

The logo for NDLERF is a 3x3 grid of squares. The top row consists of three blue squares. The middle row consists of a white square, a grey square, and a blue square. The bottom row consists of a blue square, a white square, and a blue square. The text 'NDLERF' is positioned to the right of the grid, with 'NDLE' in white and 'RF' in yellow.

# NDLERF

Law enforcement and khat:  
An analysis of current issues

Monograph Series No. 40

Funded by the National Drug Law Enforcement Research Fund  
An initiative of the National Drug Strategy



# Law enforcement and khat: An analysis of current issues

Heather Douglas  
Merali Pedder  
Nicholas Lintzeris

**Funded by the National Drug Law Enforcement Research Fund,  
an initiative of the National Drug Strategy**

Produced by the National Drug Law Enforcement Research Fund  
GPO Box 2944, Canberra, Australian Capital Territory 2601

© Commonwealth of Australia 2012

ISBN: 978-1-921532-99-3

ISSN: 1449-7476

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from the National Drug Law Enforcement Research Fund. Requests and enquiries concerning reproduction and rights should be addressed to the National Drug Law Enforcement Research Fund, GPO Box 2944, Canberra, Australian Capital Territory 2601.

Opinions expressed in this publication are those of the authors and do not necessarily represent those of the National Drug Law Enforcement Research Fund Board of Management or the Australian Government Department of Health and Ageing.

The research on which this report is based was funded by the National Drug Law Enforcement Research Fund, an initiative of the National Drug Strategy.

## Acknowledgements

The authors wish to thank the National Drug Law Enforcement Research Fund for funding this study, and Victoria Police, NSW Police Force, Western Australia Police and the Queensland Police Service for supporting the study and providing interviews. Thanks also to the members of the Somali community in Melbourne, Sydney, Perth and Brisbane and to members of the Ethiopian community in Melbourne for assisting with the research and participating in interviews and focus groups. Thanks also to Streetwise and Nikki Aslimoska at the Office of Chemical Safety and Environmental Health for khat photographs in Appendix 1 and to Jim McNicol, Barry Newell, Oliver Markovski and Megan Smith.

### *Authors' notes:*

Some parts of this report have been published previously.

Versions of chapters 2 and 3 have been published in two articles: H Douglas, M Boyle, N Lintzeris, 'The health impacts of khat: A qualitative study among Somali-Australians' (2011) *The Medical Journal of Australia* 195 (11/12) 666–669, as well as H Douglas and M Pedder, 'Legal regulation of the drug khat in Australia' (2010) *Journal of Law and Medicine* 18 284–301.

A version of chapter 6 will be published as H Douglas and A Hersi, 'Khat and Islamic Legal Perspectives: Issues for consideration', Forthcoming (2011) *Journal of Legal Pluralism* 62.

### *Disclaimer:*

The views expressed within this report are those of the authors and individual participants and do not reflect the views or opinions of Victoria Police, NSW Police Force, Western Australia Police or Queensland Police Service.

Dr Heather Douglas  
Professor  
TC Beirne Law School,  
The University of Queensland  
h.douglas@law.uq.edu.au

Merali Pedder  
Researcher

Dr Nicholas Lintzeris  
Clinical Associate Professor  
Sydney Medical School  
The University of Sydney

Thanks also to Mr Abdi Hersi for his co-writing and research of Chapter 6.



# Contents

|   |            |
|---|------------|
| <b>Acknowledgements</b> .....   | <b>i</b>   |
| <b>Recommendations</b> .....  | <b>vii</b> |
| <b>1. Introduction</b> .....  | <b>1</b>   |
| 1.1 Aims and structure .....  | 1          |
| 1.2 Background.....   | 1          |
| 1.3 What is khat? Chemical structure .....                                | 2          |
| 1.4 This study.....   | 2          |
| <b>2 Using khat</b> .....   | <b>6</b>   |
| 2.1 Introduction .....  | 6          |
| 2.2 The source of khat.....   | 6          |
| 2.3 How khat is used.....   | 7          |
| 2.4 Who uses khat? .....  | 8          |
| 2.5 Where khat is used .....  | 12         |
| 2.6 The financial cost of khat to users.....                              | 12         |
| 2.6 How often and how much is khat used.....                              | 12         |
| 2.7 Why khat is used .....  | 13         |
| <b>3. The law on khat in Australia</b> .....                              | <b>14</b>  |
| 3.1 Introduction .....  | 14         |
| 3.2 Federal regulation .....  | 14         |
| 3.3 The interaction between state and federal laws.....                   | 16         |
| 3.4 State and territory regulation.....                                   | 17         |
| 3.5 State and territory regulation under food standards legislation ..... | 23         |
| 3.6 Summary.....  | 24         |
| <b>4. The legal approach to khat overseas</b> .....                       | <b>25</b>  |
| 4.1 Introduction .....  | 25         |
| 4.2 United States.....  | 25         |
| 4.3 Canada .....  | 26         |
| 4.4 United Kingdom .....  | 27         |
| <b>5. Khat and health</b> .....   | <b>28</b>  |
| 5.1 Introduction .....  | 28         |
| 5.2 Addictive potential .....   | 28         |
| 5.3 Psychological and physiological effects.....                          | 29         |
| 5.4 Khat use and psychosis .....  | 30         |
| 5.5 Khat and violent behaviour .....                                      | 31         |

|  |           |
|--|-----------|
| 5.6 Physical effects.....  | 32        |
| 5.7 Reproductive effects.....  | 34        |
| 5.8 Khat and drug interactions.....  | 35        |
| 5.9 Resources and services available for khat users .....                  | 35        |
| Conclusion .....   | 35        |
| <b>6. Khat and Islam.....</b>  | <b>36</b> |
| 6.1 Introduction .....   | 36        |
| 6.2 The role of Islam .....  | 36        |
| 6.3 The spirituality and status of khat in Islam .....                     | 37        |
| 6.4 The halal (lawful/legal) discourse on khat .....                       | 37        |
| 6.5 The makruh (detested/discouraged) discourse on khat .....              | 38        |
| 6.6 The haram (prohibition) discourse on khat .....                        | 39        |
| 6.7 Conclusions.....   | 40        |
| <b>7. Police and khat in Queensland .....</b>                              | <b>41</b> |
| 7.1 Introduction .....   | 41        |
| 7.2 Knowledge about the legality of khat .....                             | 41        |
| 7.3 Social and health effects and policing situations involving khat.....  | 42        |
| 7.4 Existing police protocols for arrest, interview and investigation..... | 43        |
| 7.5 Ability to identify khat.....  | 43        |
| 7.6 Resources for police.....  | 43        |
| <b>8. Police and khat in Western Australia.....</b>                        | <b>44</b> |
| 8.1 Introduction .....   | 44        |
| 8.2 Knowledge of khat.....   | 44        |
| 8.3 Knowledge about the legality of khat .....                             | 44        |
| 8.4 Knowledge about the context of khat use.....                           | 45        |
| 8.5 Knowledge of social and health effects .....                           | 45        |
| 8.6 Policing situations involving khat .....                               | 46        |
| 8.7 Existing police protocols for arrest, interview and investigation..... | 48        |
| 8.8 Ability to identify khat.....  | 49        |
| 8.9 Resources for police.....  | 50        |
| 8.10 Resources for the community .....                                     | 50        |
| <b>9. Police and Khat in NSW .....</b>                                     | <b>51</b> |
| 9.1 Introduction .....   | 51        |
| 9.2 Knowledge of khat.....   | 51        |
| 9.3 Knowledge about the legality of khat .....                             | 51        |
| 9.4 Knowledge about the context of khat use.....                           | 51        |

|  |           |
|--|-----------|
| 9.5 Knowledge of social and health effects .....                                     | 52        |
| 9.6 Policing situations involving khat .....   | 52        |
| 9.7 Existing police protocols for arrest, interview and investigation.....           | 52        |
| 9.8 Ability to identify khat.....  | 52        |
| 9.9 Resources for police.....  | 52        |
| <b>10. Police and khat in Victoria .....</b>   | <b>53</b> |
| 10.1 Introduction .....  | 53        |
| 10.2 Knowledge about khat.....   | 53        |
| 10.3 Knowledge about the legality of khat .....                                      | 53        |
| 10.4 Knowledge about the context of khat use.....                                    | 55        |
| 10.5 Knowledge of social and health effects .....                                    | 56        |
| 10.6 Policing situations involving khat .....  | 58        |
| 10.7 Existing police protocols for arrest, interview and investigation.....          | 58        |
| 10.8 Ability to identify khat.....   | 58        |
| 10.9 Resources for police.....   | 59        |
| 10.10 Resources available for khat users.....  | 59        |
| <b>11. Khat use and driver impairment .....</b>                                      | <b>60</b> |
| 11.1 The problem .....   | 60        |
| 11.2 Community comments about khat and driving.....                                  | 60        |
| 11.3 Police comments about khat and driving .....                                    | 62        |
| 11.4 Conclusion .....  | 63        |
| <b>12. Conclusions .....</b>   | <b>64</b> |
| <b>References.....</b>   | <b>65</b> |
| Books, articles, websites .....  | 65        |
| Conversations and email communications:.....   | 70        |
| Cases:.....  | 70        |
| Legislation .....  | 70        |
| Overseas legislation.....  | 71        |
| <b>Appendix 1: Images of khat .....</b>  | <b>72</b> |
| <b>Appendix 2: Khat and the law in Australia .....</b>                               | <b>73</b> |
| <b>Appendix 3: Islamic perspectives on khat (summary).....</b>                       | <b>75</b> |
| <b>Appendix 4: Consent/information from community focus groups.....</b>              | <b>76</b> |
| <b>Appendix 5: Community focus groups: List of Questions/themes addressed:.....</b>  | <b>78</b> |
| <b>Appendix 6: Consent/information form police interviews .....</b>                  | <b>79</b> |
| <b>Appendix 7: Interviews with police: List of questions/themes addressed: .....</b> | <b>81</b> |

## Diagrams

|   |    |
|---|----|
| Diagram 1: The chemical structure of cathinone and cathine                        | 2  |
| Diagram 2: Where relevant populations live in Australia.....                      | 9  |
| Diagram 3: Total settler arrivals in Australia since 1999 by place of birth ..... | 10 |
| Diagram 4: Amount of khat authorised for import into Australia.....               | 15 |
| Diagram 5: Where khat is seized in WA .....                                       | 21 |

## Tables

|   |   |
|---|---|
| Table 1: Community focus groups .....         | 4 |
| Table 2: Police organisation interviews. .... | 5 |

# Recommendations

## I. Clarify state regulation and importation law

Khat is regulated in Australia through a complex regime of overlapping and differing Commonwealth, state and territory laws. In some states possession of khat is strictly prohibited and carries heavy penalties, whereas in others possession of khat appears to be legal (at least for personal use). Many focus group participants and police expressed uncertainty about the law in Australian states relating to khat. The law in relation to khat should be made as clear as possible in each state, especially given that many khat users speak English as a second language. The interaction between Commonwealth importation laws and state laws should be clarified and communicated to potential users. A fact sheet about Australian law has been created (Appendix 2; Chapter 3).

## II. Educate police about khat

In general police require more information about the law relating to khat, cultural and spiritual issues associated with its use, and the possible health effects associated with khat use. Fact sheets have been developed about Islam and about Australian law (Appendices 2 & 3; Chapters 7, 8, 9 & 10).

## III. Educate community about the law and the health effects of khat

Focus group participants generally claimed that chewing khat is harmless or indeed positive for many health conditions, including diabetes, stress and heart disease. Most users were unaware of the physical and psychological harms that have been associated with chewing khat. Health professionals have a role in educating users about harms associated with the drug and promoting its responsible use (where use is legal) in order to minimise negative health effects for the individual and for the community. Fact sheets should be developed in conjunction with community consultation to distribute in relevant communities (Chapter 5).

## IV. Conduct further research on health and the need for human studies

Only limited large-scale human population research involving khat exists. Until such studies are carried out many of the claims about the relationship between khat and negative health outcomes will remain unverified (Chapter 5).

## V. Conduct further research on how khat affects driving

Many focus group participants believed it was safe to drive under the influence of khat. In fact, many thought they were better drivers when chewing khat. By contrast, some focus group participants pointed to reduced concentration and speeding while under the influence of khat, and a number of police interviewees were concerned about the possible dangers of driving under its influence. Some education is needed to ensure that users understand the possible risks associated with driving while chewing khat. More research is required to explore these issues (see Chapter 11).



# 1. Introduction

## 1.1 Aims and structure

The key concerns raised by police were about identifying khat and knowing of current law. Summaries of current law, along with clear photographs, are included at the back of this monograph in Appendixes 1 and 2. Many police and focus group participants were uncertain about current law relating to khat. Chapter 3 discusses current law. Some police indicated interest in knowing more about the cultural issues associated with khat. Chapter 6 discusses khat and Islam and a summary is provided in Appendix 3. Focus group participants showed a significant misunderstanding of the health issues associated with khat use. A discussion of these issues is included in Chapter 5. Focus group members were particularly concerned about the relationship between using khat and driving, in particular the question of whether khat is safe to use, or be under the influence of, while driving. This issue is discussed in Chapter 11.

## 1.2 Background

People have consumed the plant *Catha edulis*, known more commonly as 'khat', for centuries for its stimulatory effects (Cox & Rampes 2003, 456). The plant is also referred to as '*Catha edulis Forsk*' and on the street as qat, jaad, kaad, herari, tohai, tschat, chat, marduuf, robta, murungu, zurba, African salad, flower of paradise and Abyssinian tea. Kenyans refer to the type of khat used in that country as 'miraa'. Khat is cultivated as a shrub or tree and is large, slow growing and evergreen. It usually reaches a height of between one and six metres, but in some regions closer to the equator it may reach 18 metres (Al-Hebshi & Skaug 2005, 299). The khat plant is hardy and can be grown in arid conditions as well as at high altitudes (Cox & Rampes 2003, 456). The time between planting a cutting and producing a viable plant that can be harvested is about two years (Anderson et al. 2007, 22). Several viable khat trees are growing in the suburbs of Perth in Western Australia, as well as some specimens in the Royal Botanic Gardens in Sydney,<sup>1</sup> New South Wales. Several plant nurseries around Australia offer khat plants for sale<sup>2</sup>—clearly the plant is able to grow in Australia. Although a great deal of the khat consumed in Australia is imported, in some states khat is being grown for personal use or for sale in other states and territories.

Khat use is understood to have originated in Ethiopia (Al-Hebshi & Skaug 2005, 300), but it is now also widely chewed in other areas predominantly around the Red Sea, especially Somalia, Djibouti and Yemen.<sup>3</sup> The legality of khat, even in countries where it has been chewed for generations, varies widely and is often the subject of fierce political debate (Klein et al. 2009, 510). As people from countries where khat is commonly used have migrated throughout the world, the diaspora has brought with it the practice of chewing khat. This migration has required many countries outside the Red Sea area to address the question of whether khat should be regulated, and if so, how. In Australia, particularly as the East African community continues to grow, khat is becoming more commonly used (Anderson 2007, 62).

Some have argued that the use of khat is an emerging concern because of its effects on health and wellbeing, and that the drug should be monitored (Stefan & Mathew 2005, 843; Nicholas 2010, 22). Health issues are discussed in Chapter 5. The law currently varies markedly among Australian states and territories. This is discussed in Chapter 3. While this is a concern in relation to regulating many drugs in Australia (Schloenhardt 2008, ch 1), particular issues are associated with regulating khat. For example, given that khat is used primarily by immigrants who usually do not speak English as their first language, the need for clear law is particularly important.

1 Conversation with Chris Ward, Living Collections Administrator, Botanic Gardens Trust Sydney, 25 March 2010. Mr Ward reported that there are three khat plants growing in the gardens, although two are listed as having been severely vandalised in recent times.

2 See, for example, All Rare Herbs, All Rare Herbs—Mail Order Plant Nursery (2010) <[www.allrareherbs.com.au](http://www.allrareherbs.com.au)>, where a khat plant can apparently be purchased online from a nursery in Queensland and posted to the purchaser.

3 Eastern African countries where khat is consumed also include Rwanda, Tanzania, Uganda, Kenya and Madagascar; see the assessment of khat (*Catha edulis Forsk*) (World Health Organization 2006; Gebissa 2004, 4).

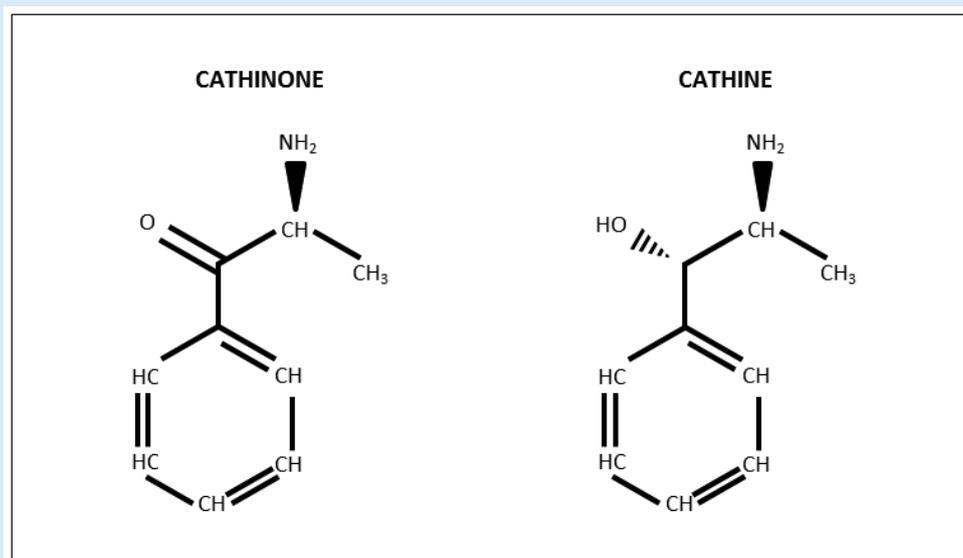
The khat plant still remains excluded from the international drug conventions. The World Health Organization considered the plant most recently in 2006 and determined that it should remain unlisted (Convention on Psychotropic Substances, 1971; Single Convention on Narcotic Drugs, 1961); therefore, it remains up to individual countries to determine what approach will be taken to regulate khat (World Health Organization 2006, 11).<sup>4</sup>

(Note: photographs of the khat plant appear in Appendix 1).

### 1.3 What is khat? Chemical structure

The khat plant contains several active constituents, including cathinone and cathine. Cathinone is the most potent constituent of the plant and possesses a chemical structure very similar to amphetamine (Cox & Rampes 457–9; Australian Bureau of Criminal Intelligence 1998, 100). Cathinone is responsible for much of the stimulant effect of khat. The young leaves and leaf tips, which are preferred for chewing, are understood to contain higher proportions of cathinone (Graziani et al. 2008, 762). It is a common misconception that, upon harvesting, cathinone quickly breaks down to the substance cathine, which is also a stimulant but to a much lesser degree than cathinone. However, a recent study has shown that drying the khat plant can actually preserve cathinone in the leaves (Chappell & Lee 2010, 109). Therefore, both fresh and dried khat may contain both cathinone and cathine, although cathinone breaks down at varying rates depending on how the khat is preserved. This feature of khat has created regulatory difficulties in jurisdictions where the active chemical, but not the plant, is regulated (eg Western Australia, Chapter 3 and US, Chapter 4).

**Diagram 1** The chemical structure of cathinone and cathine



### 1.4 This study

This study drew upon focus group discussions with communities known to use khat, principally the Somali community. The researchers also interviewed police officers. While initially the researchers intended to conduct their study in Queensland, New South Wales and Victoria, some way into the research it became clear that there was significant knowledge about khat in the Western Australian community. The study was expanded to Western Australia.

<sup>4</sup> The legal status of khat appears to fluctuate regularly. At the time of writing khat was understood to be prohibited in Saudi Arabia, Rwanda, Uganda and Tanzania but legal in Kenya and Ethiopia (although production has been banned in the Tigray region (Klein, Beckerleg & Hailu 2009, 510).

### 1.4.1 Focus groups in the community

Representatives of Somali and Ethiopian cultural groups (gatekeepers) were contacted through cultural organisations, government departments and local contacts in Queensland, New South Wales, Western Australia and Victoria. Gatekeepers then asked community members to participate in the focus groups, advising that the researchers wanted to talk about the law relating to khat and the effects of the drug. Focus group members were paid \$20 each to participate. Despite the help of gatekeepers and the offer of payment, it was difficult to recruit participants, especially women. Gatekeepers advised that many potential participants were concerned about the purpose of the research and were worried that it would lead to negative outcomes (ie in most cases increased regulation of the drug).

Members of the Somali communities in Brisbane, Sydney, Melbourne and Perth, and members of the Ethiopian community in Melbourne, volunteered for focus groups held between January and December 2010. By the end of this study 129 individuals (89 men and 40 women) had participated in 21 groups. Focus group members were aged from 18 to 78 years and were both married and single. Most were born in Somalia and arrived in Australia in the period ranging from less than one year to 24 years ago. Two groups included solely Ethiopian people. Many of the participants had completed tertiary studies but a significant number did not answer this question. Women and men were segregated in the groups and an attempt was made to separate khat users and non-users, but this proved difficult. While researchers aimed to have six to eight participants in each group, this was also difficult as very large groups sometimes arrived to take part, while at other times only one person would attend. The focus groups and interviews were held in Brisbane, Sydney, Melbourne and Perth in various locations selected by the gatekeepers.

The focus groups were semi-structured and lasted up to 90 minutes. They were led by Merali Pedder and Abdi Hersi. Based on a literature review, participants were specifically asked what they knew of the law relating to khat. They were also asked about its effects on health, including whether they believed it was addictive and contributed to mental health issues or other health problems (see Appendix 5 for list of themes addressed). All participants were given an opportunity to address themes and discuss issues and the focus groups and interviews were recorded and transcribed. Transcripts were analysed by the authors and themes were coded and concepts grouped together.

The ethics committee of the University of Queensland provided ethical approval prior to the start of the project. Participants were given an information and consent form (as approved by the committee), which they signed before participating. The interpreter explained the information and consent form to the group before individuals were asked to sign. Data were de-identified to protect confidentiality prior to analysis (see Appendix 4 for consent form).

**Table 1** Community focus groups

| Place                    | Ethnicity | Gender | Number |
|--------------------------|-----------|--------|--------|
| Brisbane, Queensland     | Somali    | Woman  | 1      |
|                          | Somali    | Women  | 6      |
|                          | Somali    | Women  | 9      |
|                          | Somali    | Men    | 5      |
|                          | Somali    | Men    | 4      |
|                          | Somali    | Men    | 10     |
|                          | Somali    | Men    | 14     |
|                          | Somali    | Men    | 5      |
|                          | Somali    | Men    | 8      |
| Sydney, NSW              | Somali    | Women  | 5      |
|                          | Somali    | Women  | 5      |
|                          | Somali    | Men    | 3      |
|                          | Somali    | Men    | 11     |
|                          | Somali    | Men    | 3      |
| Melbourne, Victoria      | Ethiopian | Women  | 5      |
|                          | Ethiopian | Men    | 10     |
|                          | Somali    | Women  | 8      |
|                          | Somali    | Men    | 9      |
| Perth, Western Australia | Somali    | Woman  | 1      |
|                          | Somali    | Men    | 3      |
|                          | Somali    | Men    | 4      |
| Total                    |           |        | 129    |

A key advantage of focus groups is that participants are encouraged to discuss their ideas and responses to problems and the researcher can facilitate and hear these discussions. Morgan (1998 81, 91) observes that it is important that participants feel safe in expressing opinions; this will usually mean setting up a relatively homogenous group. Focus groups were organised by gender and ethnicity. While homogeneity of participants may help to provide a safe environment for sharing views, limitations are implicit in this approach as well. Responses are likely to compound certain views of the particular group. This underlines the need to carry out a number of focus groups with different types of groups to ensure a breadth of views. The venue is also an important consideration as it can have an impact on recruitment and the comfort of participants. Gatekeepers selected venues for discussion based on the groups' familiarity with particular localities.

Project funds were available to pay participants \$20 to participate in a focus group. This was considered to be important to offset, in a token way, the costs incurred through attending the focus group, for example transport and child care. Phillips (2009, 10) argues that monetary incentives are sometimes useful and that a lower level of money is appropriate so that participants are not exploited or unduly induced. Payment did not appear to be a significant factor in ensuring participation in interviews. Phillips (2009) has noted that individuals may agree to become involved in research for a range of reasons, including altruism. The responses of several participants who received a cash payment underlined their altruistic reasons for participating in the research.

#### 1.4.2 Interviews with police

Thirty-one police service/force employees were interviewed in Brisbane, Sydney, Melbourne and Perth. The interviews, conducted by Merali Pedder and Heather Douglas, were semi-structured and lasted up to 90 minutes. The interviews were aimed at gauging police knowledge about khat—its effects and relevant law/s—as well as ideas about what further education would be useful (see Appendix 7 for list of themes addressed).

The interviews were recorded and transcribed. Authors analysed the transcripts and coded themes, grouping concepts together.

Before the project started, the ethics committee of the University of Queensland and relevant police departments provided ethical approval. Participants were provided with an information and consent form (as approved by ethics committees) and signed the consent form before participating. Data were de-identified to protect confidentiality prior to analysis (see Appendix 6 for copy of the consent form).

The reference group for this project helped to identify key contacts in the Victoria Police and Western Australia Police. These state contacts then arranged interviews with significant personnel, including representatives of the police multicultural liaison and drug policy development units. In WA the key contact referred the researchers to a Perth khat tree owner and a community mediator. These two people were also interviewed. In Queensland and New South Wales, police ethics committees identified interviewees. In all states multicultural liaison officers, drug and alcohol policy advisers and operational police were interviewed. Originally, the Queensland Police Service Research Committee did not grant ethical approval on the basis that: 'The use of khat by the African communities has not been identified by any areas as an issue, nor has it been identified as an emerging issue at this time.'<sup>5</sup> However, this decision was reviewed, and four police from Queensland were ultimately interviewed.

| Police organisation       | Number of Police Employees |
|---------------------------|----------------------------|
| Queensland Police Service | 4                          |
| Victoria Police           | 14                         |
| NSW Police Force          | 5                          |
| Western Australia Police  | 9                          |
| Total                     | 32                         |

5 Letter from Ethical Standards Command, Queensland Police Service, 30 June, 2010.

## 2 Using khat

### 2.1 Introduction

In this chapter we draw on the comments of focus group participants to discuss the source and cost of khat; how, where, why and by whom it is used; and the amount usually used in one sitting.

### 2.2 The source of khat

Ethiopia is said to produce most of the khat consumed in the world (Hailu 2007, 40). Khat production is the second biggest foreign exchange earner in Ethiopia after coffee, with significant quantities being exported to Somalia and Djibouti, (Anderson et al. 2007, 13–42; Clapham 1998, 186) and increasingly to Australia. Khat is also cultivated in Yemen, where it is reportedly leading to water shortages (Macleod & Vidal 2010, 1–2). It is a major cash crop in Kenya and Uganda (Klein et al. 2009, 511). According to Australian Customs and Border Protection Service (ACBPS) records, most khat exported to Australia comes from Ethiopia and Kenya (ACS, 2010).

Western Australia Police recently reported several identified incidents where shipments of khat were seized in Western Australia (WA Police 2010, 11). The report identifies three incidents in 2010 and one in 2009, with a combined weight of 25.3 kg. The shipments came from Victoria and were repackaged to send in the ordinary mail to other places within Western Australia. The report also suggests that some khat is exported from Western Australia to Victoria, although this is said to be much smaller scale, with about 4 kg seized in 2010 (WA Police 2010, 11). According to the report, packages have generally been identified by their strong smell (WA Police 2010, 11).

#### 2.2.1 Focus group comments on source

None of the participants we spoke to said that they grew khat for their individual use. They explained that many lived in units and did not have land available to cultivate the plant and that it took too long to grow. One NSW Somali man said: 'It takes a long time to branch out.' Some suggested they would like to buy land and grow khat but did not have the money. Others referred to the fact that it was grown on farms 'back home' but there weren't khat farms in Australia. A number of participants suggested that Somali people were not cultivators of the land:

It's not in our culture and it's not in our land. We don't cultivate in our land. So those kinds who cultivate are Ethiopians, Kenyans, and some other countries like Yemen in the Arab Peninsula. But Somalia, it's just they import khat from Ethiopia or Kenya and eat in Somalia ... – Somali man, Melbourne

Some participants claimed that where khat did grow in Australia, it had been planted a long time ago by Arab people and that Australians liked the flowers and so some Australians planted the trees:

This khat is a very good tree, and very strong with summer. You don't need more water. He can grow himself. He is very, very shining and very beautiful when he is grown in the backyard. That's why western people here like it to put in their backyards ... – Somali man, Perth

Most participants understood that a significant amount of khat was grown in Western Australia. Participants also observed that khat grew in NSW and Queensland, generally in people's backyards as 'part of the garden'. Khat was reported to be grown in some local council gardens and median strips around Brisbane, although participants refused to identify its location. Somali men in a Queensland focus group suggested that if people did have a tree in their yard it usually died quite quickly 'because we always have to have it'. Some participants in NSW said they bought khat from nurseries where one NSW Somali man explained it was 'readily available'. Others said they obtained khat from the botanical gardens in Sydney. A Melbourne Somali participant commented that, when he arrived in Australia in the 1980s, khat used to be grown in Victoria—for

example, in the botanic gardens in St Kilda. (He noted that the trees had been removed.) However, it was suggested that amounts grown in Queensland, Victoria and NSW were small.

A number of WA Somali men claimed they sourced fresh khat from Perth backyards so 'there was no need to import', while another claimed that some people grew the plant from seeds in that state:

It's much easier; it's much cheaper for them just to grow these trees in the backyard. They get samples of these seeds and they plant in their backyards, and they watch these admirable trees growing before their eyes. Just by their fingertips, they can get fresh leaves where they chew and they have fun ... – Somali man, Perth

Another Perth Somali woman explained that dry khat used in WA is sourced from Ethiopia via Victoria and sold in Perth. Many participants from NSW and Queensland claimed that their khat was grown in, and imported from, Perth. Others claimed that their khat was imported from countries such as Kenya and Ethiopia.

People described their suppliers as 'like a community supply group', 'back door, specific places' and 'word of mouth'. Participants frequently stated that 'everyone' knows where to buy khat. According to Queensland and NSW participants, khat was generally sold or distributed from people's houses and that there were no specific khat shops.

Some NSW Somali men commented that they purchased khat from those who they knew had licences to import khat. A number of Queensland participants claimed that they had contacts in Melbourne who had licences and would obtain their supply from these contacts. Several Queensland participants suggested that, since khat licences were now refused in Queensland, many people organised representatives or groups to go to Victoria to collect khat once it was imported but that this was expensive because of the costs of travel and accommodation. Some Queensland Somali men suggested that this change to the licensing laws caused greater 'suffering' for those wanting to use khat. A number of Queensland participants stated that they had stopped using the ordinary mail service since khat had been prohibited in Queensland.

## 2.3 How khat is used

The khat leaf, either fresh or dry, is usually chewed for its stimulating effect. Sometimes khat is drunk as a tea and occasionally it is smoked or spread on food (Nabuzoka & Badhadhe 2000, 6). Some reports indicate that imported khat may contain toxic amounts of pesticides that may be harmful to users although there is only scant evidence to suggest that khat containing pesticides causes more adverse symptoms (Al-Hebshi & Skaug 2005) and our participants did not report this concern. Users are reported to increase their rate of cigarette smoking during a khat chewing session (Laswar & Darwish 2009). Carrier (2008, 808) has described the sights and sounds of chewing as including 'bulging cheeks, green teeth, the discarded waste, spitting and hawking'.

While some have claimed that the risk of khat is that a way may be found to efficiently extract cathinone from the leaves of the plant so that higher, more stable doses can be administered, this has so far not been reported to be successful. Recently, some newspaper reports have focused on the introduction of 'MM-Cat' into Australia, which has effects similar to methylamphetamine. It has been claimed that the drug is made by extracting cathinone from khat plants, but this is not the case (Sikora 2009, 3). Rather, it is a chemical synthesis of cathinone, described in science literature as a 'designer drug' (Camilleri 2010, 59). It was claimed that MM-Cat was a popular choice for 'schoolies week' in 2009 (O'Neil 2009, 3).

### 2.3.1 Focus group comments on how khat is used.

While chewing either fresh or dry khat can lead to an amphetamine-like high, participants generally preferred fresh khat as it was 'sweeter', 'tastier' and less was needed to obtain the desired effect. Some participants were more confident about the quality of fresh khat from Western Australia as it was thought to be 'clean' and 'hygienic'. A Queensland Somali woman claimed that some of the imported 'powder' (probably dried leaves)

consisted of floor sweepings and she had found hair and sand in it. Another Queensland Somali woman commented that she was worried about the powder form that was sometimes imported because it may be 'unhealthy'.

While fresh khat is simply chewed, dry khat is usually soaked in water before being chewed or made into tea. A NSW man explained that drinking the tea made from khat accelerated the intoxication process, allowing users to gain a quicker high. A number of Melbourne participants discussed how they use dry khat:

Speaker 1: Some people like to wash it and make it wet and leave it for 10 to 15 minutes and drink the water from it. Some people eat as well as you can see it now: dry.

Facilitator: Oh and not mixed with anything.

Speaker 1: No you drink tea, Coke, water [with it].

Speaker 3: And the tea must be little bit—it must be sweet and not too much teabags. It's just you make it light.

Facilitator: Okay and so you just have a glass of water or a glass of tea and then you sip it while you're chewing.

Speaker 1: No you chew it and after you're chewing you drink a little bit of tea, a little bit of Coke. Some people drink with milk. Some people drink with water but yes it's not only by itself. Yes, you can drink something with it. – Somali women, Melbourne

Another participant explained how dry khat is used:

What they do is they put it in a bowl and make hot water and make it moist, soft and some people eat it that way. Other people eat it straight away. – Somali men, Victoria

Regardless of whether fresh or dry khat is used, participants in all focus groups explained that chewing was frequently carried out alongside of drinking sweet drinks such as tea, Coca-Cola and energy drinks such as Red Bull and V.

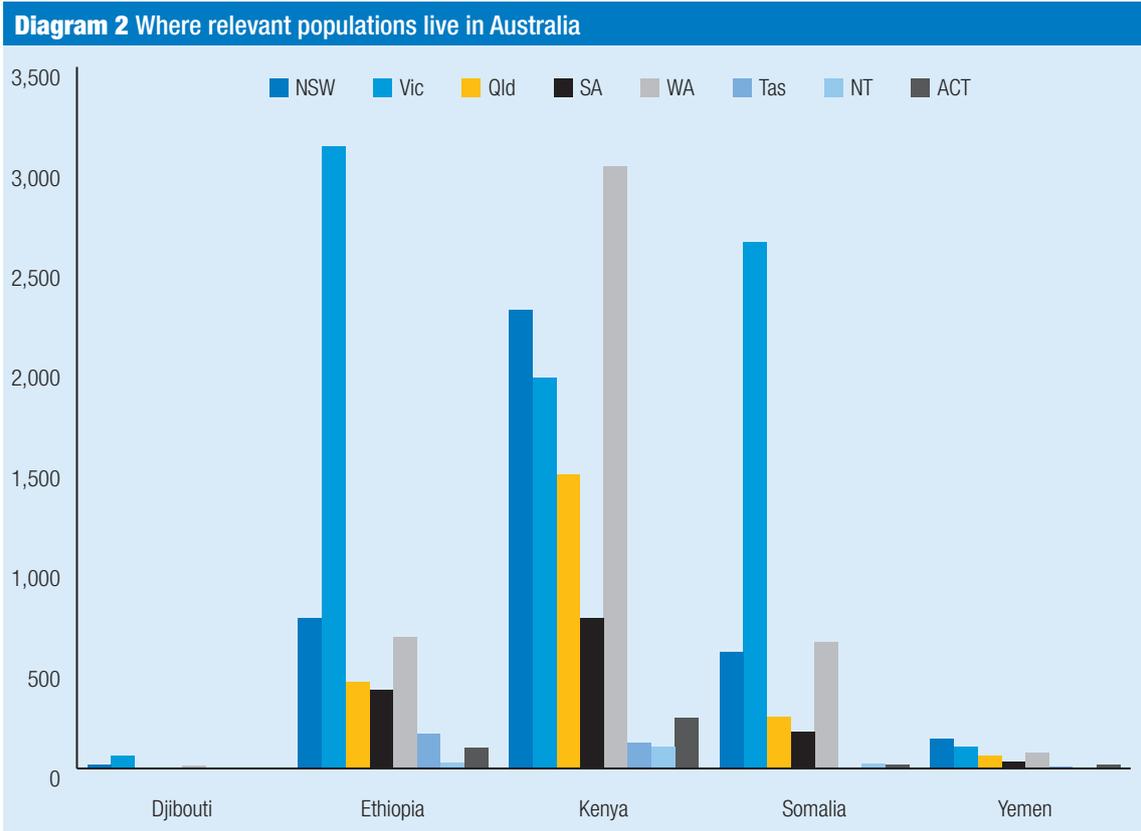
Although alcohol is forbidden in Islam, some khat users reportedly used alcohol to relieve the insomnia and restlessness that may occur after a khat chewing session. Male participants in NSW also observed this and were concerned that combining khat and alcohol was more dangerous for a person's mental health than consuming khat on its own.

## 2.4 Who uses khat?

Khat use is highly prevalent in East African and some Middle Eastern countries. Twenty years ago, 10 million people worldwide were estimated to use khat regularly (Balint et al. 1991). In Yemen, use figures vary but in published studies the percentage of users falls between 62 and 90 percent, with use figures for women estimated to be between 50 and 73 percent (Milanovic 2008, 669; WHO 2008, 737). On average, almost 70 percent of households in Yemen and 50 percent in Djibouti report using khat (Milanovic 2008, 669), and it has been reported that more than 30 percent of Ethiopians use khat regularly (Belew 2000, 14). Khat chewing is institutionalised in Ethiopian, Somali and Yemeni societies. In these countries alcohol use is prohibited under Islamic law, but the status of khat under this law is more uncertain (Kamarulzaman & Saifuddeen 2010, 115). This is discussed further in Chapter 6. The prevalence of khat use in Somalia has not been reported. However, in the UK in 2004 it was reported that 90 percent of Somali men there regularly chewed khat (Jha 2004; Nabuzoka & Badhadhe 2000, 5).

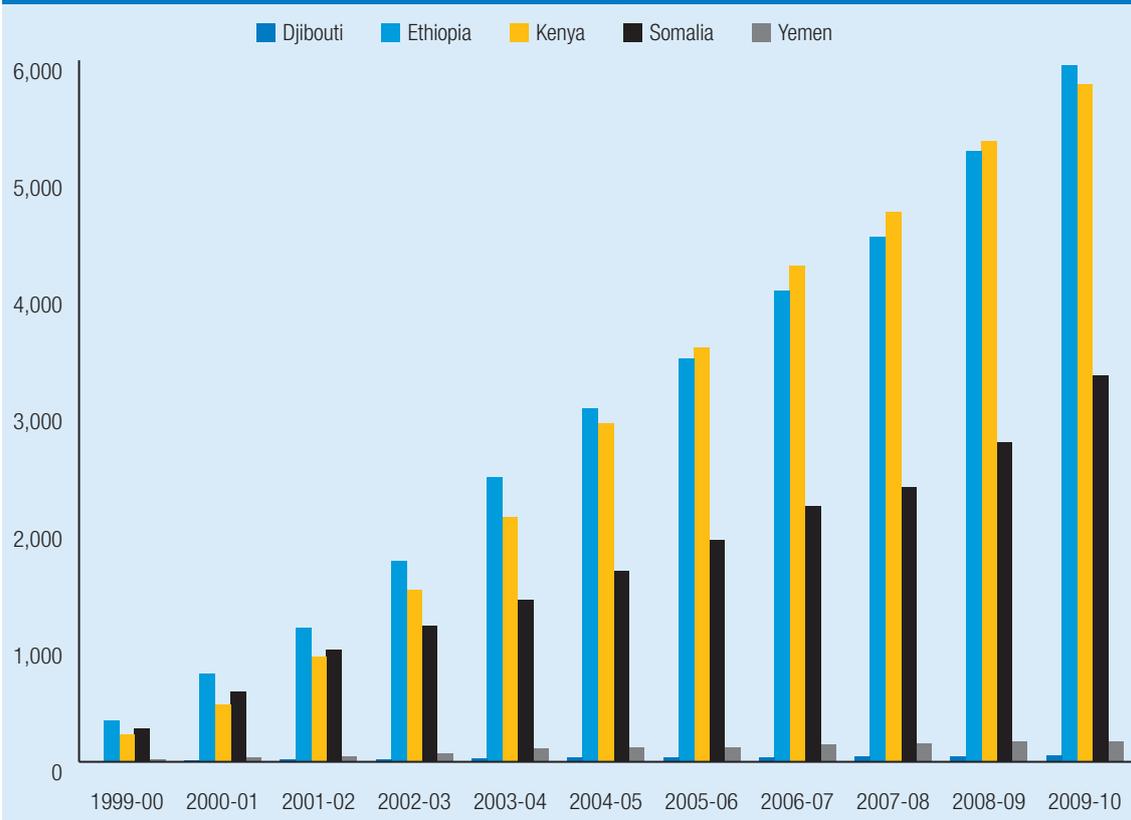
Australia has a growing population of people who were born in East African countries and who have settled in all the Australian states and territories, the largest communities live in Victoria, New South Wales and Queensland (ABS 2006). In 1991, when Somalis were first counted separately in the Australian census, 242 Somalis lived in Victoria. In the 2006 Australian census, 4,314 Somalis were counted (ABS 2006), 2,620 of whom lived in Victoria and about 800 in New South Wales and Queensland. Western Australia also had a substantial Somali population, of more than 600 people (ABS 2006). Research in Australia in relation to khat has focused largely

on the Somali population (Berman 2009, 18); however, there are other emerging communities of khat users in Australia—for example Ethiopians, Kenyans and a small number of Djiboutis. The 2006 census reported 5,634 Ethiopians living in Australia, mostly (54%) in Melbourne (ABS 2006). Djiboutis are often of Somalian origin. The 2006 census recorded 97 Djibouti people living in Australia. Kenyans also use khat, however, chewing the bark of the Kenyan variety of khat (referred to as miraa). The 2006 census reported that 9,935 Kenyans were living in Australia, mostly in Perth (27%), Sydney (18%) and Melbourne (18%) (ABS 2006). These groups are known to continue their khat chewing activities after arriving in Australia (Fitzgerald & Lawrence 2009, 10); thus, the way the drug is regulated has important implications for an increasing number of people in the Australian community. See diagram below for 2006 census figures.



(Source: ABS 2006)

The continuing drought, civil war and poverty in Somalia, as well as the fact that there is now an established population of Somalis in Australia, is likely to lead to continued immigration from Somalia to Australia for some time (Fitzgerald & Lawrence 2009, 10). Information on settler arrival figures shows a gradually increasing population of the relevant groups. See diagram below.

**Diagram 3 Total settler arrivals in Australia since 1999 by place of birth**

Source: Commonwealth of Australia 2010

#### 2.4.1 Focus group comments on who uses khat

Focus group participants identified people from Somalia, Ethiopia, Eritrea, Kenya, Yemen and Lebanon as being users of khat in Australia, although participants recognised that the Somali community was most likely to be identified as one where khat use was prevalent:

There's a huge different community who basically use it as much as we do, like Eritrean, Ethiopian, Kenyan, they very much chew it, even though Somalia is the one that picks up the name for it. – Somali men, Brisbane

Focus group participants' estimates of the prevalence of khat use among the Somali community varied. Some participants estimated it to be as high as 80 percent of men and women, although generally participants agreed that Somali men used khat more than women did. Most suggested the prevalence among women was closer to 30 percent. In Western Australia, prevalence among women was said to be as low as one percent. Many participants commented that they believed the use of khat among Somali women in Australia was increasing, compared to use patterns in Somalia, a trend that has been noted in other Western countries (Hoffman & Al'Absi 2010, 554–63). Khat use by women is still associated with a degree of social stigma, however, and women may be more likely to hide their consumption of khat from the community (including from police and medical practitioners):

... it's very hard for even a woman to say, yes, I'm a user. She can't come out and say that. While the man, it's okay for them to say, I eat khat or miraa... – Somali women, Sydney

Estimates of prevalence of khat use by the Ethiopian community in Melbourne were considerably lower in the focus groups, with some suggesting that Ethiopian women did not use khat at all and that use among Ethiopian men was negligible. Ethiopian women participants discussed the issue as follows:

Facilitator: Are there any women in the Ethiopian community that use it?

Speaker 1: Not that—no. Even in the Ethiopian community even the male, like I told you, a very low percentage, very, very low percentage. Like, if you saw a lot of people today here crowded, I can say maybe point one or point zero zero one of these men, even the men.

Facilitator: Okay. So traditionally in Ethiopia is it used a lot?

Speaker 2: No. Like I say, the Somalis [chew it].

Facilitator: But it is grown in Ethiopia a lot, isn't it?

Speaker 1: Yes.

However, numbers of Ethiopians involved in this study were very small, and some Somali participants suggested that Ethiopian people chewed more khat than Somali people.

The age of users varied widely. A Melbourne woman suggested users 'have to be over 18'. Focus group participants in Victoria suggested people started to use at around 20–25 years and that women tended to start a little later. One Melbourne Somali woman claimed that use was not restricted to older people and that around 50 percent of the younger generation of Somalis used khat, although participants generally suggested that young people did not use khat as much as older people did.

#### 2.4.2 Use outside the African community

Despite the fact that the drug continues to be attractive to communities from the Red Sea area, even after migration, research suggests that khat has not generally crossed over into other communities. This has been the experience in the United Kingdom, where there has been a significant population of Somalis for some years among whom khat use continues to be common. Suggestions have also been made that non-Africans in that country may be starting to be introduced to the drug at a low level (Sykes et al. 2009, 4).

It may be the case that the way the drug is imbibed is unattractive to many non-diaspora users (Klein 2008, 830); however, even when other methods of use have been developed they have not been popular. For example, khat was reportedly sold in London diluted in 25 ml bottles, but this did not expand its market (Anderson et al. 2007, 186). It has also been argued that the convivial social context in which khat is usually consumed—for example, conversational get-togethers in tea houses and restaurants—is more like the social context of alcohol drinking in Australia than the nightclubs and other environments associated with the 'rush' of cocaine or amphetamine use (Carrier 2008, 812).

In this study several participants suggested that khat was beginning to be chewed by 'local Australians' who were 'interested' in it.

Facilitator: Are there non-African people using khat as well?

Speaker: Yes, of course. There was this guy that I used to work with in this place that I used to work and then he would know because I'm Somalian. He's like, give me khat, give me khat. I'm like, I don't have khat, I don't do khat. He's like, well my friend, he gives my khat all the time you have to give me khat. I go, I don't know what you're talking about. The only [non-African] ones that use are the ones who are friends with Somalis and I don't think they are that much addicted like the Somalis. It's something they just do off social, one-off type. – Somali woman, Sydney

Facilitator: Do any of you have friends who aren't Somalis and aren't from Africa who use khat with you?

All: Yeah.

Speaker 1: A lot of people from England use it.

Facilitator: Are they using it regularly with you guys or just from time to time?

Speaker 2: Just sometimes. – Somali men, Brisbane

The white Australians are asking for khat because they've discovered that many people who migrated to WA are using and consuming this substance. They find it very interesting. Some of them will test it. It's fun, it takes away your frustration, it's good, it's free. Where can we get it? – Somali man, Perth

A Melbourne Somali man reported that khat was being used by Indigenous Australians living in Western Australia, where the khat tree grows more commonly than in other states. A recent report from Western Australia (WA Police 2010, 3) noted that khat had been seized from some Indigenous people but generally found that khat use was limited to specific culturally and linguistically diverse communities.

## 2.5 Where khat is used

In all states participants asserted that they generally used khat in private homes. In Victoria and NSW participants stated that they used khat both in private homes and in restaurants. This is probably an option because khat is legal to chew in these states. A NSW male participant observed that some chewers went to a mosque to pray while they chewed. Most participants chewed in small groups, usually all male or all female. Many pointed to the need for tranquillity while chewing. A number of participants commented that they organised child care so that they could chew khat. For example a Melbourne Somali woman explained:

So when my kids were small, I used to take them to my sister's place, drop them there and come back. So I think you need a bit of tranquil you know sit down there [and chew khat]. – Somali woman, Melbourne

Some participants pointed out that the rising cost of khat and lack of time meant that it was too expensive and time consuming to chew in restaurants:

Because the pressure here is you've also got to go to work and it's also expensive, khat here; it's not as cheap as when it used to be at home. Obviously a lot of the guys are taxi drivers, they don't have the time then to go and sit down in a formal setting. – Somali man, Sydney

## 2.6 The financial cost of khat to users

According to participants the fresher the khat, the more expensive it is. Fresh khat imported from Western Australia to the eastern states was more expensive than dry khat or fresh khat imported from overseas.

Focus groups members agreed that a bundle or small bunch (called a madouf) of fresh khat from Western Australia cost \$50. This was considered expensive and may be 'not enough for a man for a night' (Somali man, Sydney). These bundles have no specific weight, although they tend to have a rough weight of 250 g. One person suggested that it would cost \$100 to get enough fresh khat for one person for one night. By contrast, dry (powdered or crushed) khat cost around \$20–\$30 for 'a packet'. Participants had trouble identifying the amount of dried khat in grams contained within a packet, although it is probably close to 50 g. According to some participants in NSW groups, the price of dry khat was going down because it was increasingly easy to get hold of fresh khat.

Most people in the Queensland focus groups claimed they obtained khat for free as people just gave it to each other or shared. However, these comments may be related to a misunderstanding of the legal position in that state—that is, they may believe that selling rather than possessing khat is prohibited and thus may be reluctant to admit to buying it. Some Melbourne participants explained that they imported khat from Ethiopia from relatives and that instead of sending money for the khat they sent souvenirs in exchange. Of course the cost of khat for an individual will depend on the amount needed/desired and the time available for chewing.

## 2.6 How often and how much is khat used

Because of the relatively small quantities of cathinone found in the leaves, large quantities of the plant need to be consumed for users to achieve a 'high'. This requires users to sit for long periods of time, usually 4–6 hours, but sometimes up to 12 hours, to chew the leaves. According to research conducted in Australia about khat use, it is common for users to chew about 125 g of fresh khat in a session, with sessions taking place approximately twice each week (Berman 2009, 9–10).

Regularity of use varied widely among participants. A Perth Somali woman claimed that most people used khat casually:

But what it comes, the majority of the population they use as a casual, like a weekend. So the weekend comes, Friday you [use], you have enjoyment, Saturday similar, Sunday you rest, that's it. Monday you start working.

Another Perth Somali woman observed that the kind of use reflected in the above quotation was 'normal'. A discussion in a Somali men's focus group in Sydney concluded that once a week would be a 'moderate' way to use khat. However, a small number of participants in all states claimed they used khat everyday if they could obtain it.

Participants generally reported using between one and two bundles or madoufs (or approximately 250–500 g) of fresh leaves over a 2–8-hour sitting, with the average sitting time generally agreed to be about five hours. However, one Brisbane focus group of Somali men commented that some would chew large amounts in a single sitting:

Facilitator: In one session?

Speaker 1: Yes. Some do two, some do three [kg].

Speaker 2: Like a cow.

## 2.7 Why khat is used

Users reported that khat made them feel happier, more relaxed and more alert. They said using khat was fun and it brought the community together:

... coming together, having fun together, discussion together, having a good time together to discuss community issues, to discuss youth issues and without it, no one can sit down for two to three hours ... it makes our community get close together, especially youth. – Somali man, Brisbane

... while we're single mothers busy looking after children and working at the same time that five days and Saturday and Sunday when we have time to come together, socialise. When we are Somalia culture, we don't drink alcohol, we don't go to the bar and we don't use drugs. Yes, we don't go to nightclubs or music and that's why we want to socialise and have a bit of relaxation, yes. – Somali woman, Melbourne

... it's stress free, makes you happy, but it's not something that—I don't know why people are making a big deal about it. – Somali man, Melbourne

Makes you happy. Whole family, yeah. You and your family, you will be happy. It brings people get together. That's the main thing of it, you know, and that's a positive. – Somali man, Sydney

Participants in all focus groups reported that generally men and women did not chew khat together but instead gathered in groups of their own gender to chew khat and to socialise. Khat was almost invariably used in a social context. One Melbourne Somali woman explained: '... it's very rare that you can eat only by yourself. You have to have friends with you'.

Many participants referred to taxi drivers using khat to stay awake on the job. There may be some concerns about this and this is discussed further in Chapter 11. In another study it was reported that students used khat to help them stay awake to study. At Aden University in Yemen, the prevalence of khat use among medical students rose from 35 to 90 percent over the five years of training to assist study (Laswar & Darwish 2009). Perceptions that concentration and memory improves under the influence of khat, however, may be entirely subjective.

## 3. The law on khat in Australia

### 3.1 Introduction

Regulating khat in Australia is unnecessarily complex and potentially a source of much confusion for users, police and the courts. The existence of both a state and federal system of regulation increases this potential for confusion, as does the existence of food standards legislation in each state and territory, which may also regulate the sale of khat. Furthermore, jurisdictions have taken a variety of approaches to regulating the drug, so regulation is inconsistent throughout Australia. While these issues are common concerns in relation to drug regulation, the high level of mobility of Somali people in Australia and low levels of English language proficiency (Guerin & Guerin 2007, 155; Berman 2009, 33) create particular concern in the context of khat regulation.

In some jurisdictions, legislators have chosen to regulate one or both of the key chemical constituents of khat—cathinone and cathine—in addition to or instead of regulating the khat plant itself. This in turn has implications for the evidentiary burdens placed on prosecuting authorities in various states. These issues are discussed further below.

### 3.2 Federal regulation

Importation of khat into Australia is controlled through Commonwealth legislation. The Customs (Prohibited Imports) Regulations 1956 (Cth) lists the substances cathinone and cathine in Schedule 4 as drugs. As such they are subject to Regulation 5 of the Customs (Prohibited Imports) Regulations 1956 (Cth) (specifically sub-regs 5[20][a] to [d]). The definition of ‘drug’ in Regulation 5 includes a substance, or thing containing a substance, included in the schedule. Therefore, while the khat plant is not specifically listed as a drug, it is illegal to import both fresh and dried khat into Australia without a licence because it is assumed to contain the substances cathinone and cathine. If individuals import khat without a licence they face a maximum penalty of \$110,000.<sup>6</sup> To bring a charge under this provision, presumably the prosecution would need to have the khat forensically analysed and obtain evidence that it did in fact contain either cathinone or cathine or, alternatively, bring a charge for attempted importation.

A scheme has been in place since 1997 to grant licences allowing individuals to import khat for personal use. This is currently administered by the Office of Chemical Safety and Environmental Health (OCSEH). However, before a licence to import khat is granted, a person must first obtain a permit from the Australian Quarantine and Inspection Service (AQIS), otherwise called an ‘AQIS Import Permit’, as khat is a plant material. The application must include details of the exporter and importer. According to AQIS, only khat leaf tips are allowed to be imported and therefore any plants that are capable of being propagated are not permitted (AQIS 2010). Pursuant to a licence there are no restrictions on whether fresh or dried khat can be imported; the upper limit of 5 kg for importation remains the same.

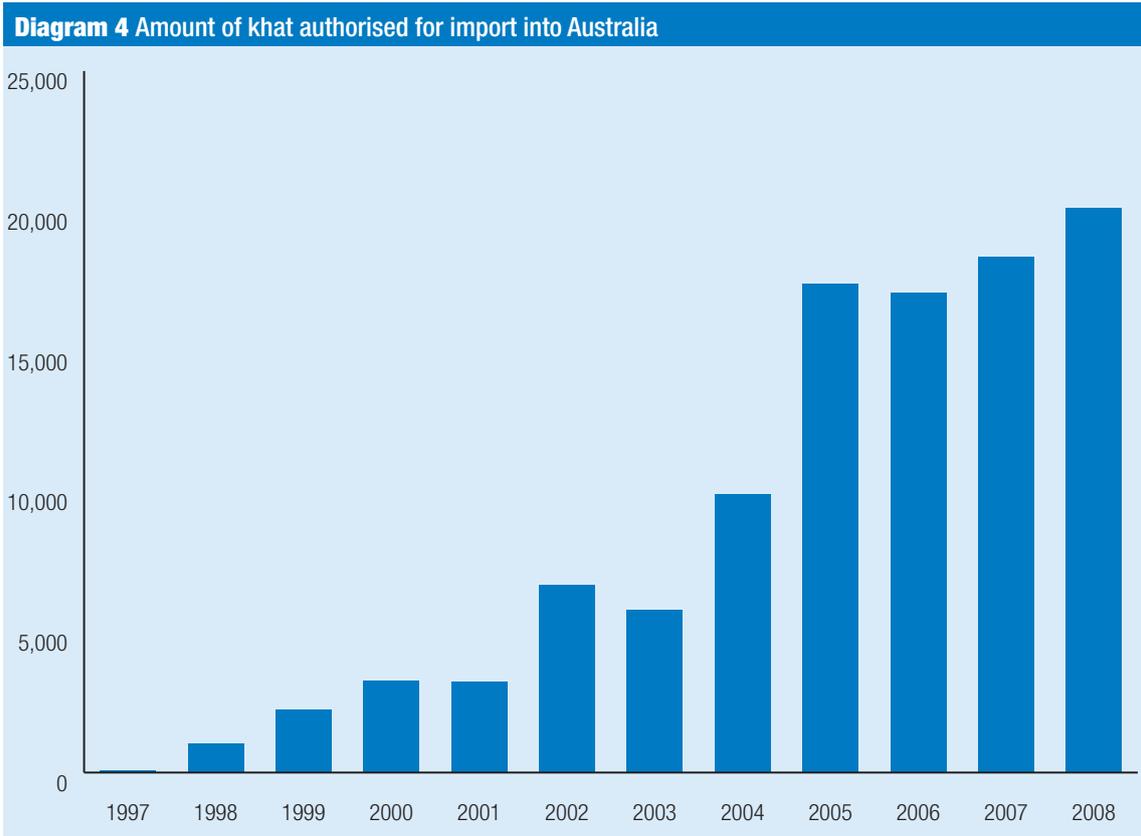
Once an AQIS Import Permit is obtained, a person can then apply for a khat import licence from the OCSEH. Individuals can apply for a one-off licence of up to 5 kg of khat or, alternatively, for a yearly licence allowing importation of 5 kg a month for personal use.<sup>7</sup> While the application form states that it is for an ‘Application for

<sup>6</sup> *Customs Act 1901* (Cth) ss 233, 233AB(2); or where the value of the khat can be determined, up to 3 times the value of the khat or \$110,000, whichever is the greater; see *Customs Act 1901* (Cth) s 233AB(2)(a). The same penalty applies to exporting khat. Khat is a prohibited import by virtue of the *Customs Act 1901* (Cth) s 51.

<sup>7</sup> The application form requires applicants to state whether they have any previous criminal convictions, so presumably good character is relevant to whether a licence will be granted. Individuals must also provide a certified copy of the identification details and a street address (rather than a post office box). These requirements have been developed by OCSEH in response to concerns about fraudulent licence applications. A number of licences are currently being investigated (telephone conversation with Nikki Aslimoska, Treaties and Compliance Division, OCSEH, 17 May 2010). The current fee for obtaining an AQIS Import Permit is \$85 via online application and \$110 manually. There is also an assessment fee, which for khat (as a Category 1 assessment) is \$40. Hence it would normally cost \$125 to obtain a permit; see Australian Quarantine and Inspection Service, Charging Schedule for Import Permit Applications (19 November 2009) <<http://www.daff.gov.au/aqis/import/general-info/fees-charges/schedule-permit-applications>>.

a licence/Permit to import khat (personal use only)', no sections on the form require applicants to declare that the khat imported will be consumed by the applicant only and not sold or provided to other persons. The 5 kg importation for personal use amount is quite high; especially considering that most khat imported into Australia is dried. To import fresh khat the importer engages a customs broker at a cost (Rees 2010). The Customs (Prohibited Imports) Regulations 1956 (Cth) state that it is illegal to import a quantity of drug exceeding that specified by the 'permission to import the drug' regulation (the 'permission' is presumably the licence or permit granted by the OCSEH).<sup>8</sup>

Each week in 2009, there were on average 43 clearances of 5 kg shipments of khat through the Melbourne airport via the postal and air cargo streams, an average of 215 kg a week. The amount of khat being imported into Australia appears to be increasing. In 1997, 70 kg were imported, while in 2008, 2,130 kg were imported (House of Representatives 2008).



Source: House of Representatives 2008

Concerns exist that individuals are importing khat and selling it to others who do not possess an import licence (Aslimoska 2010). This practice is no doubt illegal. A licence to import khat is granted subject to compliance with certain conditions and requirements (Customs [Prohibited Imports] Regulations 1956 [Cth] sub-reg 5[9]). The licence holder must keep the drug in safe custody at all times and must not dispose of it unless he or she is satisfied that it will be used solely for medical or scientific purposes (Customs [Prohibited Imports] Regulations 1956 [Cth] sub regs 5[9][a][i], [c]). Clearly, this latter requirement is likely to be irrelevant to

<sup>8</sup> Customs (Prohibited Imports) Regulations 1956 Cth sub-reg 5(1)(d)(i). Upon importation, the consignment of khat will be inspected by AQIS and, if found to be free of contamination or infestation, will then be inspected by Customs and the importer will be notified. The importer must then provide AQIS with a valid import permit and a completed copy of a quarantine entry form. Once all import permit conditions have been met, the consignment will be cleared by AQIS and the quarantine entry finalised. The consignment will then be cleared by Customs and, provided it meets Customs import requirements, the consignment will be released to the importer; see AQIS: Australian Quarantine and Inspection Service, Sending Khat to Australia (7 April 2010) <[www.daff.gov.au/aqis/mail/cant-mail/khat](http://www.daff.gov.au/aqis/mail/cant-mail/khat)>.

most khat importers and was enacted with therapeutic medications in mind.<sup>9</sup> According to the regulations, if a licence holder—that is, a person who has legally imported khat for personal use—fails to comply with any of these licence conditions, the licence may be suspended or revoked and the person may become liable to prosecution for the offence of failing to comply with a condition of a licence, and the penalties are as high as \$11,000 (*Customs Act 1901* [Cth] s 50[4]).<sup>10</sup> Thus, a person who legally imports khat under a licence may be prosecuted if they are found to be selling or giving the khat to another person, as this constitutes a breach of the licence requirement to keep the khat in the licensee's safe custody at all times. However, at this stage, there are no known instances of such a prosecution in Australia by any prosecuting authority. It is likely that the costly, lengthy and complicated process of applying for both a permit from AQIS and a licence to import from the OCSEH encourages certain individuals with know-how to become the importers and sellers to other khat users in the community. However, in doing so they may be putting themselves at risk of prosecution by Australian Government authorities.

Currently, individuals possessing a licence can authorise another person to collect their 5 kg consignment of fresh or dried khat on their behalf. This aspect of the process is under review (Australian Government 2011, 12).

### 3.3 The interaction between state and federal laws

In Queensland, South Australia, Western Australia, the Northern Territory and the Australian Capital Territory khat, cathinone and cathine are regulated under criminal statutes. The problem that regulation in these states and territories poses is whether it is legal to possess khat in these jurisdictions if an individual possesses an import permit and licence under the Australian Government regime. OCSEH has advised that licences are currently only granted to individuals in Victoria, New South Wales and Tasmania (Aslimoska 2010). In 2008, 437 licences were issued in Victoria and 21 licences in New South Wales (House of Representatives 2008, 1). Presumably, this is because it has been decided that granting licences to individuals in other states and territories will lead to individuals inevitably breaking the law in those jurisdictions once they are in possession of khat.

On this interpretation, legality of possession or otherwise turns on when the act of importation can be said to cease. 'Importation' is not defined in detail in Commonwealth legislation. The Criminal Code (Cwth) 1995, s72.36, now defines importing as including; 'bringing into Australia; deal with the substance in connection with its importation'. However, the second part of the definition appears to have a very wide meaning and indeed was introduced in 2010<sup>11</sup> to 'capture a broader range of criminal activity' (Exp. Notes 2009, 3). In discussing the meaning of the phrase 'deal with the substance in connection with its importation' the explanatory notes provide a number of examples which are said to be included in the definition:

- packaging the goods for importation into Australia;
- transporting the goods into Australia;
- recovering the imported goods after they land in Australia;
- making the imported goods available to another person;
- clearing the imported goods;
- transferring the imported goods into storage;
- unpacking the imported goods, and
- arranging for payment of those involved in the importation process.

9 Other seemingly irrelevant requirements exist: the licence holder bears the responsibility of keeping a record book of the name and quantity of the drug in his possession, as well as the name and quantity of the person who supplied the drug for import; if the drug is supplied for medical or scientific purposes, a record must be kept of the quantity supplied and the name and address of the person to whom it was supplied and an authorised officer may require the licence holder to produce such a record book; any holder of a licence to import khat is required to furnish to the Secretary a report setting out the entries recorded in the book within five days from the expiration of a 'report week', see Customs (Prohibited Imports) Regulations 1956 (Cth) sub-regs 5(9)(d)(i), (ii), (e)(i), (g). What these requirements mean for khat importers in practice is not clear.

10 See also *Crimes Act 1914* (Cth) s 4AA. A penalty unit = \$110 unless an intention to the contrary appears.

11 Crimes Legislation Amendment (Serious and organised Crime) Bill (No. 2) 2009 Schedule 1, s9 amends s300 Criminal Code Cwth 1995.

The explanatory notes also state that the examples given are not exhaustive (Exp. Notes 2009, 189). Consistent with this expanded definition, recent cases have tended to view importation as a process rather than as a bounded event, and individuals who continue to be, or become, involved with the imported material once it reaches Australia may be considered to be participating in the importation (see *R v Leff* 1996; *Schloenhardt* 2008, 332). For example, in *Courtney-Smith v R* (1990) it was held that the process of importation continued while the goods were held in a hired factory near the airport awaiting distribution.

It is possible that, once a licensed importer of khat takes possession of the goods from AQIS/ACBPS<sup>12</sup>, the importation is complete and the person then starts to be in possession of the goods. This interpretation would suggest that no conflict of laws arises because the acts of importation and possession are separate and distinct, and therefore it would be impossible to have legal possession of khat in Queensland, Northern Territory and South Australia even if the person holds a valid import permit and licence.<sup>13</sup>

However, the expanded definition of ‘import’ would seem to be inconsistent with this interpretation and may suggest that the granting of a licence to import would confer on the individual the ability to retain legal possession of khat once it has been validly imported. That is, a conflict between Commonwealth and state laws would arise and legality of possession would be determined in light of section 109 of the Constitution.<sup>14</sup> Supporting this argument is the fact that the Customs (Prohibited Imports) Regulations 1956 (Cth) prescribe a number of conditions that must be satisfied by the importer *after* the imported goods have been received and while they are in the possession of the importer—that is, those conditions set out above, including not disposing of the drug unless for medical or scientific purposes, keeping a record book of drugs in the person’s possession and providing a copy of the record book to the Secretary at the required time.

These provisions may not specifically deal with the legality of possession of the drugs. For example, if the importer with a valid licence passes/sells the imported khat to others, they would be breaching the licence, and state and territory laws would apply to individuals who took subsequent possession of the khat. While this avoids the conflict of laws described above, it also potentially encourages a market where individuals in Victoria, New South Wales and Tasmania become the distributors for users in other states and territories.

## 3.4 State and territory regulation

As noted above, Australian states and territories regulate khat, cathinone and cathine in some way within criminal statutes. Despite this, Western Australia is the only Australian jurisdiction where there has been criminal prosecution of khat possession. The regulatory regimes vary widely throughout Australia and are discussed further below.

### 3.4.1 Queensland

In Queensland, since 2008,<sup>15</sup> the khat plant (*Catha edulis*) and its active constituents are regulated under the *Drugs Misuse Act 1986* (Qld) and it is illegal to possess, supply or cultivate khat. *Catha edulis*, cathinone and cathine are included in Schedule 2 of the Act, along with substances such as cannabis, gamma hydroxybutyric acid, ephedrine and lysergic acid. Pursuant to the *Drugs Misuse Act 1986* (Qld), if a person is found guilty of possession, supply or cultivation of a Schedule 2 drug, the maximum penalty is 15 years’ imprisonment. Trafficking of a Schedule 2 drug attracts a maximum penalty of 20 years’ imprisonment.

#### 3.4.1.1 Focus group comments

<sup>12</sup> ACBPS: Australian Customs and Border Protection Service.

<sup>13</sup> See also *Drugs Misuse Act 1986* (Qld) s 125, *Misuse of Drugs Act 1990* (NT) s 42 and *Drugs Act 1908* (SA) s 46—where no reverse onus defence is explicitly made available to a person in possession of a valid licence. See also *Misuse of Drugs Act 1981* (WA) s 37, which appears to provide a reverse onus defence generally in relation to licences. See also *Drugs of Dependence Act 1989* (ACT) s 169, which recognises authorisations granted under the *Therapeutic Goods Administration Act 2008* (Cth).

<sup>14</sup> This provision states that ‘when a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.’

<sup>15</sup> *Drugs Misuse Amendment Act 2008* (Qld).

Participants in Queensland focus groups had mixed understandings of the legal status of khat. Some came to the focus group discussions to raise concerns about the current legal position or to use the forum as a kind of lobbying platform to make sure the drug was not banned (despite the fact that it is already banned in Queensland):

I think one of the main ideas behind why all these people are here today is just because most of them thought ... to do with local consent. It puts a lot of worries, because they are the ones that basically use this thing. The last thing they wish is to lose it and ban it or something. – Somali man, Brisbane

One of the main ideas that we are all here today is basically, just to find out how to get our licence back – Somali man, Brisbane.

It's very important that we raise our voice through the given means and let them know that we need this thing and it affects a lot of people if they don't get it as they used to. We need that thing back. Because it's going to cost us a bit of money to trade around with other states and stuff. – Somali man, Brisbane.

Some participants were unsure about the status of the drugs and noted there had been little education about it:

Well I guess where the majority of people who use khat in Brisbane is Somalis. It is about a few hundred of us. We are not even sure whether it's legal or illegal to be honest because we haven't heard from the radio, we haven't heard from the government authorities. – Somali man, Brisbane.

An understanding of the law in relation to importing khat from other states and countries was also mixed. Some were aware that a licence was required to import from overseas and that such licences were no longer available to Queenslanders.

### 3.4.2 Northern Territory

The Northern Territory has a similar regime to Queensland. Both 'khat leaf' and 'cathinone' are included in Schedule 2 of the *Misuse of Drugs Act 1990* (NT) and thus possession, supply and cultivation of both 'khat leaf' and 'cathinone' are prohibited. A commercial quantity of khat leaf is 5 kg, and possession of this amount in the Northern Territory could result in a maximum penalty of 14 years' imprisonment.<sup>16</sup> It is also illegal to cultivate khat in the Northern Territory, where cultivation of a single plant attracts a maximum penalty of \$5,000 or two years' imprisonment.<sup>17</sup>

### 3.4.3 South Australia

In South Australia, the regulatory regime is more complex. The plant *Catha edulis* is listed as a controlled plant under Schedule 3 of the Controlled Substances (General) Regulations 2000 (SA), and cathinone is listed as a controlled drug under Schedule 1. Penalties for offences relating to controlled substances are based on amounts of the controlled substance. In relation to the khat plant, and similar to the Northern Territory, a large commercial quantity is defined as 5 kg, a commercial quantity as 2.5 kg and a trafficable quantity as 250 g. A person who possesses 5 kg of khat with the intention of selling *any of it* is guilty of an offence and faces a maximum penalty of \$500,000 or life imprisonment.<sup>18</sup> A presumption also operates so that a person in possession of a trafficable quantity (250 g or more) of khat is presumed, in the absence of proof to the contrary, to possess the relevant intention to sell the plants or any part of them. This means that a defendant would bear the onus of proof, on the balance of probabilities, to prove that possession of the plant was for personal use only.

Importantly, there are no offence provisions relating to simple possession of a controlled plant in South Australia and, therefore, if a defendant was able to establish that the possession of khat was for personal use only, no consequences would follow.<sup>19</sup> It is unclear whether holding a permit or licence to import 5 kg of khat

16 See *Misuse of Drugs Act 1990* (NT) ss 9(d), (e), where possession of between 250 g and 5 kg would attract a maximum penalty of 5 years' imprisonment or \$10,000. See s 9(f)(ii), where possession of less than 250 g, if the person possessing it is not in a public place, attracts a fine of \$2000. The supply of a commercial quantity of khat would also attract a maximum penalty of 14 years—at s 5(b)(iii)—or 25 years where the drug is supplied to a child—at s 5(b)(ii).

17 *Misuse of Drugs Act 1990* (NT) s 7(2)(c).

18 *Controlled Substances Act 1984* (SA) s 33C.

19 In this respect, regulation of khat is similar to regulation of cannabis in that state.

for personal use would be enough to satisfy the burden of proof that the possession was for personal use only. Cultivation of khat in South Australia is regulated in a similar manner, meaning that if a person could establish that they were growing khat for their personal use only, it would seem that no legal consequences would follow. They would, however, once again, face the presumption that they intended to sell the plant or its products if they were cultivating more than 250 g of the plant. The presence of these presumptions in the legislation would make it very difficult for a person in South Australia to have possession of khat or cultivate khat without fear of prosecution.

Cathinone is also regulated in South Australia. Similar to in the Northern Territory, a large commercial quantity is also 5 kg<sup>20</sup>. However, a commercial and trafficable quantity is measured in either kilograms or discrete dosage units (DDU).<sup>21</sup> A DDU is defined as a unit prepared or apparently prepared for the purpose of being administered as a single dose and it may be part of a mixture. Amounts for cathinone are only prescribed in 'mixed' form and not in 'pure' form;<sup>22</sup> the assumption being that cathinone will always be 'mixed' with some other substance. While the word 'mixed' is not defined, in relation to khat it might be possible to argue that cathinone is 'mixed' in the khat plant. However, this is unlikely, as it would entail a strained interpretation of the word 'mixed'.<sup>23</sup>

### 3.4.4 Australian Capital Territory

*Catha edulis* is a 'controlled plant' in the Australian Capital Territory.<sup>24</sup> A 'controlled plant' is defined as a growing plant, including a seedling of the plant.<sup>25</sup> Under the Criminal Code 2002 (ACT) it is illegal to sell a controlled plant.<sup>26</sup> Commercial and trafficable quantities for *Catha edulis* are not defined; therefore, the maximum penalty applicable for selling any quantity of the khat plant is 10 years' imprisonment and/or 1,000 penalty units.<sup>27</sup> Cultivation of khat is also illegal in the Australian Capital Territory and attracts a maximum penalty of two years' imprisonment and/or a fine of 200 penalty units.<sup>28</sup> Cultivation has a very wide meaning that includes nurturing, guarding, concealing and harvesting the plant.<sup>29</sup> While possession of a growing *Catha edulis* plant is not specifically regulated, in many circumstances khat will be captured by the cultivation provisions. It is possible, however, that it would be legal to possess a *Catha edulis* plant—for example, in circumstances where a khat tree is growing in the back yard, without any need of attention.

While harvested khat is not a 'controlled plant' pursuant to the Criminal Code 2002 ACT,<sup>30</sup> cathinone is a prohibited substance in the Australian Capital Territory and possession of cathinone is prohibited.<sup>31</sup> While this

20 It is not known whether it is coincidental that 5 kg of khat or cathinone, the amount able to be legally imported under a Commonwealth licence, is the amount defined as a large commercial quantity of khat.

21 See *Controlled Substances Act 1984* (SA) s 4 .

22 A commercial quantity of cathinone (mixed) is 1.25 kg, a trafficable quantity of cathinone (mixed) is 6 g. See *Controlled Substances (General) Regulations 2000* (SA) Sch 1.

23 'Mixed' is defined in the *Macquarie Dictionary* as 'combined or prepared'; Butler, above n 77. If it was accepted that the khat plant was regulated by virtue of its containing cathinone, significant penalties apply for possession, supply and manufacture. See *Controlled Substances Act 1984* (SA) ss 33L, 33I, 33J. In relation to manufacture, this word is defined at s 4 as 'produce'. A recent case has found that 'produce' has 'no semblance of any need to demonstrate the conversion from one thing to another both qualitatively and quantitatively in this meaning;' see *R v Greenfield* [2005] SADC 123, [60] (Tilmouth J). It may be possible to argue that production might entail harvesting and packaging khat.

24 See *Criminal Code Regulation 2000* (ACT) sch 2.

25 *Criminal Code 2002* (ACT) s 600 states that a 'controlled drug' is defined as a substance prescribed by regulation as a controlled drug but does not include a growing plant. Controlled drugs are listed at sch 1.

26 *Criminal Code 2002* (ACT) s 619.

27 A penalty unit is \$110; see *Legislation Act 2001* (ACT) s 133.

28 *Criminal Code 2002* (ACT) s 618.

29 *Criminal Code 2002* (ACT) s 615.

30 See Explanatory Memorandum, *Criminal Code (Serious Drug Offences) Amendment Bill 2004* (ACT), where it was noted with respect to cannabis: 'Therefore, whether the cannabis involved in an offence is to be treated as a controlled drug or a controlled plant will essentially depend on whether the cannabis has been cut from the ground or pot etc or is still growing. This distinction is emphasised in the definition of a 'controlled plant', which is expressly defined as a 'growing' plant (including a seedling) prescribed in the Regulations.'

31 *Criminal Code Regulation 2005* (no 2 of 2005) (ACT) sch 1 pt 1.2; *Drugs of Dependence Regulation 2009* (ACT) reg 5; *Drugs of Dependence Act 1989* (ACT) s 171.

offence is relevant to cathinone once it is extracted from the plant, it does not apply to cathinone within khat plants. This is because the definition of prohibited substance specifically excludes plants from which the drug is extracted, and also because plants do not come under the extended definition of what substances will be considered controlled drugs.<sup>32</sup> Therefore, it would appear that possession of dried or fresh harvested khat in the Australian Capital Territory is indeed legal. The fact that, as of 2006, no people from countries bordering the Red Sea were recorded as living in the Australian Capital Territory may account for the fact that only a total of six licences have been granted to individuals in Australian Capital Territory since 1997 and that clarification of the regulatory regime has not been perceived to be necessary (House of Representatives 2008).

### 3.4.5 Western Australia

Growing khat plants have more of a presence in Western Australia than in the rest of the country. Khat trees grow in numerous Perth backyards and many people report that trespassers harvest their trees for their leaves (Nicholas & Shoobridge 2005, 35; Nedlands Shire Council 2008).

Only one licence to import khat has been granted in Western Australia since 1997 despite the relatively large population of Somalis, Kenyans and Djibouti people living there (House of Representatives 2008). In Western Australia the regulatory response is complex. Section 4 of the *Misuse of Drugs Act 1981 (WA)* (MDA) states that this act applies to prohibited drugs and plants. Prohibited plants to which the MDA applies are those as defined in section 5 of the *Poisons Act 1964 (WA)*. This section specifies that a prohibited plant means any plant from which a 'drug of addiction' may be obtained, derived or manufactured. 'Drug of addiction' is defined to mean any drug in Schedule 8 or Schedule 9 of the Poisons Act.<sup>33</sup> Schedule 8 and Schedule 9 refer to substances contained in the Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP). The SUSMP is defined in a further appendix to the schedule as meaning the current Poisons Standard as defined in section 52A of the *Therapeutic Goods Act 1989 (Cth)*.<sup>34</sup> In Schedule 9 of the current Poisons Standard, the substance cathinone is listed so that it becomes illegal to possess, supply or cultivate khat under the MDA.<sup>35</sup>

A recent WA police report (WA Police, 2010) states that khat-related incidents have increased in the last five years. Since 2003 there have been 39 incidents of seizure of khat. While in 22 cases the offender was charged with possession of a prohibited drug, only three of these charges resulted in a conviction. In most matters either no charge was proffered or the drug possession matters were withdrawn. Six matters resulted in convictions for 'related charges' (WA Police 2010, 3). One rare prosecution reported in the press in 2009 involved a Perth couple who were reportedly charged with possessing a prohibited drug (khat) with intent to sell or supply, and with attempting to possess the drug to sell or supply (Perthnow 2009). Khat seizures took place mainly in houses (see Diagram 5). WA police have also noted that almost all seizures involve African people (Somali or Ethiopian) and that a taxi distribution network may be used. Some WA police interviewees have suggested that difficulties exist in getting the khat analysed in a timely fashion so that cathinone can be identified before it breaks down. This is a problem related to the regulatory regime in WA.

<sup>32</sup> Note that the definition of 'controlled drug' does not include the plant from which it is extracted. Therefore, regulation of cathinone does not indirectly regulate khat; see Criminal Code 2002 (ACT) s 600; Criminal Code Regulation 2005 (ACT) reg 5. See also the definition of 'manufacture' in Criminal Code 2002 (ACT) s 606, where it is defined to mean: 'any process by which the substance is produced (other than the cultivation of a plant)...'

<sup>33</sup> *Poisons Act 1964 (WA)* s 5.

<sup>34</sup> Australian Government Department of Health and Ageing Therapeutic Goods Administration, Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP) (21 April 2010) <<http://www.tga.gov.au/ndpsc/susdp.htm>>. The *Therapeutic Goods Act 1989 (Cth)* s 52A states that 'current Poisons Standard' means: (a) if no document has been prepared under paragraph 52D(2)(b)—the first Poisons Standard; or (b) otherwise—the document last prepared under that paragraph. Under s 52D(2)(b), the committee has power to amend the current Poisons Standard or enact a new Poisons Standard.

<sup>35</sup> *Misuse of Drugs Act 1981 (WA)* ss 5, 7; see also s 34 for relevant penalties that provide for potentially lengthy prison sentences and/or large fines, depending on the circumstances.

**Diagram 5 Where khat is seized in WA**

|         |    |
|---------|----|
| House   | 14 |
| Petrol  | 1  |
| Parcel  | 8  |
| School  | 1  |
| Street/ | 14 |
| Shop/   | 1  |

Source: WA Report 2010

### 3.4.5.1 Focus group comments Western Australia

A number of participants in Perth focus groups seemed to be confused about the law relating to khat in WA. This confusion appeared to stem in part from the high level of availability of khat in Perth:

I don't think there is any specific law or policy related to khat that I'm aware of. All I know is that people freely chop off trees and hunt for khat in the forest, in the backyard of residential areas. I do believe that the law is quite lenient in regard to khat. That is my view at the moment. – Somali man, Perth

Speaker 1: Why in Western Australia illegal? It's in every single house ...

Speaker 2: But every single house has it.

Speaker 3: Many, many areas are still growing. – Somali men, Perth

We are confused, we don't know—we would have preferred to find out exactly in writing what the laws say in different states about this. That would have been very helpful, you know. – Somali man, Perth

The way that some people have been prosecuted for trespass (rather than drug possession) in Western Australia appears to have added to the confusion for some:

Speaker 1: ... Somalis were just going to these backyards and [unclear]. So the police say that tree is not illegal. It's not illegal to grow a tree in the backyard but it's illegal to actually use—for somebody to take the leaves and use it. That's a bit strange isn't it?

Speaker 2: You would think that if the leaves are illegal the tree itself should be illegal. So it's a little confusing from that respect.

Speaker 1: They were not charged with having a drug but only with trespassing. So that is a bit strange too. These guys have got supposedly a drug, you know, and nobody charged them with possessing drugs, but they were charged with trespassing. – Somali men, Perth

Although some WA participants said they were aware of khat being imported into Western Australia, most were of the view that it was not necessary.

### 3.4.6 New South Wales

In New South Wales, cathinone is regulated by its inclusion in Schedule 1 to the *Drug Misuse and Trafficking Act 1985* (NSW)<sup>36</sup> but there appears to be no mechanism through which the khat plant is regulated. This means it would be illegal for a person to extract cathinone from the khat plant, but if the cathinone remains within the plant it is not illegal. Section 4 of the *Drug Misuse and Trafficking Act 1985* (NSW) refers to 'admixtures' and states that a reference to a prohibited drug includes a reference to any preparation, admixture, extract or other substance containing any proportion of the prohibited drug. It may be possible to extrapolate that a plant might be a 'substance' for the purpose of this section. However, section 3 defines 'substance' to include 'preparation and admixture and all salts, isomers, ester or ethers of any substance and all salts of those isomers, esters or ethers', of which khat is none. This is not an exhaustive definition and section 3 *Drug*

<sup>36</sup> Cathinone is also regulated through its inclusion in the 'poisons list,' as made under the *Poisons and Therapeutic Goods Act 1966* (NSW) Sch 4.

*Misuse and Trafficking Act 1985* (NSW) also provides a mechanism whereby the minister may declare a plant to be a 'prohibited plant' when, in the opinion of the minister, the plant is capable of being used for the purpose of producing a prohibited drug. The khat plant is certainly capable of producing the prohibited drug cathinone, yet no gazetting of the khat plant has been performed by the minister in New South Wales. Therefore, it is reasonable to assume that the khat plant remains legal in New South Wales.

#### 3.4.6.1 Focus group comments NSW

Participants of focus groups held in Sydney were unsure about whether it was legal or illegal to possess or cultivate khat. Some pointed out that there was little information in the public sphere about the legal status of khat:

We don't really know [what the law is]. To give our idea more, we want to know exactly what the law says about it because I think we don't really know. – Somali man, Sydney

Participants in Sydney seemed to have more understanding about the law in relation to importation. Most of those who addressed this issue stated that 5 kg of khat could be imported for personal use with a permit but some also had views about how this law was 'managed':

I understand that, yes, the [unclear] General allows five kilos per person. If someone is importing more than that for commercial purpose it would be construed as illegal. – Somali man, Sydney

...it's a known secret that people know they should not be selling it because when you sell something that you don't have a licence to sell you're actually breaking some sort of law. So it suits everyone involved for them not to have a licence and word of mouth is the way to go about it. – Somali man, Sydney

Speaker 1: Although we can say that the law is not very clear so a husband and wife can bring five kilos each; as opposed to if you are a family of 20 you can bring five kilos each. So that again has got to be ...

Speaker 2: Very nice loophole.

Speaker 1: It's not against the law, you do it according to what the law says—however, you are getting more than the kilos that you need for the one family. Therefore I'll say, in that case, people have kind of been abusing it. – Somali man, Sydney

#### 3.4.7 Tasmania

In Tasmania, the active substances in khat, cathinone and cathine, are listed as controlled drugs under Part 2 of Schedule 1 of the *Misuse of Drugs Act 2001*. Possessing khat in Tasmania is effectively regulated under licence and enforced pursuant to Commonwealth law (see 3.2).

#### 3.4.8 Victoria

The largest Australian Somali population is based in Victoria so it is perhaps unsurprising that the most vigorous political and research-oriented activity around khat regulation and management in Australia has been undertaken in that state (Berman 2009, 45). Cathinone and cathine are regulated in Victoria through the *Drugs, Poisons and Controlled Substances Act 1981* (Vic), which regulates substances listed in the Poisons Code (s12 *Drugs, Poisons and Controlled Substances Act 1981* [Vic]) and in the Commonwealth Poisons Standard (Standard for the Uniform Scheduling of Medicines and Poisons—SUSMP). Cathinone is listed in Schedule 9 and cathine is listed in Schedule 4 of the SUSMP. Pursuant to s36B of the *Drugs, Poisons and Controlled Substances 1981* (Vic) a person commits an offence if found in possession of a Schedule 4, Schedule 8 or Schedule 9 substance (ie cathinone) unless authorised under the Act or regulations. To successfully prosecute a charge under this provision, presumably evidence of cathinone would be required. If prosecution is successful, the penalty under this provision is 10 penalty units.<sup>37</sup> Cathine is also known as norpseudoephedrine and this substance, in a quantity of 25 g, is listed in Schedule 1 of the *Drugs Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007* (Vic). Precursor chemical under the precursor chemical regulations means 'a substance (including its salts, derivatives, isomers, analogues and

<sup>37</sup> Currently one penalty unit is \$122.

homologues) that may be used in the preparation of a drug of dependence, whether or not the substance is contained in, or mixed with, another substance.’ Possession of cathine, as a ‘precursor chemical’, may be an offence pursuant to s71 D *Drugs, Poisons and Controlled Substances Act 1981* (Vic) (with a maximum of five years’ imprisonment). Successful prosecution under this provision would require that 25 g of cathine would have to be measurable and evidence of this would need to be available. In Victoria khat is subject to the Commonwealth import and licensing legislation (see 3.4.2) and may be regulated under the food standards legislation as discussed below.

#### 3.4.8.1 Focus group comments Victoria

Victorian participants had little to say about the law relating to possession and cultivation of khat. Most participants either believed having khat was legal or had not turned their mind to the question. Participants in Victoria had a stronger knowledge of the permit system for importing khat. Generally, they seemed to be aware of the need for a licence to import and how much was allowed to be imported. Participants also seemed to be aware that those with import licences could not on-sell the imported khat but had interesting ways of avoiding this requirement:

Facilitator: So do you think it’s legal to sell Khat in Victoria?

Speaker: No it’s illegal. ... Whatever five kilo that is allowed [unclear] for private use, and it’s about sharing it and using it with the rest of the family members, people in the community. You know it’s all about sharing it and using it for personal use. – Somali woman, Melbourne

Everyone imports for himself. If I don’t import for myself, I’ll go with someone who has a licence or permission to import. Then we combine it together and sell it. That khat will come to one [unclear] who will have a share. – Somali man, Melbourne

### 3.5 State and territory regulation under food standards legislation

Yet another possible level of regulation of khat exists in Australia and that is through state and territory food standards legislation that gives effect to the national Food Standards Code.<sup>38</sup> The legislation varies slightly but all Acts contain a provision which requires individuals to comply with the Australia New Zealand Food Standards Code<sup>39</sup> in relation to conducting a food business or to food intended for sale or food for sale. Failure to comply with the Food Standards Code results in a penalty of 500 penalty units.

Pursuant to Schedule 1 of Standard 1.4.4 food standards code (Prohibited and Restricted Plants and Fungi), a plant or fungus, or a part or a derivative of a plant or fungus listed in Schedule 1, or any substance derived therefrom, must not be intentionally added to food or offered for sale as food. *Catha edulis* (khat) is listed in Schedule 1.

The question remains, however, whether supplying khat to another person constitutes offering khat for sale as food. Food is defined consistently across the state and territory food acts as including ‘any substance or thing of a kind used, or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared)’ and may include plants.<sup>40</sup> Therefore, it is possible that offering to sell another person khat for the purpose of consumption would fall under this definition of offering food for sale and thus, would be illegal under the food Acts. Enforcement and interpretation of the legislation is the responsibility of state and territory health departments.

No known cases of this legislation are currently being enforced in relation to khat in any state or territory.

38 In Queensland it is the *Food Act 2006* (Qld); in New South Wales it is the *Food Act 2003* (NSW); in Western Australia it is the *Food Act 2008* (WA); in South Australia it is the *Food Act 2001* (SA); in Tasmania it is the *Food Act 2003* (Tas); in the Northern Territory it is the *Food Act 2004* (NT); in the Australia Capital Territory it is the *Food Act 2001* (Act); in Victoria it is the *Food Act 1984* (Vic).

39 Australian Government Department of Agriculture, Fisheries and Forestry; Australia New Zealand Food Standards Code (19 May 2009) <<http://www.daff.gov.au/agriculture-food/food/regulation-safety/standards-code>>.

40 *Food Act 2006* (Qld) s 12; *Food Act 2008* (WA) s 9; *Food Act 2001* (ACT) s 8; *Food Act 1984* (Vic) s 4A; *Food Act 2003* (NSW) s 5; *Food Act 2001* (SA) s 5; *Food Act 2003* (Tas) s5; *Food Act 2004* (NT) s 7.

### 3.6 Summary

The law around khat in Australia is inconsistent and sometimes hard to find. The current state of affairs may also have a number of unintended consequences. For example, Victoria would appear to be the central hub for the illegal distribution of khat throughout Australia. Currently, 90 percent of licences are granted to those with a Victorian residential address (Aslimoska 2010). Given the distances between Victoria and other distribution points, such as Queensland, it is likely that, similar to Canada (RCMP 2007, 13), the importation of khat is organised by arm's length networks. This means that licences to import for personal use issued by the OCSEH are likely to be regularly misused for the purpose of on-selling khat interstate, or possibly also within Victoria. Another clear problem is the lack of clarity of the law on this issue, especially given that many khat users do not speak English as a first language. While there is minimal reported case law in relation to khat in Australia at this stage, cases argued in the United States and Canada have demonstrated problems with similar legislative approaches as those found in Australia. Some of these issues are discussed in the next chapter.

## 4. The legal approach to khat overseas

### 4.1 Introduction

Across the Western world no consistent approach has been made to regulating khat. The US has adopted a vastly different approach to the UK in regard to regulating khat; Canadian law reflects the US position.

### 4.2 United States

In the US, khat is regulated federally via its active ingredients cathinone and cathine. Cathinone is listed alongside heroin and ecstasy as a Schedule I drug and cathine is listed as a Schedule IV drug, under the *Controlled Substances Act of 1970*. Penalties for possessing cathinone with intent to manufacture, distribute or dispense in the US are up to 20 years' imprisonment for a first offence or up to 30 years' imprisonment for a second offence.<sup>41</sup> For example, in *USA v Sheikh* (2004) the defendant was convicted of conspiracy to possess cathinone and cathine; he was ordered to serve 74 days in prison, followed by three years of supervised release. The amount of khat is not noted, but the khat was delivered via the Federal Express (from the UK) and the material was in a 'package'. This suggests it was a relatively small amount. Inevitably, penalties vary widely. In *USA v Roble* (2010) the accused was convicted of conspiracy to import and distribute cathinone and conspiracy to commit money laundering. She was convicted of all charges and sentenced to one year and one day of imprisonment with a five-year period of supervised release and forfeiture of \$25,000 (US). She appealed against the sentence on the basis that her past trauma in war-torn Somalia had not been taken into account. However, the court found that the experience had been considered and that she had returned to the khat trade despite a prison sentence. Significant amounts were involved and she was viewed as a recidivist, so the sentence was upheld.

The fact that the khat plant is not regulated in the US and that the stability of the chemical constituent, cathinone, is uncertain has presented difficulties for some prosecutions of khat possession and importation in the US. For example, in *Argaw v Ashcroft* (2005) the petitioner sought review of an order for removal from the US. Argaw had returned to the US with 'a handful' of khat after a visit to his home country, Ethiopia. Argaw advised customs that he was carrying agricultural products. When the product was inspected by customs it was identified as khat. The original immigration judge had concluded that 'cathinone is khat' and had ordered Argaw's removal on the basis that he was a trafficker in a controlled substance (cathinone). On review the court accepted that:

... khat is not a controlled substance and khat's chemical properties are not sufficiently known to establish, without testing, whether a particular batch of khat contains either controlled substance, cathinone or cathine. Argaw's khat was never tested ... (*Argaw v Ashcroft*, 2005, [11]).

Thus, the court accepted that there could be no reason to believe that Argaw was an illicit trafficker in a controlled substance.

The instability of cathinone in khat plants was specifically addressed in the case of *USA v Hassan* (2008). Hassan was originally convicted of a number of charges involving cathinone.<sup>42</sup> The court commented that when khat contains cathinone, it is a Schedule I substance and when it contains cathine, it is a Schedule IV substance. Which schedule khat is in significantly affects the applicable penalties. The court asserted that the 'mere presence of khat in the United States certainly does not support an inference that cathinone is present' (*USA v Hassan*, 2008, 28). The court reversed the judgments on various money laundering counts on the basis that there was insufficient proof that cathinone was present in the relevant khat. However, the court

41 *Controlled Substances Act of 1970*, Pub L No 91-513, §§ 841(a)(1), (b)(1)(C), 84 Stat 1242.

42 The convictions related to the following: one count of conspiracy to import cathinone, one count of conspiracy to distribute and to possess cathinone, one count of conspiracy to launder money and 41 counts of money laundering.

ordered a retrial on several inchoate offences on the basis that the jury was told that khat was not a scheduled substance and that cathinone and cathine were regulated differently (33). However, in the earlier case of *USA v Hussein* (2003), the defendant was charged with ‘knowingly possessing and intending to distribute khat, a plant naturally containing the stimulant cathinone’.<sup>43</sup> Hussein argued that the khat plant was not ‘controlled’ under the relevant legislation and that he was unaware that the plant contained cathinone. While the court accepted that the statutory provisions could be made clearer by regulating khat by name as well as via cathinone, the court was satisfied Hussein knew, in a general sense, that he was dealing with a controlled substance. The court considered that the defendant’s use of false addresses and deliberately deceptive labels, as well as the amount of remuneration he would have received for his role in the importation, were enough to support the jury’s conviction (*USA v Hussein*, 2003, 55). His sentence of one year’s probation was affirmed.

The problems associated with the instability of cathinone in khat often result in conspiracy or attempt offences. For example, in *USA v Hassan and ors.* (2009), four men were accused and convicted of conspiracy to distribute and possess cathinone offences. They appealed and on appeal it was recognised that the possession charge would require that khat actually contained cathinone, while this requirement did not exist for the inchoate offences. The defendants in this case were arrested as a result of a controlled delivery operation undertaken by the New York Police Department. Police had become aware that packages were coming in overnight courier bags to the US from Africa and the Middle East via London, Luxembourg and Amsterdam (5). It was commented that the fact that khat was wrapped in banana leaves to keep it cool, delivered by overnight courier and then taken in large rental vehicles to its destinations all supported the prosecution claim that there were efforts being made to preserve the cathinone, in turn supporting the conspiracy claim (9). The convictions were upheld.

Some have tried to avoid conviction arguing a lack of fair warning. In the 2005 US case of *USA v Caseer* (2005), the defendant was sentenced to two years of probation for one count of conspiring to import cathinone and one count of aiding and abetting in the importation of cathinone. Caseer claimed that he did not know that khat contained a controlled substance. Ultimately, the conviction was reversed on appeal. According to the prosecution’s evidence, the defendant knew the plant khat provided a stimulatory effect ‘like tea or coffee’ (*USA v Caseer*, 2005, [51]); however, the court found that ‘the stimulant effect of khat is too mild to permit a reasonable inference that Caseer knew that khat contained a controlled substance’ ([51]). The appeal court found that there had not been ‘fair warning’ in relation to the illegality of khat because cathinone, the scheduled substance, was an obscure scientific term and the ordinary person who used khat could not be assumed to have specialised knowledge about its chemical ingredients (*USA v Caseer*, 2005, [122]). Members of the court also recognised that a number of specific plants are actually regulated in the schedule, including peyote cactus, marijuana and coca; the exclusion of the khat plant from the schedule was perceived to add to the confusion (*USA v Caseer*, 2005, [104]). A more recent judgement suggests that the ‘lack of fair warning’ claim is unlikely to be successful. For example, in *USA v Awad et al.* (2010), the defendants argued that the relevant Act was ‘unconstitutionally vague and failed to provide fair notice of what conduct it made criminal...’ However, the court found that:

... when a compound is listed as a Schedule I controlled substance, that listing automatically puts the public on clear notice that those chemicals would be treated for the purposes of federal law as a Schedule I controlled substance (at [HN1]).

### 4.3 Canada

In Canada *Catha edulis* Forsk, its preparations, derivatives, alkaloids and salts, including...cathine<sup>44</sup> is listed in Schedule IV of the *Controlled Drugs and Substances Act*, SC 1996, while cathinone is listed in the more serious category, in Schedule III. Reported cases in Canada relate to charges of importing or conspiring to import the plant *Catha edulis* and have generally resulted in non-custodial sentences (*The Queen v Nur*, 2004;

43 *Controlled Substances Act of 1970*, Pub L No 91-513, § 841(a)(1), 84 Stat 1242.

44 *Controlled Drugs and Substances Act*, SC 1996, sch IV.

*The Queen v Lee*, 2006). For example, in *Lee* the judge observed that the drug was generally treated as a 'soft one' (*The Queen v Lee*, 2006). In *The Queen v Nur* the judge commented that khat had long been viewed as an 'acceptable substitute for alcohol among Muslims' ([8]). In 2007 khat was the most common illegal import into Canada. During that year approximately 28 tonnes were seized in Canada. Most of it had been brought in via the UK (RCMP 2007, 12). It is claimed that sophisticated importation networks rather than single operators import much of the khat into Canada (RCMP 2007, 13).

## 4.4 United Kingdom

The UK has a tolerant approach to the drug. In 2005, the Home Office commissioned a report to explore khat use in Somali communities in the UK (Patel, Wright & Gammampila 2005). The report found that most people who used khat did so in moderation and generally reported only mild side effects. The Somali people interviewed were divided on whether the drug should be prohibited. The report concluded that a number of issues identified could be dealt with through health awareness work, including washing khat before chewing to remove pesticides, ventilating khat chewing rooms properly and eating before khat chewing sessions, as chewing suppresses appetite (Patel, Wright & Gammampila 2005, 44).

Following the report, the UK Advisory Council on the Misuse of Drugs held a review of khat and came to similar conclusions. It found that khat should remain legal in the UK given that the evidence of harm from the drug was not sufficient to justify its control; its use was confined to very small and specific communities in the UK and it was not likely to spread to the wider community (Advisory Council on the Misuse of Drugs 2005, 10). Instead of regulation, various UK neighbourhoods have approached the khat issue as a multilayered set of issues, including community safety, health and public relations (Isse 2005, 20–1; Klein 2008, 830). Up to around 6000 kg of khat is estimated to be imported into London every day of the week, largely from Kenya (Advisory Council on the Misuse of Drugs 2005, 10). However, not all khat imported into the UK is used there; a proportion of this khat is bound for other markets in Scandinavia, Canada and the US (Klein, Beckerleg & Hailu 2009, 509; Rees 2007).

In 2009 a Value Added Tax of 15 percent was introduced in the UK. Internal calculations suggest that current import amounts into the UK will result in between 1 to 1.5 million pounds being earned in the 2010–11 financial year. It is suggested that these proceeds could be put towards education, health and harm reduction programs and to support resettlement programs operating in Somali communities in the UK (Klein, Beckerleg & Hailu 2009, 512). Khat regulation was an issue in the 2010 UK election; one conservative member of parliament, Sayeeda Warsi, promised to ban khat if elected (Warsi 2008).

While the UK approach has led to the establishment of a number of programs focused on health and neighbourhood management strategies (Klein 2008, 819), in contrast, the criminalisation approach in the US and Canada requires that significant public resources are applied to criminal trials and border regulation. While border control strategies may be uncovering a great deal of the illegal khat being introduced in Canada and the US, courts appear to be sympathetic to those involved in the khat trade and low-end penalties have generally been applied.

## 5. Khat and health

### 5.1 Introduction

While a number of adverse social and health effects have been associated with khat, many of these assertions have been countered with opposing research claims (Armstrong 2008). For example, a petition introduced to the Australian Parliament in 2008 by the East Africa Women's Foundation claimed that khat use contributed to domestic violence and family breakdown (Commonwealth of Australia 2008).<sup>45</sup> However, researchers have noted the difficulties associated with disentangling the effects of khat use from the often traumatic effects of immigration that many Australian khat users experience (Fitzgerald & Lawrence 2009, 21). Other studies have also reported on the loneliness of the migration experience (Narchal 2006).

However, there is a growing literature on the links between khat use and negative health impacts, including damage to the gastro-intestinal system, cancer, high blood pressure and stroke (Al-Motarreb et al. 2005, 576; Al-Habori 2005, 1, 149). More common effects are said to include anxiety and sleeplessness (Gebissa 2008, 787). A number of case studies have associated khat use with psychosis (Stefan & Mathew 2005, 843; Graziani et al. 2008, 771). However, Warfa et al., in their survey of research into the relationship between khat and mental illness, recognised that there was a lack of research into the links between the two (2007, 315). As previously noted, because of its stimulant effect, some studies claim that khat is used to stay awake and focus on work tasks and thereby increase productivity; however, other studies claim khat use leads to laziness and unproductiveness (Armstrong 2008, 636). Research has found that some people use khat to help them stay alert while driving for long periods—for example, while driving taxis (Berman 2009, 18) (see Chapter 11).

Many people living in Australia who regularly use khat are either refugees or recently arrived immigrants and this group is known to be vulnerable to poor health due to a number of factors, including low awareness by practitioners of the health issues affecting refugees (Murray & Skull 2005). Given the potentially significant mental health and broader health implications for those who use the drug, it is desirable that health professionals acquire knowledge about the use of khat and its health implications for users.

#### 5.1.1 Pharmacokinetics (*how the body absorbs khat*)

It is thought that ingestion of the active constituents in khat occurs both through the mucous membranes in the mouth and through the stomach and small intestine. Once chewing starts the maximum concentrations of cathinone and cathine have been found to occur in the blood stream at 2.3 hours and 2.6 hours respectively. The time taken for total elimination of the substances from the body after starting to chew is approximately 4.5 hours for cathinone and 10.2 hours for cathine (Toennes et al. 2003).

Only a small fraction of cathinone (about 2%) appears unchanged in the urine due to its metabolism in the liver. Most cathinone is metabolised to norephedrine and is excreted in this form. In the UK, a biochemical test to detect norephedrine in the urine (and therefore khat use) is commercially available. The test uses gas chromatography mass spectrometry. The test will give a positive result for up to about 48 hours after consumption of khat (Cox and Rampes 2003).

### 5.2 Addictive potential

Participants had a range of views on whether khat was addictive. Some, predominately users, did not believe khat was addictive and that if it were available they would use it, but they did not feel that they would need it all the time. A number of users reported to be able to limit their khat use to once or twice a week. By contrast, other focus group participants reported that they believed that khat was addictive and that certain people had difficulty controlling their khat use.

<sup>45</sup> However, see a Western Australian study where 52 members of Horn of Africa communities were interviewed and khat was not apparently raised as an issue. (This may be because the interviews were conducted in a state where khat is illegal.) (Fisher 2009).

It's very hard for one to control his addiction to khat. One cannot easily say only sit for khat on Sunday or on Saturday. Whenever you get a chance, you want to grab it, because one is really addicted to it. – Somali male, Perth

The most recent assessment of khat by the World Health Organization concluded that the abuse potential of khat was low and that khat dependence was mild and associated with consuming khat on a daily basis (World Health Organization 2006). Multi-criteria decision analysis modelling of drug-related harm data from the UK suggests that khat has a low potential for dependence or harm compared to other recreational drugs such as alcohol, cannabis, ecstasy, other stimulants (amphetamines, cocaine), opioids, ketamine or benzodiazepines (Nutt et al. 2007).

As with any substance, the range of harms and the development of dependence is a complex interaction between properties of the drug (psychopharmacological effects, dose, route of administration), individual conditions (such as genetic factors, personality, psychological and physical health) and socio-cultural factors, including environmental factors (such as drug availability and price), social conditions (employment, social integration) and established rules or patterns of use within a cultural group (Zinberg 1984).

However, unlike amphetamine, the addictive potential of khat chewing still remains contested. Experts consider that khat has the potential for a mild dependence syndrome (Warfa 2007, 310).

### 5.2.1 Physiological dependence

The active substances found in khat, cathinone and cathine, closely resemble amphetamine both in physiological and behavioural impacts (Feyissa & Kelly 2008). Cathinone has sympathomimetic and central nervous system stimulation similar to the effects of amphetamine, producing similar, albeit milder, clinical effects. Some evidence suggests that khat is associated with a mild withdrawal syndrome, occurring several days after stopping use. As with other psychostimulant withdrawal syndromes, the more common features include low or fluctuating mood, irritability, poor sleep (including nightmares), lethargy and cravings. Similar to other psychostimulants, however, identifying a withdrawal syndrome can be difficult, especially as the symptoms appear to be mild, emerge several days after last use and likely to not be readily identified by users as 'withdrawal' or seen as a major problem. For example, in one study only 0.6 percent of khat chewers reported that they continued to use in order to prevent withdrawal symptoms (Alem & Shibra 1997).

It is thought that tolerance to khat does not occur to any significant extent, although some evidence (noted above) suggests that a withdrawal syndrome for khat may occur (Cox & Rampes 2003). Research using animal models suggests that the active ingredient in khat, cathinone, is capable of inducing self-administration in rats and monkeys, indicative of re-enforcing properties shared by other psychostimulants such as nicotine, caffeine, and amphetamines (Gosnell et al. 1996; Yanagita 1979). While there appears to be only mild or a minor degree of physiological dependence to khat, it may be associated with features of psychological dependence. This refers to an impaired ability to control the use of a drug, with persistent use of a drug despite adverse or harmful effects. In a recent study into khat dependence among 204 khat users in the UK, 46 percent of respondents reported that they wanted to stop khat chewing (Kassim et al. 2010). Forty-eight percent of respondents had attempted to stop khat chewing, but factors such as social interaction (48%), habit and dependence (21%), helping pass time (17.6%), helping concentration during work and study (5.9%), no alternative to khat chewing (4%) and isolation (3%) were cited as being barriers to quitting. In the same study, 51 percent of respondents scored 6 or more on a severity of dependence scale (SDS) for khat, suggesting probable psychological dependence. Thirty-two percent of respondents scored 8 and above, suggesting a severe level of psychological dependence (Kassim et al. 2010). It must be emphasised that the SDS has not been validated in this population or for this drug, and interpreting these findings requires caution.

## 5.3 Psychological and physiological effects

Cathinone acts on the dopaminergic and noradrenergic pathways in the brain as well as causing an increase in the release of serotonin (Graziani et al. 2008). The physiological and subjective effects of khat are similar to

other psychostimulants—and extend across a continuum of mild to toxic effects. This is based upon factors such as the drug (dose and duration of use), individual factors (eg underlying anxiety, psychiatric disorder, vulnerability for psychosis) and social conditions of use.

- *Psychological effects* are enhanced concentration, increased alertness, enhanced mood, talkative, increased self-confidence. Vulnerable individuals can experience toxic effects, such as hypervigilance, anxiety, agitation, and features of psychosis (perceptual disturbances, paranoia). Toxic effects may also be a consequence of extended periods (eg days) with little or no sleep and poor hydration and nutrition.
- *Physiological effects* are elevated heart rate, blood pressure, wakefulness and increased energy levels. Gastroenteric effects include dry mouth, constipation, anorexia, weight loss, dental caries and periodontal disease, chronic gastritis and peptic ulcer. At toxic levels, use could be associated with related complications such as stroke or heart attacks in individuals with underlying medical conditions. Chronic use is associated with increased risk of upper gastrointestinal malignancy.

Some users suggested that khat is a useful treatment for depression:

We use it for remedy and it doesn't cost the government. – Somali female, Melbourne

Psychostimulants have been used historically in the treatment of depression and related somatic symptoms of fatigue and lethargy. Pharmacologically khat could be expected to have some antidepressant activity, at least in the short term. Given that psychological problems such as depression, anxiety and post-traumatic stress disorder are common in refugees as a result of past experiences of violence (Tiong et al. 2006), the use of khat may sometimes be an attempt at self-medication for such symptoms. However, longer term psychostimulant use and dependence can result in features of depression. Case reports of depression linked to khat use have been reported, but these usually follow the cessation of khat use, and may be linked to withdrawal (Pantelis 1989).

Participants reported a range of discontinuation effects in this study. Most commonly, and as seen with other psychostimulants, participants reported that an extended khat session was usually followed by a 'crash' phase the following day, with disrupted sleeping patterns, lethargy, low mood and irritability for 1–2 days after an episode of heavy use. Common sleep disturbances included excessive sleep, hypnagogic hallucinations (at the time of falling asleep) and vivid bad dreams when khat use was stopped. This 'crash' phase does not necessarily imply a withdrawal syndrome or dependence, and can be likened to a 'hangover' following a period of heavy alcohol use. These symptoms can cause individuals to seek help from health professionals, and could impact upon psychosocial function, work performance and relationships.

Speaker 1: I think they sleep less and less and I've seen people with red, bloodshot eyes and they have not slept for a few days while they have been munching on this and they are very high. I think their mental state can also effect what they're doing.

Speaker 2: The sad part is they go to their GP here and the GP gives them happy pills. Because they can't sleep so they get anti-depressants and then their mental issue gets worse. It's very sad.

Facilitator: So they're taking the anti-depressants and the khat at the same time?

Speaker 1: Yes, and they never tell the doctor this is what happened.

– Female focus group, Sydney

## 5.4 Khat use and psychosis

Some participants in this study commented on khat psychosis:

How it affects people's heads we don't [know] that much because you know ... here there are people who don't know from Footscray who are chewing ... just khat the whole day. You know just because sometimes when you look at them they don't look good you know. Sometimes they look like half-minded people ... because they speak—when you ask them something they tell you another thing. – Ethiopian male, Victoria

It's a very major source of madness, of craziness. People are alright if they stop it, they can come back alright, if they go the right way ... But when you overuse it, and overuse it, and overuse it, that's when you come to this situation. – Somali male, Perth

Recent literature regarding mental health problems in khat-using Somali immigrant populations in the UK suggests that severe mental health problems such as psychosis, depression or post-traumatic stress disorder are not associated with frequency of khat use, but rather were linked to earlier traumatic events (Bhui & Warfa 2010). Bhui and Warfa emphasise the importance of social and environmental factors when understanding the patterns, and effects, of khat use.

The published medical literature has a number of case reports of patients with psychotic presentations—predominately schizophreniform presentations (paranoid delusions, auditory hallucinations, hostile perception of the environment, ideas of reference, isolation, or aggressive behaviour towards others). In these cases, symptoms have resolved within three to 14 days following cessation of khat use but can recur if khat chewing is again started. Other case reports describe hypomanic presentations, with hyperactivity, changing mood varying from euphoria to anger, shouting, pressure of speech, grandiose delusions, flight of ideas and tangential thinking. Again, symptoms resolve once khat is not used.

The first reported case of khat-induced psychosis in Australia was from the Graylands Hospital in Perth in 2005. That case concerned a 33-year-old Somali man who had been living in Australia for four years who had a 10-year history of using khat but no other drug use. He was referred to mental health services because of concerns about his mental state, as he had moved out of the family home on account of believing that his relatives were poisoning him and he had also made complaints to the police about being followed by 'fundamentalists' and 'criminals'. His mental state had been deteriorating for the past 2–3 months, he also suffered from insomnia, weight loss and social isolation. The patient was treated with olanzepine 20mg/day and was discharged after four weeks (Stefan & Matthew 2005). Note, as stated earlier, that the incidence of psychosis among khat users is thought to be low and associated with chronic use only (Stefan & Matthew 2005).

Current evidence would therefore suggest that, while features of psychosis may be associated with khat use, this appears to be very uncommon and related to heavy and extended periods of use and/or in individuals with an underlying vulnerability for psychosis—either due to genetic factors, or previous life events (eg trauma). Symptoms appear to be self-limiting and resolve upon stopping use, although, as with other drugs, repeated use may again precipitate psychosis.

## 5.5 Khat and violent behaviour

Although cathinone and amphetamine share a similar chemical structure and mode of action, khat does not seem to induce the same aggression and rage as amphetamines, with the general consensus of focus group participants and police in this study being that people do not become more violent upon using khat.

I think consistently you would hear that everyone would tell you that it doesn't cause any violence. – Somali female, Melbourne

Some reports link khat use in general to domestic violence and some of the police interviewed for this study made this connection. This appears to be due to the irritability and depression experienced by users after the drug has worn off, rather than the state induced directly following ingestion of the drug:

Some people it affects in different ways. Some people are one day awake or last night they've eaten. All day they spend sleeping and some people when they eat the khat they come to you very angry. They first thing they do is hitting the kids and the mother and all those things. – Somali female, Sydney

Many participants suggested that family violence relating to khat may also be due to family conflict arising from disagreements about the amount of time and money spent on khat, rather than a direct effect of the drug. This position has been reflected in earlier work (Fitzgerald 2009, 18). For example, one Sydney Somali male participant commented:

You will find anti-social behaviour in the family life. The husband will become abusive in defending his actions [khat chewing]. The partner is not happy with that, the children are not getting a fair share of his life, all those kinds of things, then it may constitute domestic violence because of defending his habit.

## 5.6 Physical effects

Participants who used khat generally denied that khat has any negative physical side effects. For example:

There's not any health risks that khat brings because in the whole Africa people eat khat and no-one has been ill because of khat. – Somali female, Brisbane

There is also a widespread perception amongst the Somali community that khat is not a drug, but more like a food, and therefore not capable of causing harm. For example:

If it was a drug we wouldn't allow our young people to have it...it's just like we eat as a salad. – Somali Female, Brisbane

A lot of them will tell you, oh it's just a cultural, socialising thing ... so they get a shock when you tell them it is a drug. I know when we went to the drug training, everybody was shocked to find out khat is a drug.

Mainly women were training; men didn't even want to know about it. – Somali female, Sydney

Some users also believe khat to be medically beneficial overall, including being an effective treatment for diabetes mellitus (although evidence suggests otherwise). Users of khat are therefore not likely to report the use of khat to health professionals in response to screening questions about drug use, unless specifically asked about the use of khat. Health professionals should therefore routinely inquire about khat use with patients of Somali or other East African background.

The research on khat and health effects is still at an early stage. To date, most negative effects have been associated with regular long-term use, and large-scale cohort studies in humans are generally lacking. However a growing body of research suggests that khat may have a number of adverse health impacts, including effects on the cardiovascular, gastrointestinal, genito-urinary, hepatobiliary, respiratory, endocrine and central nervous systems, as well as impacting on reproductive and obstetric health.

### 5.6.1 Cardiovascular effects

When people do khat they do feel, they become very hyper, their eyes come out and they want to be cleaning, they just want to be doing something inside the house. The blood goes high, the pressure, they sweat a lot. They get that energy and they want to do a lot of work. – Somali female, Sydney

Some evidence suggests that khat use causes increased blood pressure (Al-Motarreb et al. 2010). Increased blood pressures<sup>46</sup> are detectable after starting a khat chewing session and reach a peak around three hours after chewing begins (Hasan et al. 2000).

Khat use is also associated with an increased risk of heart attack (myocardial infarction) and dilated cardiomyopathy (a condition in which the heart becomes weakened and enlarged and cannot pump blood effectively) (Al-Motarreb et al. 2010). One study suggested that the increased risk of heart attack among long-term users of khat may be 7.6 times the risk of a non-user and that the risk for heavy khat users may be as high as 22 times the risk for a non-user (Al-Motarreb et al. 2005). Khat use may also affect the properties of aspirin in such a way as to make it much less effective as a preventative treatment for heart attack and stroke (Al-Motarreb et al. 2010). A further vascular complication of khat use may be a significant increased risk of haemorrhoids, although further research controlling for confounders such as smoking, diet, age and chronic constipation has not been performed (Al Hadrani 2000).

<sup>46</sup> Both systolic and diastolic.

### 5.6. 2 Dental and oral health effects

The effect of khat chewing upon dental and oral health appears varied. Many focus group participants reported that khat users experienced dental problems in greater numbers than non-users:

I see a lot of dental issues ... You have people, very young people, their teeth are falling out. – Somali female, Sydney

To look at that, the Somalis are very proud of brushing their teeth, regularly, whether he uses khat or not, but the only thing I can imagine is some substance in the khat has a direct effect with the oral health.  
– Somali male, Sydney

Other participants, however, reported that khat users often neglect dental hygiene after a long night of chewing. Complicating the picture may be the concurrent consumption of large amounts of sugary drinks with the khat.

They eat a lot of sugar cubes or sometimes they use lollies, tea, something to make sweet because it's very bitter – Somali male, Sydney.

Research suggests that khat chewing may increase the incidence of mouth ulcers or lesions (oral leukoplakia) (Ali et al. 2004) and there is weak evidence to suggest that khat chewing has the potential to increase the risk of oral cancers, especially when khat is combined with alcohol and tobacco (Graziani et al. 2008). While some participants in this study reported that some khat chewers have lost their teeth as a result of khat chewing, research is ambivalent. One report suggests that khat chewing may lead to increased risk of tooth loss, especially in younger people (Mengel et al. 1996), while another study has found no difference in the rate of dental cavities between users and non-users (Jorgensen & Kaimenyi 1990).

The practice in Australia of consuming large amounts of sweet drink with khat, coupled with reduced appetite and consumption of more nutritious food, is likely to have a negative impact on the oral health of users.

### 5.6.3 Gastrointestinal symptoms

The literature reports that constipation is a common complaint among khat users and may be chronic (Al-Motarreb et al. 2010). One male participant in Brisbane reported this complaint:

One Somalian guy he told me this story, he go to the doctor and visit him and ask him, his stomach will be no—he can't go toilet, he got constipation and the doctor said, what's wrong with you? Your stomach's getting bigger and bigger and he say, it's khat and he says, what does it mean khat? Can you bring some samples?

Khat chewing has also been noted as a risk factor for the development of duodenal ulcers (Raja et al. 2000). Khat chewing may also cause liver damage (hepatotoxicity) and liver enzymes may be elevated as a result of khat use (Al Haboori et al. 2002). The *New England Journal of Medicine* recently reported six cases of liver failure in patients in the UK resulting in either transplantation or death which could not be attributable to any other cause except use of khat (Chapman et al. 2010).<sup>47</sup>

### 5.6.4 Khat use and diabetes

Many focus group participants raised the purported use of khat as an effective treatment for diabetes. Other researchers have found a similar belief among people in Yemen (Al Motareb 2010). For example, a Somali male focus group in Brisbane had the following discussion:

Speaker 1: He says that when he has his sugar level up and that when eats it, it's better. When he ...

Facilitator: So instead of having some food he chews the khat.

Speaker 1: He does have food, but it helps him with the sweets.

Speaker 2: If he eats too much, his blood sugar level will just rise up as well. So it's another way to just keep your level up.

<sup>47</sup> The mechanism of khat-related hepatotoxicity is unknown.

Speaker 1: It helps him with his sugar level.

Facilitator: Are you on medication for your diabetes?

Speaker 1: Yeah.

Facilitator: Have you told your doctor about the fact that you chew the khat as well?

Speaker 1: Yeah.

Facilitator: What did the doctor say?

Speaker 1: The doctor said he doesn't see any problem with it.

Speaker 3: The more he chews, the more his sugar level goes down.

One Somali man in Sydney commented:

... the people who have diabetes, it has helped them too, the khat. Most of the people who've got the licence [to import khat], they have diabetes too. I forgot to mention. Somalia people, who've got the licence I mean, the dry one, all have diabetes and it's helped.

This belief may be based on the fact that khat is an appetite suppressant and therefore may reduce sugar cravings. The limited amount of research done into khat use and diabetes suggests khat exerts a harmful effect on diabetics. In one study, blood glucose levels increased during a khat chewing session in chronic khat users who were type 2 diabetics, but glucose levels in non-diabetics were not affected (Saif 2003). There are no known population-based studies implicating khat as a risk factor for the development of type 2 diabetes, although once again the consumption of large amounts of sugary drinks that is said to accompany khat chewing puts those who practise such habits at an increased risk of developing the disease.

## 5.7 Reproductive effects

Studies of khat chewing during pregnancy suggest that it leads to lowered birth weight, teratogenic effects (ie effects that are likely to disturb the growth of the foetus) and increased infant mortality, with such effects thought to be mediated by altered utero-placental blood flow relating to the placenta and the uterus (Mwenda et al. 2003). One Victorian Somali woman reported that she used khat as a remedy against morning sickness when she was pregnant:

... I was having my last child and I was vomiting sick. My uncles from my mother's side said to my late husband give her a bit of khat. She will stop vomiting. I was vomiting like three months eating nothing and I was in Kenya at that time. I didn't drink—three months tea and when I chew a little bit, I stopped spitting and that afternoon I drink tea so it was medicine for me. From that day, I'm still chewing from 1994. It was medicine for me. Even now if a woman is pregnant and she said—I give her [khat] to eat.

Apart from this story there is no evidence in the literature that khat is an effective treatment for morning sickness (hyperemesis). One Victorian group of Somali women discussed pregnancy and commented that khat use while breastfeeding was acceptable. However, it was suggested that there is no time available to chew khat at this stage:

Facilitator: While you're breastfeeding, can you chew khat?

Female: Yes it's not like that but people doesn't do it. Yes, no time because you're waking up at night, giving breastfeed and cleaning. No time to have khat.

The breakdown product of cathinone, cathine (nor-pseudoephedrine), is excreted in breast milk and has been traced in the urine of a breast-fed infant with unknown effect (Manghi et al. 2009).

Many participants associated khat use with increased libido and fertility: 'it's more like Viagra' and 'it increases the amount of his sperm'. However, some evidence suggests that khat causes decreased fertility in males. A study in Yemen shows that khat chewers had significantly less semen volume, sperm count, sperm motility and percentage of normal spermatozoa (El-Shoura et al. 1995). Other researchers have suggested that long-term use of khat may lead to decreased libido and impotence in males (Mwenda et al. 2003).

## 5.8 Khat and drug interactions

The use of monoamine oxidase inhibitors, drugs sometimes prescribed to treat depression, should be avoided in khat users as concurrent use of khat may induce a reaction that causes the body to have too much serotonin (serotonin syndrome), leading to a severe increase in blood pressure (hypertensive crisis), which could be fatal (Cox & Rampes 2003). Some have also suggested that reactions to surgical anaesthetics may be out of the ordinary in the chronic khat user (Cox & Rampes 2003).

## 5.9 Resources and services available for khat users

Individuals experiencing problems as a result of khat use and/or addiction can gain assistance through the drug and alcohol services available in each state. No specific services are available for khat users, although multicultural mental health services available in some states, such as DAMEC in New South Wales, may be able to offer more culturally specific assistance.

## Conclusion

A vivid perception still remains among khat users that use of the drug is harmless or indeed positive for many conditions such as diabetes and stress. Health professionals have a role to play in educating users about potential harms arising from using the drug and also promoting its use to minimise khat's negative health effects for the individual and for the community.

## 6. Khat and Islam

### 6.1 Introduction

A number of participants in this study commented directly on the relationship between their understanding of the Islamic position on khat and their decision to chew the plant. In many cases it was participants' interpretation of unofficial, or Islamic law, rather than state law that guided their decision to chew khat. Both the literature and the views of the study participants were inconsistent on the position of Islam in relation to khat.

### 6.2 The role of Islam

Although Australia is generally considered to be a secular state (Hudson 2003, 425), the consideration of religion can and should make an important contribution to public debate (Audi 1989, 278–9). Indeed there may be risks in excluding religious considerations from such discussions. In particular, Maddox (2006, 309) suggests that excluding religion from debate may strengthen its power, or result in alienation fostering extremism (see also Davies 2009, 76). Hudson suggests that Australian citizenship has 'religious features' and that multicultural countries like Australia should consider themselves multi-faith rather than secular (2003, 429). In a sense, the Australian Constitution reflects this position when it exhorts that 'the Commonwealth may not make any law ... for prohibiting the free exercise of any religion ...' (section 116). If we consider Australia as multi-faith, this view has implications for the consideration of legal issues (Hudson 2003, 429). In the context of regulating khat, particular considerations may include questions about whether khat should be prohibited, culpability and sentencing.

In Australia, it has been argued that legal pluralism is already a reality and that shari'a operates as a form of unofficial law and non-state legal ordering (Black 2008 214). Scholars of Islam, and those who follow Islam, disagree as to the extent to which shari'a must be followed in non-Muslim countries (Abou El Fadl 1994, 151–3). As a result, in Australia and other common law countries where khat chewing is predominantly associated with Muslim communities, Islamic law may provide an authoritative statement governing a person's decision to chew, despite existing state law (Klein 2008, 830).

Thus there is a strong association between Muslims and the consumption of khat and it is reported that Muslims are the major consumers of khat worldwide (Armstrong 2008, 632). Predominantly, Muslim nations (such as Yemen, Somalia and Djibouti) are identified as nations where the consumption of Khat is particularly prevalent (Armstrong 2008). In these countries more than 90 percent of the population identifies as Muslim (The Pew Forum on Religion and Public Life 2010). Similarly, in the diaspora communities of immigrants from East Africa and the Horn of Africa in Australia, the UK, Canada and the US, khat chewing is associated with Muslim people (Stevenson et al. 1996, 75–7). In Australia khat chewing has been strongly associated with the Somali community, most of whom are Muslim (Fitzgerald & Lawrence 2009, 4).

Australia has an increasing Muslim migrant population from the countries of the East African and Horn of Africa regions (see Diagram 3; ABS 2006). Some suggest that khat use is central to the lives of many members of these immigrant communities (Armstrong 2008, 631). However, uncertainties exist about the Islamic legal perspective on khat and its significance to the increasing number of new immigrants to Australia (Fitzgerald & Lawrence 2009, 10). Regardless of these differences in state law, the participants in our focus groups held divergent views on the Islamic position on khat, and many participants referred to Islamic law rather than state law to explain why it was acceptable or unacceptable to chew the plant. The study participants' views are discussed in the following section, along with competing scholarly views of the Islamic position on khat.

### 6.3 The spirituality and status of khat in Islam

The spirituality and status of khat varies both among Muslim groups and among individual Muslims in East Africa and the Arabian Peninsula (Rahman 1979, 223). The geographical region, culture and the sect of Islam all play a role in how individuals and groups of Muslim people perceive khat. Because Islam 'operates in distinctive ways in local contexts, there is a range of Islams' (Black 2008, 217; Al-Azmeh 1996). A community engagement forum held in the UK by the National Drugs and Race Equality Forum found that, depending on which sheikh's teachings are followed, members of the UK Somali community may view khat use as harmless and 'halal' (permissible) or 'haram' (impermissible) (Buffin, Mir & Mirza 2008: 6). Inconsistency arises in part as a result of the interpretation of the key sources of Islamic law that are used to identify guiding principles. These are, first, the Qur'an, followed by prophetic traditions known as the Sunna and Hadith (sayings and practices of the prophet Muhammed (pbuh)) then Ijma (the consensus of scholars) and Qiyas (the process of deductive analogy) (Rahman 1979; Movsesian 2010, 867). Muslim scholars accept these four sources of Islamic law (Michalak & Trocki 2006, 527–34). According to Muslims, the Qur'an is the final revelation of God to humankind, and Ulema (Islamic scholars) unanimously agree that it is the most authoritative guide for Muslims and the first source of the shari'a (Movsesian 2010, 867).

Across the Muslim world, opinion is sharply divided among Islamic scholars and muftis on the correct approach to khat. The three main positions on khat are that it is halal (permissible), makruh (detested or discouraged) or haram (forbidden). The debate among sections of the Islamic community in regard to the permissibility and impermissibility of khat is based on the inferences made in various verses in the Qur'an and some prophetic traditions known as Hadith where they relate to intoxicants. The key to these debates lies in how the intoxicating elements that are found in the shrub khat and their impact on the human body and society at large are understood.

A well-known Muslim scholar, Shatibi, argues that a balance must be struck between adherence to the texts' apparent meaning and the lawgiver's intention (Al Raysuni 2006: 46). It must be emphasised that the current debates on the legality of khat in Islamic law are inherently part of the broader debate about whether or not Islamic shari'a is rigid or flexible and how far it is able to address changing social circumstances (Rahman 1979). The three main Islamic perspectives on khat are explored below.

### 6.4 The halal (lawful/legal) discourse on khat

Some argue that the deep-rooted Islamic religious and cultural traditions associated with khat consumption have persisted from the fifteenth and sixteenth centuries (Anderson et al. 2007: 3). Tradition was referred to by a number of the participants in our study as a justification for the halal position of khat. For example, a Melbourne Somali woman in our study observed:

It has been used generation by generation ... it's been used in the Qu'an; it's been used in religion occasions.' While in response to the question: 'Why can't you live without khat?', a Melbourne Somali man commented:

'... because it is our tradition, it is our way of life, we grow up with it—we enjoy it a lot. It doesn't harm us, it doesn't harm anyone.'

In the literature the khat plant has been referred to by a number of spiritual and religious terms, including the 'elixir of life', 'the flower of paradise' (Anderson, Beckerleg, Hailu & Klein 2007, 2; Varisco 1986, 1) and 'qut ul salihin', which translates from Arabic as 'sustenance of the righteous' (Wagner 2005, 125).

Proponents of the halal argument claim that there are a number of spiritual rituals that are aided by consuming khat, including reading the Qur'an and performing prayers. For example, one study conducted in Ethiopia showed that 80 percent of chewers used khat to gain a good level of concentration for prayers and to facilitate contact with God (Varisco 1986: 3). Similarly, members of the Sufi sect of Islam have sometimes approved the consumption of khat to gain concentration for religious practices (Gebissa 2004, 7; Armstrong 2008, 632). A Melbourne Somali woman in our study observed:

'We are 100 percent Muslim. Yes we do Qu'ran sometimes while we eat it. We'll listen to Qu'ran you know while we chew khat but we listen to music too. So we've got both.'

Similarly, a Perth Somali man observed: 'Some people use khat to get closer, to get more energy for their worship.' It is claimed that khat is also an accepted part of other Muslim religious activities. For example, it has been suggested that chewing khat is a central activity during the week-long Yemeni wedding celebrations (Wagner 2005, 137).

Proponents of the halal position also rely on the fact that there is not a verse in the Qu'ran that explicitly mentions khat or its prohibition. It is claimed by some that the lack of specific reference to khat in the Qu'ran or the Sunna, the two most authoritative principle guides of Islamic shari'a, means that khat must be halal (Omar & Besseling 2008, 3):

I don't find that [khat is not permitted] in the Qu'ran. I don't find that the Sunna has got anything to say about that. Let him bring it at an appropriate time. But that is two things that we have to look into. To make something illegal in Islam ... you either have to have it in the Hadith, or in the Sunna. – Somali male, Melbourne

Khat is understood by many Muslims to be permissible, pursuant to the Qur'an, as an alternative to alcohol. While scholars generally agree that the Qur'an expressly prohibits alcohol use (Michalak & Trocki 2006, 529), no such clear prohibition exists for khat. Many of the focus group participants in our study contrasted alcohol specifically with khat. For example:

... it's not alcohol. It's not hashish. It's something that makes you calm and we eat with tea ... – Somali woman, Melbourne

Facilitator: Do you drink alcohol...?

Speaker 1: No. It's against religion.

Facilitator: But khat is okay?

Speaker 2: Khat is ours. – Somali men, Brisbane

Some of the participants specifically claimed that, while alcohol is intoxicating, khat is not:

So drinking alcohol of course changes the whole mentality, you know the whole of thinking. You know you lose control. When you're walking even you go and you're holding you know and balance is losing so that is where it's looked at but khat doesn't do that. So that's where it's safe... it's not a drug. – Somali woman, Melbourne

Does Khat affect someone? No. Does alcohol affect someone? Yes, because we know that they do all this and they say words that they didn't want to say and they regret later on when the alcohol gets out of the body. – Somali woman, Melbourne

The question of whether Islamic scholars regard khat as an 'intoxicant' is contested and is discussed further below in the section relating to the haram position.

## 6.5 The makruh (detested/discouraged) discourse on khat

The claim that khat is detested and discouraged or 'makruh', reflects a risk-averse middle ground. Makruh is explained to be something that is not bad if it is consumed in moderation but, if used in excess, becomes haram (Movsesian 2010, 870). Beckerleg notes that the former chief mufti of Uganda is one of the pioneering growers of khat and believes that it is neither halal nor haram (2006, 229). The makruh argument relating to khat considers it in similar way to tobacco smoking. Generally, tobacco smoking is tolerated because of its perceived mild effect (Ghouri et al. 2006, 265). Some of the participants in our study made comments that imply support for the makruh position, suggesting that, as long as one does not overuse khat, chewing it is halal. Only when khat is overused or the person becomes addicted to it does use of the plant become haram:

Speaker 1: ... if we look for addicts, khat can be haram in certain jurisdictions. If you—everything you use

over can affect you mentally ...

Speaker 2: And if it gets overused.

Speaker 1: Yes, overused has been a negative effect and this is what tells you not only mental. Only if you expend over your economical your family—so this is a habit. So we—I have not a decision to add from but according to Islamic religion if you use it more than—and it can affect your mental disorder then it becomes haram. – Somali men, Brisbane

Other participants claimed that there was a relaxed position that supported individual approaches to the plant. For example, another Somali man in Brisbane suggested: 'Some might have religious matters.' Another Somali man from Perth claimed that, until there was clearer information about the impacts and effects of khat, its legal status was unclear: 'The main problem is the people that don't have evidence of any [disease], or any other effects, so no one can exactly straight away say this is haram, full stop.' Arguably, the makruh position is the weakest and is probably adopted by a minority group of scholars. Some scholars argue that the makruh position may contradict a prophetic tradition (or Hadith) that states that: 'what intoxicates in large amounts is prohibited even if taken in small amounts' (Michalak & Trocki 2006, 529). This is discussed further below.

## 6.6 The haram (prohibition) discourse on khat

A number of scholars of Islam support the position that khat is prohibited or haram. Two related arguments are relevant here. The first is that khat should be defined as an intoxicant and once it is defined in this way it must be considered haram. The second argument relies on the claim that khat should be considered haram in order to preserve human interests. It reasons that the negative effects of khat exceed its benefits and it is thus haram. These two arguments are discussed in turn below.

The term 'khamr' is used in the Qu'ran and is often translated to mean 'wine' in Arabic; however, the word is understood generally to have the broader meaning of 'intoxicant' (Michalak & Trocki 2006: 528). A number of accepted Hadith relate to intoxicants and they may also cover khat if it is understood to be an intoxicant. Michalak and Trocki refer to a number of examples of relevant Hadith in this context, such as: 'Every intoxicant is khamr and every khamr is haram' (2006: 529). Thus if khat is considered to be an intoxicant it is, inevitably, haram, regardless of how much is used:

... there is an Islamic formula ... which means if you eat a large amount of something if they intoxicate you, eating small amounts of it still falls into the category of haram which means unlawful category ... – Somali man, Brisbane

Some Ulemas (Muslim scholars trained in Islam and law) apply a broad definition to the word khamr and rely on a series of prophetic traditions that focus on the necessary human interest and the concepts of 'Maqasid' or higher objectives of Islamic shari'a. These scholars refute the reliance on the text of the Qur'an and Hadith as the only sources of Islamic law. Instead, they use a mixture of sources of Islamic law to advance their case. For instance, some argue that Sunna (or practices of the prophet) supplements the Qur'an, but the Qur'an determines the meaning of the Sunna (Masud 1995: 247). The rationale is that Islamic law clearly stipulates that whatever clouds the mind is khamr and therefore should be regarded harmful. In support of this, some point to various verses in the Qu'ran. For example, one particular verse states that one must not perform prayers while one is intoxicated (Qur'an 4:43).

The question here is whether khat is defined as an intoxicant. The effects of alcohol and khat are quite different: alcohol is a depressant while the effects of khat are stimulatory. Some of the participants in our study questioned whether khat is indeed 'intoxicating'. However, overwhelmingly study participants also accepted that khat caused them to become 'stimulated,' 'more awake and energetic' and 'more sociable'. These experiences are consistent with pharmacological studies about the effects of khat (Graziani et al. 2008, 762):

... because we are mostly people from the Somali community. There is a significant number of Somali community who are ... eating or chewing the khat or also selling or buying. Because even though we are duty bound to abide by the laws of Queensland in general the laws of Australia, but Islamically khat is it not

lawful because it is classified ... as an intoxicant. And whatever is toxic according to the Islamic verdict it is unlawful. Therefore it should be illegal in the first place. – Somali man, Brisbane

A Somali male in Perth claimed that khat was addictive and observed: 'it's addictive, like drug. Drug is haram.' A noted scholar on Islam, Kasule (2007), suggests that, 'Intoxicants change or impair the intellect or the mind,' and for that reason alone are impermissible. Clearly khat does affect the way people respond to their surroundings and to this extent could be considered to be an intoxicant.

Some Islamic jurists and scholars have also used the concept of the 'preservation of necessary human interests' to argue that khat is haram. The necessary human interests to be preserved are determined by Muslim scholars to be the following five matters, in order of importance: protection of faith, life, lineage, intellect and property (Kamali 2006, 16). Accordingly, the test is that, if it is the case that khat has a negative effect on any of the five necessary human interests, it then becomes haram.

Consistent with the 'preservation of necessary human interests' argument, Maqasid Al Sharia, or the higher objectives of Islamic law, are also used to argue that khat is forbidden.

By using the concept of public interest (Masalih Al Mursalah), some Ulema have explored the plant's effects on health, the economy, society and the environment. For example, khat crops in Yemen are negatively affecting the environment, society and the economy by depleting scarce water resources through irrigation (Al-Mugahed 2009, 742). Similarly, in Somalia khat use is recognised as a drain on the economy (Poore 2009, 135). Thus it is claimed that it is the preservation of the greater good of mankind that supports the impermissibility of khat. A number of studies have discussed the social and economic effects of khat (eg Sykes et al. 2010) and these factors were also identified by some of the participants in our study:

Also in the Koran ... Allah doesn't like those who are extravagant who spend their wealth unwisely. In those categories I am very confident to say that khat is haram, which means unlawful in the first place. – Somali man, Brisbane

You could also be addicted to it so some people use less maybe on the weekend just to socialise. Some people, they can't control. Every night they buy it and use it so that means that all their income goes to khat instead of supporting their family. Or maybe even get more money out the family instead of saving for them. It's like a drug, I think. – Somali woman, Sydney

Another participant accepted that Muslim scholars were divided but that some scholars claimed that:

... the mere fact of someone sitting for eight continuous hours and wasting the time which God almighty has given to him. Based on that alone, [scholars] will say that wasting that time on something which is not beneficial is totally un-Islamic and unlawful. – Somali man, Perth

## 6.7 Conclusions

While the Islamic position on khat is far from clear, most of those who participated in our focus groups had a strong view on the correct position relating to Islam, and this view influenced their decision to support or reject prohibition and to chew or not to chew khat. For many Somali people living in Australia, two laws influence their lives; the state and Shari'a laws. Clearly, Islamic legal perspectives on khat are not consistent, but they add an important dimension to considering regulation and enforcement. Given that the overwhelming majority of khat users in Australia are Muslim, the uncertain status of khat in Islam poses significant challenges.

## 7. Police and khat in Queensland

### 7.1 Introduction

Only four police employees were interviewed in Queensland. The Ethical Standards Command of Queensland Police referred them to the project for interview. All interviewees were selected because they had heard of khat and knew something about it. Interviewees associated use of the drug with Somali and Ethiopian people. Two interviewees explained that people of Somali and Ethiopian background were clustered in a few suburbs of Brisbane: Logan, Beenleigh, Zillmere, Acacia Ridge, Moorooka, Salisbury and, more generally, the southside of Brisbane. Toowoomba was also identified as a town where a number of people of Somali background lived. Interviewees agreed that the level of police knowledge and general community knowledge in Queensland about khat was ‘very low’.

### 7.2 Knowledge about the legality of khat

All interviewees were aware that khat was illegal in Queensland and that it was listed as a Schedule II drug under the *Drugs Misuse Act 1986* (Qld). Three interviewees were also aware of the possibility of importing up to 5 kg of khat pursuant to Australian Government legislation; however, two of these three interviewees were unsure about whether this was possible in Queensland. One interviewee had been involved with introducing the prohibition of possessing khat and explained his understanding of why it was introduced as follows:

My understanding was that they were more looking at the active compound within the plant, which is a cathinone. That was the reason—well one of the reasons for bringing into the schedules. They simply named the plant because it was a plant which contained that active compound. But other than that, I’m not aware of too much more.

This interviewee discussed generally how legislation was developed to respond to emerging drug issues. He commented that the effect of the drug was important and gave examples of situations where a spate of illnesses or deaths had been associated with a drug. In the case of khat, this interviewee observed:

Originally I think this information came from the US in regards to cathinone. Then it was further developed and found that it’s contained within the plant, *Catha edulis*, it was developed from there.

In relation to permits for importation this same interviewee observed:

Up to a couple of years ago, it was lawful for a person to import a quantity of khat for personal use. That was a national import scheme down through the Department of Health and Ageing ... A couple of years ago they discovered that it was a restricted plant under our laws in this state. So they rang us and basically said well, we’re going to stop issuing permits for Queensland residents. That took about 18 months for those permits to lapse and dissolve out basically. They haven’t issued anymore.

This interviewee also noted the uncertainty in relation to the question of importation into Queensland in circumstances where the importer has a valid licence from interstate and has moved to Queensland with legally imported khat:

Again, that would have to be on a case-by-case basis. I mean you’d probably look at that and suggest that, okay; this person has had a lawful import licence from a Commonwealth authority. They’ve since moved to Queensland and they’re in possession of this drug. You would have to think that you wouldn’t progress with the prosecution. But you would probably have to advise that person that as they now reside within Queensland, it is an illicit drug. If they were caught with it again, regardless of their import permit from the Commonwealth, then they’ll be liable for prosecution. Again that depends on the officer.

One interviewee commented that police knowledge of khat in Queensland would generally be low except for those police in areas where concentrations of members of Horn of Africa communities are living:

There's 10,000 police in Queensland and I would say a vast majority wouldn't be aware of khat. You go to places like in the Metro South Region, Logan, Annerley where you have certain ethnic groups. Toowoomba's another one. Where those ethnic groups have cultural background use in that particular drug ... But even if you talk to all the officers, within that area, there'll be quite a number there within those areas that wouldn't be aware of it.

One interviewee believed that knowledge of the legal position on khat in Queensland was generally good in Horn of Africa communities. He attributed this knowledge to the work of a police community liaison worker in the Brisbane Southside and to his understanding that a letter had been sent to previous permit holders advising of the legal situation. This interviewee also observed 'but not everyone knows ... [the legal situation]'.

### 7.3 Social and health effects and policing situations involving khat

Three interviewees commented that they had not heard of khat being used in Queensland and another said:

It hasn't figured highly on our radar here at all—I can't really comment on that. I know historically that it's traditionally used in some other countries. You know, a lot of African countries, Ethiopia and those sorts of countries but again I can't comment on the use of it here because we've never encountered it here personally.

Another stated that:

... if it was a really significant issue I'm sure it would have come across our bows before this [interview].

While one interviewee suggested khat might have 'settling-down type effects' or 'medicinal effects', another interviewee commented:

My understanding is that it is similar to an amphetamine. Cathinone basically has similar effects to an amphetamine even though there might be a slightly reduced level of effect. But it develops the same symptoms. When you've got long-term or chronic use, then the effects are exacerbated. What's been reported from the regions is that the men are generally aggressive. The ones who use it all the time, they're aggressive, intolerant and basically will snap in an instant. Jittery, all the symptoms you get from someone who's under the effects of an amphetamine.

This interviewee suggested khat was linked to domestic violence and that police officers in certain suburbs were aware of this:

They're more aware of it because they see—they attend the domestic violence incidents and things like that where you have a person who's either affected by alcohol or affected by khat or both.

This interviewee also commented that it was a 'social type drug like alcohol' with 'some cultural significance'. He suggested that khat was mainly used by men and that:

... in metro south where you have a women's group, African women's group, basically jumping up and down about that more isn't being done about the khat plant and the problem with their local communities and the men using the drug frequently. It's affecting the family life; they're spending money to buy khat instead of buying food. ... that was from that research of documents from Metro South Region. They basically said that the women are concerned about the men using khat. They're not going—having troubles getting jobs. So they're basically using it as a crutch to support their depression and that kind of stuff. But they're using that and the drug is affecting their family life. It's causing aggression and that kind of stuff within the family ... a lot like alcohol abuse is. You get hard core alcoholics, you know, it can lead to problems with their family life. That's what they're reporting is happening within their own communities with the guys, the men using khat.

This interviewee was also aware that one prosecution for khat possession had taken place in Queensland:

Interviewee: ... our unit did an operation involving a store called Happy High Herbs. This information is publicly available through court documents. There were a couple of stores in the state that were selling dried *Catha edulis* leaves. I happened to be involved with that and I attended one of the places where we found these. That's pretty much the only prosecutions I'm aware of.

Facilitator: So they're not African people selling that?

Interviewee: No. That was just a store; one of those alternative stores.

Facilitator: What kind of quantities, like, just small amounts?

Interviewee: Very small bags, dry bags of leaves like this, likely to weigh 25 grams I guess.

According to interviewees no specific policing strategies existed to deal more aggressively with khat. One interviewee commented that khat might be an issue in a few suburbs and towns but it was not a statewide Drug Squad concern. This interviewee observed that the Drug Squad was more interested in drugs associated with criminal activity and had no information to suggest the existence of organised criminal activity associated with khat.

## 7.4 Existing police protocols for arrest, interview and investigation

Generally interviewees believed that current police practices were sufficient to deal with concerns surrounding khat. Two interviewees emphasised the important role of the cross-cultural liaison officers, for example:

We have cross-cultural liaison officers in every region so if there were issues surrounding it that they needed assistance with they would contact the regional cross-cultural liaison officer, and if they wanted assistance they would contact us.

Another interviewee explained that lack of understanding of the law by new arrivals was dealt with quite effectively by police under existing protocols:

In the same way where we have issues now with some new arrivals who don't understand our traffic laws, for example, or the need not to give the nice policeman any money to let them go if they're picked up for speeding. There's a whole range of those cultural sorts of things where they might be very normal in their own country but not here.

## 7.5 Ability to identify khat

Only one of the interviewees was confident about identifying khat; others were unsure. The comments of the person who believed he was able to identify the drug are noted below:

Facilitator: Do you think you'd be able to identify fresh khat if you came across it?

Interviewee: I probably could now I've seen it. When we located the dried khat, my first impression was what is this? I thought there was something wrong with it. It wasn't until we took it to the botanist and he said that's dry khat. It shrinks significantly and it's quite small.

Facilitator: It just looks like tea leaves?

Interviewee: Pretty much. I actually thought they looked like bay leaves.

Facilitator: Okay, so it wasn't crumbled?

Interviewee: No.

Facilitator: Oh, so they were full leaves?

Interviewee: Full leaves dried.

## 7.6 Resources for police

According to one interviewee, information and training about khat was not provided to trainees at the police academy. However, this interviewee suggested that mentors gave more specific training once police were in the field. One interviewee called for good photographs to be made available to police officers so they could identify the plant and this interviewee also wanted more information about its effects.

## 8. Police and khat in Western Australia

### 8.1 Introduction

Nine members of Western Australia Police were interviewed based on their having some knowledge of, or previous experience with, khat. Interviewees were either from police headquarters or from local districts. As many khat trees grow in the suburbs of Perth, interviewees were more familiar with khat than police personnel in other states of Australia.

### 8.2 Knowledge of khat

All officers spoken to in Western Australia knew of khat, and in many cases this knowledge was considerable. Knowledge had come from the internet, internal police resources, from other police personnel or from the community itself. Four interviewees had been involved with investigations of khat-related offences.

### 8.3 Knowledge about the legality of khat

Despite many officers' experience with investigating offences involving khat, there was still confusion over the legal status of the drug in Western Australia. This was especially so in relation to the cultivation of khat, largely due to the fact that the khat tree is widely grown throughout Perth. Many officers believed that cultivation of the khat plant in Western Australia was legal. Officers who believed that cultivation of the khat plant was illegal in that state also believed that the law was not practicable, given how many established plants were grown there for ornamental purposes.

Interviewee 1: They were a prohibited plant.

Interviewee 2: Yes, so why did you leave the trees?

Interviewee 1: Because they all—you can start ripping them out of his yard, you've then got to go to the Methodist Ladies College and start tearing down hedges and stuff and it's why the law is just not workable. It's only a prohibited plant because any plant which a prohibited drug can be derived of is by definition a prohibited plant.

... if you try and charge some 70-year-old grandmother who's had the plants in her house for the last 30 years, there'd be a public uproar.

Most interviewees believed that the majority of police officers in Western Australia would not know that khat was illegal in that state.

The legislation in relation to khat in WA was also widely criticised by interviewees for its lack of clarity and method of regulating khat indirectly through regulating the active constituents cathinone and cathine.

It's just abysmal the way [the law] is at the moment. It's just so ambiguous. It needs to be either full-on legal or full-on illegal. Plant—the whole lot.

Ideas varied about what would be needed for successful prosecution of an offence of cultivating a khat tree. One interviewee believed that proving an intention to possess the khat plant would be necessary to prove an offence in relation to cultivation, while another four interviewees believed that a person would only be committing an offence in relation to a tree growing on their property if they were to pick the leaves.

From a legislative point of view I don't think it's—if you're growing a plant I think it's still cultivating, but I think to try and prove intentional [mens rea] for that, I think it would be fairly hard. I mean to say that if someone didn't have a whole stack of them in pots ready to go, you could easily go, I didn't even realise it was a plant.

I think it would be very difficult to mount a successful prosecution. If you haven't picked it, once again then the plant's there, it's been from a house you've bought, I think you'd be very much struggling.

My understanding is that to have the plant is fine and to nurture that and water it and grow a plant is no problem, but it's when the leaves are harvested that it becomes a prohibited drug.

Facilitator: But if you came across say like a backyard that had 20 khat trees in it and it looked like they were being harvested but you didn't find any on a person, what would you do about that?

Interviewee: Knowing what I know now, I would probably just submit it via our intelligence system because growing 20 plants technically isn't illegal, is it?

Interviewees also identified the potential inconsistency between Commonwealth importation laws and state laws in relation to possession and cultivation.

As to importing it into Australia, I think quarantine have—you can import a certain amount with a permit, but in most states from what I could understand is that it's still a prohibited plant under similar legislation under the Poisons Act or Misuse of Drugs or whatever. So even though you can import it, it's still an illegal substance to possess.

Most interviewees were aware that selling khat in Western Australia was illegal. Some interviewees had participated in investigations into offences involving the supply of khat.

## 8.4 Knowledge about the context of khat use

Police personnel interviewed generally had a good understanding of the context of khat use. Most knowledge had been obtained from speaking to members of the community who used khat, as well as local media reports on the drug.

Interviewees believed khat to be used mainly by males from Horn of Africa countries—both Muslims and Christians. Two interviewees also stated that members of Australia's Indigenous community were also using khat.

We've seen it out in the Aboriginal community. Haven't seen it so much in the anglo community, but yes, definitely seen it in the Aboriginal community.

Interviewees were aware that khat could be chewed or made into a tea. Most believed that it was used in private homes as a social drug, or by taxi drivers to allow them to work longer hours. Two interviewees believed that it was a party drug used by young people and people in street gangs in a similar way to alcohol.

A couple of the street gangs—like African Kings and all that—they were all using it.

## 8.5 Knowledge of social and health effects

Interviewees had minimal knowledge of the social and health effects of khat. Many believed that the health effects were similar to amphetamines and that it would therefore cause problems such as aggression and violence. Two interviewees were aware of the potential impact of khat on families.

You hear varying accounts about the effects of it on families. But it tends to suggest that as far as we know, this lady here is talking about higher rates of divorce because the husband's too tired to go to work, misses out on work, loses his job, those sorts of income pressures and family pressures, rather than necessarily violence. On the other hand I've read other material that says that it has similar effects to methylamphetamine. So it can lead to paranoia and those sorts of things or psychosis. It will lead people to becoming violent.

## 8.6 Policing situations involving khat

Interviewees recalled that most policing situations relating to khat involved trespass and supply offences. The majority opinion was that police were not dealing uniformly with offences involving khat. One interviewee believed that offences involving khat were increasing in number, while another thought that khat use would decrease in the future due to the younger generation choosing alternative drugs or alcohol.

Police personnel expressed a major concern about evidentiary issues relating to charging khat offences. Many interviewees stated that police might decide not to lay charges in relation to khat offences because of the difficulty and expense in having the material analysed. Some interviewees believed that cathinone degrades to cathine within 24 hours of khat being picked, while others were aware that cathinone might still be present in dried khat. Many instances were recounted where khat seized by police had been analysed and found not to contain any cathinone due to improper handling procedures.

Facilitator: Why isn't it a uniform response do you think?

Interviewee 1: Preconceived ideas about stability of—you get told by one person it's only stable for 24 hours, so by the time you get it to the lab it's not going to test, so don't even bother.

Facilitator: Do you think that's the only reason that they're not charging it?

Interviewee 1: I guess—I mean I can't speak for every officer out there but probably somehow they're going, it's not worth the paperwork for a couple of leaves of—probably the same with someone found with a small amount of cannabis. They'd probably just go well, chuck it out and go.

So they might apprehend people. They might seize all the stuff. Then they find out when they get it analysed that it's cathine, it's a Schedule 4. So the charges fall away. In the meantime that's cost us \$170 per certificate. Start multiplying that by X amount of troopers out there who are putting things through the chemistry centre and getting a nil result of a prohibited drug anyway.

One interviewee stated that charges might not be laid in a situation where the person in possession of khat did not know that khat was illegal in Western Australia.

The only one we did charge or interview that we got cathinone back it was—my boss decided—we ended up doing withdrawal of the charge because it's not in public interest to charge them ... Because they have no knowledge and she's from Kenya and she's grown up in a plantation and she just gets it through the post and it's a cultural thing that they deal with. So in the end we just decided to—that it's just not in the public interest to charge.

No consensus emerged about what amounts of khat would result in an investigation being conducted by police.

Facilitator: So what kind of threshold do you think is going to trigger a police officer to want to go through the rigmarole of [investigating an offence]? It would be different for everybody?

Interviewee: It would have to be in a large scale.

Interviewees also expressed the opinion that the problems caused by khat were not significant and therefore an aggressive policing policy was not warranted.

We haven't really, sort of in an aggressive sense, gone out there to deliberately collect and try and probe further into it. It's—I guess because it's not really presenting at this moment in time as a high priority issue, not to say it's not important but there are other issues in the community that's—you know, obviously the meth thing keeps coming back up all the time and then cocaine's starting to come.

Interviewees also noted that fines given by the courts in relation to offences involving khat, were low.

Interviewee 2: The problem is if you get a small bag of fresh stuff, the cost to analyse it as compared to what they would get as a charge, as a penalty ...

Facilitator: Is more than what they're getting fined.

### 8.6.1 Trespass offences

Trespass offences were considered to be the main policing problem in relation to khat in Western Australia.

Interviewees stated that, where a person is found to be trespassing in order to pick khat leaves, police often only lay a charge in relation to the trespass and not in relation to possessing khat, given the evidentiary difficulties involved in the investigation of khat offences.

Interviewees recalled various stories about how owners of khat trees had dealt with the problem of trespass on their property. In some cases police had advised the owners of khat trees to chop their tree down to stop the problem; however, this was usually only a suggestion made to the owners of the tree.

Facilitator: So police wouldn't—if someone's been prosecuted for trespassing on a particular property, police aren't going to tell the owners of that property to destroy the tree as a matter of course?

Interviewee 1: Well they can do but it's ...

Interviewee 2: Discretionary.

Interviewee 1: ... you can't say, as I was saying before, if you tell someone we're going to charge you for having that tree in your yard but ... probably one of the recommendations would be if you get rid of that tree, you're less likely you're going to have these guys coming through your front yard every day.

Interviewee 2: ... we said that to ourselves, why don't we just do that. Why don't you start going and charging people for having the tree in there?

Facilitator: Or just telling them it's illegal. If you still have it in ...

Interviewee 2: That's like an amnesty sort of thing.

In other cases police were aware that owners had come to an agreement with khat users for them to pick khat from their trees.

I've heard through the grapevine and speaking to people here in the community that they've usually come to arrangements with homeowners. They rent their trees so they pay them. Apparently they're still highly sought after here, the leaves and ...

They'll pay the homeowners. It sells for about \$25 kg I was told and there are houses where people go and process them, package them and sell them. But it's not a major scale thing. So they will make a deal with the homeowner, this is my tree, I'll pay you this money but you don't let anyone else pick the leaves. Or either they were cut down.

### 8.6.2 Supply offences

In relation to supply offences, interviewees recalled instances of where shipments of khat coming into or going out of Western Australia had been intercepted.

They were just as I said packaging, putting it in 5 kg packs and sending it at the end of the day straight over to Melbourne so it's in Melbourne the next day. It gets picked up and gets used straight away. So it's within the 24 hours so the cathinone is still in there, they could still use it.

Interviewee: It was coming from Victoria in the post in the big post boxes and it was all in—what we'd call an ounce bag that you'd get an ounce of cannabis in. It was like that.

Facilitator: It was fresh or dried?

Interviewee: It was dry. It wasn't like completely brand new, just picked.

Most interviewees believed that the purchase of khat was not costly and that many police officers believed it was therefore not a serious issue:

There's also not a high cost associated with the purchase of it. Like I think even you said they just give it away. Someone will get a bag of it and it's free to your friends.

I don't think it'd be a very expensive thing to buy ...

I did a presentation on this to our metro tasking and coordination group, which is each of the district heads get together, and they're going, oh what's the price on it? I'm going, well, it's not really a price. It's more the fact it's a drug. They've gone, oh well, if it's not selling for anything why do we bother picking it up for?

### 8.6.3 Violent offences

Four interviewees mentioned violent offences related to khat. Two interviewees said that people had become violent in the course of trespassing on another person's property to obtain the khat leaves.

Some of them are quite violent or abusive towards the people. Like if they tell them to get off the property, they'll either try and assault them or abuse them.

We've had basically brawls in people's driveways as they've come home to see people coming out of their driveways. That was our issue with they want these leaves and some people are quite forceful about getting them.

In relation to domestic violence, six out of seven interviewees reported that they had not dealt with or heard of any instances of domestic violence that had been associated with khat use. Interviewees admitted this may be due to underreporting of domestic violence or the lack of specific enquiries about khat at the time of attending incidents of domestic violence:

It would be hard to really know because you don't know what they've taken when you're dealing with them.

One interviewee recalled attending multiple incidents of domestic violence at a residence where both male and female partners were believed to be using both fresh and dried khat in combination with alcohol:

The people that were taking this stuff all night as well as mixing it with alcohol, they'd end up by the morning they were having their arguments and fights and they were just coming across like just drug induced problems, I suppose.

### 8.6.4 Driving offences

Many interviewees identified taxi drivers as being frequent users of khat. Three interviewees identified the issue that khat could not currently be detected using a urine test but needed to be tested by a blood test.

It's illegal to drive under the influence of drugs here. You can't pick khat up from a urine test. It's only from a blood test, and for it to get to a blood test I think they have to be an offence over a certain—like it has to be like an indictable offence to require the blood test, or it has to be ordered by an inspector or something like that. I can't remember exactly what the procedure was, but it wasn't very often that they got blood tests done. So it's pretty hard to—you just pull someone on the side of the road and say, give me your blood. I'm going to check and see if you're using khat.

## 8.7 Existing police protocols for arrest, interview and investigation

Existing police protocols for arrest and interview were universally endorsed as being appropriate for offences involving khat. Interviewees noted the importance of having an interpreter present during interviews if required. One interviewee suggested that greater knowledge of the psychological effects of khat would be helpful in assisting police to determine whether a person was fit to participate in an interview:

If they give an interview and then later on they say that they were off their face because they were on khat and you didn't realise I suppose there could be defences there for them. It's the more you know about khat, the easier it is or the better it'll be for you to determine how you can handle that interview and whether you need to put it off for some time or whether they're able to participate in the interview.

Three interviewees described what they believed people who had been chewing khat might look like:

Interviewee: On a couple of occasions I've seen the green in their teeth. On the main occasion I was talking about because they had been chewing just as we got up there so it was still fresh, but they were also quite clagged out and sort of frothy.

Facilitator: Spittle.

Interviewee: Yeah, on their lips and stuff like that.

I've dealt with one bloke I was interviewing for an armed robbery and this is before I knew about khat. The whole time we had him he was like getting big glasses of water and he was just—he could not satisfy his thirst. I thought this is really weird. He was drinking to the point where he was just about making himself sick. Apparently that's a by-product of khat is that it makes you immensely thirsty and he was giving all the symptoms of somebody that was using amphetamines.

In relation to investigating offences relating to khat, many interviewees were aware of recent changes to police protocol involving handling khat before forensic analysis, including freezing seizures as soon as possible and ensuring a cold transport chain until analysis could take place. Many interviewees saw this as a burdensome and cumbersome process. Some interviewees also believed that most police officers would not be aware of this protocol.

Interviewee 1: Storage issues if we seize it during the night we'd have to—if you get 30 kilos—it's hard to throw it in the freezer.

Interviewee 2: Like I said it's a very light drug. So 30 kilos—the actual cubic volume of it was five of the big hessian bags full of the movement envelopes. You'd have to sort of like take small samples from each bag—I don't know it's just—it's a lot of work for very little result and our bosses get a lot of work done and you get a failed court result and you've got to pay six grand in court costs and you've got to pay your analysis fees. By the time you get to that and the boss will say yes plus this amount of overtime in my budget as well.

I think the other problem is that the drug receivable unit won't take bags. So if you've got drugs in bags, they need to be decanted from the bags. The bags are stored as one item of property and the contents of the bag is a secondary item. They went into our security movement envelope still but I don't know if that sort of was a negative thing for [preservation of cathinone content] or not.

Facilitator: Are there any concerns related to police searches for khat—for example, identification concerns or handling concerns?

Interviewee: There're lots of concerns. Most people don't know what you need to do with it.

I just don't think many of us know exactly the procedure. Like it's not—I think you could ask pretty much everyone on my team and no one would have any idea what to do. They would probably all ask the same question, but the whole process of once you seize it, getting it back, getting it analysed ASAP or freezing it if it can't be done ASAP. That whole thing I've only learnt from reading, so I don't think many police officers would know.

One interviewee believed that difficulties in investigating offences involving khat were due primarily to inadequacies with the current legal regulation of the drug in Western Australia:

Interviewee: Until the legislation is done properly ... It's not workable.

Facilitator: Because of the fact that it grows everywhere?

Interviewee: Because of that and because of the limited life span of the drug in the plant.

## 8.8 Ability to identify khat

More than half of the police interviewees in Western Australia believed that they could identify khat. Interviewees believed that those police officers working in areas with high concentrations of people from Horn of Africa countries would be able to identify khat, whereas those working in other areas would not. Interviewees stated that the packaging and context of the leaves helped them to identify khat, as khat is often picked and placed in plastic bags.

Facilitator: So do you think you could identify if you went into someone's house and then saw it sitting there you think you could say yeah, that's it?

Interviewee: Yes, I believe so. They're quite [pungent]. They're long slivers, green leaves so I would have an idea, yes. Obviously they're not there; they're not pressing them for their floral collection. There'd be a big pile of them as well.

Interviewee 1: If you showed me or asked me to identify it amongst other leaves, I couldn't. But if I found somebody with a pocketful of leaves, I would think there's only one reason why you've got that and it's because it's khat.

Interviewee 2: I'd agree. I keep myself pictures of it in case I come in contact again to compare, but I'd be the same.

Facilitator: Does it have distinctive smell?

Interviewee: No.

One interviewee suggested that the best way for police to identify khat was for officers to take a photograph of the plant using their mobile phones and to send the picture to the drug squad for provisional identification.

With mobile phones and everything else like that these days it's easier just to take a photo, send a photo, have a look, and that happens a lot. Someone will say well I've got this, what do you think? They'll send it through this office and we end up at this office in particular advising other police officers out there.

## 8.9 Resources for police

Interviewees stated that they believed that there needed to be greater awareness of the drug generally within the police force. Interviewees stated that they wished to know more about the signs to look for in a person suspected of being under the influence of khat. Officers also wanted to have more training in relation to identifying various forms of khat (eg dried, fresh). Other knowledge gaps identified included how long khat remained in a person's system once ingested, methods of detecting ingestion of khat, eg urine test or blood test, and whether cathinone is present in dried leaves or leaves that have been recently picked (see 5.1.1 of this report).

## 8.10 Resources for the community

Many interviewees saw a need for greater engagement with and education of the community in relation to khat.

It has to be a cultural change to it. Yes we do enforce the law but at the same time we can't operate in the community unless we have community support and that they see that we're there for the good of everybody and we're not targeting any one section of the community.

One interviewee suggested that information on the law on khat could be provided as part of information given to new arrivals from Horn of Africa countries.

## 9. Police and Khat in NSW

### 9.1 Introduction

Ethics approval officers in the NSW Police Force identified six police employees for interview. Interviewees identified populations of Somalis and Ethiopians in Sydney and these people were known by some interviewees to chew khat. Khat is considered legal in NSW and thus is unlikely to be perceived as an enforcement issue for police in this state.

### 9.2 Knowledge of khat

Four interviewees had never heard of the drug before the interview was scheduled, one had heard of it in a 'research sense' and one person, an African, was very knowledgeable about khat. This last person had not come across khat in the policing context. Those who did not know about the drug emphasised that they were very knowledgeable about policing matters involving drugs and organised crime but that they had not come across khat in these contexts:

I have a two-person drug team here which is run by our detective senior constable, and she hasn't mentioned anything to me about khat or anything like that. It's mainly cannabis, cocaine and amphetamine type drugs.

I know the boss worked in a specialist drug area for a long time and I was in drug and organised crime for a long time. We've both never heard of it. Neither has X who's been a detective for 20 odd years as well.

Normally if there's something on a new drug, it's generally put out to the public. Whether it is via a media release or something on the internet or something in the paper or whatever. Sometimes we get drug intel alerts that come out from the drug squad but we've never seen anything I can remember from them.

Interviewees all assumed that general knowledge about the drug in the community would be low.

### 9.3 Knowledge about the legality of khat

Police employees had not come across khat during any of their police duties and had not generally needed to reflect on whether khat was legal. In one interview two police employees discussed, in a hypothetical sense, offences that might arise when a person breached an import permit by on-selling khat. The two participants concluded that they didn't know if there would be an offence and that they would work with the Australian Federal Police if it came up.

Police employees also assumed that knowledge of the legal status of khat in the community would be low:

I don't know much about that because I didn't go into investigating or researching but I don't think people know if it's legal or illegal. I don't think so because information was not publicised or anything, so, so far I don't think people know really.

One police employee suggested that education was needed:

... education is not there really about this. First you need to educate people in order to give them warning or you did this wrong and it's wrong or something like that. That's the area where I'm standing at, so I think the concern has to come from knowledge.

### 9.4 Knowledge about the context of khat use

Only one police interviewee knew about the context of khat use and this person had not come across khat use in NSW, although he had heard 'rumours' about its use in that state. This person suggested that it would be people from Horn of Africa countries who would use it and that more men than women would use khat. He had also heard there was a khat tree in the botanic gardens in Sydney.

## 9.5 Knowledge of social and health effects

Given the lack of knowledge of khat among NSW police employees, there was, of course, similarly limited knowledge about health effects. The same knowledgeable person identified earlier commented that khat creates dependency, weight loss and causes people to be nervous. He commented that when people did not get khat they became aggressive. He suggested that time away chewing khat impacts on the family:

First of all when they chew that, they don't do anything else. If they have children and wife and children, for them that's the practice, but if the wife needs some action to be done by the man he's not there; he's sitting there but he's not there. It affects the family. The child may need the father to tell something to him and the father is already in that mood and it affects the family. Then it affects the social life.

This interviewee suggested greater education about social and health effects should be provided to users.

## 9.6 Policing situations involving khat

Police employees generally claimed they had very low levels of involvement with Somali people:

[We hear] very little [from Somalis] in relation to family violence, domestic violence or that type of thing.

Somalis ... are very rarely on the radar.

It's even very rare to find drugs on anyone with an African background, I've found.

Police employees pointed out that their role was primarily law enforcement and while khat was not listed as a schedule drug it was not of particular interest to police. Interviewees commented that it was up to governments to legislate. One interviewee noted that if khat did come up in police work for particular reasons, an intelligence report would be submitted:

... again it's like any domestic violence investigation. We've had some of the causes and factors. A lot of times it's alcohol. It might be drug related. But if someone said it was because they were chewing khat, well that would come up then. An intelligence report would be submitted ... and that's what we're saying, that's never been raised in this area.

## 9.7 Existing police protocols for arrest, interview and investigation

Interviewees thought that existing police protocols would operate effectively even where a person was intoxicated with khat. One interviewee pointed to the approach taken with amphetamine users:

We get ambulance to come in and check them [amphetamine users] out and if ambulance thinks they need to go to hospital, then they go to hospital under guard and that type of thing.

Another interviewee thought that existing arrest and interview processes could accommodate a khat-intoxicated person. One interviewee noted that access to interpreters was important. Generally, there were no concerns about the applicability of existing protocols.

## 9.8 Ability to identify khat

Interviewees agreed that neither they, nor police in NSW more generally, would be able to identify khat:

They probably wouldn't even know what it was to be quite honest.

Is it green leaf or...?

## 9.9 Resources for police

Police employees unanimously called for better training and education about khat, specifically what khat is, its effects, information about patterns of use and, relevant regulations:

The main issue's obviously education for the cops—that's what we need. It could be out there and we just don't identify it.

## 10. Police and khat in Victoria

### 10.1 Introduction

The Drug and Alcohol Unit of Victoria Police selected 14 police members for interview. Interviewees were either from police headquarters or from an area with a large population of people from the Horn of Africa. Two interviewees were New and Emerging Community Liaison Officers with African backgrounds.

Interviewees said that there were many people from East African countries living in Victoria, including Ethiopian, Somali, Eritrean and Sudanese populations. Interviewees did not have widespread knowledge about which communities were more likely to use khat than others.

### 10.2 Knowledge about khat

All officers spoken to in Victoria had some knowledge of khat, although the depth of knowledge among interviewees varied significantly. In most cases this knowledge was superficial and had come from the internet, the internal Victoria Police database or from police education seminars. Six interviewees had firsthand knowledge of khat from encountering it within the community or from hearing stories from the community.

Interviewees all assumed that general knowledge about the drug in the wider community would be low.

### 10.3 Knowledge about the legality of khat

Knowledge among police employees about the legality of khat varied, although specific knowledge of the law with respect to possession, sale and cultivation was generally low. Some officers believed that khat had recently been banned in Victoria, while others thought it was legal and therefore they had not looked further into its regulation.

I can't tell you off the top of my head if it was a banned substance or not. I know there were discussions around it, but I wouldn't rule it out.

Facilitator: Do you know about whether it's legal to cultivate khat in Victoria?

Interviewee: No idea.

Others were aware that various compounds within the plant were regulated in Victoria. Some confusion existed about the operation of the legislation given that the substances cathinone and cathine are regulated while the khat plant is not.

Interviewee: How can you possess the plant and not possess the ...

Facilitator: The active ingredients?

Interviewee: Yes.

... there's a Controlled Substance Act that deals with the compounds in it, with cathinone, but I don't know what Act prohibits the cultivation of it.

The police employees' knowledge of the law on importation varied, with some knowing quite a lot and others very little:

My understanding is that even though it's a regulated drug under the schedule or parts of khat are regulated drugs under the schedule the plant itself can be brought into the country if the recipient has applied for and been granted a permit.

There are laws in respect to importation. I think the maximum—I can't remember whether it's 10 kilos or something is the maximum you can bring in—5 kilos, there you go. But, again, that's not really an issue for me to be concerned about. It's more a Customs issue, say.

Police employees agreed about the legality of the sale of legally imported khat in Victoria.

Facilitator: But is it your understanding that it's legal to sell khat once you've imported it?

Interviewee: In Victoria?

Facilitator: Yes.

Interviewee: That's my understanding of it. Because that's what I've observed, they do it during broad daylight so I just assumed that it was.

Facilitator: So is any person able to buy khat in a shop in your area?

Interviewee: Yeah.

Facilitator: So anyone could go into the shops to buy it?

Interviewee: Yeah ... definitely I've seen people coming in and buying khat. Should I have reported it?

Once the recipient gets it he can't supply anyone. It's only for personal use.

There was also a lack of clarity about which agency (eg Victoria Police or the Australian Customs Service) would be responsible for enforcing any breach of importation law.

Facilitator: If I told you that to import it you need to get a licence from AQIS and from Customs to import it, and the licence is for personal use, can you imagine what would happen if police knew that and they came across khat, someone who possessed khat but didn't have a licence to import? Would that be a Victorian Police matter?

Interviewee: No, it wouldn't but it would be where we could—if we were aware of that, like if the average member was aware of that, we can charge people under Commonwealth legislation which just means we have to send the brief off to the Commonwealth OPP for authorisation.

Some of the grocers from what we've heard were selling it ... There have also been reports of it being sold illegally in the housing commission—the public estates as well. Because certain people are bringing it in as a side earner ... But if it's not a banned substance, how do you go about policing it?

Facilitator: Are there any concerns, for example, if you found someone to be in possession of khat in Victoria who didn't have a licence to import it and things like that?

Interviewee: It's an area that we probably need further looking into because that would then be a breach of a federal offence. So basically, if you didn't have a licence to possess khat for your personal use, I'm not too sure how exactly we would do that. There is nothing in our legislation that makes provision for a person to have a permit or a licence to possess khat. The actual plant isn't illegal. We probably wouldn't even require it. The people who would be concerned about that would be Customs or Department of Health and Ageing, the federal department who actually issue the permits for it to be imported. But I suspect if you were found in possession of khat in Victoria and you were able to produce a permit from Customs showing that you are eligible to import it and have it in your possession for personal use, then I don't see any legal issues or law enforcement issues, at this time.

Many officers expressed the sentiment that the law relating to possession, sale and cultivation of khat needed clarification.

It's just too grey. The whole thing's just too grey, and I can tell you now, if I was out and about and we did a search warrant, and someone said to me oh, there's five kilos of khat there, I wouldn't even touch it. I wouldn't touch it. I wouldn't seize it. I wouldn't do anything with it, because the legislation is too grey. If we seize it, what do we do with it?

Police employees generally believed that those using khat had a good knowledge of the law in relation to khat and were well-informed, perhaps more so than the police.

Interviewee: I think, for those that are importing it, they would have obviously an understanding of how the permits work and how the custom regulations work in terms of importation. But I don't think it's something widely known by police or the wider community.

Facilitator: So you think people using it believe it's legal?

Interviewee: I think they would be, yes.

Two police employees thought that users did not know the legal status, especially those users who were not directly involved in its importation.

[African community knowledge] probably varies. I would imagine it would vary to understanding of what the legislation in relation to it here. I'm sure there are some that absolutely do know but ... Those that seek permits will know the illegalities surrounding it but those that buy from those that import it probably aren't aware that—they might just see it as their cultural right.

Police employees agreed that the wider community would not know about the law relating to khat.

## 10.4 Knowledge about the context of khat use

Two police employees had absolutely no knowledge of the context of khat use, two police employees had excellent firsthand knowledge and the rest had second-hand superficial knowledge. Police employees generally believed that men made up most of the users and that the drug was culturally important. Police employees also generally believed that khat was associated with Muslim culture and was used as a replacement for alcohol. Police employees who identified as Muslim were aware that there was a debate as to whether khat was forbidden in Islam.

I've heard anecdotally that the Africans are big on it, but I've only heard anecdotally. I've not experienced it, or seen it. I haven't heard it from any sources out on the street anywhere. I haven't even heard the drug mentioned through sources out on the street.

Last year, I attended [named conference] and there was a presentation on khat and the person who was presenting was from [x] named [x]. He talked about where khat is used and how and he said that it's usually used in the home. It's a group of males that usually use it. It's more of a social interaction kind of thing where they get together and they chew khat. But they also use it for ceremonies such as babies' births or christenings or equivalent to that or birthdays. I don't think it's been used by females as much. I think it's more of a tradition and it's a cultural thing as well, from my understanding.

It's not overly prevalent in the homes. It's not being brought to us as a big issue in homes. It's actually not really being presented to us as a problem in itself. The times when I notice it most is they have their meeting places where the males gather and they'll quietly sit there and have conversations, have their khat, watch TV. Whatever it might be. So we have like meeting groups that gather and that can be through all hours of the night. It's basically just rooms where they all hang out ... Well there's an establishment. There's one or two establishments which are just called—they call themselves community—it's just like an African community location. And they're generally out of the way and centralised. And it's basically—from what I've found—they're basically just a sheltered area with one or two, maybe three rooms, where various groups hold different conversations. And predominantly just filled out with cushions and Foxtel and the guys just sit around and chew their khat, smoke their scented smoke. I can't remember what it's called. They just kill time there effectively.

... it's more of a social thing ... a lot of people don't consider it to be using drugs because you sit there for hours and you have a conversation with people and it's meant to—it's almost like drinking coffee or tea. It's people getting together and having a good time and chewing khat to stay up mainly.

These people obviously subscribe to being—identify themselves as being Muslim.

As a result there have been quite a number of discussions from the theological perspective actually saying that khat is basically a narcotic—that's the words that they're using. It's forbidden in Islam. So that's where,

I suppose, where the difficulty is at the moment. Where people are trying to decipher the difference between accepting it as being outlawed by Islam and a preference.

## 10.5 Knowledge of social and health effects

No police employees had comprehensive knowledge of the health effects. Two interviewees had no knowledge of the health effects. Of the interviewees who had some knowledge, most assumed the health effects to be similar to amphetamines. Interviewees also guessed that khat combined with alcohol could induce violent behaviour, although they had no firsthand knowledge of this happening.

Khat is classified as an amphetamine-type stimulant so I guess it would have similar effects to any other strong stimulant ... But, just general knowledge, obviously amphetamines are known to cause certain mental health issues. There have been suggestions that they can cause psychosis or psychotic episodes. The come-down effects or withdrawal effects from amphetamines are pretty severe. So I guess khat would probably fall under that category as well.

I guess if it's mixed with other substances like alcohol, I think it increases the risk of the person becoming more violent. Obviously, they'll probably be getting stimulated from the amphetamine type effects plus the alcohol on top of that could cause some problems. But I haven't come across anything that suggests khat alone will lead to violence.

Police employees were most likely to mention mental health as the greatest health concern associated with khat use, although no specific instances of khat-induced psychosis were known.

It's very detrimental to mental health from what I could gauge.

I certainly can't recall an incident, and I've been in the western suburbs for 11-odd years, I certainly can't recall an incident which was a form of psychosis or otherwise was behind—khat was blamed.

One police employee suggested that some people might use khat to self-medicate for depression and that mental health was not openly discussed in communities where it was widely used.

This is the interesting thing, that a lot of people who chew khat might have mental health issues, might have depression et cetera, but because of the way the community operates, mental health is just one of those things that people just don't talk about openly. But I know for a fact that a lot of these young people come together because they have a lot of issues and mental health might be one of those issues. They won't necessarily come out with it, they won't talk about it openly so coming and chewing khat together is almost an escape from their reality and they feel comfortable in that zone and that's what they do ... But definitely I wouldn't dismiss it. I wouldn't say that it has a correlation or there's a relation between the two but from what I know from the community is that mental health is just something they just often don't talk about.

Two police employees had a deep understanding of the social effects. Several police employees reported that the community had concerns about the social effects of khat. One police employee believed that khat did not have any negative social effects. Police employees generally believed that the negative consequences of khat use were not readily seen due to the low prevalence of use in the wider community.

The social implications are just, over a year ago, close to two years ago, there was an article that was written and the person that was interviewed is a Somalian community leader, she's a female community leader, and she spoke about the effects of khat on the women ... So their husbands would chew khat, it's not necessarily chewing of the khat, it's the social part of it which is they will go and hang out with other men for hours on end after driving their taxis and not come home. So it's almost that the women feel like their husbands are absent from the scene, that they don't see their husbands because number one, they're working real long hours, but on top of that they're going to places where they will sit down for hours just chewing khat with other men. So that's causing conflict in the home and the children often don't get to see their father; and when the dad comes home all he basically does is sleep. That's some of the social problems.

Facilitator: Do you think khat interferes with their ability to work?

Interviewee: No. Well all the people I've spoken to have been employed or at university. And they use it on a regular basis. So—to the age group I spoke to—I've spoken to are about 21 to 45 and they haven't indicated that it's had any adverse effects on them in that way.

Universally, there were no reports of khat directly being associated with violence in Victoria, although one interviewee stated that khat use was linked to violence in Africa. One police employee suggested that khat use might cause tension in the home, which could lead to arguments and violence.

Facilitator: What do you understand to be the relationship between khat and violence; is there any that you know of?

Interviewee: Not directly. I wouldn't consider khat to be the same as somebody who's intoxicated from drink and might get a bit agro. But there are always the side effects and the trickle effects. For example, if this man is not at home for hours because he's chewing khat, when he comes home and his wife nags him about it, says why aren't you here and why are you chewing khat, often conflict arises that way. It happens not necessarily as a result of him being on khat, but the fact that when he chews khat he will go out and chew it for hours with other people and then come home when he should have been home hours ago.

Similarly, most police employees believed that khat use was not associated with anti-social behaviours. Some interviewees noted that anti-social behaviours associated with khat use might not be coming to the attention of police.

Facilitator: What about khat and anti-social behaviours?

Interviewee: No, I haven't seen any association ... We haven't attended incidents where there's been that connection between khat and what you're suggesting like anti-social—if anything it's probably a little bit more social.

If you gave me the option of supplying the alcohol or khat to the whole community, I'd put khat in there every time, okay. None of the people who are using khat, that I am aware of, give us any anti-social behaviour, fights, brawls, they're just people who appear to be like—appear to enjoy hanging out.

Interviewee: If it is problematic in that community the chances are of it being brought to the attention of authorities is pretty low because these communities are naturally sort of—I don't know what the word is but they don't go outside to other authorities or to health professionals, they just keep it in-house. So if it is a problem in those communities we're not going to know about it for some time.

Facilitator: Is that your experience with those communities, that they keep it in-house?

Interviewee: Very much so, yeah ... and so if khat is causing social issues or behavioural issues within those communities we won't know the full extent of it for a long, long time yet, until their understanding of Vic Pol and their trust in Vic Pol develops two or three generations down the track.

One police employee reported that community leaders were concerned about the effect of khat use on young men in their community.

For the community leaders that I've spoken with over the last few months, it's evidently become a concern for them. In particular, the anti-social behaviour of the young men. So a lot of community leaders are telling me that they're a little bit worried that some of these young men are not going to school, they're not working, so they're not studying, they're not being productive and they're chewing khat all day. So from the minute they wake up they go to places that sell khat, where you can go and have a sit, sit down on sofas or wherever it may be and chew khat all day. So it's making them unproductive members of the society and they want them to be actively engaged in the community by working and going and studying et cetera .

## 10.6 Policing situations involving khat

Universally, interviewees reported that khat had never arisen as a policing issue.

Facilitator: So has khat come up on the radar whatsoever within this level area command?

Interviewee: No.

Facilitator: None?

Interviewee: No. I've never seen it. I've never had anything to do with it whatsoever... In fact, the first time that I've actually seen khat in a photograph was today. Yeah, we've had nothing to do with it.

Facilitator: So have there been any policing contacts within this region where khat has been a concern? No?

Interviewee: No. The only concern was whether it was illegal or not.

In relation to policing situations involving domestic violence, it was reported that khat use might have been associated with domestic violence in some instances, although this may not have been reported by victims or noted by police.

The issue is, whenever police are invited—I mean called to intervene in domestic violence, there would not be any process to identify the causes of that violence. This is the problem here, right? ... So, if they were allowed to ask questions, for example why are you fighting? What causes this? Then perhaps that would have come out and say, look because I've been using this or he did this because he was using this. That could be a possibility but I don't think they do have the time to be able to identify those ... I don't they will make the complaint in relationship to khat itself.

I think from that presentation of the Drug Trends Conference, African Women's Associations were calling for it to be banned because they were experiencing domestic violence. So those types of issues have been reported but I can't really suggest anything like family violence.

## 10.7 Existing police protocols for arrest, interview and investigation

Officers were generally satisfied with the existing police protocols for arrest and interview when it came to interviewing persons who were suspected to be under the influence of khat. The biggest concern identified by officers was about knowledge of the law relating to khat and therefore how to conduct an investigation into a khat-related offence.

We've got practices and procedures that really dictate how we conduct interviews, and I don't think that they would change, whether a person's using khat or any other sort of stimulant or depressant.

Police members—irrespective of which culture or people they deal with—will go through the process of arresting, investigating and bringing before a court of law as they're trained. The only exception is that, with the new Human Rights Charter, they have to make sure that in the course of their duties that they don't compromise the Human Rights Charter. Which basically, in a nutshell, says that you've got to afford your standard rights as you would with anybody else ... But also ensuring that their cultural and religious integrity isn't compromised.

## 10.8 Ability to identify khat

Two interviewees felt they would be able to identify khat. Most officers said they would be unable to identify it and that they did not believe that most Victoria Police officers would be able to identify it. One interviewee suggested that the Forensics and Botany section of Victoria Police would be available to assist officers with identifying khat. One interviewee also reported that khat might be seized unnecessarily in a situation where officers were unsure as to what it was.

... the first time that I've actually seen khat in a photograph was today.

It just looks like tobacco anyway. So no, we wouldn't know how to identify it. We would probably be guided by the owner to explain to us exactly what it is. And in most cases they would in the knowledge that it's not illegal. So they've got nothing to hide.

Khat looks like green tea leaves or something along those lines.

They wouldn't know what it was. They might think it was dope.

## 10.9 Resources for police

Most interviewees believed that organisational knowledge about khat was low. Officers were concerned about their ability to identify and handle khat, their knowledge of the health and psychiatric effects of khat, their knowledge and understanding of current law relating to khat, their knowledge of how federal importation laws interacted with state laws and their knowledge of what evidence would need to be gathered in order to bring about a successful prosecution. Some officers also wanted to know more about the cultural context of khat use.

The area we would struggle with is the knowledge gap about (a), what it is (b), what it looks like (c), our power to arrest someone for possession of it and (d), whether it's actually on the schedule of drugs or not ... It's around knowledge—my concern is around knowledge of what it is and what our power to act is.

We don't know enough about it. We don't know enough about the cultures that it comes from because we just seem to assume that if they're African then it's part of their culture but that's —my understanding is that that's not the case. In some African cultures it's frowned upon because of the social problems that it's causing but it's very easy to say, well he's African, he's allowed to have it.

If you come across a product and it's not illegal in Victoria, then I can see some issues with the members thinking well, have we got the power to arrest this person for this particular product? What's the process? One of the other issues that I can see is that you wouldn't be able to lay, in Victoria, any charges at all in respect to this drug, even though the two compounds might be part of a schedule, 'til it's analysed. You won't get analysis done here. The only way you get analysis done is if the matter's contested. So that's a dilemma for us. It's because of the backlog at our forensics centre, where they do all our testing.

Several interviewees commented that existing information available through Victoria Police databases was limited or outdated.

A common sentiment was that khat was less of a priority for police in Victoria due to the fact that it was legal under state legislation and that it did not appear to be causing widespread problems.

It's considered a low priority. If it's from an illicit drug perspective it's considered very low priority, if at all, because it's—to all intents and purposes, it's legal. So it's not something that members would really focus on.

## 10.10 Resources available for khat users

Interviewers put forward various ideas about what resources might be made available to khat users or those found to be experiencing difficulties as a result of khat use. Interviewees generally believed khat use in Victoria to be a health issue and not a criminal issue and that those experiencing mental health effects as a result of khat use should be referred to the usual mental health services. One interviewee noted that the drug diversion program would not be available to khat users as khat was not listed as an illicit substance in Victoria. Several interviewees believed that the community would benefit from receiving information on the mental and physical health effects of khat as well as the social implications of its use.

You could conduct education seminars over the radio for example where you're not in the face of people and they feel less threatened by that. You might want to talk about it as an issue of public family health or personal health.

## 11. Khat use and driver impairment

### 11.1 The problem

According to much of the literature, and to many focus group participants, the ‘wakefulness’ induced by khat constituted a key reason for using the drug. Other studies have suggested that one of the main reasons for using khat was to ‘improve performance’ (Gelaw & Haile-Amlak 2004, 183). Many focus group participants stated that khat was often used by taxi drivers to stay alert and because it enabled them to work longer hours. This raises an important question of whether it is safe to drive under the influence of khat.

According to research conducted in Ethiopia, evidence suggests that khat may be a major contributor to road traffic accidents (Eckersley et al. 2010, 235). A study of khat-chewing flight attendants showed that khat use impairs both perceptual-visual memory and decision speed (Khatab & Amer 1995). Another study found impairment of psychophysical functions in 10 out of 19 drivers suspected of driving under the influence of khat (Toennes & Kauert 2004). Of particular concern in the Toennes and Kauert study was their conclusion that ‘chewing khat may severely impair driving ability, but may also be without noticeable effects’ (2004, 89).

The effect of khat on driver performance has only been studied minimally, but early results suggest that some concern is warranted (Feigin, et al. 2010, 480). More research is needed to explore the contribution of khat-chewing to driving impairment and to determine whether a safe level of khat consumption exists in relation to driving and what that level might be (Pennings, Opperhuizen & Amsterdam 2008, 204; Feigin et al. 2010, 480). At present khat is not detected by any of the routine drug tests used by police to ascertain driver impairment (Eckersley et al. 2010, 235; Feigin 2010, 480).

### 11.2 Community comments about khat and driving

Some focus groups commented on the relationship between khat and driver impairment. Most thought that khat did not impair driving. Many participants commented that khat use was popular among taxi drivers:

... some people who drive taxi, they need to wake up for a long time. They might use it or put it in their pocket and drive their car. There’s no problem. – Somali woman, Melbourne

... if you are chewing khat and driving ... I never heard of anyone having an accident while chewing khat. The reason he is chewing it, he is working long shifts—just to stay awake. – Ethiopian woman, Melbourne

Many participants believed that khat reduced the likelihood of accidents and improved driving ability because it allowed the driver to stay awake and improved driver concentration:

Speaker: ... it’s just like keep you awake, awake and strong, focused like for example taxi drivers like drive long hours, like 12 hours, 14 hours ... if you did this maybe it keeps you focused, straight like and ... because you’re awake and they don’t make accidents.

Facilitator: So you think it might stop accidents from happening if you were chewing khat rather than cause accidents?

Speaker: Yeah ... certain times you close your eyes, that’s when the accident happens so if it prevents you not to sleep on the road ... – Ethiopian man, Melbourne

Somalis in the 1970s were the best drivers in Africa. Everybody who was using Somali drivers had beaten the opposition by far. You know why? Because Somali drivers were using khat to keep them awake. Not awake but active concentration on the road. They can drive many hours and work more hours than other people who just every other—what you call corner shop—get a beer and then collapse. – Somali man, Perth

One can continuously chew khat, stay awake for two, three, four nights ... Continuously. Driving truck, driving taxi, or doing any other related work. Staying awake continuously, it's like a machine, it's a gear. You go into that, you've got drinks with you, you can survive for many nights without rest, without sleep.  
– Somali man, Perth

Not all participants agreed that khat chewing was appropriate for driving. A participant suggested that, while in the short term, khat use might benefit work output, in the longer term the recovery time needed after chewing khat could have negative impacts on work:

If he chew overnight the khats he's not coming to church in the morning. So if he chew the khats he may not go to work the next morning. – Ethiopian man, Melbourne

One participant observed that those who chewed khat would probably drive faster:

I don't use—eating that and driving the car but I know a lot of young guys who are driving a car but they lost all their points because they are too fast and when they are eating, because you are thinking you are the one who rule all of the world, you know, because you think something else. – Somali man, Brisbane

The claim that khat users may drive at excessive speeds while under the influence has not been tested in research and it would be useful to explore this further. A small minority of participants suggested that khat contributed to wakefulness but did not improve concentration.

Because if you eat khat people think a lot and they imagine—their imagination becomes very high. So I think driving, maybe concentration would be decreased. But the awakensness, and people when they are driving in the night time from one distance to another they try to have this one so they will not fall asleep.  
– Somali man, Sydney

Facilitator: Khat doesn't impair your driving?

Speaker 1: No.

Speaker 2: And that has been proven by the booze bus. – Somali woman, Melbourne

Speaker: When police pull you over, you are not getting a drink and drive. Your system is alright, it's safe to drive.

Facilitator: So it doesn't show up on the drug tester?

Group: No. – Somali men, Brisbane

They're using while they're driving taxi at night and there's no risk for it at all. So sometimes they stop taxi and they [unclear] and they see some substance in his mouth. They don't have much law to catch him or to quit it because they don't know what to do. But they get a hard time with the police ... but there's no law in their hands because parliament doesn't pass it, these things, and they don't evaluate the quantity. If they are to test it, maybe point zero zero something, which is less than what's allowed for the alcohol to drive ...  
– Somali man, WA

A group of Somali women in Sydney suggested that khat should be able to be identified in breathalyser testing:

Speaker 1: I don't think they can test that you are on khat, that's why you've done this.

Speaker 2: It's not in public probably.

Speaker 3: You know sometimes when you are driving they give you breath tests?

Speaker 1: Yes, but it doesn't come up.

Speaker 3: Doesn't show?

Speaker 1: No.

Speaker 3: It should show. – Somali women, Sydney

### 11.3 Police comments about khat and driving

A number of police interviewees also identified khat use as a particular concern among taxi drivers:

Another thing is, of course, with the taxi drivers who use khat to keep them awake for their late shifts, particularly when they're going hungry, which is very much working around the clock. – Victoria Police

It's supposed to be very popular among taxi drivers. – WA Police

Several police interviewees were concerned about the risk posed by drivers who were under the influence of khat:

My first thoughts are road safety because of the number of anecdotal stories that taxi drivers are using khat to stay awake and work 24, 30 hour shifts and how that impacts on road safety is probably a concern. – Victoria Police

But it's potentially as dangerous and I would be interested in—interesting to look at, is there potential if people are driving taxis and they're chewing khat—are they potentially putting people at risk? You might argue that they could be. You're not allowed to drive a taxi if you've been smoking dope. – Victoria Police

Several police observed that equipment currently did not detect khat and so a blood or urine test was needed. Police were generally reluctant to call on such tests unless there had been an accident. Even if police did obtain the further tests, in Victoria and Queensland, they were not sure it would be identified in a standard blood or urine test:

Facilitator: Is there any law in Queensland that picks up if someone was using khat while driving? Would they be charged with being under the effects of stupefying substances or something like that?

Interviewee: Well it depends whether it came up in their blood scan. You know the analysis of their blood. Some of them—there is an offence for driving while under the influence of drugs and that's any scheduled drug; anything within the schedule. So obviously if the active ingredient is cathinone and that showed up in their blood, then during analysis they could be charged with that. Basically driving under the influence of a dangerous drug namely cathinone. That's what it would be.

Facilitator: Okay. But you'd have to do a blood test.

Interviewee: Yes. There is that presumptive testing system that they use at the moment. But I'm not—and random drug testing. It's a tongue swab basically and they put it in a machine and it tests for certain compounds. Not sure [about khat]. – Queensland Police

It's illegal to drive under the influence of drugs here. You can't pick khat up from a urine test. It's only from a blood test, and for it to get to a blood test I think they have to be an offence over a certain—like it has to be like an indictable offence to require the blood test, or it has to be ordered by an inspector or something like that. I can't remember exactly what the procedure was, but it wasn't very often that they got blood tests done. So it's pretty hard to—you just pull someone on the side of the road and say, give me your blood. I'm going to check and see if you're using khat. – WA Police

But to actually test for it on the road at the moment is—it's a blood test. Unless there's an accident or something, that's not an option. – WA Police

So it'll obviously show up on a urine test? Say if we were to breath test someone on the side of the road, thinking that they were affected by something? They go, zero on a breath machine? So we can then turn around and take them for a urine test at the hospital that will show up that they've got that in their system obviously? A urine test? – NSW police

Some police interviewees were concerned that it was difficult to observe whether a person was driving under the influence of khat. While police interviewees suggested some observable things that may support khat intoxication, their comments also demonstrated the problems inherent in the suggested approaches:

So you'd recognise that this person is drunk but when you see somebody that's been chewing khat, and he's a taxi driver, he just looks like he's been driving for hours, he looks a bit drained and stuff. Unless they have the big ball in their mouth, then you'll know, but a lot of them now make it a little bit smaller. – Victoria Police

... you can stop people with red eyes and they look like being up for two days. – Western Australia Police

But if they're just sitting around chewing and everyone appears to be normal it's not going to give us ... As you know, usually there's a visual physical appearance of someone affected by drug or alcohol. Whereas if they're not displaying that, I don't see that it would raise concern at all. – NSW Police

Police interviewees pointed to the need for further education and for appropriate testing mechanisms to assess driving capability:

[Police need to be educated] to pick up on the signs, whether someone's been chewing khat or not. And yeah I guess I always go back to the taxi drivers—in particular when they pull over taxi drivers who for whatever reason hadn't done something on the road, then they need to interview them because a lot of time, obviously when you're tested for alcohol, it doesn't come up anyways. – Victoria Police

## 11.4 Conclusion

A number of concerns were raised in the focus group and police comments are extracted here. Many users believed that it was safe to drive under the influence of khat. Indeed, many appeared to believe they were better drivers when they were chewing the drug. Many seemed to assume this, in part, because current breathalyser testing processes did not identify khat. This was a concern. These comments suggested that some education needed to be done in the user community to ensure that users understood the possible risks of driving while chewing khat.

Although police had called for information and education about how to detect, by observation, whether a person might be driving under the influence of khat, this could be difficult or impossible given that some research had shown that a person's driving may be 'severely impaired' without noticeable effects (Toennes & Kauert 2004).

Some focus group participants pointed to reduced concentration and speeding while under the influence, and a number of police raised concerns about the possible dangers of driving under the influence of khat. More research is required to explore these issues and more specifically to determine how or whether khat impairs driving and, if possible, how much can be taken before driving is impaired.

## 12. Conclusions

Khat is regulated in Australia through a complex regime of overlapping and differing Commonwealth, state and territory laws. In some states possession of khat is strictly prohibited and carries heavy penalties, whereas in others, possession of khat appears to be legal (at least for personal use). Many focus group participants and police expressed uncertainty and confusion about the law in Australian states relating to khat. While a fact sheet has been developed which sets out the current law (Appendix 2), the authors suggest that the model adopted in the UK (see Chapter 4) may be worth exploring. One of the key concerns in the US (Chapter 4) and Western Australia (Chapter 8) appears to be that importing and distributing khat is/ or may become associated with organised crime. In both the US and Western Australia khat use is illegal and this arguably encourages an illegal market to flourish. A regulated environment, that allows import and agriculture to be managed, may avoid the association between khat and organised crime, and allow the imposition of a tax on growers, importers and users. Such a tax could help fund education and support programs for users, as is the case in the UK.

In general police required more information about the law relating to khat, cultural and spiritual issues associated with its use and the possible health effects associated with using khat.

Focus group participants generally claimed that chewing khat was harmless or indeed positive for many conditions, including diabetes, stress and heart disease. Most users were unaware of the harms that have been associated with chewing khat. Health professionals have a role to play in educating users about harms that have been associated with using the drug and also promoting its responsible use (where use is legal) in order to minimise the negative health effects of the drug for the individual and for the community. For example, users should be encouraged to drink sugar-free drinks or water while chewing khat as the high sugar/acid content of drinks often taken along with the drug is likely to have negative impacts on diabetes and dental health. Fact sheets on the health effects of khat should be developed in conjunction with community consultation, and distributed in relevant communities.

Large-scale human population research involving khat is limited. Until such studies are carried out, many of the claims about the relationship between khat and negative health outcomes will remain unverified.

Many focus group participants believed that it was safe to drive under the influence of khat; indeed, many believed they were better drivers when they were chewing khat. By contrast, some focus group participants pointed to reduced concentration and speeding while under the influence of khat, and a number of police interviewees were concerned about the possible dangers of driving under the influence of the drug. Some education is needed in the user community to ensure that users understand the possible risks associated with driving while chewing khat. More research is required to explore these issues.

## References

### Books, articles, websites

- Australian Customs Service (ACS) 2010. 'Catha edulis (khat) (information sheet)'. Melbourne: ACS. Copy available from the Australian Customs and Border Protection Service.
- Aden S. A preliminary review of the social, economic and health effects attributed to khat chewing of the Somali community in Melbourne. Unpublished: [www.vtpu.org.au/docs/khatSomali.ppt](http://www.vtpu.org.au/docs/khatSomali.ppt)
- Advisory Council on the Misuse of Drugs 2005. *Khat (qat): Assessment of risk to the individual and communities in the UK*. London: Advisory Council on the Misuse of Drugs
- Alem A & Shibre T 1997. Khat induced psychosis and its medico-legal implication: A case report. *Ethiopian Medical Journal* 35(2): 137–9
- All Rare Herbs (2010). *All Rare Herbs—mail order plant nursery*. <http://www.allrareherbs.com.au>
- Al-Raysuni A 2006. *Imam al-Shatibi's theory of higher objectives and intents of Islamic law*. Kuala Lumpur: Islamic Book Trust
- Al-Azmeh A 1996. *Islams and modernities*. London: Verso
- Al-Habori M 2005. The potential adverse effects of habitual use of *Catha-edulis* (khat). *Expert Opinion on Drug Safety* 4(6): 1145
- Al-Habori M, Al-Aghbari A, Al-Mamary M & Baker M 2002. Toxicological evaluation of *Catha edulis* leaves: A long-term feeding experiment in animals. *Journal of Ethno Pharmacology* 83(3): 209–17
- Al-Hadrani A.M 2000. Khat-induced haemorrhoidal disease in Yemen. *Saudi Medical Journal* 21(May): 474–7
- Al-Hebshi N & Skaug N 2005. Khat (*Catha edulis*)—an updated review. *Addiction Biology* 10(4) 299–307
- Ali AA, Al-Sharabi AK, Aguirre JM & Nahas R 2004. A study of 342 oral keratotic white lesions induced by qat chewing amongst 2500 Yemeni. *Journal of Oral Pathology and Medicine* 33(6): 368–72
- Al-Motarreb A, Al-Habori M & Broadley KJ 2010. Khat chewing, cardiovascular diseases and other internal medical problems: The current situation and directions for future research. *Journal of Ethno Pharmacology* 132(2): 540–8
- Al-Motarreb A, Briancon S & Al-Jaber N 2005. Khat chewing is a risk factor for acute myocardial infarction: A case-control study. *British Journal of Clinical Pharmacology* 59(5): 574–81
- Al-Mugahed L 2008. Khat chewing in Yemen: Turning over a new leaf. *Bulletin of the World Health Organization* 86(10): 741–2
- Anderson D, Beckerleg S, Hailu D & Klein A 2007. *The khat controversy: Stimulating the debate on drugs*. Oxford: Berg Publishers
- Anderson D & Carrier N 2009. Khat in colonial Kenya: A history of prohibition and control. *Journal of African History* 50(3): 377–97
- Australian Quarantine and Inspection Service fact sheet: Quarantine awareness fact sheet for khat importers. Canberra: Australian Government Department of Agriculture, Fisheries and Forestry. [http://www.daff.gov.au/\\_\\_data/assets/pdf\\_file/0018/52704/khat\\_english.pdf](http://www.daff.gov.au/__data/assets/pdf_file/0018/52704/khat_english.pdf)
- Armstrong E 2008. Research note. Crime, chemicals and culture: On the complexity of khat. *Journal of Drug Issues* 38(2): 631–48
- Australian Bureau of Criminal Intelligence 1998. *Australian illicit drugs report 1997–1998*. Canberra: Australian Crime Commission. [http://www.crimecommission.gov.au/publications/iddr/1997\\_98.htm](http://www.crimecommission.gov.au/publications/iddr/1997_98.htm)
- Australian Bureau of Statistics (ABS) 2009. People born in Africa. *Census 2006* Canberra: ABS. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3416.0Main+Features32008>
- ABS 2009. People born in Africa: Where do most African migrants live? *Census 2006* Canberra: ABS. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3416.0Main+Features32008#Anchor5>
- ABS 2007. *2006 Census of Population and Housing*. Canberra: ABS. <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/2914.02006?OpenDocument>

- Australian Government Attorney-General's Department 2011. Discussion paper: Implementation of model schedules for Commonwealth serious drug offences. Canberra: Criminal Justice Division. [http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews\\_ConsultationonimplementationofmodeldrugschedulesforCommonwealthseriousdrugoffences](http://www.ag.gov.au/www/agd/agd.nsf/Page/Consultationsreformsandreviews_ConsultationonimplementationofmodeldrugschedulesforCommonwealthseriousdrugoffences)
- Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) 2009. *Australia New Zealand Food Standards Code*. Canberra: DAFF. <http://www.daff.gov.au/agriculture-food/food/regulation-safety/standards-code>
- Australian Government Department of Health and Ageing 2010. *Standard for the uniform scheduling of drugs and poisons*. Canberra: Therapeutic Goods Administration. <http://www.tga.gov.au/ndpsc/susdp.htm>
- Australian Quarantine and Inspection Service 2009. Charging schedule for import permit applications. <http://www.daff.gov.au/aqis/import/general-info/fees-charges/schedule-permit-applications>
- Australian Quarantine and Inspection Service (AQIS) 2010. *Sending Khat to Australia*. Australia: AQIS. [www.daff.gov.au/aqis/mail/cant-mail/khat](http://www.daff.gov.au/aqis/mail/cant-mail/khat)
- Balint GA, Ghebrekidan H & Balint EE 1991. *Catha edulis*: An international social-medical problem with considerable pharmacological implications. *East African Medical Journal* 68(7): 555–61
- Beckerleg S 2006. What harm? Kenyans and Ugandan perspectives on khat. *African Affairs* 105(419): 219–41
- Belew M, Kebede D, Kassaye M & Enguoeselassie F 2000. The magnitude of khat use and its association with health, nutrition and socio-economic status. *Ethiopian Medical Journal* 38(1): 11–26
- Berman G 2009. *Consultation with the Somali community on khat: Attitude, impacts and ways forward*. Melbourne: Mental Health and Drugs Policy Unit of the Victorian Department of Human Services. [http://www.ceh.org.au/downloads/Final\\_Report\\_Khat\\_Nov2009.pdf](http://www.ceh.org.au/downloads/Final_Report_Khat_Nov2009.pdf)
- Black A 2008. Accommodating Sahriah law in Australia's legal system: Can we? Should we? *Alternative Law Journal* 33(4): 214–19
- Buffin J, Mir Y & Mirza I 2009. *Khat: current views from the community around the UK—findings from community engagement forums*. London: National drugs and race equality coalition
- Camilleri A, Johnston MR, Davis S & Cladicott DGE 2010. Chemical analysis of four capsules containing the controlled substance analogues 4-methylmethcathinone, 2-fluoromethamphetamine,  $\alpha$ -phthalimidopropiophenone and N-ethylcathinone. *Forensic Science International* 197(59): 59–66
- Carrier N 2008. Is miraa a drug? Categorizing Kenyan khat. *Substance Use and Misuse* 43(6): 803–18
- Centre for Muslim–Jewish Engagement 2011. Compendium of Muslim texts. University of Southern Carolina. <http://www.usc.edu/schools/college/crcc/engagement/resources/texts/muslim/search.html>
- Chapman MH, Kajihara M, Borges G, O'Beirne J, Patch D, Dhillon AP, Crozier A & Morgan MY 2010. Severe, acute liver injury and khat leaves. *New England Journal of Medicine* 362(17): 1642–44
- Chappell J & Lee M 2010. Cathinone preservation in khat evidence via drying. *Forensic Science International* 195 (1–3): 108–20
- Clapham C 1988. *Transformation and continuity in revolutionary Ethiopia*. Cambridge: Cambridge University Press
- Commonwealth of Australia 2008. Khat petition. Parliamentary Debates, House of Representatives, 22 September 2008
- Convention on Psychotropic Substances, opened for signature 21 February 1971, 1019 UNTS (entered into force 16 August 1976)
- Cox G & Rampes H 2003. Adverse effects of khat: A review. *Advances in Psychiatric Treatment* 9(6): 456–63
- Davies M 2009. Pluralism in law and religion, in Cane P, Evans C & Robinson Z (eds), *Law and religion and theoretical and historical context*. Cambridge: Cambridge University Press: 72–99
- Dundas Rentlen A & Valadares R 2009. The importance of culture for the justice system. *Judicature* 92(5): 194–201
- Eckersley W, Salmon R, Gebru M 2010. Khat, driver impairment and road traffic injuries: A view from Ethiopia. *Bulletin of the World Health Organization* 88: 235–6
- El Fadl KA 1994. Legal debates on Muslim minorities: Between rejection and accommodation. *Journal of of Religious Ethics* 22(1): 127–62
- Elmi AS 1983. The chewing of khat in Somalia. *Journal of Ethnopharmacology* 8: 163–76
- El-Shoura SM, Aziz MA, Ali ME, El-Said MM, Ali KZM, Kermier MA, Raof AMS, Allam M & Elmalik EMA 1995. Deleterious effects of khat addiction on semen parameters and sperm ultrastructure. *Human Reproduction* 10(9): 2295–3000
- Explanatory Memorandum. Criminal Code (Serious Drug Offences) Amendment Bill 2004 (ACT) Legislative Assembly of the Australian Capital Territory

- Explanatory notes. Crimes Legislation Amendment (Serious and organised crime) Bill (No.2) 2009 The Parliament of the Commonwealth of Australia
- Feigin A, Higgs P, Hellard M & Dietze P 2010. Further research required to determine link between khat consumption and driver impairment. *Bulletin of the World Health Organization* 88(6): 480
- Feyissa AM & Kelly JP 2008. A review of the neuropharmacological properties of khat. *Progress in Neuro-psychopharmacology & Biological Psychiatry* 32(5): 1147–66
- Fisher C 2009. *The exploration of the nature and understanding of family and domestic violence within the Sudanese, Somalian, Ethiopian, Liberian and Sierra Leonean communities and its impact on individuals, family relations, the community and settlement*. Perth: Association for Services to Torture and Trauma Survivors
- Fitzgerald J & Lawrence L 2009. *Khat: A literature review*. Melbourne: Centre for Culture, Ethnicity and Health. [http://www.ceh.org.au/downloads/Khat\\_report\\_FINAL.pdf](http://www.ceh.org.au/downloads/Khat_report_FINAL.pdf)
- Gelaw Y and Haile-Amlak A 2004. Khat chewing and its socio-demographic correlates among the staff of Jimma University. *Ethiopian Journal of Health Development* 18(3): 179–84
- Gebissa E 2004. *Leaf of Allah: Khat and agricultural transformation in Harerge Ethiopia 1875–1991*. Ohio: Ohio University Press
- Gebissa E 2008. Scourge of life or an economic lifeline? Public discourses on khat (*Catha edulis*) in Ethiopia. *Substance Use and Misuse* 43(6): 784–802
- Ghouri N, Atcha M & Sheikh A 2006. Public health: Influence of Islam on smoking among Muslims. *British Medical Journal* 332(7536): 291–94
- Gosnell BA, Yracheta JM; Bell SM & Lane KE 1996. Intravenous self-administration of cathinone by rats. *Behavioural Pharmacology* 7: 526–31
- Graziani M, Milella M & Nencini P 2008. Khat chewing from a pharmacological point of view: An update. *Substance Use & Misuse* 43(6): 762–83
- Guerin P & Guerin B 2007. Research with refugee communities: Going around in circles. *The Australian Community Psychologist* 19(1): 150–5
- Hailu D 2007. *Should khat be banned? The development impact*. Geneva: International Policy Centre for Inclusive Growth. <http://www.ipc-undp.org/pub/IPCOnePager40.pdf>
- Hassan N, Gunaid A & Murray-Lyon I 2007. Khat (*Catha edulis*): Health aspects of khat chewing. *Eastern Mediterranean Health Journal* 13(3): 706–18
- Hassan NA, Guinaid AA, Abdo-Rabb AA, Abdel-Kader ZY, al-Mansoob MA, Awad AY & Murray-Lyon IM 2000. The effect of qat chewing on blood pressure and heart rate in healthy volunteers. *Tropical Doctor* 30(2): 107–8
- Hoffman R & Al'Absi M 2010. Khat use and neurobehavioural functions: Suggestions for future studies. *Journal of Ethnopharmacology* 132(3): 554–63
- House of Representatives Standing Committee on Petitions 2008. Answers to Questions on Notice (3 December 2008). <http://www.aph.gov.au/HOUSE/committee/petitions/roundtables/3dec08/answerkhat.pdf>
- Hudson W 2003. Religious Citizenship. *Australian Journal of Politics and History* 49(3): 425–9
- Isse H 2005. Working with Somali khat users. *Drugs and Alcohol Today* 5(3): 20–21
- Jorgensen E & Kaimenyi JT 1990. The status of periodontal health and oral hygiene of miraa (*Catha edulis*) chewers. *The East African Medical Journal* 67(8): 585–90
- Kamali M 2006. *An introduction to Shariah*. Kuala Lumpur: Ilmiah
- Kamarulzaman A & Saifuddeen SM 2010. Islam and harm reduction. *International Journal of Drug Policy* 21(2): 115
- Kassim S, Islam S & Croucher R 2010. Validity and reliability of a severity of dependence scale for khat (SDS-khat). *Journal of Ethnopharmacology* 132(3): 570–7
- Kasuli OH 2007. *Protection, preservation, and promotion of the intellect, Hifdh Al Aql*. Symposium on protection of the Aql. Kulliyah of Medicine: International Islamic University Kuantan. <http://omarkasule-04.tripod.com/id1290.html>
- Khattab NY & Amer G 1995. Undetected neuropsychophysiological sequelae of khat chewing in standard aviation medical examination. *Aviation Space & Environmental Medicine* 66(8): 739–44
- Klein A 2008. Khat in the neighbourhood: Local government responses to khat use in a London community. *Substance Use and Misuse* 43(3): 819–31

- Klein A, Beckerleg S & Hailu D 2009. Regulating khat: Dilemmas and opportunities for the international drug control system. *International Journal of Drug Policy* 20(509)
- Klein A & Metaal P 2010. A good chew or good riddance: How to move forward in the regulation of khat consumption. *Journal of Ethnopharmacology* 132(3): 584–9
- Lamina S & Babu SM 2009. Khat (*Catha edulis*): Academic, health and psychological effects on 'mature' students. *African Journal of Drug & Alcohol Studies* 8(2): 49–59
- Lamina S 2010. Khat (*Catha edulis*): The herb with officio-legal, socio-cultural and economic uncertainty. *South African Journal of Science* 106(3/4): 1–4
- Laswar AK, Darwish AK 2009. Prevalence of cigarette smoking and khat chewing among Aden University medical students and their relationship to BP and body mass index. *Saudi Journal of Kidney Disease and Transplantation* 20(5): 862–6
- Macleod H & Vidal J 2010. Once it was paradise: Now Yemen runs dry. *The Guardian* (UK), 11 March 2010
- Maddox M 2006. *God under Howard: The rise of the religious right in Australian politics*. Crows Nest: Allen & Unwin.
- Manghi R & Broers B et al. 2009. Khat use: Lifestyle or addiction? *Journal of Psychoactive Drugs* 41(1): 1–10
- Masud M 1995. *Shatibi's philosophy of Islamic law*. Kuala Lumpur: Islamic Book Trust
- Mengel R, Eigenbrodt M, Schunemann T & Flores de Jacoby L 1996. Periodontal status of a subject sample of Yemen. *Journal of Clinical Periodontology* 23(5): 437–43
- Michalak L & Trocki K 2006. Alcohol and Islam: An overview. *Contemporary Drug Problems* 33: 523–62
- Milanovic B 2008. Qat expenditures in Yemen and Djibouti: An empirical analysis. *Journal of African Economies* 17(5): 661
- Mohammed K 2004. A Muslim perspective on human rights. *Humanities Social Sciences and the Law* 41(2): 29–35
- Morgan D 1998. *The focus group guidebook*. Thousand Oaks: Sage
- Movsesian M 2010. Religious legal theory: The state of the field. *Seton Hall Law Review* 40: 861–89
- Murray S & Skull S 2005. Hurdles to health: Immigrant and refugee health care in Australia. *Australian Health Review* 29(1)
- Mwenda J, Arimi M, Kyama M & Langat D 2003. Effects of khat (*Catha edulis*) consumption on reproductive functions: A review. *East African Medical Journal* 80(6): 318–23
- Nabuzoka D & Badhadhe F 2000. Use and perceptions of khat among Somalis in a UK city. *Addiction Research* 8(1): 5–26
- Narchal R 2006. *Report on loneliness narratives: A Somali experience*. Parramatta: Baulkham Hills Holroyd Parramatta Migrant Resource Centre
- Nedlands Shire Council 2008. Khat trees in Nedlands backyards. *Media release* 27 May 2008
- Nicholas R 2010. *An environmental scan on alcohol and other drug issues facing law enforcement in Australia*. Hobart: National Drug Law Enforcement Research Fund
- Nicholas R & Shoobridge J 2005. *Alcohol and other drug issues facing policing in Australia*. Australia: Australasian Centre for Policing Research
- Nutt D, King L, Saulsbury W & Blakemore C 2007. Development of a rational scale to assess the harm of drugs of potential misuse. *The Lancet* 369(9566): 1047–53
- O'Neil M 2009. Legal drug alarms police. *The Courier Mail* (Brisbane) 15 November, 3
- Oakley A 1981. Interviewing women: A contradiction in terms, in Roberts H (ed), *Doing feminist research*. London: Routledge and Kegan Paul: 30–61
- Odenwald M, Klein A, Warfa N 2010. Introduction to the special issue: The changing use and misuse of khat (*Catha edulis*): Tradition, trade and tragedy. *Journal of Ethnopharmacology* 132(3): 537–39
- Omar A & Bessiling R 2008. *Khat: A drug of growing abuse*. Sweden: Bloms Trycker AB
- Pantelis C, Hindler CG & Taylor JC 1989. Use and abuse of khat (*Catha edulis*): A review of the distribution, pharmacology, side effects and a description of psychosis attributed to khat chewing. *Psychological Medicine* 19(3): 657–68
- Patel S, Wright S & Gammampila A 2005. Khat use among Somalis in four English cities. *Home Office Report* 47(5)
- Permanent Committee for Scholarly Research and Ifta (PCSR) 2008. Permanent Committee Fatwas Kingdom of Saudi Arabia, Group 1, Volume 22, Fatwa 2159
- Pennings E, Opperhuizen A & Amsterdam J 2008. Risk assessment of khat use in the Netherlands: A review based on adverse health effects, prevalence, criminal involvement and public order. *Regulatory Toxicology and Pharmacology* 52(3): 199–207

- PerthNow: No author 2009. Couple face khat drug possession charges. *PerthNow*, 18 November 2009
- Phillips T 2009. Exploitation in payments to research subjects. *Bioethics*. <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-8519.2009.01717.x/pdf>
- Poore B 2009. Somaliland: Shackled to a failed state. *Stanford Law Review* 45: 117–50
- Rahman F 1979. Towards reformulating the methodology of Islamic law: Sheikh Yamani on 'public interest' in Islamic law. *New York Journal of International Law and Politics* 12: 219–24
- Raja'a YA, Noman TA, Al-Warafi AK, Al-Mashraki NA & Al-Yosofi AM 2000. Khat chewing is a risk factor of duodenal ulcer. *Saudi Medical Journal* 21(9): 887–8
- Royal Canadian Mounted Police (RCMP) 2007. *Drug situation in Canada 2007*. Ontario: RCMP
- Rees P 2007. *Briefing Paper 2: Khat* (March 2007). NHS Leicester City: Directorate of Public Health and Health Improvement. <http://www.phleicester.org.uk/Documents/trs/Khat%20briefing%20Paper1.pdf>
- Saif Ali R, Al-Qirbi A, Al-Geiry A & Al-Habori M 2003. Effect of *Catha edulis* on plasma glucose and C-peptide in both type 2 diabetics and non-diabetics. *Journal of Ethnopharmacology* 1(86): 45–9
- Schloenhardt A 2008. *Queensland Criminal Law*. Sydney: Oxford University Press
- Sikora K 2009. New killer cocaine on the streets of Sydney. *The Daily Telegraph* (Sydney), 12 June 2008. 3
- Single Convention on Narcotic Drugs, opened for signature 25 March 1961, 520 UNTS (entered into force 13 December 1964)
- Stefan J and Mathew B 2005. Khat chewing: An emerging drug of concern in Australia? *Australia and New Zealand Journal of Psychiatry* 39(9): 842–3
- Stevenson M, Fitzgerald J & Banwell C 1996. Chewing as a social act: Cultural displacement and khat consumption in the East African communities of Melbourne. *Drug and Alcohol Review* 15(1): 73–82
- Stewart D, Shandasani P & Rook D 2007. *Focus groups: Theory and practice* (2nd ed). Thousand Oaks: Sage
- Sykes W, Coleman N, Deasai P, Groom C, Gure M & Howarth R 2010. Perceptions of the social harms associated with khat use. *Home Office Research Report* 44
- Tefera TL 2009. Supply response, local reality and livelihood sustainability: The policy dilemma of khat (*Catha edulis*) production in eastern Ethiopia. *International Journal of Agricultural Sustainability* 7(3): 176–88
- The Pew Forum on Religion and Public Life 2009. *Mapping the global Muslim population*. Washington: The Pew Forum on Religion and Public Life
- Tiong A, Patel MS, Gardiner J, Ryan R, Linton KS, Walker KA, Scoper J & Biggs BA 2006. Health issues in newly arrived African refugees attending general practice clinics in Melbourne. *Medical Journal of Australia* 185(11/12): 602–6
- Toennes SW & Kauert GF 2004. Driving under the influence of khat: Alkaloid concentrations and observations in forensic cases. *Forensic Science International* 140(1): 85–90
- Toennes SW, Harder S, Schramm M, Niess C & Kauert G, 2003. Pharmacokinetics of cathinone, cathine and norephedrine after the chewing of khat leaves. *Journal of Clinical Pharmacology* 56: 125–30
- Trewin D 2004. Other areas of social concern: Religious affiliation and activity. *Australian Social Trends* 4.102.0. <http://www.abs.gov.au/Ausstats/abs@.nsf/1020492cfcfd63696ca2568a1002477b5/fa58e975c470b73cca256e9e00296645!OpenDocument>
- United States Department of Homeland Security 2010. *2009 Yearbook of Immigration Statistics*. Washington: Office of Immigration Statistics
- Varisco DM 1986. On the meaning of chewing of QAT (*Catha edulis*) in the Yemen Arab Republic. *International Journal of Middle East Studies* 18(1): 1–13
- Western Australia Police 2010. *The extent and impact of khat harvesting in Western Australia* (Problem profile)
- Wagner M 2005. The debate between coffee and Qat in Yemeni literature. *Middle Eastern Literatures* 8(2): 121–49
- Warsi S, 2008. Conservatives will ban khat. *The Guardian*, 15 June 2008
- Warfa N, Klein A, Bhui K, Learey G, Craig T & Stanfeld SA 2007. Khat use and mental illness: A critical review. *Social Science and Medicine* 65(2): 309–18
- World Health Organization (WHO) 2006. *WHO Expert Committee on Drug Dependence—34th Report*. WHO technical report series 942–46

Yanagita T 1979. Studies on cathinones: Cardiovascular and behavioural effects in rats and self-administration experiment in rhesus monkeys. *NIDA Res Monogr* 27: 326–27

Zinberg N 1984. *Drug, set, and setting: The basis for controlled intoxicant use*. New Haven: Yale University Press

## Conversations and email communications:

C Ward, Living Collections Administrator, Botanic Gardens Trust Sydney, telephone conversation, 25 March 2010

N Rees, Analysis & Production at the Intelligence Branch Victoria, Australian Customs and Border Protection Service, email received by Heather Douglas, 21 May 2010

N Aslimoska, Treaties and Compliance Division, Office of Chemical Safety and Environmental Health, telephone conversation, 17 May 2010

## Cases:

*Argaw v Ashcroft* 395F.3d 521, [11] (4th Cir, 2005)

*Courtney-Smith v R* (no 2) (1990) 48 A Crim R 49

*R v Greenfield* [2005] SADC 123

*R v Leff* (1996) 132 FLR 102

*The Queen v Lee* [2006] QCCQ 2363, [3]

*The Queen v Nur* [2004] ABPC 148

*USA v Awad* 598 F.3d 76 (2010)

*USA v Abdulle* 564 F.3d 119 (2009)

*USA v Awad* 369 Fed. Appx. 242 (2010)

*USA v Caseer* 399 F 3d 328 (6th Cir, 2005)

*USA v Hassan* (2nd Cir, No 05-6949, 19 September 2008)

*USA v Hussein* 351 F 3d 9, [55] (1st Cir, 2003)

*USA v Roble* 396 Fed. Appx. 762 (2010)

*USA v Sheikh* 367 F 3d 756 (8th Cir, 2004)

## Legislation

Australian Constitution 1900 (Cth) available at: <http://www.aph.gov.au/senate/general/constitution/index.htm> (accessed 2 February 2011)

Controlled Substances (General) Regulations 2000 (SA)

*Controlled Substances Act 1984* (SA)

*Crimes Act 1914* (Cth)

Criminal Code 2002 (ACT)

Criminal Code Regulation 2000 (ACT)

Criminal Code Regulation 2005 (no 2 of 2005) (ACT)

Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) (Cth) 2009

Customs (Prohibited Imports) Regulations 1956 (Cth)

*Customs Act 1901* (Cth)

*Drugs Act 1908* (SA)

*Drugs Misuse Act 1986* (Qld)

*Drugs Misuse Amendment Act 2008* (Qld)

*Drugs of Dependence Act 1989 (ACT)*

*Drugs of Dependence Regulation 2009 (ACT)*

*Drugs, Poisons and Controlled Substances Act 1981 (Vic)*

*Drugs Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007 (Vic)*

*Food Act 1984 (Vic)*

*Food Act 2001 (ACT)*

*Food Act 2001 (SA)*

*Food Act 2003 (NSW)*

*Food Act 2003 (Tas)*

*Food Act 2004 (NT)*

*Food Act 2006 (Qld)*

*Food Act 2008 (WA)*

*Misuse of Drugs Act 1981 (WA)*

*Misuse of Drugs Act 1990 (NT)*

*Poisons Act 1964 (WA)*

*Poisons and Therapeutic Goods Act 1966 (NSW)*

*Therapeutic Goods Act 1989 (Cth)*

## Overseas legislation

*Controlled Substances Act of 1970* Pub L No 91-513, 84 Stat 1242 (USA)

*Controlled Drugs and Substances Act, SC 1996, sch IV* (USA)

## Appendix 1: Images of khat



Dry khat leaves



Khat wrapped for importation



Fresh khat growing in Perth, WA.



Young shoot of khat



Flower buds on a khat plant



Flower buds on khat plant

## Appendix 2: Khat and the law in Australia

### The law on khat in Australia—summary

Khat is regulated in Australia through a complex regime of overlapping and differing Commonwealth, state and territory laws. In some states possession of khat is strictly prohibited and carries heavy penalties, whereas in others possession of khat appears to be legal (at least for personal use). Khat is regulated at two stages, namely, importation of the plant and its possession.

#### Importation

Importation of khat into Australia is controlled through Commonwealth legislation. Cathine and cathinone (the active constituents in khat) are listed as drugs in the Customs (Prohibited Imports) Regulations 1956 (Cth) and as such they are regulated under Regulation 5 of the Customs (Prohibited Imports) Regulations 1956 (Cth). Under the regulations, it is illegal to import both fresh and dried khat into Australia without a licence, because it is presumed to contain cathine and/or cathinone (although the prosecution would still have to prove this). If individuals import khat without a licence they face a maximum penalty of \$110,000.

The legal importation of khat requires first a permit from the Australian Quarantine and Inspection Service (AQIS), and then a licence from the Office of Chemical Safety and Environmental Health (OCSEH). It is only possible to obtain a permit for importing the leaf tips of khat (any plants that are capable of being propagated are not permitted). The application to AQIS must include details of the exporter and importer of the khat. The current cost of obtaining a permit is \$125.

Once an AQIS Import Permit is obtained, a person can then apply for a licence to import khat from OCSEH. Individuals can apply for a one-off licence of up to 5 kg of khat (fresh or dried) or, alternatively, for a yearly licence allowing importation of 5 kg per month for personal use. The Customs (Prohibited Imports) Regulations 1956 (Cth) makes it illegal to import a quantity exceeding that specified by the licence or permit granted.

It is illegal for a person to import khat and sell it or give it to others who do not possess an import licence, since it is a condition of the import licence that the holder of the licence must keep the drug in safe custody at all times and must not dispose of the drug unless he or she is satisfied that the drug will be used solely for medical or scientific purposes: Customs (Prohibited Imports) Regulations 1956 (Cth) sub-regs 5(9)(a)(i), (c). If a licence holder fails to comply with the licence conditions, the licence may be suspended or revoked and the person may become liable for prosecution for the offence of failing to comply with a condition of a licence. The penalties are as high as \$11,000: *Customs Act 1901* (Cth) s 50(4).

#### Possession

The legality of possessing khat varies among the Australian states and territories. Furthermore, possession may be illegal in a state or territory despite the possessor holding a valid import licence issued by the Commonwealth. It is necessary to examine the state or territory law which is applicable to determine whether possession is legal.

Possessing cathinone in extracted form is illegal throughout Australia. Possessing the khat plant is illegal in Queensland, Western Australia and the Northern Territory but legal in New South Wales, Tasmania and Victoria. The situation in South Australia and the Australian Capital Territory is more complex.

**Queensland:** It is illegal to possess, supply or cultivate the khat plant (*Catha edulis*), cathine or cathinone: *Drugs Misuse Act 1986* (Qld) Schedule 2. The maximum penalty for possession, supply or cultivation is 15 years' imprisonment, and for trafficking is 20 years' imprisonment.

**Northern Territory:** It is illegal to possess, supply or cultivate 'khat leaf' and cathinone: *Misuse of Drugs Act 1990* (NT) Schedule 2. A commercial quantity of khat leaf is 5 kg, and the maximum penalty for possession of this quantity is 14 years' imprisonment. The maximum penalty for cultivation (of a single plant) is \$5,000 or two years' imprisonment.

**South Australia:** The khat plant and cathinone are controlled substances: Controlled Substances (General) Regulations 2000 (SA) Schedules 3, 1. It is an offence to sell khat or to possess or cultivate khat with the intention of selling *any of it*. The maximum penalty depends on the amount; for a large commercial quantity (5 kg or more) it is \$500,000 or life imprisonment. A person in possession of or cultivating 250 g is presumed, unless they can prove otherwise, to intend to sell the plants or any part of them. There is, however, no offence for the simple possession or cultivation of a controlled plant, so there is no consequence if the defendant can prove on the balance of probabilities that the possession or cultivation is for personal use only. Cathinone is also regulated, including when it is mixed with some other substance. It is possible, but unlikely, that this includes situations where the cathinone is mixed with the khat plant.

**Australian Capital Territory:** It is illegal to sell or cultivate a growing khat plant: Criminal Code 2002 (ACT). The maximum penalty is 10 years' imprisonment and/or a fine of 1,000 penalty units (currently \$110,000) for selling any quantity of the khat plant, or two years' imprisonment and/or 200 penalty units (currently \$22,000) for cultivating it. Cultivation has a very wide meaning, including nurturing, guarding, concealing and harvesting the plant. Possession of a growing khat plant is not specifically regulated, but in many circumstances this will be captured by the cultivation provisions. Possession of dried or fresh harvested khat is legal, but possession of cathinone which has been extracted from the plant is not.

**Western Australia:** It is illegal to possess, supply or cultivate khat (containing cathinone) or cathinone: *Misuse of Drugs Act 1981* (WA). The Western Australia police have made numerous khat seizures, although prosecutions have often been unsuccessful. Simple possession or cultivation of khat without a finding of intent to sell attracts a maximum penalty of \$2,000 and/or two years' imprisonment. Selling khat or possession or cultivation with intent to sell attracts a maximum penalty of \$100,000 and/or 25 years' imprisonment.

**New South Wales:** The khat plant is not illegal, although cathinone is: *Drug Misuse and Trafficking Act 1985* (NSW) Schedule 1. There is a facility for the minister to declare a plant to be a prohibited plant (s 3), but this power has not been exercised in relation to the khat plant.

**Tasmania:** In Tasmania, the active substances in khat, cathinone and cathine, are listed as controlled drugs under Part 2 of Schedule 1 of the *Misuse of Drugs Act 2001*. The possession of khat in Tasmania is effectively regulated under licence and enforced pursuant to Commonwealth law.

**Victoria:** Possession of cathinone is illegal: *Poisons, Drugs and Controlled Substances Act 1981* (Vic). The maximum penalty is 10 penalty units (currently \$1,220). Possession of 25 g of cathine (norpseudoephedrine) is illegal: Drugs, Poisons and Controlled Substances (Precursor Chemicals) Regulations 2007 (Vic). In the context of khat possession charges these provisions would require evidence of either the presence of cathinone or 25 g of cathine.

## Appendix 3: Islamic perspectives on khat (summary)

In Australia khat chewing has been associated with the growing number of immigrants from East African and Horn of African nations, especially Somalis, most of whom are Muslim. For many of these consumers of khat, the position of Islamic law, or shari'a, a determining factor in the choices they make, and indeed may often weigh more heavily upon their minds than the Australian domestic law. **However, khat has an uncertain status in Islam, and this poses significant challenges.**

Across the Muslim world, opinion is sharply divided among Islamic scholars on the correct approach to khat. The principal inconsistency arises in relation to the 'intoxicating' effects of khat and their impact on the human body and society at large. **The three opposing positions on khat are that it is halal (permissible), makruh (detested or discouraged) or haram (forbidden).**

Tradition is a key justification cited by some that **khat is halal or permissible**. Proponents point to spiritual rituals which are aided by the consumption of khat such as reading the Qur'an and performing prayers: 'Some people use khat to get closer, to get more energy for their worship' (Perth Somali man). It is also claimed that no verse of the Qu'ran explicitly prohibits khat. Indeed, khat is understood by many Muslims to be permissible as an alternative to alcohol, which the Qur'an does expressly prohibit. Those who argue that khat is halal draw a distinction between its effect and the physical incapacitation caused by alcoholic intoxication: '[khat] is safe ... it's not a drug' (Somali woman Melbourne)

The claim that khat is **detested and discouraged or makruh** reflects a risk-averse middle ground, which does not command a great deal of support. Something is makruh if it is not bad when consumed in moderation, but if used in excess becomes haram. However, some scholars argue that the makruh position contradicts a prophetic tradition that: 'What intoxicates in large amounts is prohibited even if taken in small amounts'.

Two related arguments are put forward to show that khat is **prohibited or haram**; first, that khat is an intoxicant and therefore haram and second, that khat should be considered haram in order to preserve human interests. If khat is considered to be an intoxicant, according to Islamic teaching it is haram regardless of how much is consumed. Some have questioned whether khat is indeed 'intoxicating'. It is accepted that khat has a stimulating effect. Khat affects the way a person responds to their surroundings and thus has been considered to be an intoxicant. It is argued that forbidding khat preserves the necessary human interests of the protection of faith, life, lineage, intellect and property. The social and economic effects of khat have been commented upon frequently and were recognised by a number of study participants: 'Some people—they can't control. Every night they buy it and use it so that means that all their income goes to khat instead of supporting their family' (Somali women, Sydney). Some argue that such consequences demonstrate that khat is haram.

## Appendix 4: Consent/information from community focus groups

### Information sheet: Project—Law enforcement and khat: An analysis of current issues.

#### Researchers:

|   |  |
|---|--|
| <b>Dr Heather Douglas, T C Beirne School of Law</b> | <b>Dr. Nicholas Lintzeris, School of Medicine</b>  |
| <b>Tel: 07 336 56605, H.Douglas@law.uq.edu.au,</b>  | <b>Tel: 02 9515 6419, nlintzer@med.usyd.edu.au</b> |
| <b>St Lucia, 4072</b>                               | <b>Sydney, 2006</b>                                |

This project aims:

- to educate members of the public about the legal position and effects of khat and
- to understand use patterns and social and health effects of khat.

The researchers invite you to take part in a one-hour discussion about the law about khat and its effects. We hope to talk to you at the same time as we talk to other members of your community. If you decide to take part, there will be six to eight [wo]men in the discussion group along with a fe/male researcher and a fe/male Somali interpreter. The discussion will take place at [address].

The discussion will be audio-recorded and then it will be written down. The recording and the writing will not include your name. When we make a report about this research your name won't be in the report. The researchers can promise you that, unless the recording of this interview is ordered to be handed over to a legal authority, the researchers are the only people that will hear any of this discussion or read the writing from the discussion. If you do decide to take part the researchers expect you to consider the privacy of the other participants in the group and not talk to anybody about what was said in the discussion.

We hope you will be willing to participate in this discussion. We want to make sure that our research includes a wide range of views from your community. Your participation will help to make sure that any recommendations made in relation to how police should deal with khat and how information material is developed for the community reflect a wide range of community views.

At the end of this research we will prepare a report and we will make it available on the internet at this address: <http://www.law.uq.edu.au/khat>. You can check the internet site at the end of the year to get information about how this research is going and any reports that the researchers have written will be there. If you want the researchers to send you a copy of the research you can telephone them or email them and they can post or email you a copy. Their contact details are at the top of this page.

You don't have to take part in this discussion and if you decide not to participate this won't affect you. If you start to participate in the discussion and you decide during the discussion that you don't want to continue, you can leave and you don't have to explain and this won't affect you either. If you do stop, any information already provided will not be further used in the study. If you decide to take part in this discussion the researchers will give you \$20 to cover some of the costs related to taking part in this discussion (for example, transport). This will be given to you at the end of the discussion.

This study has been cleared by one of the human ethics committees of the University of Queensland in accordance with the National Health and Medical Research Council's guidelines. If you want to talk about this research you can telephone Heather Douglas (contactable on 07 3365 6605). If you would like to speak to someone at the university who is not involved in the study, you can contact the Ethics Officer on 07 3365 3924. This study is funded by the National Drug Law Enforcement Research Fund. Thank you for your assistance with this research project.

# Consent form: Somali community members

## Project Title: *Law enforcement and khat: An analysis of current issues*

- I have read the information sheet and the consent form.
- I agree to participate in the *Law enforcement and khat: An analysis of current issues project* and give my consent freely.
- I understand that unless the recording of this interview is ordered to be handed over to a legal authority, the researchers are the only people that will hear any of this discussion or read the writing from the discussion.
- I understand that the project will be carried out as described in the information sheet. I have kept a copy of the information sheet.
- I know that I don't have to participate in this discussion and if I decide not to participate it won't affect me.
- I realise that I can stop participating in the discussion at any time and I do not have to give any reasons for stopping.
- If I do stop, any information already provided will not be further used in the study.
- I have had all my questions answered.

Signatures:

.....

|                  |                       |      |
|------------------|-----------------------|------|
| Participant name | Participant signature | Date |
|------------------|-----------------------|------|

.....

|                   |                        |      |
|-------------------|------------------------|------|
| Investigator name | Investigator signature | Date |
|-------------------|------------------------|------|

## Appendix 5: Community focus groups: List of Questions/themes addressed:

### Law enforcement and khat: An analysis of current issues.

#### *Schedule of questions*

|   |   |
|---|---|
| Dr Heather Douglas, T C Beirne School of Law<br>Tel: 07 336 56605, H.Douglas@law.uq.edu.au,<br>St Lucia, 4072 | Dr. Nicholas Lintzeris, School of Medicine<br>Tel: 02 9515 6419, nlintzer@med.usyd.edu.au<br>Sydney, 2006 |
|---|---|

- Introduction of facilitator and interpreter.
  - Review consent/information forms.
  - Refer participants to project website where they can keep up with publications and reports from the research.
  - Discussion themes
1. Understanding of the law about khat in [state] (with respect to use, possession, sale or supply and cultivation).
  2. Understanding of the law about importation and exportation of khat.
    - At this point participants will be referred to the project website which includes links to Australian Government advice about the legal position of khat in [state] and Australia.
  3. Use and supply issues: where obtained (eg generally: restaurants/coffee shops/directly imported etc) how much is used, how often, cost.
  4. Context: different use patterns women/men, younger/older people, within the Somali community or beyond, where used (home, coffee shop etc).
  5. How used: chewed, tea, mixed with other substance, leaf/powder, dried/fresh.
  6. Effects of khat—health effects, addiction, anti-social behaviours, specifically domestic violence, effects on driving etc.
  7. Are there different effects associated with way substance used?
  8. Do police become involved because of the use of khat—in what contexts, why?
  9. Other issues?
    - Thanks, reminder of project website, payment of participants.

## Appendix 6: Consent/information form police interviews

### Information Sheet

#### *Project Title: Law enforcement and khat: An analysis of current issues*

This study has been cleared by one of the human ethics committees of the University of Queensland in accordance with the National Health and Medical Research Council's guidelines and by the Western Australian Police ethical approval process. This project aims to develop law enforcement and protocols to assist law enforcement agencies and criminal justice officials to educate the public about the legal position and effects of khat; to understand use patterns and social and health effects of khat, particularly as they may relate to violence and anti-social behaviour and mental health problems; to identify khat, conduct appropriate searches and charge; identify police call-out situations where khat may be significant and consider police interview approaches that address khat use.

The researcher will need to speak to you for approximately one hour about the issues outlined above. The interview will be recorded and the recording will be later transcribed. Any references to your comments in the interview will be recorded in publications in a way that identifies you as an employee of the [X] Police but will not include your name or other identifying information. The interviewee's confidentiality will be maintained. The data collected in this project will be coded by state and number. References to the data in any subsequent publications will be by state and number.

Your participation in this project will ensure that a range of views is included in any recommendations made in relation to the development of protocols and information material for police and community members. At the end of this research we will prepare a report and we will make it available on the internet and will also provide copies to you if you wish. Your participation is voluntary and a refusal to participate will involve no penalty or loss of benefits to which you might otherwise be entitled, and you may discontinue participation at any time without penalty or without providing an explanation.

You are free to discuss your participation in this study with project staff (contactable on 07 3365 6605). If you would like to speak to an officer of the university not involved in the study, you may contact the Ethics Officer on 07 3365 3924.

Thank you for your assistance with this research project.

## Consent form:

### Project Title: Law enforcement and khat: An analysis of current issues

I understand that this research aims to develop law enforcement and protocols to assist law enforcement agencies and criminal justice officials to educate the public about the legal position and effects of khat; to understand use patterns and social and health effects of khat, particularly as they may relate to violence and anti-social behaviour and mental health problems; to identify khat, conduct appropriate searches and charge; identify police call-out situations where khat may be significant and consider police interview approaches that address khat use.

I understand that the researchers will speak to me for approximately one hour about the issues outlined above.

I understand that the interview will be recorded and the recording will be later transcribed.

I understand that any references to my comments in the interview will be recorded in publications in a way that identifies me as an employee of the [x] Police but will not include my name or other identifying information. Confidentiality will be maintained. The data collected in this project will be coded by state and number. References to the data in any subsequent publications will be made by reference to state and number.

This study has been cleared by one of the human ethics committees of the University of Queensland in accordance with the National Health and Medical Research Council's guidelines and by the Western Australia Police ethical approval process. I am free to discuss your participation in this study with project staff (contactable on 07 3365 6605). If I would like to speak to an officer of the University not involved in the study, I may contact the Ethics Officer on 07 3365 3924.

I have read the information sheet and the consent form. I agree to participate in the Law enforcement and khat: An analysis of current issues project and give my consent freely. I understand that the project will be carried out as described in the information statement, a copy of which I have retained. I realise that whether or not I decide to participate is my decision and will not affect me. I also realise that I can withdraw from the project at any time and that I do not have to give any reasons for withdrawing. I have had all questions answered to my satisfaction.

Signatures:

.....

Participant

.....  
Date

.....

Investigator(s)

.....  
Date

## Appendix 7: Interviews with police: List of questions/themes addressed:

The themes/questions listed below were raised with police interviewees but not all interviewees addressed all of the issues raised.

1. Drawing on your operational experience or on your work at Victoria police, what do you understand:
  - a) To be the level of public knowledge about khat and the law relating to khat?
  - b) The context of khat use (including gender)?
  - c) The health and social effects of khat?
  - d) To be the relationship between khat and violence?
  - e) To be the relationship between khat and anti-social behaviours?
  - f) To be the relationship between khat and mental health?
2. In what policing contexts has khat been a concern?
3. Are there concerns related to police searches for khat (eg identification concerns?) If so how should/are they (be) dealt with?
4. Are there concerns related to charging offences related to khat (eg inconsistency between state and Commonwealth law?) If so how should/are they (be) dealt with?
5. Are there concerns related to interviewing suspects potentially using khat (eg cultural concerns?) If so how should/are they (be) dealt with?
6. Are there other particular issues for police in responding to khat use in the community?