cautioning ratio was particularly low (under 15%) in Wagga Wagga

**Table 4: Use of cautioning among LACs in the Greater Metro region, in the first three years of the Scheme**

<i>LAC</i>	<i>Number of cautions</i>	<i>Number of charges</i>	<i>Cautioning ratio</i>
Ku-ring-gai	292	243	54.6
Gladesville	69	66	51.1
Eastwood	126	122	50.8
Blacktown	355	363	49.4
Blue Mountains	93	116	44.5
Flemington	235	295	44.3
Campbelltown	166	251	39.8
Holroyd	144	238	37.7
Green Valley	64	120	34.8
The Hills	53	100	34.6
Liverpool	68	138	33.0
Macquarie Fields	64	137	31.8
Rosehill	67	163	29.1
Fairfield	80	206	28.0
Penrith	137	356	27.8
Camden	75	203	27.0
St Marys	63	183	25.6
Bankstown	105	320	24.7
Cabramatta	60	214	21.9
Quakers Hill	77	295	20.7
Mt Druitt	70	330	17.5
Parramatta	92	535	14.7
Hawkesbury	28	215	11.5
<b>Total</b>	<b>2,583</b>	<b>5,209</b>	<b>33.1</b>

and Far South Coast. Only Wollongong had a cautioning ratio above the state average at 49.4 per cent.

The Western region had issued the fewest cautions and had the lowest cautioning ratio in the state, and this was the case with most LACs within the region. Most LACs had issued relatively few cautions and had a caution ratio below the state average. Only Darling River had a caution ratio above the state average at 39.8 per cent.

The use of second cautions has also varied across the state. While each of the five regions had issued a second caution after the Scheme was amended, not all of the LACs had issued one. Only 61 of the 80 LACs had issued a second caution after the amendment. Second cautions were most frequently issued in Blacktown (14), Kings Cross (13), Ku-ring-gai (12), Eastern Suburbs (8), City Central (7) and Flemington (7) LACs, which generally had issued large volumes of cautions.

**Table 5: Use of cautioning among LACs in the Northern region, in the first three years of the Scheme**

<i>LAC</i>	<i>Number of cautions</i>	<i>Number of charges</i>	<i>Cautioning ratio</i>
Brisbane Waters	172	317	35.2
Tweed-Byron	430	1,096	28.2
Newcastle	152	393	27.9
Lake Macquarie	120	321	27.2
Tuggerah Lakes	130	364	26.3
Waratah	78	242	24.4
Manning-Great Lakes	80	351	18.6
Mid North Coast	85	478	15.1
Lower Hunter	134	807	14.2
Hunter Valley	34	221	13.3
Coffs-Clarence	171	1,125	13.2
Richmond	149	1,072	12.2
<b>Total</b>	<b>1,735</b>	<b>6,787</b>	<b>20.4</b>

**Table 6: Use of cautioning among LACs in the Southern region, in the first three years of the Scheme**

<i>LAC</i>	<i>Number of cautions</i>	<i>Number of charges</i>	<i>Cautioning ratio</i>
Wollongong	240	246	49.4
Monaro	98	256	27.7
Shoalhaven	90	255	26.1
Albury	116	341	25.4
Lake Illawarra	99	349	22.1
Cootamundra	58	214	21.3
Goulburn	97	381	20.3
Griffith	54	253	17.6
Deniliquin	77	431	15.2
Far South Coast	82	493	14.3
Wagga Wagga	72	466	13.4
<b>Total</b>	<b>1,083</b>	<b>3,685</b>	<b>22.7</b>

## WHAT ARE THE CHARACTERISTICS OF THE OFFENDERS WHO HAVE BEEN CAUTIONED?

Cautions have been issued mostly to young male offenders. Table 8 shows a breakdown of cautions issued by age and gender of the offender. It can be seen that 86 per cent of cautions have been issued to males and 57 per cent of cautions issued to persons aged 18 to 24 years. Half of all cautions have been issued to males aged 18 to 24 years. These proportions have remained relatively constant across the three years of the Scheme.

**Table 7: Use of cautioning among LACs in the Western region, in the first three years of the Scheme**

<b>LAC</b>	<b>Number of cautions</b>	<b>Number of charges</b>	<b>Cautioning ratio</b>
Darling River	64	97	39.8
Lachlan	47	159	22.8
Barwon	60	273	18.0
Mudgee	41	191	17.7
Barrier	28	136	17.1
Orana	40	199	16.7
Chifley	70	355	16.5
Canobolas	66	351	15.8
New England	59	362	14.0
Oxley	56	364	13.3
Castlereagh	11	72	13.3
<b>Total</b>	<b>542</b>	<b>2,559</b>	<b>17.5</b>

**Table 8: Age and gender of cautioned offenders, in the first three years of the Scheme**

<b>Age (years)</b>	<b>Males</b>		<b>Females</b>		<b>Total<sup>a</sup></b>	
	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>	<b>No.</b>	<b>%</b>
18-19	1,941	21.0	248	3.0	2,218	24.0
20-24	2,653	29.0	348	4.0	3,066	33.0
25-29	1,267	14.0	227	3.0	1,519	17.0
30-39	1,358	15.0	282	3.0	1,669	18.0
40-49	514	6.0	118	1.0	641	7.0
50+	104	1.0	17	0.0	122	1.0
<b>Total</b>	<b>7,837</b>	<b>86.0</b>	<b>1,240</b>	<b>14.0</b>	<b>9,235</b>	<b>100.0</b>

<sup>a</sup> Note that the total includes a small number of cautions and charges, for which the gender was missing.

A total of 239 cautions (2.6%) were issued to Indigenous persons (offenders identifying as Aboriginal or Torres Strait Islander or both). This proportion has remained relatively constant across the three years of the Scheme. Indigenous persons are over-represented in cautions, relative to their proportion in the total NSW adult population in 2001 of 1.4 per cent (Australian Bureau of Statistics 2002). Of the Indigenous offenders issued with cautions, 166 were male and 73 were female. Indigenous males cautioned represent two per cent of all males cautioned, while Indigenous females cautioned represent six per cent of all females cautioned. Despite the over-representation of Indigenous persons among cautions, Indigenous persons were over-represented to a much greater extent in charges. This issue will be taken up later in the report (see the Section entitled *Unintended Outcomes Produced by the Scheme*).



As with cautions generally, second cautions after the amendment have been issued mainly to young males, with 92 per cent being issued to males, and 59 per cent to 18 to 24 year olds. Over half of the second cautions have been issued to males aged 18 to 24 years. Second cautions were issued to Indigenous offenders at a similar rate at which cautions were issued generally (2.7%).

## **WHAT OFFENCES HAVE OFFENDERS BEEN CAUTIONED FOR?**

Almost all cautions (more than 99%) have been issued to offenders for the minor cannabis offences of possess, use or possess equipment for the use of cannabis. Less than one per cent (48 cautions) are recorded as having been issued for offences outside the Scheme.<sup>6</sup> Many of these cases are likely to reflect recording errors in COPS rather than cautions being issued to more serious offenders.

Cautions have predominantly been issued for possession of cannabis (96%), rather than use (1%) or equipment offences (3%). The breakdown of these offences has remained very similar over the three years of the Scheme.

## **HOW MUCH CANNABIS HAVE OFFENDERS BEEN CAUTIONED FOR?**

While the Scheme permits the cautioning of offenders detected in possession of up to 15g of cannabis, cautions have overwhelmingly been issued to offenders detected in possession of very small amounts of cannabis. Of the 6,286 cautions where information was available on the amount of cannabis involved, the average amount was 3.4g and the median amount was 2.0g. Over three-quarters of cautions were issued for amounts of 5g or less. The trend in the monthly average amount of cannabis for which cautions have been issued has remained stable over the three years of the Scheme.

A very small proportion (less than 1%) of cautions were recorded as having been issued for amounts of cannabis over 15g. Note that some of these weights may include the weight of the drug bag and/or the container or packaging in which the cannabis was stored, the combined amount of cannabis seized from several offenders in the one incident, or may have been incorrectly entered into COPS.

## **HOW MANY OFFENDERS HAVE CONTACTED ADIS?**

Over the three years the Scheme has been in operation, only 63 persons have called the ADIS help-line after receiving a caution.<sup>7</sup> This represents 0.7 per cent of the 9,235 cautions that have been issued.

Twenty persons contacted ADIS prior to the amendment and 43 persons contacted ADIS after the amendment. Of those who made contact after the amendment, 17 called following receipt of a first caution. This represents 0.4 per cent of the total number of first cautions issued in this time. Twenty-six persons contacted ADIS following receipt of a second caution, representing 14 per cent of all second cautions issued. Note that not all persons issued two cautions necessarily received an official second caution and were made aware of the requirement to contact ADIS. This issue will be dealt with in more detail later in the report (see the Section entitled *To What Extent Have Second Cautions Been Issued Correctly?*).

## 4. IMPLEMENTATION AND OPERATION OF THE SCHEME

In this section we examine the implementation and operation of the Scheme, drawing mainly upon the material obtained from the key informant interviews, but also from the review of program documentation and analysis of existing data.

### WHAT TRAINING AND COMMUNICATION WAS PROVIDED TO POLICE ABOUT THE SCHEME?

Extensive communication and training was provided to police prior to the introduction of the original Scheme, as is detailed in Coumarelos et al. (2002). Information about the Scheme was communicated to police prior to the Scheme's commencement through a number of mediums, including an article in *Police Service Weekly (PSW)*, an internal memo to police and two broadcasts on Police TV. The Scheme was also communicated externally, by way of articles published in professional journals and an official launch at Parliament House, accompanied by a media release. Information on the Scheme was also subsequently provided on the police intranet and in two later articles in the PSW.

A comprehensive training package was delivered to police by EDOs through the Mandatory Continuing Police Education Scheme (MCPES). In addition, police were issued with notebook guides (cue cards), which outlined the cautioning procedure and eligibility criteria. Brief training sessions in the form of Six Minute Intensive Training Sessions (SMITS) were also available to police at muster (the briefing at the beginning of a shift) in the first few weeks of the Scheme. All these training resources were available to police on the police intranet in addition. The earlier evaluation by DAC indicated that most police received training well before the commencement of the Scheme and were satisfied with the training (Coumarelos et al. 2002).

### WHAT TRAINING AND COMMUNICATION WAS PROVIDED TO POLICE ABOUT THE AMENDMENT TO THE SCHEME?

In contrast to the original Scheme, the communication and training provided to police when the amendment was introduced was much more limited. There were a number of reasons for this. It was anticipated that the number of second cautions issued would be quite low and therefore affect relatively few police and then only infrequently. There were limited education resources available, due to a major restructure being underway at Education Services and a key position being vacant within DAC at the time. There was also limited time available to develop and deliver training resources and communication strategies, to the same extent that had been done for the original Scheme, due to the amendment being introduced 'in a hurry', as one informant put it. In addition many legislative and other changes relevant to police, such as the *Police Powers (Drug Premises) Act 2001*, were happening at the same time and were seen to be of a higher priority by NSW Police.

The amendment to the Scheme was communicated to police in a number of ways. A statewide memo was sent to LAC Commanders and updated Scheme guidelines were distributed to EDOs and placed on the police intranet. Two articles were subsequently published in the PSW, in February 2002 and November 2002. There was no external communication to the general public regarding the amendment to the Scheme.

Training on the Scheme was provided to police through the MCPES, but was an optional rather than compulsory unit. This meant that each LAC could decide whether the training was required or not. The restructure in Education Services also meant that the education package was not updated to reflect the amendment until late 2003. Following the restructure and an audit of second cautions undertaken by DAC, a training plan was developed in October 2002. This entailed the development of new SMITS, distribution of updated cue cards that reflected the procedures and eligibility criteria for both first and second cautions to all police, and the development of a new training package for EDOs and Team Leaders of specialist units.

Most EDO informants indicated that they had delivered some form of training on the amendment, through SMITS or the issue of notebook cards (cue cards). However, not all EDOs had delivered training. One EDO stated that because the training was not compulsory, it was not seen as necessary in the LAC. Another EDO stated that they hadn't been in the position long enough to have delivered any training on the Scheme.

Most police informants felt that, while they had received enough training on the Scheme as a whole, they had not received enough training on the amendment to the Scheme. Two police felt that training on the amendment was not necessary, but most police said they would have liked more training, in the form of a mandatory lecture, a self-education package on the intranet or practical training. Several officers commented that they had received the memo concerning the amendment, but that it was not a good way of training police, as they received too many memos and it was impossible to read them all in detail.

## **HOW HAS THE SCHEME OPERATED IN PRACTICE?**

On the whole the Scheme appears to be operating reasonably smoothly, with many key informants experiencing no problems with the practical operation of the Scheme. It is evident that police are using their discretion to caution rather than charge offenders and are cautioning the minor cannabis offenders for whom the Scheme was intended.

## **IS THE SCHEME TARGETING MINOR CANNABIS OFFENDERS?**

From the data presented in the Section entitled *Statistical Overview of the First Three Years of the Scheme* it can be seen that almost all cautions have been issued to minor cannabis offenders for possess, use, or equipment offences and for amounts of cannabis less than or equal to 15g. Thus on the whole the Scheme appears to be targeting the minor cannabis offences for which it was intended.

## **ARE POLICE USING THEIR DISCRETION TO CAUTION OFFENDERS?**

The volume of cautions issued demonstrates that, overall, police are using their discretion to caution, rather than charge minor cannabis offenders. Beyond this, however, most police informants stated that they did not use their discretion to decide whether to caution or charge. They claim to follow the caution criteria guidelines closely and issue cautions if the person meets the criteria. Police cited a couple of examples where they had charged persons who were eligible for a caution, because the person was violent or suspected of the more serious offence of supply. A couple of other examples were cited where police, in keeping with the diversionary spirit of the Scheme, had issued a caution to a person who was not strictly eligible, either because they had a concurrent offence which was considered minor, or a prior conviction which was considered minor or very old. Despite these few examples, police by and large stated they adhered to the criteria.

## **LOCAL VARIATION IN CAUTIONING**

Commanders were asked why they thought the cautioning rate in their LAC was high, low or average. Their responses indicated that local factors were very important in determining the rate. A key factor was the degree of support for the Scheme within the LAC, particularly from the top. Commanders whose LACs had high cautioning rates alluded to the fact that cannabis cautioning was encouraged in their LAC. A Commander whose LAC had a low cautioning rate pointed out that the Scheme was not generally accepted in the LAC. He suggested that the LAC was 'full of cannabis' and charging was seen as a more appropriate and effective way of dealing with offenders in the area.

Local policing strategies were also seen as an important determinant of the cautioning rate, as they influenced the type of offender detected and therefore whether they met the eligibility criteria. Commanders whose LACs had high cautioning rates mentioned their emphasis on proactive drug detection operations, utilising drug dogs, and high visibility policing. This meant that they tended to detect people carrying small amounts of cannabis who were eligible for cautioning and who might not otherwise have been detected. A Commander whose LAC had an average cautioning rate suggested that many of the offenders detected in his LAC were quite serious offenders and did not meet the criteria.

Commanders also indicated that the characteristics of the police in the LAC were important. A Commander whose LAC had an average cautioning rate felt there were a lot of new recruits in his LAC and they were possibly less likely to caution as a result of their inexperience and lack of understanding of the broader social issues surrounding the Scheme. He suggested that more training of police on harm minimisation might encourage his officers to issue more cautions. The Commander with the low cautioning rate, on the other hand, felt that his officers were older and therefore less likely to caution as they were less accepting of cautioning, seeing it as a 'soft option'. He stated that if he were to promote cautioning in the LAC he would encounter resistance from the officers.

## **IS THERE ANY SCOPE FOR INCREASING CAUTIONS?**

Comments from informants indicated that, on the whole, they were issuing as many cautions as was possible under the current guidelines. Only changes to the cautioning criteria would allow a higher proportion of minor cannabis offences to be dealt with by way of caution. Many informants felt that it would be appropriate to broaden the criteria to permit cautioning of offenders who had old and/or minor prior convictions (such as common assault or minor drug offences) or minor concurrent offences. Others mentioned the amount of cannabis permitted could be increased over the current 15g, although some acknowledged this was unlikely to make much difference, given the small number of offenders likely to be affected. A couple of informants suggested that the number of cautions should not be limited to two. Removal of the need to admit the offence was also raised as a possibility, although the legal ramifications of such a suggestion would need to be carefully considered. Not all informants felt it was appropriate to broaden the criteria. Some thought they should be tightened, by reducing the amount of cannabis permitted, or restricting the number of cautions to one, for example.

Commanders whose LACs had lower cautioning rates generally felt the cautioning rate could be increased through better training of police on the principles of the Scheme and in the use of cautioning. Police also felt that if they were provided with more feedback about the effectiveness of the Scheme and had a better understanding of the theoretical background of the Scheme, its aims and objectives, they may be more likely to utilise it.

One of the Commanders whose LAC had a low rate of cautioning also felt that if he provided more support for the Scheme and promoted it more among his officers, this might increase the utilisation of the Scheme.

Having a legislative base to the Scheme was also raised as a potential means by which to increase the use of the Scheme. It was suggested that this may make some officers more comfortable with the idea of cautioning. Legislating the Scheme may have the greatest impact in those LACs who are not as supportive of the Scheme. It would also make the cautioning of adults more consistent with the cautioning of juveniles for cannabis offences under the Young Offenders Act.

## **ARE THERE ANY DIFFICULTIES WITH THE PRACTICAL OPERATION OF THE SCHEME?**

Most key informants had not experienced any problems with the practical operation of the Scheme. Of those that had experienced problems, the most common difficulty was with issuing cautions in the field. This was due to difficulties with offender identification procedures available to police in the field. Police also had difficulties carrying caution books, drug bags necessary for securing the cannabis, or scales for weighing the cannabis, primarily because they were accountable items and/or were too bulky to carry.<sup>8</sup> Police should not have had too many difficulties estimating the weight, as most cautions were issued for very small amounts of cannabis (5g or less). A couple of informants did, however, mention their concern with overestimating the weight, as the discrepancy between their estimate and the actual amount could lead to allegations of corruption.

Their response to these difficulties, in some cases, was to organise supervisors to bring drug bags, caution books and scales to the scene, thereby doubling the resources necessary to deal with the offender. In other cases their response was to bring the offenders back to the police station for processing. This seems to be a common response, as Coumarelos et al. (2002) found that almost 50 per cent of police officers

surveyed reported they had issued all cautions at the station. Taking the offender back to the station brings along its own set of problems. One officer stated that *'They're not under arrest so some people choose not to come to the station, then we have to arrest and charge'*. Another officer suggested that if police are required to bring the offender back to the police station there is more of a temptation to charge the person. One of the Commanders, on the other hand, felt that it may be preferable to bring people back to the station, correctly identify them, weigh and bag the drugs at the station and issue the caution. He suggested there was less chance of any corruption allegation being made against police as well as police having access to the facilities to correctly identify offenders.

Numerous officers spoke about the complicated and time consuming procedures required for the destruction of cannabis seized during cautions. While this is not a difficulty unique to the Scheme, as it is an administrative and accountable feature of all drug detections, officers suggested that the procedures for destroying drugs in caution matters be streamlined. It was suggested that Commanders, rather than the court, could authorise the destruction of cannabis confiscated as a result of a caution. One officer did note that this would create problems if the person disputes the caution. Allegations of police corruption may also be an issue.

Less commonly mentioned issues were that the cautioning process takes too long and ties up resources during operations, and therefore needs to be streamlined, such that minimal intervention and paper work is required. The need to improve COPS to properly record cautions and the need for uniformity across adults and juveniles regarding procedures and the forms and amounts of cannabis permitted were also raised. One informant also suggested the possibility of introducing a cooling off period, whereby offenders had a period of time in which they could seek legal advice and consider whether they wished to accept the caution. He suggested this would be particularly relevant for Indigenous persons, who often failed to meet the eligibility criteria because they would not admit the offence.

From the point of view of ADIS informants, the main difficulty was dealing with offenders who perceived that the ADIS help-line was connected with the police and were, therefore, unwilling to speak freely with counsellors. Another difficulty was that ADIS staff did not have adequate information about the type of people they were dealing with on the help-line, the circumstances in which they were detected and what they were detected for. Such information would assist ADIS to better help and advise the people that did contact them. Privacy issues may, however, need to be taken into account.

## **ARE THERE ANY PRACTICAL DIFFICULTIES WITH SECOND CAUTIONS?**

While the Scheme appears to be operating reasonably well, overall, this is not the case with the second caution aspect of the Scheme. Most of these problems appear to stem directly from the lack of training and communication provided when the amendment was brought in, but also from the relative infrequency with which second cautions are issued. While only a few informants mentioned specific problems with the operation of second cautions, it became apparent from their comments that many police are unaware of the existence of second cautions, or are only partly informed about this part of the Scheme. Even some police who had issued second caution notices and one EDO did not accurately understand the legal implications for a recipient who did not report to ADIS. A misconception among some police was that if the recipient of the second caution did not present to ADIS for counselling, a charge or summons would have to be issued.

Lack of awareness of the second caution aspect of the Scheme had led at least one officer, on several occasions, to issue second cautions on first caution notices. Misunderstanding of the Scheme had led another officer to charge offenders rather than issue second caution notices, as he understood he would have to charge the offenders if they didn't turn up for counselling.

The problems police experienced with issuing second caution notices flowed through to ADIS, who were unclear whether they were dealing with an offender cautioned on a first, second or even third occasion. Offenders call and state they have been cautioned on two occasions, but quote a first caution notice number, because they have been issued a first caution notice, or in a few cases because they have been cautioned on the first occasion outside of the Scheme as a juvenile. It is therefore unclear to ADIS what obligations the offender is under and whether the mandatory education session needs to be delivered. The response of ADIS has been to deliver the mandatory education session to all offenders who call, which is in keeping with the aims of the Scheme.

Apart from the lack of knowledge and misunderstanding surrounding second cautions, the other difficulty raised by informants related to monitoring offenders' compliance with the mandatory education session. Under the guidelines for the Scheme, police are required to send a copy of the second caution notice to DAC. ADIS are required to advise DAC on a fortnightly basis which persons have completed the mandatory education session. DAC then notifies the issuing officers whether or not the offender has complied with the Scheme requirement. One officer experienced difficulties sending the caution notice to the fax number identified on the caution notice, claiming the number was 'incorrect'. The need for acknowledgement that notification has been received, as well as the need for feedback on whether or not the offender had completed the education session was also mentioned. ADIS also mentioned a desire for some broad feedback from the police on offenders completing the education session. DAC records, however, indicate that they have provided timely feedback on the offender's compliance to officers in all but a few instances. The need for feedback on whether the offender has completed the education session, reported by police informants, may therefore have arisen because officers weren't aware of the need to use official second caution notices, or the need to notify DAC they had issued one. Alternatively, feedback provided by DAC may not have got through to police effectively. DAC has also indicated that effective feedback may have not have been provided in some cases due to difficulties matching the names of offenders provided by police with those provided by ADIS as a result of incorrect names.

## **TO WHAT EXTENT HAVE SECOND CAUTIONS BEEN ISSUED CORRECTLY?**

The analysis presented here on the extent to which second cautions have been issued correctly is limited to whether or not second cautions were issued to persons who had already received a first caution and whether they were issued on an official second caution notice. Second cautions that have been issued outside the guidelines, to offenders who do not strictly meet the eligibility criteria, were considered as having been issued correctly, in keeping with the discretionary nature of the Scheme, which encourages police to caution rather than charge offenders.

Given the limited communication and training provided to police about the introduction of second cautions and the general lack of awareness or misunderstanding of the Scheme among police highlighted by the key informant interviews, we would expect that many second cautions would not have been issued correctly on official second caution notices.

While it is not possible to measure accurately the extent to which second cautions have been issued correctly, we do have some indicators.

Of the 187 persons cautioned on a second occasion after the amendment was introduced (as identified by their CNI) only 69 (or 37%) have been notified to DAC as official second cautions, by either police or ADIS, as required.

Of the 69 official second cautions notified to DAC, 47 were considered to have been issued correctly. In 41 of these cases the offender had previously been issued a first caution and met the eligibility criteria for the second caution. In six cases the offender had previously been issued a first caution, but did not strictly meet the eligibility criteria for the second caution. We assume here, however, that police have used their discretion to issue the second cautions.

These 47 instances in which we consider the second caution to have been issued correctly represent only 25 per cent of the 187 persons cautioned on two occasions.

The remaining 22 official second cautions notified to DAC were not considered to have been issued correctly. In 15 of these cases no first caution had previously been issued. In six cases the offender was issued with a first caution notice. Note that in five of these cases the offender was actually advised of the requirement to contact ADIS. Presumably, in these cases police have issued a first caution notice because a second caution notice was not readily available. We have not considered these cases as having been issued correctly because the offender did not take away any formal documentation of the requirement to contact ADIS.<sup>9</sup> In the remaining case it was unclear as to whether the caution was issued correctly or not due to the lack of information in COPS.

It is unclear what happened in the remaining 118 (63%) cases in which the offender was cautioned on two occasions. There are a number of possibilities. Some offenders may have been correctly issued a second caution notice, but police did not notify DAC because they were unaware of the requirement to do so, or because they experienced difficulties getting through to the DAC fax number. Another possibility is that police were issuing offenders with first cautions as they weren't able to identify that offenders had previously been cautioned due to difficulties accessing reliable procedures with which to identify offenders in the field. Another possibility is that police did not have ready access to second caution books. The number of such cases is likely to be small, however, given that these issues did not emerge at all from the key informant interviews or were only mentioned by one key informant, at most. DAC records of second cautions do indicate that police did issue second cautions without notifying DAC and that police did issue first cautions as they had no ready access to second caution books. However, the number of such instances was small. Given the widespread lack of understanding police had about second cautions, the most likely possibility is that police were issuing offenders with first caution notices because they were unaware of second cautions.

In addition to offenders not being issued second cautions on official second caution notices, it also became apparent from the key informant comments mentioned earlier that at least one officer was charging offenders rather than issuing second cautions. This was based on a misunderstanding that he would have to charge the offender anyway, if the offender failed to complete the mandatory education session. The extent of this practice cannot be gauged from the key informant interviews. Given that other police informants shared this misunderstanding about the Scheme, and that police informants were selected as they had experience issuing cautions, the practice may not be limited to just one or two officers. Depending on the extent of this practice, the proportion of second cautions issued correctly may be somewhat less than 25 per cent.



## **IMPACT OF SCHEME ON INFORMANTS' WORKLOAD**

Most police felt that the Scheme had decreased their workload. Police indicated that cautions saved time, compared with other methods of proceeding, at both the time of drug detection and in not having to attend court and prepare a brief. Time savings were achieved at the time of drug detection because there was no need to enter the person into custody (although this varied across LACs) and there was no need to record fingerprints. Some police, however, felt that cautions offered no time savings over a Field Court Attendance Notice (FCAN) at the time of drug detection (but would later by way of not having to attend court if the matter was defended).

Police informants estimated the average time saved at the time of the drug detection as about two hours per caution, compared with proceeding by charge or summons. Two police quantified the average time saved in not having to attend court as about two days.

As described earlier, numerous officers raised the drug destruction procedures as a practical difficulty, not necessarily unique to the Scheme, but associated with the Scheme. The drug destruction procedures were also seen by officers as adding to their workload. It was suggested that simpler drug destruction procedures for cannabis cautions would save additional police time. The legality and practicality of any new procedures would need to be considered.

Whilst the Scheme appears to have decreased the workload for police, this was not the case for all informants. Some of those responsible for the implementation of the Scheme, and communication and training associated with the Scheme felt the Scheme had increased their workload.

## 5. WHAT OUTCOMES HAS THE SCHEME ACHIEVED?

This section examines the outcomes achieved by the Scheme, in terms of whether it has diverted minor cannabis users from court, whether it has assisted offenders to consider the legal and health ramifications of their cannabis use and how many offenders have been referred to treatment. The analysis of COPS, Local Courts and ADIS data and the key informant interviews are drawn upon.

### HAS THE SCHEME DIVERTED MINOR CANNABIS OFFENDERS FROM COURT?

There is no direct measure of the number of persons who have been diverted from court as a result of the Scheme. We do, however, have a number of indicators of the level of diversion. These include the number of cautions issued, as well as comparisons before and after the Scheme was introduced of the numbers of charges laid by police for minor cannabis offenders, the numbers of minor cannabis charges dealt with by the Local Courts, the numbers of persons convicted of a minor cannabis offence as their principal offence, and the total numbers of formal legal actions for minor cannabis offences.

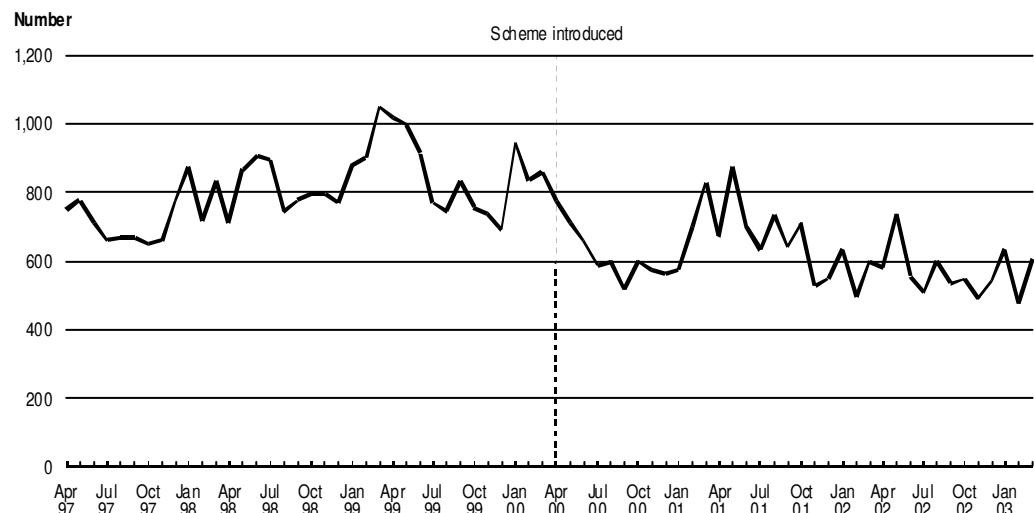
These data indicate that the Scheme appears to have been successful in diverting cannabis users from the court.

Over 9,000 cautions have been issued in the first three years of the Scheme. Potentially many of these persons have been diverted from court, as they could have potentially been charged and appeared before the court.

#### *Has the number of charges laid changed?*

Figure 4 shows the number of charges laid by police for minor cannabis offences each month from April 1997 to March 2003. It can be seen that in the three years prior to

**Figure 4: Number of charges laid for minor cannabis offences, April 1997 to March 2003**

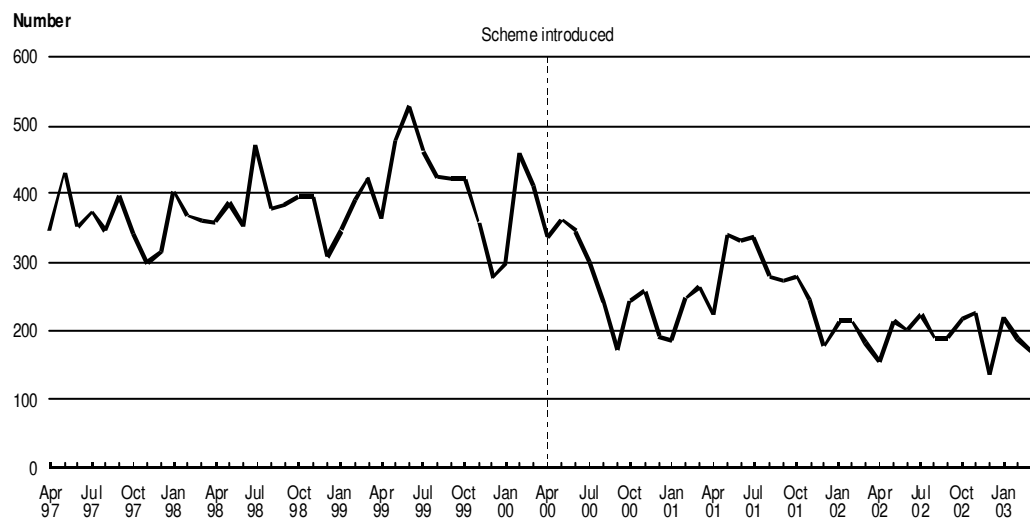


the introduction of the Scheme the trend in the monthly number of charges laid for cannabis offences was upward, increasing 16 per cent, from 8,736 three years prior to the Scheme, to 10,108 in the year immediately prior to the Scheme. In the three years since the introduction of the Scheme, the trend in the monthly number of charges laid for cannabis offences has been downward, decreasing 11 per cent from 7,680 in the first year of the Scheme, to 6,810 in its third year. In total, 6,679 fewer charges for minor cannabis offences have been laid in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme.

***Has the number of charges dealt with by the courts changed?***

Figure 5 shows the number of sole cannabis charges dealt with by the Local Courts each month from April 1997 to March 2003. Note that sole cannabis charges are charges for cannabis offences, where there are no concurrent offences. In the three years prior to the introduction of the Scheme the trend in the monthly number of sole cannabis charges dealt with by the Local Courts was stable. In the three years since the introduction of the Scheme the trend in the monthly number of sole cannabis charges dealt with by the Local Courts has been downward, decreasing 26 per cent from 3,154 in the first year of the Scheme to 2,326 in the third year of the Scheme. In total 5,241 fewer sole cannabis charges were dealt with by the Local Courts in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme.<sup>10</sup>

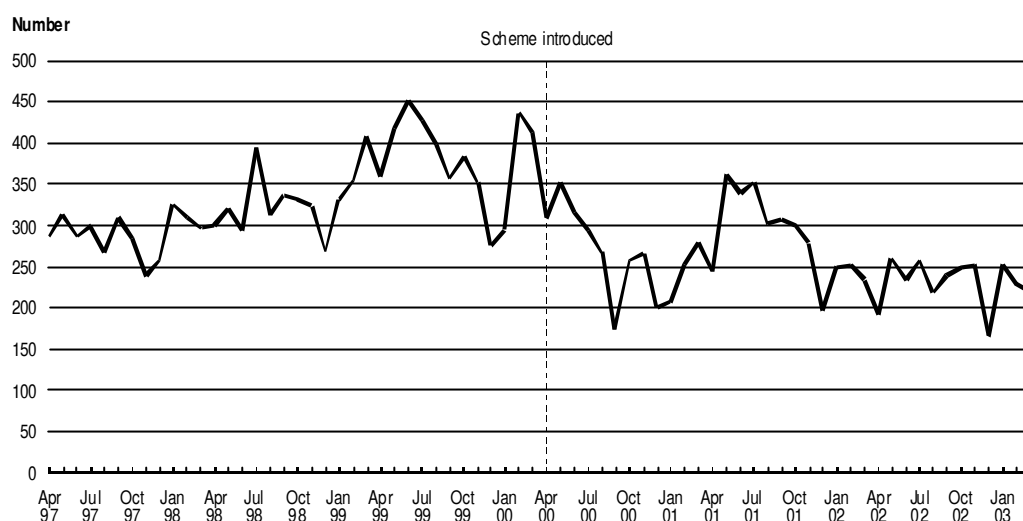
**Figure 5: Number of sole cannabis charges dealt with by the Local Courts, April 1997 to March 2003**



***Has the number of persons convicted changed?***

Figure 6 shows the number of persons convicted each month by the Local Courts from April 1997 to March 2003 whose principal offence was a minor cannabis offence.<sup>11</sup>

**Figure 6: Number of persons convicted by the Local Courts whose principal offence was a minor cannabis offence, April 1997 to March 2003**



Note that the number of persons convicted by the courts includes both persons pleading guilty and persons found guilty by the court. In the three years prior to the introduction of the Scheme, the trend in the monthly number of persons convicted by the Local Courts with a principal cannabis offence was upward, increasing 32 per cent from 3,478 three years prior the Scheme to 4,574 in the year prior to the Scheme. In the three years since the introduction of the Scheme, the trend in the monthly number of persons convicted by the Local Courts with a principal cannabis offence has been downward, decreasing 13 per cent from 3,177 in the first year of the Scheme to 2,773 in the third year of the Scheme.<sup>12</sup>

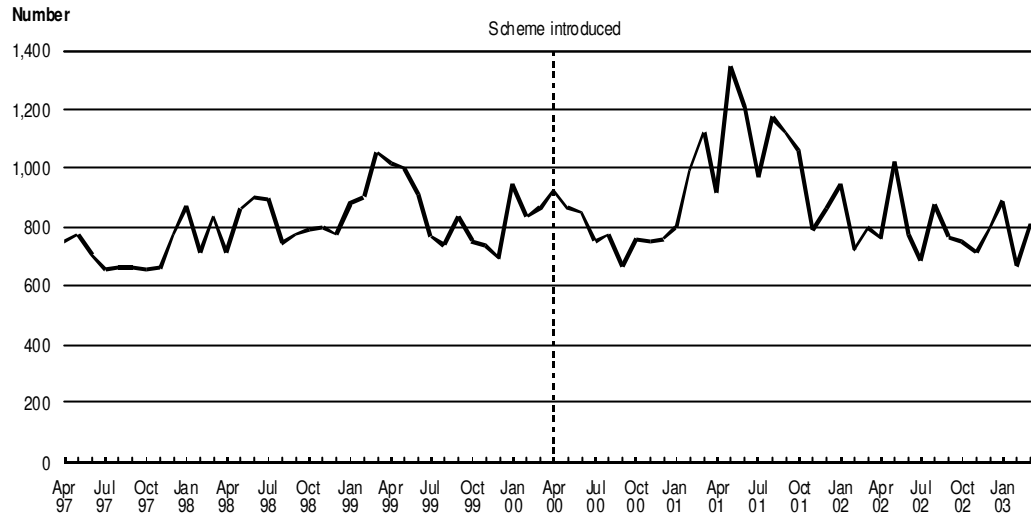
In total, 2,658 fewer persons have been convicted with a principal offence of cannabis by the Local Courts in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme.

### ***Has the total number of legal actions taken changed?***

Figure 7 shows the total number of legal actions taken by police each month for minor cannabis offences. In the three years prior to the introduction of the Scheme, the total number of legal actions was equivalent to the number of charges laid by police. As with charges, the trend in the monthly number of total legal actions is upward. Total legal actions increased 16 per cent from 8,736 three years prior to the Scheme to 10,108 in the year prior to the Scheme. In the three years since the introduction of the Scheme, the trend in the monthly number of total legal actions (charges and cautions) has been stable.

In total there have been 2,556 more total legal actions in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme. A lot of the increase seems to be due to increased activity, particularly in cautions, but also in charges, over a period between February 2001 and October 2001 in the second year of the Scheme.

**Figure 7: Total number of legal actions for minor cannabis offences, April 1997 to March 2003**



***Have rates of cautioning, charging and total legal actions per 100,000 population changed?***

Table 9 shows the rate of cautioning, charging and total legal actions per 100,000 adult population, for each of the three years prior to the introduction of the Scheme and the three years following the introduction of the Scheme.<sup>13</sup> It can be seen that the charge rate had been generally increasing prior to the Scheme and has decreased in the three years since the introduction of the Scheme. The rate of total legal actions (which was equivalent to the charge rate prior to the Scheme) had generally increased prior to the introduction of the Scheme. The rate of total legal actions then remained similar in the first year of the Scheme, increased in the second year of the Scheme and then dropped off again in the third year of the Scheme. Overall, the rates were higher for the three years after the Scheme, compared with the three years prior to the Scheme. This was entirely due to the higher rate in the second year of the Scheme, with the rates in the first and third years of the Scheme equivalent to the rate immediately prior to the Scheme.

**Table 9: Annual cautioning, charging and total legal action rates per 100,000 adult population, April 1997 to March 2003**

<b>Year</b>	<b>Caution rate (per 100,000 adult population)</b>	<b>Charge rate (per 100,000 adult population)</b>	<b>Total legal action (per 100,000 adult population)</b>
April 1997 to March 1998	n.a.	185.8	185.8
April 1998 to March 1999	n.a.	212.2	212.2
April 1999 to March 2000	n.a.	209.7	209.7
April 2000 to March 2001	48.1	157.2	205.3
April 2001 to March 2002	83.9	156.6	240.4
April 2002 to March 2003	54.1	135.4	189.5

*Note: n.a. denotes not applicable*

The sheer volume of cautions, together with the substantial decreases in the numbers of charges laid by police, charges dealt with by the courts and persons convicted by the court, suggests that the Scheme has been successful in diverting many minor cannabis offenders from court.

Key informants also generally agreed that the Scheme was effective in diverting cannabis users from court, with a number citing the sheer volume of cautions issued or the number of persons kept out of court as evidence of the Scheme's effectiveness. Opinion, however, was divided as to how effective the Scheme would be in the longer term. Many informants commented that there was no evidence to indicate that the Scheme reduced re-offending and kept people out of court in the long term. Others commented that the low conversion rate from first to second cautions indicated the Scheme was successful.

The decreases in the numbers of charges laid, charges dealt with by the courts and persons convicted by the court, however, have not been of the same magnitude as the number of cautions issued. While over 9,000 cautions have been issued, the number of charges laid has decreased by less than 7,000, the number of charges dealt with by the courts has decreased by less than 6,000 and the number of persons convicted by the court has decreased by less than 3,000.

Overall, the total number of legal actions and the rate of legal actions per 100,000 population have tended to be higher since the introduction of the Scheme. Most of the increase in the total number of legal actions, and all of the increase in the rate of total legal actions per 100,000 population, can be attributed to greater activity in relation to cautions, and to a lesser extent, charges, during the second year of the Scheme, particularly during the period from February to October 2001.

## **HAS THE SCHEME ASSISTED OFFENDERS TO CONSIDER THE LEGAL AND HEALTH RAMIFICATIONS OF THEIR CANNABIS USE?**

The Scheme has provided over 9,000 offenders with information on their caution notice about the legal and health ramifications of their cannabis use. Whether this information has assisted these offenders to consider the legal and health ramifications of their cannabis use is unclear. Some key informants doubted whether offenders would be interested in this information. Others felt the information wasn't sufficient in some aspects, particularly about the effect a cannabis conviction could have on a person's access to lines of credit and overseas travel, for example.

Most key informants thought the Scheme was successful in informing caution recipients of the legal aspects of cannabis use, but were very sceptical about the Scheme's educative role regarding the health effects of cannabis use. A few informants commented that those who had contacted ADIS would have benefited. Very few offenders, however, have contacted the ADIS help-line.

### ***How many offenders have contacted ADIS?***

As we saw in the Section entitled *Statistical Overview of the First Three Years of the Scheme*, only a tiny proportion of cautioned offenders had contacted ADIS. In the three years since the Scheme has been in operation a total of 63 persons have contacted the ADIS help-line as a result of the Scheme, (0.7% of those persons who have received cautions).

Since the amendment was introduced, 26 of the 187 persons receiving two cautions (or 14%) contacted ADIS. As we have seen earlier, however, the vast majority of persons receiving two cautions would not have received an official second caution notice. This was primarily due to the lack of awareness among police about second caution notices, but also due to the lack of availability of second caution notices, or difficulties identifying whether offenders had previously been issued a caution. Many of the offenders receiving a second caution would not have been aware of the requirement to contact ADIS, as they did not receive an official second caution notice. Once we take this into account, we find that 20 of the 47 persons who were known to have received an official second caution notice contacted ADIS (43%). This proportion is much higher than the rate at which first caution recipients contact ADIS (0.4%), but still quite low, given that contact is mandatory for these persons. It is also much lower than the rates achieved in the Western Australian and Queensland schemes, which were 78 per cent and 81 per cent, respectively (Penter et al. 1999, Hales et al. 2003). However, in these schemes failure to attend the education session resulted in subsequent prosecution.

Most informants felt that the reason so few caution recipients were contacting ADIS was because caution recipients did not think they had a problem with their cannabis use and because there was no legal compulsion to do so. When asked whether there was a better way to encourage offenders to seek help for their cannabis use, many informants suggested coercive elements, such as following-up people who had failed to contact ADIS for the mandatory education session with a view to issuing a summons, charge, criminal infringement notice or fine. Other informants believed there was no appropriate way to increase the number of offenders seeking help for their cannabis use without sacrificing the diversionary aims of the Scheme, increasing the workload of police, and decreasing the efficiency with which the Scheme operated. These informants suggested that such offenders would be better helped at other points in the criminal justice system (if they were subsequently picked up), such as through programs like the Magistrates Early Referral into Treatment (MERIT).

### ***How many offenders have been referred to treatment by ADIS?***

Many of the cautioned offenders who did contact ADIS were given information, counselling or referred to treatment. Among the 63 cautioned offenders who did contact ADIS, 18 were given information on drugs, 23 were provided with counselling and 17 were referred to another agency. Thirteen offenders have been referred to treatment by ADIS since September 2001. ADIS was not able to provide any data on treatment referrals prior to this date but the number of referrals in this earlier part of the Scheme is likely to have been low. The mandatory education session was delivered to 26 offenders, three-quarters of whom received an additional part to the session which was not mandatory. While some of these offenders may have received multiple forms of assistance from ADIS (information and counselling, for example), it can be seen that the offenders who do contact ADIS frequently receive some kind of advice, help or treatment.

### ***What health-related outcomes could be expected?***

Cannabis users, in general, are unlikely to seek help for their cannabis use. ADIS has received 4,117 calls from cannabis users about their cannabis use on their general help-line over the three years of the Scheme, an average of 1,372 calls per year. According to the 2001 National Drug Strategy Household Survey, an estimated 636,451 persons

in NSW aged 14 years and over had used cannabis in the last 12 months. The rate at which cannabis users in the general NSW population call ADIS for assistance with their cannabis use is therefore estimated to be 0.2%. These figures suggest that persons who have been cautioned by police are only slightly more likely than the general cannabis-using population to contact ADIS for help.

The low rate at which cannabis users contact ADIS in general is not surprising, given that historically ADIS has not actively promoted its services, particularly in relation to cannabis. Data from the Alcohol and Other Drug Treatment Services National Minimum Data Set (Australian Institute of Health and Welfare 2002a), however, similarly indicates that few cannabis users in NSW seek help for their cannabis use. This data indicates that approximately 3,013 clients registered for drug and alcohol treatment primarily for cannabis in NSW in 2000-2001, which is equivalent to approximately 0.5% of the total number of cannabis users in NSW. Note, however, that this percentage is likely to be an under-estimate, as the data set only includes government-funded agencies that provide specialist alcohol or other drug treatment services. Cannabis users who seek treatment through their general practitioner, for example, are not included.

## UNINTENDED OUTCOMES PRODUCED BY THE SCHEME

### *Net-widening*

As we have seen earlier, the decreases in the numbers of charges laid, charges dealt with by the courts and persons convicted by the court, since the introduction of the Scheme, were not of a magnitude comparable to the number of cautions issued. While over 9,000 cautions have been issued, the number of charges laid has decreased by less than 7,000, the number of charges dealt with by the courts has decreased by less than 6,000 and the number of persons convicted by the court has decreased by less than 3,000. The total number of legal actions and the rate of legal actions per 100,000 population were also seen to have increased since the introduction of the Scheme.

It has previously been argued by Coumarelos et al. (2002), that the Scheme has resulted in net-widening, whereby persons who received a caution would ordinarily have been dealt with informally, by way of informal warning, had the Scheme not been introduced. Their argument was based on the findings from their earlier evaluation that there had been an increase in the total number of persons formally dealt with for minor cannabis offences. Coumarelos et al. (2002) noted that an increase in police activity in drug detection, brought about by a shift to high visibility policing of drug related offences and the introduction of operations involving police dogs to detect drugs in public places, may also have contributed to the increase in the number of persons formally dealt with under the Scheme.

The present evaluation investigated these issues in more detail. Police key informants were asked about the extent to which they informally warned persons for minor cannabis offences, and whether their practice had changed in this regard since the introduction of the Scheme. Most police informants emphatically denied issuing informal warnings at all and said that this practice had not changed as a result of the Scheme. They stated the reason they did not issue informal warnings was due to concerns over accusations of misconduct or corruption. Their reluctance to use informal warnings did not result from the introduction of the Scheme but rather from concern about the



level of accountability expected of police. There were some informants, however, who did feel that cannabis cautions had replaced informal warnings to some extent. A couple of informants thought that this was particularly the case for persons detected carrying small traces of cannabis. Another felt that it was because the Scheme had made the options for dealing with cannabis users clearer for police. While the true extent to which cautions have replaced informal warnings cannot be gauged from these key informants, it is clear that cautions have replaced informal warnings, at least to some extent, and therefore that the Scheme has produced some degree of net-widening.

A few informants commented that any net-widening produced by cannabis cautioning is not necessarily a bad thing as it increases police accountability and reduces the possibility of allegations of corruption. It also means that many cannabis users are provided with educational material and access to treatment.

Factors independent of the Scheme are also likely to have contributed to the increase in persons formally dealt with for minor cannabis matters. As we saw earlier, the numbers of persons formally dealt with for minor cannabis matters was already increasing prior to the introduction of the Scheme. Upward trends were evident in the monthly number of charges laid by police and the number of persons convicted by the Local Court. Such increases are not likely to reflect increased cannabis use amongst the community, as the National Drug Strategy household surveys indicate that cannabis use fell in NSW between 1998 and 2001, with 16.7 per cent of persons aged 14 years and over in 1998 reporting cannabis use in the last 12 months but only 11.9 per cent reporting such use in 2001 (Fitzsimmons & Cooper-Stanbury 2000, Australian Institute of Health and Welfare 2002b). Rather, the increases may reflect increased police activity in relation to drug detection, or, as the comments from police just described suggest, a general move away from the use of informal cautions due to concern about the level of accountability expected of police and fear of allegations of corruption, independent of the Scheme.

Much of the increase in formal actions after the introduction of the Scheme was limited to the second year of the Scheme. Most of the increase in the total number of legal actions, and all of the increase in the rate of total legal actions per 100,000 population, could be attributed to greater activity in relation to cautions, and to a lesser extent, charges, during the second year of the Scheme, particularly during the period from February to October 2001. This pattern suggests that more specific factors were at work in addition to the existence of a general net-widening effect.

The focus on proactive high visibility policing after the Scheme's commencement has most certainly contributed to the increase in the number of formal actions taken by police. Most police mentioned that the recent use of proactive police operations and policing methods such as the use of drug detection dogs, knife searches and 'move along' legislation tended to increase the number of drug detections, particularly the number of cannabis cautions issued. Much of the increase in formal actions can then be seen to be a direct result of the increase in the proactivity of police and an increase in the number of searches conducted, and would have occurred even if the Scheme was not in place. One informant commented that this demonstrated the value of Scheme, as without it, police would have little option but to charge persons detected under such circumstances, given the current climate.

Thus while the Scheme has produced some degree of net-widening, factors outside the Scheme have also contributed substantially to the increase in formal legal actions for minor cannabis offences.

### ***The Scheme is not as effective for Indigenous persons compared with non-Indigenous persons***

The Scheme has achieved better outcomes for many Indigenous persons. Over 200 Indigenous persons have been cautioned under the Scheme, where previously they most likely would have been charged. There have also been substantial decreases in the number of charges laid by police against Indigenous persons for minor cannabis offences (162 fewer charges) and in the number of sole cannabis charges involving Indigenous persons dealt with by the Local Courts (158 fewer charges) in the three years since the introduction of the Scheme, compared with the three years prior to the Scheme. The number of Indigenous persons convicted by the Local Courts, whose principal offence was cannabis, however, has increased by 17 persons since the Scheme was introduced. Many of the Indigenous persons convicted with a principal cannabis offence were also convicted of other offences and were probably not eligible to be cautioned. Taking only those Indigenous persons convicted by the court with a principal cannabis offence, who had no convictions for other offences, we find that the number of Indigenous persons convicted by the court has decreased by 27 in the three years since the Scheme was introduced, compared with the three years prior. Together these findings suggest that the Scheme has successfully diverted many eligible Indigenous persons from the court.

On the other hand, however, the Scheme has not been as effective in diverting Indigenous persons from court as it has been for non-Indigenous persons. Indigenous persons were much less likely than non-Indigenous persons to receive a caution under the Scheme. Only 11 per cent of Indigenous persons proceeded against by police for a minor cannabis offence received a caution, compared with 31 per cent of non-Indigenous persons. The earlier evaluation by Coumarelos et al. (2002) suggests that in the main this is likely to stem from the fact that Indigenous persons often fail to meet the eligibility criteria for a caution. They found that Indigenous persons were less likely to receive a caution because of a failure to meet the eligibility criteria, and not because of unfavourable treatment by police. Police had cautioned all Indigenous persons who were eligible and had exercised their discretion, in some cases, to issue cautions to Indigenous persons who did not meet the eligibility criteria. Where Indigenous persons had been charged, prior convictions and failure to admit the offence were the primary eligibility criteria Indigenous persons failed to meet. Concurrent offences and amounts of cannabis exceeding 15g precluded Indigenous persons from receiving cautions to a lesser extent. While other research also suggests that prior convictions contribute to the over-representation of Indigenous persons in the criminal justice system (Baker 2001), it is unclear whether the finding of Coumarelos et al. (2002) holds true for the entire three years the Scheme has been in operation and across all regions in the state. It is also possible that relatively high proportions of Indigenous persons reside in areas where police are generally less supportive of the Scheme and prefer charging to cautioning. This may also contribute to the lower rate at which Indigenous persons are cautioned. Indeed, in the present evaluation there were reasonable numbers of Indigenous persons residing in and around the LAC with the low cautioning rate, which was generally less accepting of the Scheme.

Regardless of the reasons why Indigenous persons are less likely to receive a caution, the impact has been that relatively fewer Indigenous persons than non-Indigenous persons have been diverted from the criminal justice system, thus increasing the degree to which Indigenous persons are over-represented in the criminal justice system. Since the Scheme was introduced, Indigenous persons have represented 8.5 per cent of all charges laid by police for minor cannabis offences, whereas prior to the Scheme's

inception Indigenous persons represented 7.1 per cent of all such charges laid by police. Similarly, since the Scheme's inception, Indigenous persons have represented 8.2 per cent of all persons convicted by the Local Courts, whose principal offence was a minor cannabis offence, compared with 6.2 per cent prior to the Scheme. While the percentage increases may appear small, the consequences for the Indigenous persons concerned are quite serious, particularly in terms of their future employment prospects and any future contact with the criminal justice system. Previous research by Hunter and Borland (1999) highlighted the adverse impact arrest has on Indigenous peoples employment prospects. Baker (2001) has found that prior convictions contribute to the higher imprisonment rates of Indigenous persons, and consequently their over-representation in the criminal justice system.

### ***Inequitable outcomes for offenders***

The findings indicate that there is considerable variation in the cannabis cautioning rates across the different LACs. Part of this variation is due to some LACs not being as supportive of the Scheme as other LACs, leading to the use of charges in preference to cautions in these LACs. This raises a number of equity issues, as it means that offenders in some areas do not have the same access to cautions, and therefore to diversion, as offenders in other areas. This variation in caution rates across LACs could also lead to confusion among cannabis users as to what is permissible under the Scheme.

In addition, the findings indicate that the amendment to the Scheme has in some cases produced worse outcomes for persons detected for a cannabis offence on a second occasion. Whereas under the original Scheme such offenders would probably have been cautioned twice, after the amendment at least one officer had been charging second-time offenders due to a misunderstanding about the amendment to the Scheme. Given that other police informants shared this misunderstanding, and that informants were selected on the basis of their experience with cautioning, the extent of this practice may be somewhat more widespread than identified here.

## 6. WHAT IMPACT HAS THE SCHEME HAD ON THE CRIMINAL JUSTICE SYSTEM IN TERMS OF TIME AND RESOURCES?

In this section we estimate the impact the Scheme has had on the criminal justice system in terms of time and resources. Our approach is to estimate the time and cost savings to the police, courts and others achieved by the Scheme and to compare them with the total amount of funding put into the Scheme. The time and cost savings we present do not refer to actual hours and dollars saved, but to time and cost efficiencies (opportunity costs) achieved. In other words, the time police save through cautioning (rather than charging) can be spent on more important police business. Similarly, the time the courts save through the reduced number of minor cannabis matters they have to deal with can be spent on more serious matters. It should be noted that this analysis is in no way intended to constitute a full cost-benefit analysis of the Scheme. It is merely provided as a guide to what the Scheme is likely to have achieved.

Cautioning was seen by key informants as saving police time at both the time of drug detection and in not having to prepare matters for court and attend court. This finding is consistent with that of Coumarelos et al. (2002). They found in their earlier evaluation that many of the police officers surveyed felt that cautioning had reduced their overall workload, particularly in terms of the time saved at court, at the police station, and in reduced paperwork and processing.

Police informants in the present study estimated that cautions offered time savings to police of about two hours at the time of drug detection, compared with most other methods of proceeding. Clearly this amount of time would not be saved for every caution police had issued. Some key informants noted that cautions offered no time savings at the time of drug detection, compared with proceeding by way of FCAN. The amount of time saved was also said to depend on the circumstances in which the caution was issued, and whether or not the offender was taken back to the station and placed in custody. Furthermore, police informants estimates of time savings are not necessarily representative of all police officers, and in fact are likely to be overestimates, given that police informants were selected on the basis of their experience issuing cautions. Less experienced officers may not save so much time issuing cautions. As such, we conservatively assume that 1.5 hours were saved at the time of drug detection in 50 per cent of the cautions to date.

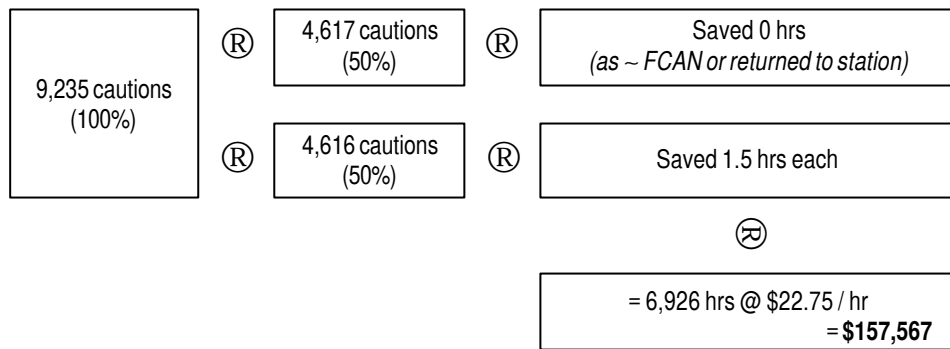
Key informants estimated that cautions offered a further savings of two days in not having to prepare for and attend court. Again this time would not be saved in all cases, as not all charges are defended in court, because many defendants plead guilty. We assume that two days (7 hours each) have been saved in 30 per cent of the total reduction in the number of persons convicted for minor cannabis offences, which we saw earlier was 2,658 persons.<sup>14</sup> We further assume for the remaining 70 per cent that the defendant pleads guilty and no court time is saved.

Combining the savings to police both at the time of drug detection and in not having to prepare for and attend court, we estimate that over 6,000 police hours have been saved in each year of the Scheme and over 18,000 police hours over the three years of the Scheme.

**Figure 8: Estimated time and cost savings to the police and the courts produced by the Scheme in the first three years<sup>a</sup>**

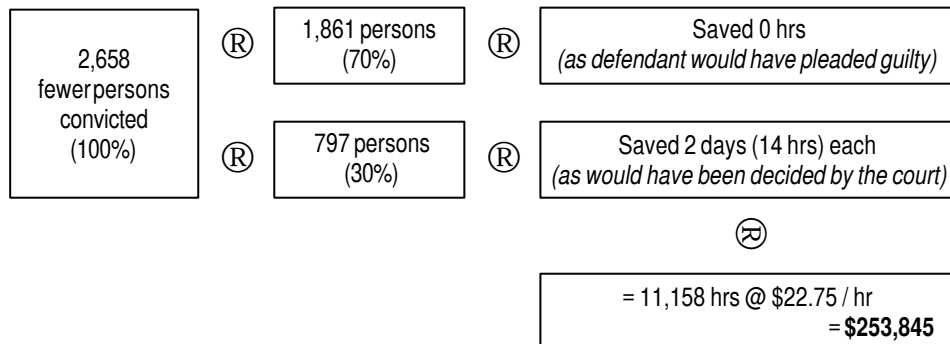
**Savings to police**

**- At time of drug detection**

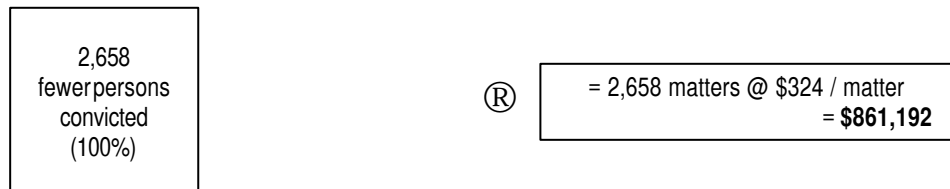


**Savings to police**

**- In time not having to be spent preparing for and attending court**



**Savings to courts**



**Total savings to police and courts** Ⓡ = **\$1,272,604**

<sup>a</sup> Note that the time and dollar savings provided in this figure are not intended to represent the precise savings achieved by the Scheme, but are merely provided as indicative of the likely savings.

Using the wages of a top level Constable (as Constable was the most common ranking officer among those second cautions officially notified to DAC, closely followed by Senior Constable) mid-way through the Scheme of \$22.75 per hour (or \$44,955 annually) this translates to an estimated savings in dollar terms of over \$100,000 in each year of the Scheme and over \$400,000 over the three years of the Scheme.<sup>15</sup> The dollar savings would obviously vary according to the ranks of the officers most frequently issuing the cautions, preparing the briefs and attending court and the shifts and time periods in which they undertake these activities.<sup>16</sup>

The Scheme has also produced substantial savings for the Local Courts, in terms of the reduction in cannabis matters dealt with by the court. In total, 2,658 fewer persons were convicted by the Local Courts in the three years since the introduction of the Scheme, or 886 fewer persons per year. According to the Productivity Commission, the average cost of a finalised criminal matter in the Local Court was \$647 in 2001/02 (Steering Committee for the Review of Commonwealth/State Service Provision 2003).<sup>17</sup> We conservatively assume that only 50 per cent of this cost (\$324) is saved as a result of the Scheme, as not all court costs (or time) could necessarily be used to deal with other court matters. This translates to savings of more than \$800,000 over the three years of the Scheme, not adjusting for any inflationary increase in court costs. Assuming the more likely case, in which a greater proportion of court costs (or time) can be used to deal with other court matters (say 75%), then the cost savings produced by the Scheme translate to over \$1,000,000.

Together, the savings the Scheme has produced for both police and the court amount to well over \$1,000,000 over the three years. Figure 8 provides a graphical illustration of how we arrived at our estimate of the cost savings. The savings do not include any time and cost savings to Legal Aid and the offenders themselves, in not having to prepare for and attend court, which we have not attempted to estimate here. Neither do they include any future savings likely to be brought about by the fact that many offenders have avoided criminal convictions and the potential negative social impacts this may have had on their lives, in terms of such things as future employment opportunities, overseas travel opportunities and access to lines of credit, for example.

We also have not attempted to account for any additional costs produced by the Scheme, such as those associated with providing advice and treatment to offenders and the extra workload the Scheme has created for some key informants, namely those involved in the implementation of the Scheme and in providing communication and training associated with the Scheme. These costs are not likely to be high given the relatively small numbers of offenders and staff involved. We have also not attempted to account for any costs incurred as a result of any net-widening. Such costs are not easily quantifiable. One police informant did comment, however, that cautioning only minimally increased workload over an informal warning.

Aside from these costs and savings that we have not accounted for, if we consider that the total funding spent on the Scheme by NSW Police and ADIS is estimated to be approximately \$1,096,000, or \$365,333 per year, then the Scheme appears to have at least paid for itself in its first three years.<sup>18</sup> Given that most of this funding was spent in the start-up phase of the Scheme, the cost efficiencies will have been greater in the second and third years of the Scheme. Whether the Scheme will continue to have such a positive impact on the criminal justice system, in terms of time and cost efficiencies, in the longer term, remains unclear.

## 7. POSSIBLE OPTIONS FOR IMPROVING THE OPERATION AND OUTCOMES OF THE SCHEME

In light of our findings we now discuss possible options for improving the operation and outcomes of the Scheme. As we have seen, apart from a few operational concerns, the Scheme as a whole is operating reasonably smoothly and efficiently. It is effective in diverting minor cannabis offenders from court, although whether it is effective in keeping offenders out of court in the longer term remains unclear. It has produced substantial cost-savings for the police and the courts. The major problem with the Scheme is that it does not appear to be very effective in getting offenders to consider the legal and health consequences of their cannabis use. The introduction of the mandatory education session (aside from the operational concerns) did little to increase the rate at which offenders seek assistance or treatment for their cannabis use. Less than half of the offenders who were correctly issued a second caution notice contacted ADIS for the mandatory education session.

The rate at which offenders contact ADIS might be increased if police were provided with more comprehensive training on the use of second cautions and/or if second caution procedures were further streamlined. Changes of this sort, however, are unlikely to substantially increase the proportion of offenders contacting ADIS. Many informants suggested that more actively following-up and prosecuting or fining those who failed to complete the mandatory education session might be more effective ways of getting offenders to consider the legal and health consequences of their cannabis use. Others felt that such an approach would undermine the diversionary aims of the Scheme and/or reduce the efficiency with which it operates. Given the small number of offenders concerned and the fact that many of them may not believe they have a problem and may not in fact have a problem with cannabis use, the wisdom of trying to coerce them into education or treatment might also be called into question.

A couple of key informants did suggest that perhaps the Scheme could be rationalised to focus solely on diversion from court, rather than on treatment. They saw diversion into treatment as best incorporated into the court system, where there are greater powers to monitor and ensure compliance with treatment conditions, such as is the case with programs like MERIT.

Setting aside these broader policy issues, there are a number of more specific areas where the outcomes and the practical operation of the Scheme could be improved.

### **BROADEN THE ELIGIBILITY CRITERIA**

Cautions still represent only 29 per cent of all formal legal actions for cannabis offences. There is, therefore, still plenty of scope for increasing the diversionary impact of the Scheme. Police informants generally indicated they were issuing as many cautions as was possible under the current guidelines. Most believed that changes to the caution criteria would be required before they could increase the rate at which they issue cautions for minor cannabis offences. At present persons with prior convictions for drug, violent or sexual offences, or who have been detected for other offences concurrently with the cannabis offence are not eligible for a caution. Broadening the eligibility criteria to permit cautioning of persons with prior convictions for minor drug or violent offences (such as common assault) or prior convictions that are quite old (say, over five

years earlier) may help increase the diversionary impact of the Scheme, particularly for Indigenous offenders. Similarly, broadening the criteria to permit minor concurrent offences may also help. Removal of the need to admit the offence and the introduction of a cooling-off period, whereby offenders had a set period in which to seek legal advice and consider whether they wished to accept the caution, are other potential means by which to increase the rate at which minor offenders are diverted from the court system. Before any changes are made to the eligibility criteria, the legal ramifications, the feasibility and the potential diversionary impact of any such changes ought, however, to be carefully examined.

### **MORE TRAINING, COMMUNICATION AND FEEDBACK TO POLICE ON THE SCHEME GENERALLY**

A number of Local Area Commanders and police informants felt that the utilisation of the Scheme could be increased if police had a better understanding of the aims and objectives of the Scheme and the theory underpinning it. Being provided with more feedback about the effectiveness of the Scheme was also seen as important. Further training, communication and feedback to police on the Scheme generally may further improve its effectiveness, particularly in those LACs which are less supportive of the Scheme.

### **IMPROVE ACCESS TO CAUTION BOOKS AND DRUG BAGS**

Some police informants reported difficulties with access to caution books and drug bags in the field because these are accountable items and too bulky to carry around. Improving access to these items in the field may improve the efficiency with which the Scheme operates. Informants suggested that smaller field drug bags and smaller caution notices (and books), similar to those used for FCANs, for example, could be introduced. One informant suggested the need for multiple books (FCANs, cautions etc) could be eliminated by computerising the process, through the use of a 'Palm Pilot' (a handheld computer), for example. While computerisation may not be a feasible short term option it would be worth investigating the possibility of combining FCAN, Infringement Notice and Caution books to make it easier for police to carry and access all types of notices.

### **IMPROVE POLICE ABILITY TO ESTIMATE THE WEIGHT OF THE DRUGS**

A number of police informants experienced difficulties issuing cautions in the field as the scales for weighing the cannabis were too bulky to carry. Some also expressed concerns about their ability to accurately estimate the weight as they feared that an overestimate may lead to allegations of corruption. Providing additional training or guidelines on how to estimate the weight of the cannabis may improve the practical operation of the Scheme. Providing some reassurance to police that an overestimate is acceptable as long as the correct procedures for securing the drug are followed may also help.

### **IMPROVE DRUG DESTRUCTION PROCEDURES**

Many informants expressed concerns about the complicated and time-consuming procedures required for the destruction of cannabis. While this is not a difficulty unique to the Scheme, streamlining the drug destruction procedures could increase



the efficiency with which the Scheme operates. Some informants suggested that Commanders, rather than the court, could be given the authority to make orders for destruction of the cannabis, after a period of time that allowed for the caution to be withdrawn. However, there may be practical and legal issues that need to be considered here, as well as the potential for allegations of corruption.

## **IMPROVE OFFENDER IDENTIFICATION PROCEDURES IN THE FIELD**

Some informants experienced difficulties identifying offenders in the field, and preferred to return to the station to correctly identify them. Informants suggested improvements in COPS would make identification easier. Improvements in the way cautions are recorded and in the details that are recorded about offenders may help in this regard. Further training of the radio operators who respond to calls from police in the field may also help in the identification of offenders and therefore, increase the efficiency with which the Scheme operates.

## **BETTER COMMUNICATION BETWEEN ADIS AND POLICE**

As a consequence of police not always issuing cautions on the correct notice, ADIS were not always clear whether they were dealing with an offender cautioned on a first, second or even third occasion, and whether the mandatory education session was required. While offenders called ADIS claiming they have been cautioned twice, their caution number implied it was their first caution. ADIS informants also mentioned that they would be better able to assist the offenders who contacted them if they were provided with more regular feedback about the types of offenders dealt with under the Scheme and the effectiveness of the Scheme. Occasional meetings between police and ADIS each year and in-service training may assist to resolve such difficulties and provide the relevant feedback.

## **OTHER OPTIONS FOR IMPROVING THE SCHEME**

Other suggestions for improving the Scheme advanced by some key informants were having –

- uniform procedures and criteria for dealing with adult cannabis offenders under the Scheme and juvenile cannabis offenders under the Young Offenders Act
- a legislative base to the Scheme.

Both these suggestions have the potential to increase the utilisation of the Scheme amongst police, particularly in those LACs that are less supportive of the Scheme. However, those who advanced these suggestions did not see them as critical to the Scheme's future success.

We have raised a number of possible options for improving the operation and outcomes of the Scheme that arise directly from the findings of our evaluation. These options are in no way intended to constitute an exhaustive list. No doubt there are other options for improving the Scheme that have not been identified directly through our evaluation. What our findings have also highlighted, however, are the challenges of implementing even a small change to the Scheme. The potential implications of any future changes to the Scheme need to be carefully thought through. We also highlight the importance of evaluating any such change and the need to assess the success of the Scheme in the longer term.

## NOTES

- 1 Note that throughout this report 'charge' refers to any police action that could initiate court proceedings i.e. charge, Court Attendance Notice, Field Court Attendance Notice and summons. Recently 'charges' have been replaced by Court Attendance Notices, either with or without bail, and summonses have been replaced by Future Court Attendance Notices. Note also that throughout this report 'minor cannabis offence' refers to the offences of possession and use of cannabis and possession of equipment for cannabis use.
- 2 Other initiatives include the Magistrates Early Referral Into Treatment (MERIT), the Drug Offenders Compulsory Treatment Pilot, the Youth Drug Court Pilot and changes to the *Young Offenders Act 1997* facilitating the diversion of young people into drug treatment.
- 3 Common Law provides police officers with a discretion to prosecute an alleged offender in certain circumstances. When evidence capable of establishing each ingredient of an offence has been collected, an officer should apply a public interest test when considering the discretion to prosecute. If effective alternatives to prosecution are available, an officer should consider them on an ethical and equitable basis. Discretion must be exercised on a bona fide basis. Police discretion not to prosecute requires consideration of many factors, including –
  - the seriousness of, and statutory obligation in respect to, the offence
  - the necessity to maintain public confidence in the courts and the law
  - the availability and efficacy of any alternatives to prosecution
  - community expectations
  - workplace obligations and responsibilities (Supt. Hansen, Manager, DAC, pers. comm., 10 Feb 2004).
- 4 It was thought impractical to issue second caution books, which are accountable items, in the field given the infrequency with which second cautions were expected to be issued, and the risk they could be damaged or lost. Second caution books were thus distributed to all LACs and were available at charge stations and availability of notices was left to the discretion of the Commander. This was also an economic solution.
- 5 Note that a statistical test (Kendall's rank order correlation test) was used here to test whether a significant upward or downward trend was evident in the monthly number of cautions issued. Statistical tests have similarly been used, where appropriate, throughout the remainder of this report to test for other upward or downward trends.
- 6 These offences were more serious cannabis offences (deal/traffic, cultivate or import cannabis), drug offences other than cannabis and non-drug offences. In one further caution the offence type was not recorded.
- 7 Note that the figure of 63 includes only those calls to the help-line that specifically related to cautions. The figure of the Police Ministry, quoted earlier on page 4, includes all calls to the help-line that were answered. Some of these may not have specifically related to cautions.
- 8 An accountable item is one that is registered by NSW Police and all movements of that item are recorded so that its whereabouts are known at all times within the station. It is used as a means of preventing corruption.
- 9 Four of these five offenders did, however, contact ADIS.
- 10 Note that a similar pattern was also evident for cannabis charges, in general, regardless of whether there were concurrent offences or not.
- 11 A person whose principal offence is a cannabis offence has no other concurrent offences that received a more serious penalty than the cannabis offence.
- 12 Note that the number of persons convicted by the Local Courts whose principal offence was a minor cannabis offence is less than the number of sole cannabis charges dealt with by the Local Courts, in some cases. This is because persons whose principal offence was cannabis may have had concurrent charges for other offences, whereas sole cannabis charges do not have any associated concurrent offences.

- 13 Adult population was calculated using Australian Bureau of Statistics 2003, *Population by Age and Sex, Australian States and Territories*, Cat no. 3201.01, ABS, Canberra.
- 14 Data extracted from BOCSAR's Local Courts database indicate that, of those defendants who were convicted by the Local Courts with a principal cannabis offence in the period 1997-2002, approximately 30 per cent were found guilty by the Court and 70 per cent pleaded guilty. There has been little change in the proportion of persons pleading guilty since the Scheme has been introduced. This suggests the Scheme has not simply diverted those offenders who would have pleaded guilty, had they proceeded to court.
- 15 As at 5 January 2001 the annual salary of a Constable (Level 5) was \$44,955. This amount was divided by 52 and again by 38 to calculate the hourly rate.
- 16 Note that factoring in wage rises for police over the three years of the Scheme makes little difference to our estimates.
- 17 Note that the costing of the Productivity Commission includes all finalised matters, that is, matters decided by the court and matters where the defendant pleaded guilty.
- 18 NSW Police estimate that over the three years of the Scheme \$1,066,000 of the total funding provided by the Drug Summit and National Illicit Drug Strategy for drug diversion initiatives was spent on the Scheme. These funds covered the development of the Scheme and its amendment, and included development of training and other program materials, delivery of training, modifications to the COPS database, evaluation of the Scheme and the salaries of DAC officers working on the Scheme and other diversion programs. ADIS indicated they had received \$30,000 in funding from the National Illicit Drug Strategy via NSW Health for the Scheme over the three years of the Scheme. These funds covered the set up of the dedicated phone line, purchase of materials for cannabis offenders, development and modification of databases, training and development of the mandatory education session.
- 19 Equipment for cannabis use included bong, plastic bottle, water pipe and other drug implement.
- 20 Indigenous status is defined according to whether the person identified themselves as Aboriginal or Torres Strait Islander, or both.
- 21 Some charges may concern small quantity amounts of cannabis greater than 15g, and some appearances may concern amounts greater than the small quantity amount of 30g (that is, indictable matters that can be dealt with summarily).
- 22 Note that calls to the help-line which were hang ups, wrong numbers or test calls were excluded. Only calls answered were included in the analysis.
- 23 Only two police officers were sought in the pilot LAC.

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## APPENDIX: FULL DETAILS OF METHODOLOGY

### REVIEW OF PROGRAM DOCUMENTATION, MATERIALS AND LITERATURE

Documentation associated with the program and program materials was sought from NSW Police, and reviewed to ascertain how the program, particularly its amendments, were developed, implemented and communicated to police. NSW Police provided BOCSAR with copies of program materials (including the guidelines, caution notices), training materials (education package, cue cards, SMITS), communication materials (PSW and other articles) and documentation associated with the program development (including minutes of meetings, policy documents). Copies of the earlier DAC evaluations of the first six months and first year of the Scheme were also provided. This documentation was supplemented with information obtained through discussions held with DAC staff over the course of the evaluation on the program development and implementation.

### ANALYSIS OF EXISTING DATA

Existing data from the NSW Police Computerised Operational Policing System (COPS), the NSW Local Courts database and the databases maintained by ADIS were analysed to examine the implementation, operation and outcomes of the Scheme.

#### *COPS data*

Details of all cannabis cautions and all charges (including charge, Court Attendance Notice, Field Court Attendance Notice and summons) laid for possess or use cannabis offences or 'other drug offences' where the drug type was cannabis or the drug implement was for cannabis use, were extracted from the COPS database maintained by BOCSAR.<sup>19</sup> Associated descriptive data (including offence type and LAC) and demographic data (including the age, gender and Indigenous status of offenders) were also extracted where appropriate.<sup>20</sup> In general, the data covered the period April 2000 to March 2003, that is the three-year period after the introduction of the Scheme. Data specifically related to the amendment (that is, second cautions) covered the period September 2001 to March 2003. Additional data covering the period April 1997 to March 2000, that is the period three years prior to the introduction of the Scheme, were also extracted where before and after Scheme comparisons were made. The three year period prior to the introduction of the Scheme was considered an appropriate comparison period as initial analysis of the data revealed that the trend in the number of charges laid for minor cannabis offences was not stable in the lead up to the Scheme, but rather had been increasing.

Additional COPS data on the amount of cannabis involved in the cautions and the number of persons issued two cautions (as identified by their CNI), together with associated descriptive and demographic data, were supplied by NSW Police, as they were not available from the information contained in the COPS database maintained by BOCSAR. NSW Police also supplied data on the number of official second caution notices they had been notified of, either by issuing officers or ADIS.

A notable limitation of the charge data is that it is not possible to readily ascertain whether these offenders would have been eligible for a caution, nor whether they could even be considered minor cannabis offenders, suitable for diversion from the criminal justice system. The COPS database maintained by the Bureau does not contain information on the amount of cannabis involved or whether the offender was charged with any concurrent offences or had prior convictions, for example. It was not possible to match this information in the COPS system itself without manually examining each case. Thus some of those offenders included in the analysis on charges may have been more serious offenders, detected for possession of larger amounts of cannabis, with lengthy criminal histories, and/or concurrent offences, and therefore may not be equivalent to those offenders cautioned.

A further limitation of the charge data is that offenders can be charged with multiple cannabis offences relating to one incident (such as possess cannabis and use cannabis), whereas an offender would only be issued with one caution in such an instance. Thus the charge data may, in a sense, also over-count the number of offenders and incidents involved.

Note also that NSW Police provided data related to amounts of cannabis from the Enterprise Data Warehouse (EDW). Data were provided for 8,770 cautions. The amount of cannabis was missing in a substantial proportion of cautions (28%). In many cases the amounts were likely to have been minimal. In a very small proportion of cases the amount was not applicable as the offence was use or possession of equipment for cannabis use. As these offences account for only a very small proportion of all cautions, and would have minimal impact on the analysis, they have not been excluded. The amount of missing data is not surprising, given the issues police have in estimating the weight of the cannabis in the field, without access to scales. Weighing the cannabis back at the station can also be problematic due to the requirement of securing the cannabis in a drug bag along with any packaging or storage container.

Note also that for some cautions the amount of cannabis was over the 15g permissible. NSW Police checked and cleaned cases where the amount of cannabis over 30g. In many of these cases the weight had included the weight of the drug bag and/or the container in which the cannabis was stored which police are required to secure. In other cases the weight was the combined amount of cannabis seized from several offenders in the one incident. Unfortunately however, it was not possible to check all cautions for amounts over 15g in the study time frame. Thus it is possible that some of the amounts included in the analysis may be greater than the actual amount of cannabis the offender was detected with. Since the vast bulk of cautions concerned amounts of 5g or less, any such cases should have had minimal impact on the analysis.

### *Local Courts data*

Details of all finalised Local Court appearances relating to charges of possession of cannabis, possession of equipment for administering cannabis or self administer/attempt to self administer cannabis, where there was no charge for any other offence, were extracted from the NSW Local Courts database maintained by BOCSAR. Information on the number of persons convicted of cannabis offences where the cannabis offence was the principal offence was also extracted. The cannabis offence is the principal offence where there were no other concurrent offences that received a more serious

penalty than the cannabis offence. The data covered the period April 2000 to March 2003, that is the three-year period after the introduction of the Scheme. Additional data covering the period April 1997 to March 2000, that is the period three years prior to the introduction of the Scheme, were also extracted where before and after Scheme comparisons were made. As with COPS data, the three-year comparison period was considered appropriate as the trends in the number of charges dealt with and in the number of persons convicted by the Local Courts in the lead up to the Scheme were not necessarily stable.

Note that as with the charge data extracted from COPS, it is not possible to readily ascertain from the courts data whether those dealt with by the Court were eligible for a caution, or could even be considered minor cannabis offenders, suitable for diversion from the court system. Information on the amount of cannabis involved is no longer recorded on the Local Courts database. Detailed information on prior convictions is also not available. Some of the court appearances may therefore concern offenders detected with large amounts of cannabis, who had lengthy criminal histories.<sup>21</sup> Offenders with concurrent offences are excluded as only cannabis charges, where there was no charge for any other offence were included in the analysis.

With regard to the persons convicted of cannabis offences, it is not possible to readily ascertain whether there were other offences involved. However, if there were other offences involved, they are likely to be quite minor offences, given that the cannabis offence was the principal offence. Nonetheless, even minor concurrent offences technically disqualify a person from receiving a caution under the Scheme's guidelines.

### ***ADIS data***

Details of persons contacting the dedicated ADIS Cannabis Cautioning help-line following receipt of a caution were provided by ADIS, from their databases.<sup>22</sup> Associated data on whether the person had received a first or second caution, whether they had completed the mandatory education session, whether they had been referred to treatment and demographic data including age, gender and postcode were also provided where available. In general the data covered the period April 2000 to March 2003, that is the three years since the Scheme has been introduced. Data related specifically to second cautions and completion of the mandatory education session covered the period September 2001 to March 2003. Data on the number of persons referred to treatment were unfortunately only available for the period September 2001 to March 2003. Additional data on the total number of cannabis related calls from cannabis users to the general ADIS help-line over the entire three-year period were also provided, for comparison purposes.

Note that ADIS extracted this data from several different databases, and therefore there may be some minor discrepancies in the data, due to the different sources.

### ***Analysis***

Statistical tests (Kendall rank-order correlation test) were conducted where appropriate to determine whether significant upward or downward trends were evident.

## **INTERVIEWS WITH KEY INFORMANTS**

A series of semi-structured interviews was conducted with 35 key informants.



### *Selection of key informants*

Key informants comprised persons from NSW Police (32), NSW Police Ministry (1) and ADIS (2). NSW Police key informants included Local Area Commanders (6), Education and Development Officers (6), and operational police (18), drawn from six LACs, as well as DAC staff (2). The 18 operational police were selected on the basis that they were identified as having issued cautions under the Scheme (either numerous first cautions or at least one second caution). DAC, Ministry and ADIS staff were selected on the basis of their experience with the development or operation of the Scheme. Suitable informants were identified by BOCSAR with the assistance of DAC and ADIS staff, and information DAC provided on the numbers of cautions (first and second) individual officers had issued.

The 30 police key informants (excluding DAC staff) were selected first by LAC. BOCSAR selected six LACs, such that regional and metropolitan LACs, and LACs with high, average and low levels of cautioning to charge rates were included. All LACs had issued a reasonable volume of cautions. One of these LACs was selected to pilot the interview schedule, but was later included as part of the main study, as no major changes were made to the interview schedule. Cooperation was first sought from the Local Area Commander for the LAC to participate in the interviews. Once the Commander's agreement had been obtained, interviewers nominated the officers they wished to interview. These were the Commander, the EDO and three police officers BOCSAR selected on the basis of the information DAC provided on the numbers of cautions individual officers had issued.<sup>23</sup> LAC staff informed the interviewers whether the three police officers were available during the time frame allocated for the interviews. Where any of the police officers were not available, interviewers nominated additional officers from a list until they had arranged interviews with three police officers, at least one of whom had issued a second caution, where this was possible. Due to circumstances beyond the interviewers control, it was not always possible to follow this selection procedure, however, and suitable persons had to be nominated by senior LAC staff as replacements in some cases.

In total 39 key informants were approached for interview. Each of the DAC, Ministry and ADIS informants approached agreed to be interviewed. All six Commanders approached agreed for their LAC to participate in the study, and five of the six Commanders agreed to be interviewed. One Commander had only been in that position and in that LAC for several days, and nominated the Acting Crime Manager, who had been in the LAC for many years as a Duty Officer, as a more suitable informant. All six EDOs approached agreed to be interviewed. In one LAC the EDO had not been in the position long and the Crime Manager was additionally nominated as a suitable informant, being familiar with the training regime.

In most LACs not all of the first three police officers nominated for interview were available for interview, mostly as they were not available during the study time frame, or were no longer in the LAC, but also because they were not considered suitable for interview, or were not known in the LAC. Where the officers were unavailable they were replaced with other police officers on the list, or suitably experienced police officers nominated by LAC staff, where this was necessary. Following the initial culling process, 21 police officers were actually approached for interview, but one was too busy, one did not turn up to the interview appointment and one was sick on the day of the interview appointment. Again these officers were replaced with other police officers on the list, or suitably experienced police officers nominated by LAC staff, where this was necessary. Of the 18 officers interviewed, only two were nominated by LAC staff, rather than being selected from the interviewers' list.

### ***Profile of the police key informants***

The length of time the 30 police key informants from the six LACs had served with NSW Police ranged from three years to over 30 years, with the average length of service 15 years. Police informants had spent between one month and 21 years in their current role, with the average time spent in the current role four years.

The 18 police officers interviewed, had served with NSW Police for 12 years, on average. Both junior and senior police were interviewed with police holding the following ranks – Constable (5), Senior Constable (7), Sergeant (2), Senior Sergeant (1) and Detectives of varying ranks (3). The officers also held a variety of jobs including supervisory and non-supervisory roles across different teams including bike squad, transit police, response team, proactive team, Target Action Group and crime management unit. While most officers had served with NSW Police since the inception of Scheme (only three had joined later), most officers had moved into their current role after the inception of the Scheme. Only five officers had been in their current role since the inception of the Scheme.

The six EDOs had been in their current role, on average, for three years, but only two had been in that role since the inception of the Scheme, and four since the amendment came into effect.

The six Commanders had been in their role, on average, for three years. Only two had been in their role since the inception of the Scheme, and three since the amendment came into effect.

### ***Interview procedure***

Interviews were conducted by three interviewers. Two interviewers, from Forsythe Consultants Pty Ltd, an independent consultancy sub-contracted by BOCSAR, carried out the interviews with the 30 police key informants in the six LACs. The remaining five interviews were carried out by the first author. As far as possible interviews were conducted individually on a face-to-face basis at the informant's work premises. There were, however, some exceptions. The two ADIS key informants were interviewed together. Four interviews (one Commander, two EDO and one DAC staff) had to be conducted by telephone, and one interview (DAC staff) took place at BOCSAR, due to time and logistics constraints. All interviews were conducted in private.

The interview ranged in length from 10 minutes to two hours and 10 minutes. On average they took 44 minutes. Notes were taken by the interviewer in each case. Interviews were conducted during the period September to November 2003.

### ***Interview schedules***

The interview schedules were primarily designed to address the objectives of the evaluation. Questions were therefore included that examined informant's perceptions of the implementation and operation of the Scheme, the effectiveness of the Scheme, the impact the Scheme had on their workload and areas where improvements could be made to the Scheme to improve its operation and outcomes. Informants were also given the opportunity to raise issues of concern to them.

Earlier work on the evaluation, reviewing program documentation and literature and analysing existing data had also highlighted several areas that needed further investigation. Questions examining the variation in cautioning rates across LACs and whether there was scope for increasing the caution rate were included, as were

questions addressing the low rate at which cautioned offenders had contacted ADIS. In addition, questions addressing the possible net-widening effect produced by the Scheme, identified in the earlier evaluation by Coumarelos et al. (2002), were included.

The interview schedule was adapted for the different groups of key informants – Commanders, EDOs, police officers, DAC and ministry staff, and ADIS staff. The different interview schedules followed the same general themes, but also had questions specific to each group and their particular experience and expertise with program.

Initial feedback on the interview schedule was provided by DAC. The interview schedule was then piloted in one LAC with the Commander, EDO and two police officers, resulting in slight modifications. Different issues also emerged as the interviews progressed, resulting in further modification to the interview schedule. The general themes, however, remained the same throughout.

Note that key informants were selected on the basis of their knowledge and experience with the program and in the case of police officers on the basis they were identified as having issued numerous cautions or at least one second caution. Key informants were selected in order to obtain a thorough representation of the range of views, rather than by random selection. In addition key informants were selected with the assistance of DAC and ADIS staff, and senior staff in the LACs in some cases. Their assistance will have necessarily influenced the selection of key informants.

### ***Analysis***

Content analysis was used to analyse the interview material. This type of analysis involved pooling informants' responses, systematically examining comments and grouping those related to particular issues together. This process allows the main themes to be identified and similarities and differences between informants to become apparent.

The content analysis for the 30 police key informant interviews was carried out by Forsythe Consultants Pty Ltd. The first author carried out the content analysis for the remaining key informant interviews and then combined the two analyses.

