

Navigating the grey: Experiences of incremental cannabis reform in Australia

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Abstract

Introduction and Aims: There have been many changes to cannabis laws across the globe, some dramatic but more often incremental. This study explored the experiences after an incremental cannabis law reform in the Australian Capital Territory, Australia.

Method: Semi-structured interviews ($n = 30$) were conducted in March and April 2021, 14 months after the introduction of cannabis law reform, with people aged 18 and over who had grown and/or consumed cannabis in the previous 12 months. Participants were asked about recent and past cannabis use, growing cannabis and changes to their practices after the introduction of the legislation.

Results: Incremental cannabis law change resulted in regulatory grey areas. How people interpreted and navigated such grey areas were connected to their relative privileges, circumstances and histories. Those who were highly policed were more likely to experience the grey areas negatively. Those who were not highly policed found the grey areas confusing or 'half-arse' (insufficiently executed), but mostly experienced the new laws positively through new cannabis cultivation or perceived reduction in stigma and fear of arrest. Those with self-identified privilege were unconcerned with grey areas of the legislation.

Discussion and Conclusion: Incremental policy change can result in grey areas that require some navigation. Vulnerable populations appear less likely to experience the full benefits of such incremental drug law reform. It is vital to attend to the inequities that can arise from incremental law reform so that positive experiences are shared across the population regardless of relative privilege.

KEYWORDS

cannabis, drug, legislation, policy, policy making

1 | INTRODUCTION

Across the globe, there have been many changes to the legal status of cannabis. Canada, Uruguay and parts of

the United States, for example, have all legalised cannabis use in the past 10 years [1, 2]. Other jurisdictions have implemented smaller progressive changes, for instance, through the removal of criminal penalties for the use and

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possession of small quantities of cannabis [3–5]. In this paper, we trace the experiences of modest changes to cannabis legislation in one territory of Australia, the Australian Capital Territory (ACT).

While much research has focused on the impacts of large-scale policy shifts or on policy change processes, there has been seemingly little consideration of the impacts of subtle policy shifts or incremental policy reform on the people at whom those policies are targeted [6, 7]. This study departs from previous analyses by seeking to understand people's experiences of an incremental policy change in the context of cannabis law reform in the ACT, and in particular, the experiences of those who grew and/or consumed cannabis in the 12 months after the law change.

Incrementalism was first described by Charles Lindblom in his 1959 essay 'The science of "muddling through"' [8]. This paper and later works described policy progression as most commonly occurring through a series of small approximations towards a goal rather than large wholesale change [8, 9]. According to Lindblom, policy makers are not free to choose their ideal policy as policy decisions are bounded by time, money, knowledge and political and legal realities. In addition, policy makers must interact with other policymakers each with their own agendas and values, hoping to gain enough support for their policy preferences in order to enact them [10]. As such, Lindblom argued that policy emerges not from rational choice but from a series of compromises or 'mutual adjustments' with other actors [10, 11].

Since the publication of 'muddling through,' incrementalism has been the subject of much analysis, debate and criticism [12]. One stream of this debate has been concerned with the effectiveness of incrementalism as a policy process, with some critics arguing that it results in conservative, weak, inefficient and passive policy that supports the status quo [13–15]. Etzioni [14] for instance argued that incremental approaches focus on the short-term, seek only limited variations from past policies and therefore neglect social innovations resulting in limited policy impact. In addition, incrementalism is seen as inadequate in addressing significant social ills such as racial segregation [13] or existential threats such as climate change where radically new policies are needed [16, 17]. Given the perceived deficiencies in incrementalism, a question arises over whether it is worth implementing partial measures when comprehensive policy measures are not politically feasible [17].

Supporters of incrementalism argue, however, that small adjustments are better than holding out for large reforms that cannot find a majority [9, 18–20] and, while not perfect, are usually the best that can be done [9]. They also caution not to underestimate the impact of small steps, noting that enough of them coming quickly enough can create a drastic alteration of the status quo

[9, 21]. As Lindblom explains, small steps can be made quickly because they are less controversial, thus, reducing the stakes in political stalemates [9]. Therefore, some have argued that incremental policy change may be the best option for progressing policy in highly contested and politicised policy fields like drugs policy [22].

In this article, we analyse the experiences of incrementalism in the Australian drug policy context, where there is much political capital attached to maintaining a tough-on-drugs approach, or at least leaving the status quo unchallenged [23–25]. We focus on the Drugs of Dependence (Personal Use of Cannabis) Amendment Bill 2018 which was implemented in the ACT, Australia, at the beginning of 2020. This bill legalised the use and possession of personal quantities of cannabis (50 g of dried cannabis and 150 g of freshly harvested or wet cannabis) and cultivation of a small number of cannabis plants (maximum of 2 per person up to 4 per household). However, the bill stopped short of introducing a full legal regulatory regime with cannabis trafficking offences, as well as the sale, swap or sharing of cannabis plants, products and cannabis seeds remaining illegal. Cannabis plants grown via 'artificial cultivation' also remained prohibited.

Australia operates under a federated system whereby government administrative duties are split between the federal government and districts comprised of states and territories, each with their own elected governments. Relative to other states and territories, the ACT has been a leader in forward-thinking drug policy and was the second state to introduce civil—as opposed to criminal—penalties for cannabis possession in 1992 (after South Australia in 1987). The Simple Cannabis Offence Notice Scheme provided police with discretion to issue a \$100 fine for cannabis possession or cultivation. However, the scheme had low uptake with one evaluation finding only 25% of people stopped for cannabis were issued with a Simple Cannabis Offence Notice (the remaining 75% being charged with a criminal offence) [26–28]. This was a driving factor in formalising cannabis decriminalisation arrangements in law [29].

After the cannabis bill was introduced to the ACT parliament, a Standing Committee was formed to inquire into and make recommendations on the bill based on public submissions and suggested amendments by the government, opposition and key stakeholders such as the police [28]. Provisions in the final bill were framed as a compromise between these groups and the best that could be done while operating within the federated system [30]. For instance, many people (including the politician who introduced the cannabis bill, Mr Petterson MLA), noted a preference for a fully legalised and regulated cannabis market, but this was not viewed as possible while the federal government maintained jurisdiction over the trading of cannabis and cannabis seeds [27, 30, 31]. The ACT cannabis bill can therefore be seen as an

example of incremental policy making. This study aimed to examine how such incremental changes in cannabis policy were experienced by people who use or grow cannabis in the hope that future reform initiatives can take into consideration the experiences reported herein.

2 | METHODS

This study utilised a qualitative approach and forms part of a larger multi-disciplinary Australian Research Council Discovery Project examining participation in (illicit) drug policy. The research reported here was approved by the University of New South Wales Human Research Ethics Committee. During April 2021 researchers from the UNSW Sydney conducted 30 one-on-one semi-structured interviews with people either via phone or Zoom, with interviews lasting between 12 and 79 minutes (average length 34 minutes). To be eligible to participate, people needed to have used and/or grown cannabis in the past 12 months, reside in the ACT, be over 18 years old, speak English and be willing to give informed consent. Participants were offered a \$40 supermarket voucher as reimbursement for their time. Of those we interviewed, 17 had both consumed and grown cannabis in the past 12 months, and 13 had consumed cannabis in the past 12 months.

Recruitment occurred between March and April 2021. The study utilised a number of methods to recruit including via social media and posters that were distributed at local shops, drug harm reduction services, community organisations, cafes, community notice boards and universities. Snowballing was also used, where consenting participants passed on details of the study to people in their network.

We aimed to recruit a diverse range of participants, by making sure people were not recruited through one source and ensuring that there were both male and female participants, and a mix of people who had grown or consumed cannabis. Conditions of socioeconomic status were explored in the interviews, and these experiences were seen to vary considerably across participants. For instance, the study included university students, people working in service industries, white-collar professionals and the unemployed; those who rented private or government accommodation, owned their own home or were homeless. There was also a diversity in experience and histories of cannabis growing and cannabis use, including those with lengthy histories of regular use and those who used cannabis infrequently, those who had been growing for many years and those who had just started. Some people were using multiple substances and receiving care and support through harm reduction services, others consumed cannabis only socially and others used cannabis for medicinal purposes.

The semi-structured interviews were exploratory in nature, focussing on the individual experiences of participants. Areas of investigation included participants' recent and past cannabis use, how they obtained and grew cannabis, and whether they changed these activities after the introduction of the cannabis bill. Participants were also asked about their perspectives and experiences of the new laws and their views on other regulatory models. All interviews were digitally recorded and then professionally transcribed with informed consent. Before analysing the data, transcripts were cleaned of all names and other identifying information. The semi-structured interview guide is included as Appendix S1, Supporting Information.

Following the process for analysis outlined by Neale [32], the dataset was initially read in its entirety and then interview accounts coded and sorted in NVivo in line with the interview schedule, for instance, coding against experiences of growing and consuming cannabis. After reviewing these codes, discussion ensued between the research team around reoccurring topics, themes and categories. These were then collaboratively synthesised into distinct areas including the notion of the legislation being incomplete or confusing. The literature on incrementalism then informed the second round of coding and analysis of the interview accounts, with a specific focus on how people experienced, conceptualised and navigated the incremental policy environment. During this second round of analysis, researchers met, reviewed and reflected on the interpretations of the data.

3 | RESULTS

3.1 | Understandings and interpretations of the legislation: The regulatory grey zone

An experience commonly encountered in the interviews was what some participants referred to as 'grey areas' of the cannabis legislation: parts of the legislation where the boundaries of legal and illegal cannabis activities converged and resulted in blurred legal lines. There were a broad range of grey areas raised by participants including regulations around growing, the definition of 'artificial cultivation' and drug driving laws. However, the most frequently cited grey areas related to the remaining criminalisation of trading or sharing of cannabis seeds, plants and products; thresholds defining personal quantities of cannabis; and conflict between federal and territory legislation.

A major grey area and point of contention for participants was that to legally engage in the consumption of cannabis they had to first engage in criminal behaviour by purchasing it despite the changes to the legislation:

'So yeah, they might want to ... they might like to try smoke it, but they have to go through the route of illegally purchasing it to then legally smoke it, which is so weird' (C17).

For those who wanted to grow, grey areas centred on purchasing or acquiring cannabis seeds or plants. As with purchasing cannabis these were all activities that people could still be prosecuted for:

'There is kind of a missing link in like people are legally allowed to grow and legally allowed to consume, but ... at some point even though all you are doing is hobby farming, so none of the actual farming stuff is illegal, you have to interact with the criminal market at some point to like get the stuff' (C09).

The contradiction in making people engage in illegal behaviours to reach a path of legal consumption is called out in both accounts. The first quote notes that this contradiction is 'weird', a perception mirrored by other participants who called the legislation 'strange' or 'silly'. The person quoted above notes that the legislation appears to be incomplete, a perception shared by others, particularly those who had been hoping for or expecting to be able to buy or share cannabis. This incompleteness is expressed as lacking logic or 'sense':

'Like I think it's sort of a half-arse¹ law to be honest ... you're allowed to smoke it, you're allowed to grow, but you are not really allowed to buy any of the seeds or anything to make it. So, the law itself to me doesn't really make sense' (C08).

Another participant noted that the incompleteness in the legislation results in some seemingly arbitrary provisions:

'There's some like funny things in the legislation that I find a bit amusing like you're not allowed to possess seeds, but you're allowed to, you know, have a plant. At what point does a seed become a plant?' (C21).

The quote above demonstrates that for some people it was not clear why policy makers drew the lines where they did. Why are plants allowed but not seeds? When does one become the other? The putative reason for seeds remaining illegal while plants were not, arose from differences in jurisdictional responsibility (with seeds being regulated by federal government). However, not all participants were aware of this and so openly wondered on

the reasoning behind some of these grey zones. Some participants expected the legislation to make 'sense' and expressed disappointment when it did not, commenting that the limited nature of the legislation was hopeless, or pointless, or had limited utility:

'You hear they change the law and it's only just a little bit, what's the point of that you know' (C07).

Others were more positive in their assessment of the cannabis bill, noting that although it fell short of what they wanted or expected or felt the laws were a 'half-measure' or 'flawed' (C19), they still viewed the law change overall as good and progressive. For instance, the person who called the law 'half-arse' observed that a failure to implement a full legal and regulated cannabis market was due to political reasons and in this context suggested 'it was probably one of the best manifestations that law could have taken' (C08). Others echoed this sentiment that any change was good change—'beggars can't be choosers' said one participant (C27). Some situated the ACT's cannabis legalisation of use, possession and cultivation within a broader movement towards a full legal regulatory regime, or a step towards some other future drug law reforms as expressed below:

'The law going through obviously, it's a good thing and it's a step in the right direction, but still, it is a half measure' (C02).

Regardless of the perceptions of the legislation, some noted that legislative grey areas caused practical problems for people wanting to stay within the law. This was especially so for people cultivating cannabis, some of whom reported often harvesting much more from a single plant than the legally allowed thresholds for fresh cannabis of 150 g, sometimes as much as up to a kilogram. Explained by one person:

'Technically [they are] doing the right thing, but when it comes to harvest time, if they've got 500 grams, they're breaking the law ... So, they go from being legal to illegal' (C25).

Growing more than legally allowed meant that this opened them up to the possibility of criminal prosecution for trafficking, a much more serious offence than possession charges. Yet, efforts to remain within legal limits were stymied by other parts of the legislation that prohibited gifting, sharing and selling cannabis, with participants unclear of how they could then participate in growing and remain legal:

'If you grow yourself, you can only have 150 grams of cannabis, I don't know how that works whether if you had a good year, like a bumper crop or something and you are like, so what do I do with the rest of it, are you allowed to like give it to a friend ... I don't know if you can bag it up and put it in the garbage bin ... like do you take it down to the green waste, do I take my bushes down there? I don't know ...' (C17).

What emerged during interviews was that how people dealt with such grey areas, how willing they were to engage in grey area activities like growing and their opinion of the grey areas as silly or something more serious were connected to their own socioeconomic circumstances, history and experiences which in turn influenced how they experienced the law change more broadly.

3.2 | Navigating the grey

There were some who were entirely unconcerned with grey areas of the legislation due to the protective effects of a range of privileges they experienced. It was felt that these privileges diminished the likelihood of police interference in their cannabis activities:

'I don't really know anyone who has been arrested for that [cannabis] and that might be coming from like a position of privilege, and I think that applies to like a lot of other people I know, like we don't look like people who would attract suspicion' (C09).

Such experiences and 'privileges' of who they were and what they looked like made this person comfortable to not only engage in grey area practices like buying cannabis, but also to operate outside the bounds of the law by selling cannabis and growing more than legally allowed. Other accounts of feeling comfortable operating outside the bounds of the law also nodded to particular privileges such as the area they lived in:

'It's just like I assess, yeah, what are my chances of being caught by the boys in blue? Because I do grow too many plants, there is no doubt about that. So, I do risk assessment, hang on, I have been stopped by the cops once in 25 years, the cops are not regular visitors to our neighbourhood, never you know visiting our neighbours, anything like that so I actually think our risk is pretty low' (C10).

Others indicated a willingness to participate in these grey zones by continuing to purchase cannabis, or through purchasing cannabis seeds or engaging in growing despite finding the laws confusing or silly. Some felt that there was little chance of active policing of the grey zone such as buying cannabis seeds or cannabis products because the new law meant it was now a low priority. As one participant noted, 'I don't think police are particularly going to crack down on seeds' (C21). Some noted a level of comfort around operating in the grey areas, either because purchasing cannabis was an activity they were regularly undertaking before the law change, or they had no other choice as there were no legal means to acquire cannabis if they were unable to grow.

Those who were willing and able to navigate the grey zones were also very positive about the parts of the legislation that they perceived to be clear: legalisation of cannabis cultivation, possession, and use. Within our sample there were many who grew cannabis for the first time and directly credited the legislation with facilitating that:

'When it was legalised, that really did remove the barrier I think of being able to grow a plant at home' (C15).

Those who grew cannabis reported a range of additional benefits for them and their friends and families, including access to cheap and available cannabis, cannabis for medication and associated benefits with relieving ailments, access to a better-quality product, access to organic produce, ability to avoid 'dodgy' street dealers and the joy of growing.

In addition, many people felt that legalisation of use, possession and cultivation had reduced stigma associated with cannabis use and noted they were more willing to be open about their use with a range of people including their family. As this person noted:

'It [the laws] didn't really change about how I possessed it [cannabis] in Canberra.' It was more about the openness to sort of being able to talk about it almost, like it became easier, because it wasn't strictly a criminalised thing to be like 'oh yeah, I smoke occasionally' and people would be like 'oh yes, that's fair' (C16).

Many also reported that the cannabis bill had removed any latent concerns they had about cannabis charges for use and possession. Participants related feeling happy about the law change and talked about the relief of knowing that they did not have to worry about being arrested, said one person:

'It's just nice to know that you're not going to get hassled ... you know that it's legal, it's a nice feeling' (C21).

As this person below notes, the law change also meant that they were no longer so secretive about their cannabis use:

'Because it's legal for me to smoke pot now, I find that I'm a lot more relaxed than having to hide it and shit' (C12).

However, there were those who held negative opinions of government or the police who viewed the grey areas of the legislation with suspicion, and this led to a more negative interpretation of the whole cannabis bill. For instance, some questioned how the laws worked in the ACT when their police force was the national body, the Australian Federal Police, and cannabis was still officially criminalised in federal legislation. In the quote below, this is framed in terms of contest between people who use cannabis against the federal government:

'It's a bit of a stitch up really ... because you look at all these laws that the state [ACT] has put in place, and then you look it up federally and it just contradicts that completely. So you know, if they wanted to, they [federal government] still have a way of having their way of always being able to win, I guess' (C01).

Negative interpretation of such grey areas often combined with some confusion about what was in the legislation and led people to believe they could still be liable for prosecution for activities that were now legal. This was particularly true for those who had histories with the police or described themselves as 'known to police'. People with such histories expressed a fear of police interference and attempted to avoid it, as the above quote highlights, not fully trusting the law to give them total protection from some kind of consequence.

The calculations of what parts of the new cannabis legislation carried greater risk of police interference could be complex. For instance, one person who found the specific laws around growing cannabis to be 'ridiculous' and felt that it was impossible to grow cannabis legally: 'you're basically going to have it locked in a fucking cage man' (C06) was nevertheless attempting to grow cannabis because they felt it to be a safer option than purchasing it through street dealers due to the risk of being stopped and searched by police. Even though the new law allowed cannabis possession, they still felt that this was a risky activity and wanted to avoid police interactions:

'If I've got to go somewhere and pick it up, you know, then you got to travel with it. You never know, you know what I mean. Like in Canberra, I've been pulled over' (C06).

Some drew a direct correlation between their police history and the likelihood of being stopped and searched, believing that the police 'keep tabs' on those with previous cannabis offences:

'Well, being a known drug user and carrying round bag full of weed and the police ... you are known to the police and so they are going to pull you over every now and again, so yeah ... if they know you, they'll stop you' (C19).

One of the participants describing themselves as 'known to police' directly experienced such interference, reporting that their cannabis was confiscated after the introduction of the legislation, and that the Australian Federal Police told them cannabis use continued to be illegal because of existing federal law. They therefore felt that the policies made no difference to their ability to smoke or grow cannabis without prosecution, and said that they continued to keep their cannabis use hidden:

'I think if you are known by police or the police know you, I think that the law is bull-shit, like it's utter crap, yeah, but if you're not known by the police or you have nothing to do with the police, you can get away with growing anyway because the cops are not going to know about it unless you are dobbed in. But as I said, it doesn't matter anyway because the federal law says that you can't grow so ... it's all a bunch of garbage really' (C22).

However, not everyone with police histories had negative experiences of policing in the ACT. One person who had previous cannabis possession charges in another area of Australia, moved to the ACT due to the law change to avoid further police trouble. This participant described the laws that legally allow cannabis possession 'without the stigma or possible charges that could be laid' as 'cool' (C17). At the same time, they described the laws prohibiting artificial growth as a 'grey area' which made them wary of participating in cultivation due to potential conflict with the police:

'It's very, very murky and a very interesting area. I'm still trying to get my head around proper legislation, so I can yeah, do it [grow cannabis] legally without getting in trouble for it' (C17).

4 | DISCUSSION

Overall, the study found that incremental cannabis policy change in the ACT resulted in the creation of regulatory grey areas that were the site of confusion and perceived contradictions. The ability to navigate these grey areas and experiences of the legislation was dependent on life circumstances, including various privileges and perceived risk of police interference. Put simply: the same legislative change was felt differently by different people.

Those with a range of self-identified privileges were less concerned with policy grey areas as they perceived their privilege to protect them from police detection or interference and so were happy operating both in the grey and beyond the bounds of the law. For many others, the grey zones were perceived as silly, confusing or 'half-arse', but people were willing to engage in them. In contrast to grey areas, provisions perceived to be clear in the cannabis bill around use, possession and cultivation had facilitated many to grow cannabis or had removed concern about criminal prosecution which in turn had led to changes in attitude such as being more relaxed and a perceived reduction in stigma. However, those most likely to be stopped by police continued to fear police interference for cannabis activities or directly experienced interference, despite the removal of criminal prosecution (i.e., police charges) from the legislation. Any assessment of incremental policy reform is unlikely to find either complete ineffectiveness [13, 14] or wholesale positive outcomes [9, 21] because the grey areas created through incremental policy reform produce variegated experiences, as demonstrated clearly here.

There are some valuable lessons for policy makers in all this. First, how new drug policy is interpreted by the public is informed by a range of factors, and policy changes may be misinterpreted or misunderstood where incremental change has resulted in grey areas. Secondly, attempts to inform the public about policy changes may be undermined where lived experience does not match official information received. In our study, this occurred when people were misinformed by the police and had their cannabis confiscated. As our study did not involve consultations with the Australian Federal Police it is not clear why these things happened or how often such interactions are occurring. It is entirely likely that those tasked with implementing policy also found the grey areas confusing. At the same time, external factors could have contributed to extra confusion for both policy implementors and policy subjects with the federal government suggesting in the media that they would override the bill, that federal laws still apply and they would instruct the police to implement federal rather than ACT law [33].

Higher rates of policing for drug use among particular populations is well documented [34, 35]. In Australia, studies on social bias in policing have found higher rates

of stop and search and arrests for drug use for people who are younger, male, Aboriginal, a minority ethnicity, unemployed and with prior police encounters [36–38]. Further research with both the police and disadvantaged populations is therefore warranted to better understand the scale of negative policing regarding the ACT cannabis bill, the experiences of disadvantaged populations with cannabis law reform, and other implementation challenges.

Many of the grey areas identified by participants were raised as potential issues during debate over passage of the bill and in a report by the Standing Committee tasked with inquiring into the bill [28]. For instance, the Committee noted that the continued criminalisation of cannabis seeds directly conflicted with the bill's purpose, but that as this was an area under federal jurisdiction, did not seek to resolve the issue [28].

What this study demonstrates is how these and other issues with the legislation manifested among different people. As noted by Lancaster, Ritter and Diprose [39], people who use drugs are rarely seen as legitimate stakeholders in policy discussions, yet, this study demonstrates that lived experience matters, and that there may be a variety of experience between different types of people who use drugs. This study also shows that formal recognition of cannabis cultivation is a critical site in the lived experience of new drug laws. Mechanisms that allow for policy development to better take account of lived experience may contribute to better understanding and mitigating potential negative interpretations and effects. This seems especially important in contexts of partial policy implementation, where more 'perfect' policy is stymied by political tensions. Within the policy grey zones mapped in this paper, it remains to be seen whether the legalisation of cannabis cultivation may provide the conditions for a new political and policy constituency.

5 | CONCLUSION

In the context of incremental cannabis law reform, reforms can be experienced positively where the threat of police interference has been removed and where reform is understood in the context of ongoing, progressive change. However, more is needed to ensure that these positive experiences are shared across the population regardless of relative privileges.

AUTHOR CONTRIBUTIONS

Liz Barrett: writing - original draft, review and editing; methodology; investigation; formal analysis; conceptualisation. **Richard Mellor:** conceptualisation; methodology; investigation; formal analysis; writing - review and editing; project administration. **Alison Ritter:** conceptualisation; methodology; supervision; formal analysis; writing - review

and editing; funding acquisition. **Laura McLauchlan:** writing - review and editing. **Matthew Kearnes:** writing - review and editing. Each author certifies that their contribution to this work meets the standards of the International Committee of Medical Journal Editors.

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CONFLICT OF INTEREST

The authors declare no conflict of interest.

ETHICS STATEMENT

The research reported here was approved by the University of New South Wales Human Research Ethics Committee. This statement has now been added to the Methods section.

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ENDNOTE

¹ Australian idiom meaning poorly executed.

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SUPPORTING INFORMATION

Additional supporting information can be found online in the Supporting Information section at the end of this article.

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