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DRUG POLICY MODELLING PROGRAM  
**MONOGRAPH 27**

**CRIMINAL JUSTICE RESPONSES RELATING  
TO PERSONAL USE AND POSSESSION OF  
ILLICIT DRUGS: THE REACH OF  
AUSTRALIAN DRUG DIVERSION PROGRAMS  
AND BARRIERS AND FACILITATORS TO  
EXPANSION**

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Drug Policy Modelling Program Monograph Series

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# THE DRUG MODELLING POLICY PROGRAM

This monograph forms part of the Drug Policy Modelling Program (DPMP) Monograph Series.

Drugs are a major social problem and are inextricably linked to the major socio-economic issues of our time. Our current drug policies are inadequate, and governments are not getting the best returns on their investment. There are a number of reasons why: there is a lack of evidence upon which to base policies; the evidence that does exist is not necessarily analysed and used in policy decision-making; we do not have adequate approaches or models to help policy-makers make good decisions about dealing with drug problems; and drug policy is a highly complicated and politicised arena.

The aim of the Drug Policy Modelling Program (DPMP) is to create valuable new drug policy insights, ideas and interventions that will allow Australia to respond with alacrity and success to illicit drug use. DPMP addresses drug policy using a comprehensive approach that includes consideration of law enforcement, prevention, treatment and harm reduction. The dynamic interaction between policy options is an essential component in understanding best investment in drug policy.

DPMP conducts rigorous research that provides independent, balanced, non-partisan policy analysis. The areas of work include: developing the evidence-base for policy; developing, implementing and evaluating dynamic policy-relevant models of drug issues; and studying policy-making processes in Australia.

Monographs in the series are:

01. What is Australia's "drug budget"? The policy mix of illicit drug-related government spending in Australia
02. Drug policy interventions: A comprehensive list and a review of classification schemes
03. Estimating the prevalence of problematic heroin use in Melbourne
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06. A systematic review of harm reduction
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13. Scoping the potential uses of systems thinking in developing policy on illicit drugs
14. Working estimates of the social costs per gram and per user for cannabis, cocaine, opiates and amphetamines

15. Priority areas in illicit drug policy: Perspectives of policy makers
16. A summary of diversion programs for drug and drug-related offenders in Australia
17. A review of Australian public opinion surveys on illicit drugs
18. The coordination of Australian illicit drug policy: A governance perspective
19. Media reporting on illicit drugs in Australia: Trends and impacts on youth attitudes to illicit drug use
20. Cannabis use disorder treatment and associated health care costs in New South Wales, 2007
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22. Legal thresholds for serious drug offences: Expert advice to the ACT on determining amounts for trafficable, commercial and large commercial drug offences
23. Prevalence of and interventions for mental health and alcohol and other drug problems amongst the gay, lesbian, bisexual and transgender community: A review of the literature
24. Government drug policy expenditure in Australia – 2009/10
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26. Reducing stigma and discrimination for people experiencing problematic alcohol and other drug use
27. Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion

DPMP strives to generate new policies, new ways of making policy and new policy activity and evaluation. Ultimately our program of work aims to generate effective new illicit drug policy in Australia. I hope this Monograph contributes to Australian drug policy and that you find it informative and useful.



Professor Alison Ritter, Director, DPMP

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## **EXECUTIVE SUMMARY**

Frequent debate about criminal justice responses to personal use and possession of illicit drugs prevails in the Australian context, particularly about whether or not current responses are effective or even cost-effective (Bammer, Hall, Hamilton, & Ali, 2002; Douglas & McDonald, 2012; Wodak AM, 2014). Yet systemic gaps in knowledge exist about how Australian drug laws are actually enforced, including to what extent people who come to the attention of Australian police for an offence of illicit drug use and possession end up prosecuted or receive a sentence of imprisonment for these offences alone. More importantly, there is no knowledge on the extent to which people get diverted away from a formal criminal justice system response.

This is a notable omission, as diversion, whereby offenders are diverted away from criminal justice sanctions or into drug education/treatment, constitutes one of the core drug policy responses to illicit drug use and drug-related offending in Australia (Ritter, Lancaster, Grech, & Reuter, 2011). Drug diversion programs have been supported in Australia since the 1980s, albeit significantly expanded post the introduction of the Illicit Drug Diversion Initiative (IDDI) in 1999: a national agreement to divert offenders into drug education/treatment (Hughes & Ritter, 2008). There is now a large evidence-base showing the benefits of diversion, including reductions in the burden on police and courts, reductions in recidivism, increasing treatment uptake and improved social outcomes (AIHW, 2014; Mazerolle, Soole, & Rombouts, 2006; Payne, Kwiatkowski, & Wundersitz, 2008; Shanahan, Hughes, & McSweeney, 2017a). In recent years both the National Ice Taskforce (Lay, 2015) and the National Drug Strategy 2017-2026 (Commonwealth Department of Health, 2018) include commitments to expanding this practice and enhancing systems to facilitate greater diversion.

In order to achieve these goals, further work is necessary, to quantify the “reach” of drug diversion programs (that is what proportion of people detected for use/possession in Australia are diverted away from criminal justice proceedings), and to identify how to expand drug diversion across Australia.

### **Aims**

This project sought to provide the first comprehensive analysis of Australian criminal justice responses relating to personal use and possession of illicit drugs and the reach of Australian drug diversion programs. The specific aims of the project were:

- To outline current Australian laws and approaches taken to illicit drug use and possession in each jurisdiction (including programs on alternatives to arrest).
- To assess the scale of criminal justice responses to use/possession in Australia over the period 2010-11 to 2014-15, including the number of people detected, prosecuted and/or sentenced for use/possession, the number of people diverted away from criminal justice proceedings, and the populations that are most and least likely to receive a drug diversion by state/territory and demographic factors.
- To identify barriers and facilitators to the diversion of use/possess offenders in Australia (e.g. legal barriers, program design, resourcing).

## Methods

The project comprised three parts. In the first part we systematically identified and documented the current law and definitions as well as policy relating to “personal use and possession” of illicit drugs in each state and territory in Australia and existing diversion programs. This included searches of the statutes (including associated regulations) for each state and territory using the legislative database [www.austlii.edu](http://www.austlii.edu) (the Australasian Legal Information Institute). We cross-referenced these findings from summaries of the legal frameworks pertaining to use and possession that appear in publicly available resources and our previous research. We further identified all diversion programs for use/possession currently in operation across Australia. We began by working from information gathered for previous studies conducted by Hughes, Ritter and colleagues at the National Drug and Alcohol Research Centre, and crosschecked that information with online searches of policing, court and legal information websites in each state and territory, recent publicly available reports and other relevant handbooks containing information on diversion programs and their criteria (e.g. Lawyers’ Practice Manual, Police Diversion Manuals) and via feedback from police in every state and territory.

In the second part we compiled three different sets of unpublished official crime data from the Australian Bureau of Statistics (ABS) on police detections, court actions and imprisonment for drug use and possession that occurred in Australia over a five-year period (2010-11 to 2014-15). These data were chosen as they were the only data that cover police, courts and prisons across all states/territories. For this analysis all offenders had a *principal offence* of drug use/possession: which meant that this was their *most* serious offence. We then identified 1) the number of people detected, prosecuted and/or sentenced for use/possession alone, and changes over time; 2) the number of people receiving a drug diversion; and 3) factors which may influence receipt of a drug for use/possession alone. Four factors that may affect access to diversion were examined: state/territory, age, sex and prior detections. Aboriginal or Torres Strait Islander status and rural/regional/metropolitan residence were not examined due to data limitations.

In the final part we consulted 24 experts covering police, justice, health, and non-government organisations about the barriers and facilitators to the diversion of use/possess offenders in Australia. In advance of the consultation, all stakeholders were provided with a briefing paper outlining the core findings from parts 1 and 2. Stakeholders were given the opportunity to comment on the findings and the current reach of diversion and to identify barriers and enablers to expanding the diversion of use/possess offenders in Australia, including the design of laws, program eligibility criteria, resourcing, structural issues e.g. access to transportation and the broader policy context.

## Overview of legal context of use and possession in Australia

Use and possession of illicit drugs for personal use is a criminal offence in all Australian states/territories. These offences attract a wide range of (mainly criminal) sanctions, including terms of imprisonment. The maximum penalties vary considerably by jurisdiction, offence type (e.g. use versus possession) and drug type, but on average use/possession can be sanctioned with 1-2 years prison. There are many programs offering alternatives to arrest or sanction for use/possession in Australia. Importantly, South Australia, the Northern Territory and the Australian Capital Territory utilise a different approach to the use and possession of cannabis – these offences attract a civil penalty. The existing set of options is summarised in the table below.<sup>1</sup>

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<sup>1</sup> Other types of diversion are offered in Australia for drug-related offending, but we include here only those relevant to people detected for use/possession offences. As such, we exclude drug courts as they target serious offences only.

**Summary of police and court diversion programs that can be employed for use/possession offences in Australia, by type and state/territory**

	Police diversion for cannabis use/ possession	Police diversion for other illicit drug use/ possession	Police/court diversion for young offenders	Court diversion for minor drug or drug-related offences	Other non-AOD specific programs
<b>ACT</b>	√*	√	√	√	√
<b>NSW</b>	√		√	√	
<b>NT</b>	√*	√	√√	√	
<b>Qld</b>	√		√	√√	
<b>SA</b>	√*	√	√	√	√√
<b>Tas</b>	√	√	√	√	
<b>Vic</b>	√	√	√√√√	√	√√√√
<b>WA</b>	√	√	√√	√√√√√	

Number of ticks shows number of programs offered in each state. \* Civil Penalty Schemes.

Of note, all states/territories provide police diversion for use/possession of cannabis (either by civil penalty schemes or cannabis caution schemes). Six states/territories also provide police diversion for use/possession of other illicit drugs. New South Wales and Queensland are noted exceptions without such programs. Youth and court diversion programs also operate in all states. That said, pre-arrest diversion programs for use/possession constitute the main response to use/possession in Australia. All diversion programs have eligibility restrictions e.g. the maximum amount of drug that can be possessed and the number of times offenders can be diverted. These criteria differ across jurisdictions and programs. Programs also differ in terms of whether it is compulsory or optional for police or the judiciary to offer a diversion and if there are penalties for non-compliant offenders.

**Trends and profiles of offenders detected with a principal offence of use/possession**

Over the period 2010-11 to 2014-15, there were 224,520 offenders detected for a principal offence of use/possession in Australia: an average of 44,904 offenders detected each year. The typical profile of people detected with a principal offence of use/possess in Australia is:

- Male (79.8%)
- Young: aged 18-29, peak age 20-24
- Detected on only one occasion (86.1%). i.e. few have multiple detections for use/possession
- Most people were detected in Queensland (29.6%), New South Wales (25.4%) or South Australia (20.2%) (together these states account for almost three quarters of all detections in Australia).

There was an increasing number and population rate of offenders detected for use/possession in Australia. Increases were particularly apparent in Queensland, New South Wales and Western Australia.

**Current extent of diversion for use/possession in Australia**

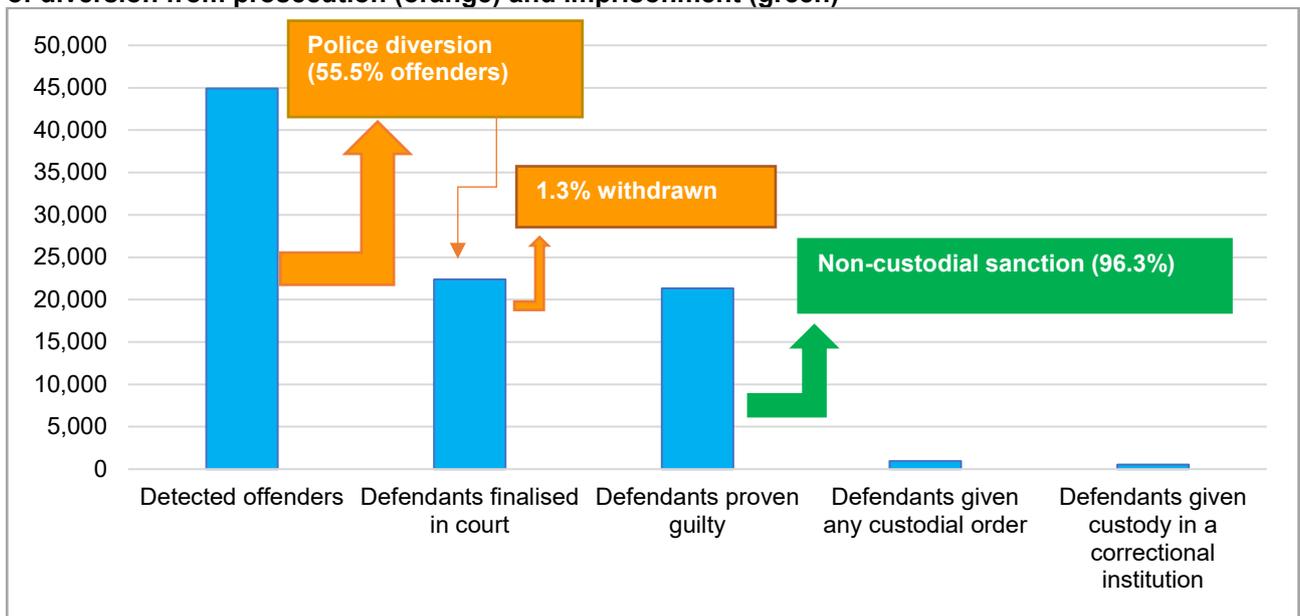
Nationally, over the five-year period, 55.5% of offenders detected for use/possess in Australia were given a police drug diversion.<sup>2</sup> If Queensland is excluded (the outlier state, with the highest number of detections and the largest increase in detections), the proportion of offenders given a police drug diversion was 63.8%.

<sup>2</sup> ABS data on action taken by police were not available for the Northern Territory. A minority of offenders (629-879 per year) were detected here.

Following offenders through the criminal justice system, on average:

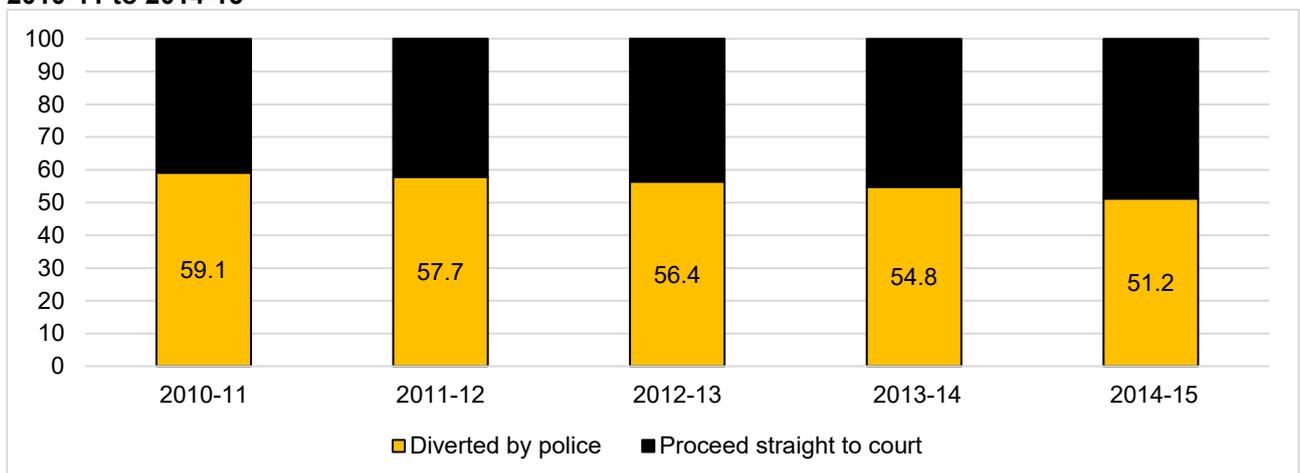
- 44,904 offenders are detected with a principal offence of use/possession per year.
- 55.5% offenders detected for use/possess in Australia are given a police drug diversion (in the first instance).
- 45.3% proceed to court (this includes a small number of offenders – 0.8% – who fail to fulfil their diversion program requirements).
- Of those who proceed to court, almost all (95%) are found guilty and sentenced (with 1.3% of matters withdrawn by the prosecution).
- Of those sentenced, 2.2% receive custody in a correctional institution (with a median sentence length of 4 months). Most (96.3%) receive a non-custodial order e.g. a monetary order (63.8%).

**Annual average movement of use/possess offenders through the criminal justice system, and points of diversion from prosecution (orange) and imprisonment (green)**



Analysis of trends over the period 2010-11 to 2014-15 showed that the proportion of use/possess offenders in Australia diverted by police away from court has declined. For example, as showed in the graphic below the proportion diverted away has reduced from 59.1% in 2010-11 to 51.2% in 2014-15. (Rates do vary by state: see subsequent analysis). Conversely, more offenders were prosecuted and sanctioned for this offence alone.

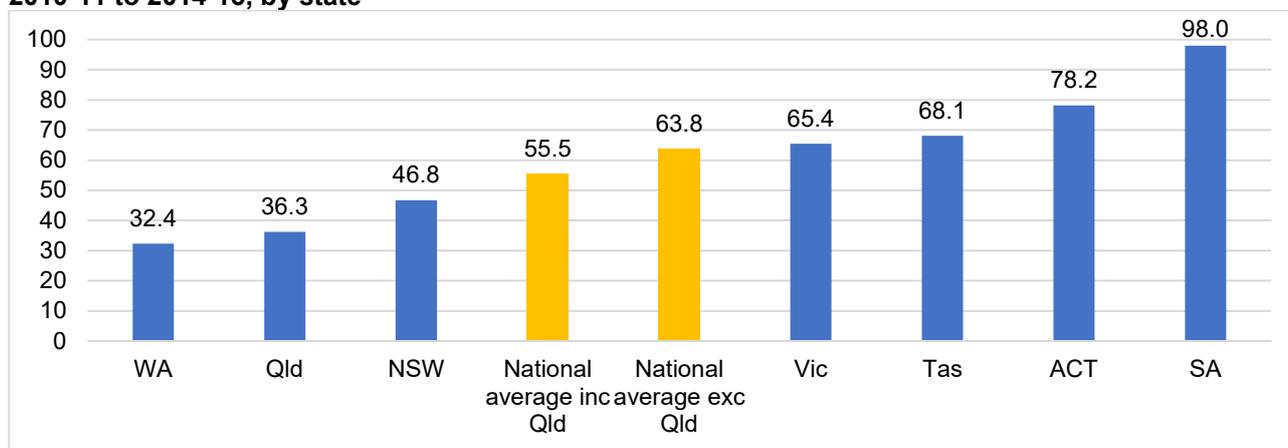
**Proportion of offenders with a principal offence of use/possession given a police drug diversion, 2010-11 to 2014-15**



## What factors shape who is given a diversion for use/possession in Australia?

The most important factor shaping whether offenders with a principal offence of use/possession were given a diversion was jurisdiction. Across jurisdictions, the incidence of police diversion varied from 32.4% (Western Australia) to 98.0% (South Australia). Western Australia, Queensland and New South Wales showed significantly lower proportions of offenders diverted away from the courts: all with less than 50% of offenders diverted. In contrast, South Australia diverted almost every offender detected with a principal offence of use/possession away from courts. As noted by one expert, “this shows that there is currently a noticeable lottery for people who use drugs based on which [jurisdiction] you are in”. There were further differences in jurisdictional trends: prior to 2014-15 the incidence of police diversion increased in the Australian Capital Territory and Tasmania but reduced in Western Australia, Queensland and New South Wales.

### Proportion of offenders with a principal offence of use/possession given a police drug diversion, 2010-11 to 2014-15, by state <sup>3</sup>



Several other factors shape who is given a police diversion for use/possession in Australia including:

- Age. Youth are much more likely to receive diversion: 86.4%, compared to 52.7% of those aged 18 and over.
- Prior offending. Repeat use/possess offenders are less likely to receive a diversion: 32% compared to 64%. (This reflects in part current program design).

## Expert views on diversion of use/possess offenders in Australia and barriers and facilitators to expanding drug diversion

Experts showed unanimous support for drug diversion in Australia, recognising that it is more cost-effective, pragmatic and consistent with a harm minimisation approach, as well as a means to reduce workloads and pressures on both police and courts. There was a universal view, including amongst jurisdictions with relatively low and relatively high levels of diversion, that there needs to be more diversion for possession for personal use in Australia, including to counter the recent national trend of reducing rates of drug diversion.

We sought feedback from stakeholders as to what might be driving the large variation in rates of diversion across jurisdictions particularly the three states with less than 50% of offenders diverted from court (Western Australia, New South Wales and Queensland). The low rate of diversion in Queensland

<sup>3</sup> This excludes the Northern Territory, but analysis of the proportion of use/possess offenders who end up in court indicates that the Northern Territory has the second highest level of pre-court diversion (with only 24.4% offenders proceeding to court).

and New South Wales was attributed in large part to such states only offering police diversion for use or possession of cannabis. The low rates of diversion in Western Australia, were more of a surprise given police diversion programs operated for use and possession of both cannabis and other illicit drugs. Nevertheless, low rates of diversion in Western Australia were attributed to three main factors: first, that Western Australia switched from a cannabis infringement scheme to a therapeutic cannabis diversion scheme during the first year of analysis, stopping or limiting access during the transition period; second, strict eligibility factors; and finally, implementation issues which made it easier for police to charge than divert offenders (due to both a lack of a 24-hour diversion line and a requirement that police schedule diversion appointments). A still further factor highlighted as affecting all three 'low diversion states' is geography. Here it was noted that access to drug diversion is more restricted in rural/regional Australia, due to the lack of availability of alcohol and drug treatment services and structural barriers to offenders accessing services.

More generally, experts outlined a broad array of barriers and facilitators to expanding Australian drug diversion programs, covering legislation, program design, resourcing, police attitudes, training and operational performance systems and more. Here we outline the key factors raised by experts. See Part 6 for the full details and Table 16 for a summary.

Key barriers raised by experts included:

**1. Absence of a full spectrum of programs**

All stakeholders noted that gaps in diversion programs reduce access. Of note, NSW and Queensland do not have drug diversion for illicit drugs other than cannabis: which is deemed the leading cause of their lower rates of diversion (as compared to all other jurisdictions other than Western Australia).

**2. Changes in drug trends and policing of drug offenders**

In recent years, Australia has seen significant shifts in policing of drug offenders: with many more use/possess offenders detected for methamphetamine and cocaine and less for cannabis (Australian Criminal Intelligence Commission, 2018; Crime Statistics Agency, 2016; Queensland Sentencing Advisory Council, 2017). In a climate where some jurisdictions have programs limited to cannabis and where there are tighter eligibility criteria around other drug diversion programs, this inevitably restricts police capacity to divert.

**3. Narrow diversion eligibility criteria**

Narrow eligibility criteria exclude many use/possess offenders. Key criteria that limit access are 1) threshold quantities on the amount of drug that can be possessed, 2) limits on the number of times people can enter programs, 3) requirements placed on offenders to admit offences, and 4) priors/rules around concurrent offences. Three such factors have affected the Western Australia programs: low threshold limits, limits on entry and priors. More generally, while most programs enable diversion access on only two occasions, four programs limit people to having one diversion opportunity only. Some programs include a requirement that offenders admit to the offence as a condition to being offered diversion; this can disadvantage Aboriginal and Torres Strait Islander people, for both cultural reasons and a lack of trust in police.

**4. Lack of treatment access**

Many stakeholders noted that "treatment capacity is stretched" in Australia, which directly or indirectly impedes access to therapeutic diversionary responses. The shortages of treatment in Australia has been well demonstrated in Australia (Ritter & Stoope, 2016). Stakeholders noted that access to therapeutic diversionary responses can be a challenge in remote parts of Australia

due to long wait lists (of two to three months) and/or transportation issues in attending appointments.

#### **5. Cultural resistance among individual police officers and local area commands**

While diversion has been an option for many years, cultural resistance and beliefs that diversion is a “soft option” can and do remain and can lead to differential application of diversion. Some experts argued that this is exacerbated by a climate of media criticism or if there is limited feedback given to police about what happens to people that they divert. We were also told how some police local area commands actively resist diversion. While this appears a minority occurrence, it can significantly curtail diversion in those regions.

Key facilitators raised by experts included:

#### **1. Establishing diversion options for all illicit drugs in all states and territories**

The number one facilitator to expanding diversion would be to ensure all jurisdictions can provide diversion for *all* illicit drugs. Program breadth is deemed vital to counter the clear gaps in diversion in some jurisdictions (particularly New South Wales and Queensland), and to counter the reducing trends in diversion provision across Australia. Breadth of diversion programs is also important to ensure programs can keep up with changing drug trends both now and into the future and that there is “no wrong door” for diversion clients.

#### **2. Considering newer models of diversion delivery**

Where diversion involves therapeutic options, traditional models have been face-to-face. Many stakeholders noted that face-to-face modes of delivery can increase challenges for some populations to attend, particularly those residing in rural and regional areas, those without easy access to transport, and those who work during the day. As such, there is merit in considering newer modes of treatment delivery to increase ease of access, such as via telephone, online or through smart phone applications. Such approaches may also be more cost-effective, thus reducing demands on an already over-stretched treatment system.

#### **3. Streamlining referral systems for police**

Streamlined referral systems are an important facilitator of diversion. It is vital that the systems are efficient and that it is easier and quicker for police to offer diversion than to charge an offender. Easy referral systems are particularly important when diversion requires the establishment of appointments with drug or alcohol clinicians. Here we note that 24-hour referral lines or online systems can facilitate timely appointments.

#### **4. Increasing feedback mechanisms to police about drug diversion**

Given that police are the main gatekeeper to diversion, experts recommend employing more feedback mechanisms to police about “what happens post provision of a drug diversion”. This includes individual feedback to officers about compliance of the offenders that they divert (e.g. if they referred someone to treatment did they attend or if they referred them for an expiation notice did they pay?), as well as jurisdictional feedback about the number of people diverted across the state/territory, and evidence on the worth of drug diversion (see also points 6 and 7). Some online referral systems incorporate automatic compliance mechanisms for reporting back to officers, which we were told builds police support and diversion uptake.

#### **5. Adding drug diversion into police performance monitoring systems**

A number of jurisdictions have currently (or have at some point in the past) included drug diversion in police performance monitoring systems. All concurred that the use of operational performance monitoring is advantageous (especially where diversion is discretionary) to

incentivise police to use diversion, build compliance, and enable tracking/monitoring of numbers diverted (see also point 4). It can also enable easier problem solving if new issues arise such as a decrease in offender compliance in specific local area commands.

**6. Evidence on what works and the reach of drug diversion**

Experts argued that building the evidence-base on drug diversion and drug diversion systems is vital to increase diversion. There are three different lines of evidence. First, evidence on program outcomes, such as cost-effectiveness. Second, evidence on program reach (such as this current report), particularly when it enables benchmarking across states. Third, evidence on diversion systems and what types of systems are most effective (see for example Hughes, Shanahan, Ritter, McDonald, & Gray-Weale, 2014b). Such information can build police support, show how much more diversion is possible and to problem solve or reshape jurisdictional approaches for maximum effect.

**7. Introducing a legislative or hybrid legislative requirement to divert eligible offenders**

The most talked about facilitator was switching Australian drug diversion programs from a discretionary basis to a legislative basis, such as the South Australian Police Drug Diversion Initiative, or a hybrid legislative basis. A legislative basis offers a means to entrench diversion and makes it easier for police to use this approach, particularly in the face of criticism by media or other stakeholders, and to overcome some of the inherent cultural barriers that operate within police. The main concern raised with such an approach is that it could 'lock the program in' and make it harder to adjust. As such, a number of stakeholders noted particular merit in a hybrid system where the requirement to divert would be enshrined in law but rules about the operation of diversion programs (such as threshold limits) would be in regulations or other policy documents. There was a general view amongst the experts we consulted that a legislative or hybrid legislative basis would also lessen the need to invest in ongoing training, education and operational incentives within police.

**8. A supportive national policy framework**

A final noted facilitator was a supportive national policy framework. Commitments to diversion and expanding diversion, such as seen in the current National Drug Strategy 2017-2026, provide important means to spur action and drive change. This can lessen potential blocks in politics or media that may otherwise reduce action in some states and territories. Knowledge that other jurisdictions are also engendering change is another aid. As such, building transparency and fostering exchange about efforts to expand diversion, is an important way to build diversion going forward.

In conclusion, this report provided the first estimates of the reach of Australian drug diversion programs and showed that over the five-year period police divert 55.5% of offenders with a principal offence of use/possession. It shows that the likelihood of being diverted for a principal offence of use/possession is not equal, with people residing in South Australia or the Australian Capital Territory between 1.7 and 3 times more likely to be diverted than people who reside in Western Australia, New South Wales or Queensland, and that the rate of diversion also decreased across most states and territories from 2010-11 to 2014-15. Importantly, this report has highlighted a strong desire from the experts consulted to reverse the inequity in access and downward trend with many steps put forward that could be taken to expand diversion in Australia. The most important steps we suggest are ensuring diversion program access for all illicit drugs in every state and territory, moving towards a legislative or hybrid legislative basis for programs and considering new online modes of treatment/education provision.

## **PART 1: INTRODUCTION**

Frequent debate about criminal justice responses to personal use and possession of illicit drugs prevails in the Australian context, particularly about whether or not current responses are effective or even cost-effective (Bammer et al., 2002; Douglas & McDonald, 2012; Wodak, 2014). Yet systemic gaps in knowledge exist about how Australian drug laws are actually enforced, including to what extent people who come to the attention of Australian police for an offence of illicit drug use and possession end up prosecuted or receive a sentence of imprisonment for this offence alone. More importantly, there is no knowledge on the extent to which people get diverted away from a formal criminal justice system response.

This is an important omission as diversion, whereby offenders are diverted away from criminal justice sanction or into drug education/treatment, constitutes one of the core drug policy responses to illicit drug use and drug-related offending in Australia (Commonwealth of Australia, 2017; Hughes & Ritter, 2008; Ritter et al., 2011). Moreover, there is now a large evidence-base showing the benefits of diversion, including reductions in the burden on police and courts, reductions in recidivism, increasing treatment uptake and improved social outcomes (AIHW, 2014b; Mazerolle et al., 2006; Payne et al., 2008; Shanahan et al., 2017a). Quantifying the national reach of Australian drug diversion programs is thus increasingly important.

There are multiple reasons for gaps in our existing knowledge about diversion. Criminal laws must always be interpreted and applied by the police and courts; this raises questions about how laws are interpreted and applied, whether this is done differently on occasion and why (see for example Ashworth & Horder, 2013; Wagenaar & Burris, 2013). The specific laws and policies pertaining to illicit drugs make it even harder to discern what happens in practice: illicit drug use and possession is a criminal offence in most parts of Australia sanctionable with a sentence of imprisonment (McDonald & Hughes, 2017), but Australia has evolved a broad array of drug diversion programs targeting multiple aspects of the criminal justice system – diversion from arrest, diversion from courts, diversion from prison (Hughes & Ritter, 2008; Ritter, Hughes, & Hull, 2016). For example, Hughes and Ritter (2008) conducted a review of all Australian drug diversion options, and showed that in 2007, most states employed 5 or 6 different programs targeting possession of cannabis, possession of other illicit drugs, minor drug-related offenders and serious drug-related offenders. This means that there are a large array of potential responses and avenues through which people may be diverted. For example, people may be detected but receive a non-criminal response at the point of arrest or sent to court and then receive a non-criminal sanction. There are also large differences (between jurisdictions) in the laws and diversion options: including in threshold limits for use and possession offences and more (Hughes, Ritter, Cowdery, & Phillips, 2014a). Finally, there are scant data that can examine responses across the entire criminal justice system (police, courts and prison) and across the whole of Australia.

Systematic research into drug laws, policies and practices on the ground in relation to drug use/possession can provide valuable insights. For example, in 2014, Hughes, Shanahan, Ritter et al, (2014b) evaluated police and court diversion programs in the ACT, showing that at the time, police diversion for drugs other than cannabis was curtailed due to low threshold limits. As a consequence, police were diverting only 0 to 7.9% of eligible heroin, methamphetamine, ecstasy and cocaine use/possess offenders (compared to 70.9% of cannabis offenders), which was costlier than a diversionary option and meant that many heroin and methamphetamine offenders were missing out on assessment and treatment opportunities.

Quantifying the reach of Australian diversion programs is particularly important now as both the National Ice Taskforce (Lay, 2015) and the National Drug Strategy 2017-2026 have committed to

expanding drug diversion (Commonwealth of Australia, 2017). Drug diversion is noted in the National Drug Strategy as a proven method of both demand reduction and harm reduction. Moreover, the strategy notes the explicit goal of “enhancing systems to facilitate greater diversion into health interventions from the criminal justice system, particularly for Aboriginal and Torres Strait Islander people, young people and other at risk populations who may be experiencing disproportionate harm” (Commonwealth of Australia, 2017, p. 23).

## **1.1 Project objectives**

This project sought to provide the first comprehensive analysis of Australian criminal justice responses relating to personal use and possession of illicit drugs and the reach of Australian drug diversion programs. The specific aims of the project were:

- To outline current Australian laws and approaches taken to illicit drug use and possession in each jurisdiction (including programs on alternatives to arrest).
- To assess the scale of criminal justice response to use/possession in Australia over a five-year period (2010-11 to 2014-15), including the number of people detected, prosecuted and/or sentenced for use/possession, the number of people diverted away from criminal justice proceedings, and the populations that are most and least likely to receive a drug diversion by state/territory and demographic factors.
- To identify barriers and facilitators to the diversion of use/possess offenders in Australia (e.g. legal barriers, program design, resourcing).

## **PART 2: THE HISTORY AND EXPANSION OF DRUG DIVERSION IN AUSTRALIA**

The diversion of offenders away from the criminal justice has long been part of Australian police practice, especially relating to youth offenders. Throughout the 1980s and 1990s programs that specifically targeted illicit drug offenders started to be introduced, such as the South Australian Cannabis Expiation Notice Scheme introduced in 1987. Early programs tended to be ad hoc or rely on informal police discretion.

Diversion became more systematic and embedded into all states and territories post adoption of the Council Of Australian Governments Illicit Drug Diversion Initiative (IDDI): a national agreement, signed in 1999, to divert minor drug offenders away from the criminal justice system into assessment, education and/or treatment programs via both police and courts. The IDDI was accompanied by a national framework, principles of best practice for diversion and the provision of federal funding amounting to over \$310 million total to enable an expansion of treatment places (Hughes, 2007). Diversion programs expanded considerably after that time, rising to 51 programs by 2007 (Hughes & Ritter, 2008).

### **2.1 Definitions of diversion**

Diversion in Australia has multiple meanings. The traditional “criminological” definition of diversion is that it involves “the redirection of offenders *away* from conventional criminal justice processes” (Payne et al. 2008, p. 2). In contrast the “newer” definition involves diversion *into* a program, including but not limited to education and treatment programs. These approaches reflect different rationales for diversion: to minimise contact with the formal criminal justice system versus to provide opportunities to address drug use/offending. While diversion programs in Australia have increasingly become therapeutic, both sets of programs form part of the Australian landscape, such as via the cannabis expiation notice schemes and cannabis caution schemes.

### **2.2 Types of drug diversion in Australia**

Five main types of diversion are now provided in Australia for drug and drug-related offenders (Hughes & Ritter, 2008). Four are relevant to people detected for use/possession. (We exclude drug courts which target serious offences only). Typical program requirements of each are outlined below:

- Police diversion for use/possession of cannabis only: Aimed at offenders detected using or possessing cannabis for personal use. Different responses are provided: cannabis cautioning and cannabis expiation. The former involves a therapeutic approach – an “on the street” formal caution, provision of educational information and optional referral to an education session or brief intervention. The latter provides offenders with opportunities to avoid a criminal record through the payment of an expiation fee of \$100-300. But failure to pay the expiation fee may result in criminal proceedings.
- Police diversion for use/possession of other illicit drugs: Aimed at offenders using or in possession of small quantities of amphetamines, cocaine, ecstasy or heroin. Requires offenders to undertake an alcohol and other drug assessment and attend 1-3 sessions of education/counselling.
- Police diversion for young people: Aimed predominantly at offenders aged 10-18 and open to individuals detected for *any* offence, including drug offences. Results in the provision of non-therapeutic sanctions including a warning, caution or the requirement to attend a family group conference.

- Court diversion for minor drug/drug-related offenders: Aimed at minor offenders with a recognisable drug problem. Most programs are pre-plea and require assessment and education/treatment (predominantly counselling) for a period of 3-4 months. One exception to this is the Queensland Illicit Drug Court Diversion Program which targets illicit drug possession specifically.

## 2.3 Efficacy of drug diversion

Evaluations of Australian drug diversion programs (AIHW, 2008, 2014b; Baker & Goh, 2004; Boyd, 2017; Bright & Martire, 2013; Hales, Mayne, Swan, Alberti, & Ritter, 2004; Hughes & Ritter, 2008; Hughes et al., 2014b; Lenton et al., 1999; Lenton & Heale, 2000; Millsted, 2012; NSW Auditor General, 2011; Office of Crime Statistics and Research, 2008; Payne et al., 2008; Shanahan et al., 2017a) have shown that multiple positive outcomes are possible from drug diversion:

- Reduced utilisation of criminal justice system resources
- Reduced incidence of re-offending
- Increased time period before re-offending and decreased likelihood of imprisonment
- Reduced drug use and/or harmful use
- Improved physical health and mental health
- Improved cost-effectiveness
- Other social, community and economic benefits including implications associated with avoiding a criminal finding or conviction.

Baker and Goh (2004) found that the NSW Cannabis Cautioning Program led to 2658 fewer persons convicted with a principal offence of cannabis by the Local Courts in the three years since the introduction of the scheme, compared with the three years prior to the scheme. The burden on the criminal justice system also reduced, as evidenced by 5,241 fewer sole cannabis charges dealt with by the Local Courts and it was estimated that over the first three years of the scheme the police saved over 18,000 hours, or over \$400k (Baker & Goh, 2004). A more recent evaluation by the NSW Auditor-General (2011) concluded that from 2000-01 and 2009-10 the NSW Police Force had used cautioning to divert over 39,000 minor cannabis offenders from the courts and saved at least \$20 million in court costs.

Payne et al (2008) conducted a national evaluation of criminal justice outcomes of IDDI programs. This showed that the majority of people who were referred by police to IDDI programs did not reoffend in the 12-18 months after their diversion. Specifically, 70-86% of first-time offenders diverted did not reoffend and 53 – 66% of those with prior offending recorded no or fewer offences in the 18 months after diversion. This applied irrespective of the type of program or the jurisdiction within which it operated.

A national cost-effectiveness and outcomes study by Shanahan et al (2017b) that compared pre-post impacts of three forms of diversion (caution, cannabis expiation and warning) with traditional criminal justice responses for minor cannabis offenders showed that cannabis diversion cost between six and 15 times less than a criminal charge. The charge group's mean cost was the highest (\$1,918), reflecting additional police and court activities, with the next most expensive being the caution group, following by expiation. This study also showed that those diverted for cannabis possession versus charge had social benefits. For example, they reported fewer employment problems and less disruptive relationships with family and friends. Moreover, those diverted to expiation and caution had more

positive perceptions of police legitimacy (21.7% and 23.9% compared to 14.9% for those charged) (Shanahan et al., 2017b).

The Australian drug diversion programs have led to a large increase in treatment referrals in Australia. For example, in the 10 years to 2012-13, the number of treatment episodes provided to clients referred from diversion programs more than doubled, whereas numbers of treatment episodes for other clients were relatively constant (AIHW, 2014b). Moreover, clients referred from police or court diversion programs received 27,405 treatment episodes in 2012-13, accounting for 18% of all treatment episodes provided by Australian alcohol and other drug treatment agencies. Moreover, diversion clients are a distinct group who otherwise don't access the system. For example, they are younger (25% aged 10–19 compared with 11% of non-diversion clients; 39% aged 30 and over compared with 63% of non-diversion clients). The AIHW also showed evidence of a high level of compliance: 4 in 5 (82%) diversion episodes were completed successfully in 2012–13, either because treatment was completed, or diversion program conditions had been met.

The two main potential concerns are firstly, the potential for net-widening, whereby more people rather than less are processed by police. Net-widening was particularly observed in the early years of the South Australian Cannabis Expiation Notice Scheme (Christie & Ali, 2000) and can reduce or counteract any other savings in time for police or courts. Secondly, equity and access: evaluations have found some groups of people may be excluded or fair less well in drug diversion programs, particularly those residing in rural/regional areas and Aboriginal and Torres Strait Islander people (AIHW, 2008).

## **2.4 International evidence about diversion programs**

There is also much evidence on the efficacy of drug diversion outside of Australia (see for example Goetz & Mitchell, 2006; Hughes, Stevens, Hulme, & Cassidy, in press; McSweeney, Stevens, Hunt, & Turnbull, 2006; Stevens et al., 2005). One newer police diversion program of note is the US Law Enforcement Assisted Diversion (LEAD) program, which provides case management, drug treatment, legal services and other social supports (including referrals to job training), for people detected for minor drug or prostitution offences. Evaluations have showed that those diverted were significantly more likely to obtain housing, employment and legitimate income and had reduced likelihood (87 per cent lower odds) of at least one prison incarceration than those who received a traditional CJS responses (Collins, Lonczak, & Clifasefi, 2015). Added to that is evidence on criminal justice diversion programs more generally (see for example Washington State Institute for Public Policy, 2018; Wilson, Brennan, & Olaghery, 2018; Wilson & Hoge, 2013; Wong, Bouchard, Gravel, Bouchard, & Morselli, 2016). For example, Wilson and Hoge (2013) conducted a meta-analysis of 73 youth diversion programs and found that diversion is more effective in reducing recidivism than conventional judicial interventions. On average the recidivism rate of those diverted was 31.5% compared to 41.3% for those sanctioned through the traditional criminal justice system. More recently a Campbell systematic review examining the effects police-initiated diversion programs again found positive impacts: police-led diversion reduced the future delinquent behaviour of low-risk youth relative to traditional processing (Wilson et al., 2018). Assuming a 50 percent reoffending rate for the traditional processing condition, the results suggest a reoffending rate of roughly 44 percent for the diverted youth.

Some studies have highlighted the importance of timing of intervention and type of response. Of note, Wilson and Hoge (2013) found that programs that targeted youth *prior* to the laying of a charge were found to be more effective in reducing recidivism than programs that targeted youth *post* charge (1.69 and 1.49 times less likely to reoffend, respectively than those who received a conventional judicial intervention). They also found the type of intervention mattered: caution or intervention. While both

caution and interventions reduced recidivism, they found that for low risk youth, caution programs appeared to be more effective in reducing recidivism than programs providing some form of intervention (2.44 versus 1.49), while intervention programs targeting medium/high-risk youth were more effective in reducing recidivism than those working with low-risk offenders (1.96 versus 1.69). This suggests the potential benefits of pre-charge as opposed to post charge programs as well as methods to target programs at offender needs.

Finally, Washington State concluded police diversion for low-severity offences (pre-arrest) for adults estimated that the program cost \$556 per participant, but led to \$3,905 in benefits for every participant, including \$1,111 reduction to the taxpayer and \$2,794 to others (from economic benefits from a more educated workforce). And diversion for youth led to \$2,393 in benefits versus \$573 in costs for participants. These benefits were associated with reductions in crime, increased labour market earnings associated with high school graduation and improved health care (Washington State Institute for Public Policy, 2018).

## **PART 3: METHODS**

This project comprised of three parts: documenting Australian laws and diversion programs; analysis of Australian Bureau of Statistics data on all offenders detected with a principal offence of use/possession and quantifying the reach of drug diversion; and expert consultation about the barriers and facilitators to the diversion of use/possess offenders in Australia.

### **3.1 Documenting laws and diversion programs**

In the first part we systematically identified and documented the current law and definitions as well as policy relating to “personal use and possession” of illicit drugs in each state and territory in Australia and existing diversion programs. This included searches of the statutes (including associated regulations) for each state and territory on the legislative database [www.austlii.edu](http://www.austlii.edu) (the Australasian Legal Information Institute). We cross-referenced these findings from summaries of the legal frameworks pertaining to use and possession that appear in publicly available resources such as the law handbooks in each jurisdiction and the recent Victorian Parliamentary Inquiry on Drug Law Reform, and from previous research undertaken by members of the team, including a major study co-authored by KS and AR for the Queensland Mental Health Commission, and an Australian Research Council funded DECRA Fellowship (DE160100134) that is currently held by KS.

In order to compile details on relevant diversion programs, we began with information collected by CH, AR and others from previous studies conducted at the National Drug and Alcohol Research Centre (Hughes & Ritter, 2008; Hughes et al., 2014b; Shanahan et al., 2017a) and cross-checked that information. Cross-checking was conducted using online searches of policing, court and legal information websites in each state and territory, as well as recent publicly available reports (e.g. the report of the 2018 Victorian parliamentary inquiry into drug law reform) and other relevant handbooks containing information on diversion programs and their criteria (e.g. Lawyers’ Practice Manual, Police Diversion Manuals).

An initial, truncated summary table of diversion programs and their characteristics was included as part of the briefing paper sent to participants in the expert consultation (discussed in Part 3.3) and participants provided feedback on any omissions or inaccuracies. Three final summary documents were prepared, and these were sent to participants in the expert consultancy for any final input.

### **3.2 Analysis of Australian Bureau of Statistics data on drug use/possession**

In the second part three different sets of unpublished official crime data from the Australian Bureau of Statistics (ABS) on police detections, court actions and imprisonment on drug use and possession that have occurred in Australia over a five-year period (from 2010-11 to 2014-15) were drawn together (ABSa, ABSb, ABSc, 2018). These data were critical as it is the only source that covers the whole of Australia and each aspect of the criminal justice system (police, courts and prisons). All data have been adjusted by the ABS to make it comparable across states/territories.

Such data were used to analyse 1) how many people were arrested, sentenced and/or imprisoned in Australia for drug use/ possession alone, and changes over time; 2) the proportion receiving an alternative to arrest (diversion) and the timing of that diversion (e.g. police vs court,); 3) the sub-sets of offenders that were most and least likely to receive an alternative to criminal proceeding for use/possession alone, by age, sex, state/territory and criminal justice history. We were unable to examine Aboriginal and Torres Strait Islander status or residence (rural/regional/metropolitan) due to data gaps. Ethics approval was obtained for this component from the University of New South Wales HREC: HC16050.

All data pertained to offenders with a principal offence of use/possession. Principal offence refers to the most serious offence type for which a person has been proceeded against during the reference period. This is determined through the ranking of offences in the National Offence Index (NOI). Under the NOI murder and attempted murder are ranked as the most serious offences (NOI = 1 and 2 respectively) and offences involving parking offences and traffic and vehicle regulatory offences are rated the least serious offence (NOI = 153 and 154 respectively). Possession or use of illicit drugs is ranked 124 to 126, while serious drug offences including importation of illicit drugs, dealing, trafficking or cultivation of illicit drugs are ranked 14 to 22. As such this means that where an offender has two or more offences within the same incident that could be classified to different offence categories of ASOC classification (e.g. *0211 - Serious assault resulting in injury* and *1041 – Possess illicit drugs*), by applying NOI, a 'principal offence' can be selected to represent that offender. In this instance the NOI ranking '*23 - Serious assault resulting in injury*' would be the principal offence. Similarly, for an offender with offences of drug trafficking and drug possession (e.g. *1022 - Deal or traffic illicit drugs – non-commercial quantity* and *1041 – Possess illicit drugs*), their principal offence would be *deal or traffic*. This method of classification was advantageous for this analysis as it meant that it could be assured that the people facing charges for use/possession did not have concurrent offences for more serious criminal offences.

The unit of analysis for this report was unique offenders i.e. an offender was only counted once in any one year irrespective of how many offences they may have committed within the same incident or how many times they were dealt with by police. This meant the focus was on the number of offenders detected or sanctioned, and particularly how many offenders were diverted. It is important to note that the counting units employed by the ABS differ across datasets: the main unit for all police data and prison data was unique offenders, but court data was based on proceedings. Court data were thus adjusted using a multiplier of the number of police proceedings laid per unique offender detected by police, based on state and year. That said, consistent with the use of mainly pre-arrest diversion programs in Australia, most analysis of the extent of diversion for use/possess offenders and factors shaping access were conducted using the police data alone.

Offender rates were expressed as the number of offenders per 100,000 of the ABS Estimated Resident Population (ERP) aged 10 years and over. These rates generally accord with international and state and territory practice and enable the comparison of the extent and type of offending across the individual states and territories, as well as a comparison over time. Where rates were presented for a sex or age group, the ERP used in the calculation of the rates refers to the relevant sex or age group.

### **3.3 Expert consultation on barriers and enablers**

The final part of the project was designed to identify the legal and practical barriers and opportunities for alternatives to criminal proceedings for personal use/possession offences in Australia, taking into account the design of current laws (such as presence or absence of offences for specific activities, and legal basis – criminal or civil) and eligibility criteria for drug diversion programs (such as the type of drug and quantity that can be possessed, state/territory differences and legal threshold limits for possession in different states and territories). We commenced by drawing together the findings from 3.1 and 3.2 to identify barriers and enablers, then consulted with experts, identified for this specific component, to cross-check these and ascertain other barriers and opportunities that may be less evident e.g. the number of treatment places available in a state.

We began by identifying experts who would have knowledge of these issues, in each state and territory, based on previous contacts and projects. The experts were contacted via email and invited to participate in the consultation process. A total of 24 people took part including police from all states

(except Victoria and the Northern Territory who declined) and justice, health bureaucrats, non-government organisations and peak bodies.

In advance of the consultation, all stakeholders were provided with a briefing paper outlining key trends from the ABS data and details regarding diversion programs from across Australia, including features of the main police programs. Most consultations were held via teleconference. Exceptions were one via email and one that was face-to-face. The teleconferences were led by CH and KS and supported by a research assistant who transcribed the teleconferences (EM). Experts were given the opportunity to comment on the findings, including trends in diversion in their own and other jurisdictions during the relevant time period, views on the current reach of diversion and to identify barriers and enablers to expanding the diversion of use/possess offenders in Australia. We (CH and KS) also discussed patterns and trends emerging among experts throughout the consultation phase, compiling a list of key barriers and enablers as the consultation unfolded.

## PART 4: LEGAL CONTEXT AND POLICY RELATING TO USE AND SIMPLE POSSESSION OF ILLICIT DRUGS IN AUSTRALIA

Australia has a broad and complex array of laws that pertain to alcohol and other drug issues. The regulation of drugs (their possession, consumption and manufacture) is guided by Commonwealth, state and territory laws, but offences pertaining to use and simple possession are largely the remit of states and territories. This chapter outlines the offences relating to use and possession for personal use and current drug diversion programs.

### 4.1 Offences relating to use and possession for personal use

Legislation relating to illicit drug use and possession varies by jurisdiction, as well as by offence and by drug type. Table 1 outlines the laws, legislative basis and maximum penalties for use and possession of illicit drugs and illicit drug paraphernalia in each state and territory.

**Table 1: Maximum penalties for use and possession of illicit drugs for personal use in Australia, by offence type and jurisdiction**

	Law	Personal use	Possession		
			Paraphernalia	Cannabis	Other illicit drug
ACT	Drugs of Dependence Act 1989 Criminal Code 2002 Medicines, Poisons and Therapeutic Goods Act 2008	1 yr prison &/or \$15,000 fine	No offence	Penalty notice of \$100 or 1 PU	2 yrs prison &/or 50 PU
NSW	Drug Misuse and Trafficking Act 1985	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU	2 yrs prison &/or 20 PU
NT	Misuse of Drugs Act 2006	6 mths prison &/or 50 PU (only if person is reckless)	6 mths prison &/or 50 PU	Penalty notice of 2 or 50 PU	2 yrs prison &/or 200 PU
Qld	Drugs Misuse Act 1986	No specific use or self-administration offence	2 yrs prison	3 yrs prison (S) 15 yrs prison (I)	3 yrs prison (S) 15 yrs prison (I)
SA	Controlled Substances Act 1984	\$500 (cannabis) 2 yrs prison &/or \$2,000 (other)	2 yrs prison &/or \$2,000	Penalty notice of \$150-300 or \$500 fine	2 yrs prison and/or \$2,000
Tas	Misuse of Drugs Act 2001	2 yrs prison &/or 50 PU	50 PU	2 yrs prison and/or 50 PU	2 yrs prison &/or 50 PU
Vic	Drugs, Poisons and Controlled Substances Act 1981	5 PU (cannabis) 1 yr prison &/or 30 PU (other)	No offence	5 PU	1 yr prison &/or 30 PU
WA	Misuse of Drugs Act 1981	2 yrs prison &/or 2 yrs prison	3 yrs prison &/or \$3000	2 yrs prison &/or \$2,000	2 yrs prison &/or \$2,000

PU: Penalty Units. A "penalty unit" is a measurement used to calculate the dollar value of a fine; in each jurisdiction the value of a penalty unit is reviewed (and typically increases) periodically (on the first day of the financial year). The penalty unit is announced through special gazette. In Victoria, for example, the current value of a PU (as at the time of this report) is \$161.19. The maximum fine for a cannabis use offence is thus currently \$805.95, whereas for another illicit drug it is \$4,835.70. S and I: Summary or Indictable Offence.

As can be seen in Table 1, it is a criminal offence to use an illicit drug (or self-administer it) in all states and territories except Queensland. It is an offence (criminal or civil) to possess illicit drugs in all states and territories, albeit responses vary according to the type of drug (see below). Use and/or possession of illicit drugs for personal use is thus a criminal offence sanctionable with 1-2 years imprisonment in most Australian states/territories. It is also a criminal offence to possess an implement for using an illicit drug, such as a cannabis bong or methamphetamine pipe in all states and territories, except in the

ACT and Victoria. There are important variations in operation across jurisdictions, which we outline below.

## 4.2 Threshold quantities for possession for personal use versus possession for supply

One other important aspect of Australian drug laws is that all states and territories employ legal threshold quantities for drug trafficking, which enable offenders to be charged with possession ‘for the purpose of supply’, as opposed to possession ‘for personal use’, based on the amount of drug possessed (Hughes & Ritter, 2011, released 2014; Hughes et al., 2014a). Table 2 outlines the trafficable threshold quantity for the five most commonly used illicit drugs in Australia.

In all states except Queensland, anyone who is caught in possession of a trafficable amount can be charged with “deemed supply” and thus faces penalties for supply or trafficking based solely on this evidence (Hughes, Cowdery, & Ritter, 2015). As outlined in Table 2, the trafficable threshold limit in most states and territories is set at 2 or 3 grams of MDMA/ecstasy, heroin or cocaine, but is as low as 0.5 grams in NT and 0.75 grams for MDMA in NSW, or as high as 1000 grams for cannabis.

**Table 2: Trafficable threshold quantities (grams) in Australia, by drug type, state and pure and mixed systems**

	Heroin	Meth/ amphetamine	Cocaine	MDMA	Cannabis leaf	Cannabis plant
<b>Pure drug</b>						
Qld	2	2	2	2	500	100 plants
<b>Mixed drug</b>						
ACT <sup>1</sup>	5	6	6	10	300	10 plants
NT	2	2	2	0.5	50	5-19 plants
NSW	3	3	3	0.75	300	5 plants
SA	2	2	2	2	250	10 plants
Tas	25	25	25	10	1000	20 plants
Vic	3	3	3	3	250	10 plants
WA	2	2	2	2	100	10 plants

Pure = 100% pure drug: excludes buffers or glucose.

Mixed = Includes added substances i.e. however drug was sold on the street.

<sup>1</sup> This was amended in April 2014. For details see (Hughes & Ritter, 2011, released 2014).

## 4.3 Laws around the definition of possession

In general, in Australia possession is defined as “having actual control of the drugs” including:

- Having the drugs with you, such as in your pockets;
- Having the drugs in your home or car; and
- Someone is looking after the drugs for you.

Importantly, there is some variance. Key definitions appear in Appendix A.

## 4.4 Variation in offence provisions and penalties across the jurisdictions

As Table 1 and 2 revealed, there are important variations in legislation on use and possession across states and territories. This variability is an effect of Australia’s federated system and means that jurisdictions determine, according to their own processes (and within any overarching constitutional constraints), how to manage drug use and possession offences and diversion. These variations in

approach also provide invaluable opportunities for informational exchange, including as to how to expand drug diversion.

The various differences include distinctions as to:

- *The sorts of activities that can constitute a criminal offence.* For example, in most jurisdictions it is a crime to use (or ‘self-administer’) drugs, but ‘use’ is not an offence in Queensland. Possession of paraphernalia for use of illicit drugs (e.g. a methamphetamine pipe) is not an offence in the ACT or Victoria but is in other jurisdictions. There are also some other related offences in some jurisdictions, such as prohibitions on the distribution (also known as ‘secondary supply’) of drug paraphernalia, but we have not considered those provisions in any depth here, as they are outside the remit of personal use and possession.
- *The maximum quantity that constitutes possession for personal use.* Due to the variance in threshold quantities, different jurisdictions have different constraints when it comes to determining what constitutes possession for personal use. Of note, NT, SA and WA limit possession of cocaine, heroin or methamphetamine to  $\leq 2$  grams, whereas Victoria and NSW limit it to  $\leq 3$  grams and Tasmania has a higher threshold limit again ( $\leq 25$  grams).
- *The range of penalties available.* Legal penalties relating to prohibited substances vary across all states and territories, as well as by how the prosecution chooses to undertake the charge: as a minor (summary) offence or as a major (indictable) offence. Maximum penalties are: 1-15 years imprisonment for use or possession of a drug for personal use or drug paraphernalia (e.g. a cannabis bong). There are different penalties for trafficking offences, but these are beyond the scope of this report.
- *The response to different drug types.* In four jurisdictions the penalties for cannabis offences are lower than for offences involving other illicit drugs (see Table 1). The differences are stark regarding threshold quantities: with much higher threshold quantities for possession of cannabis than possession of other illicit drugs. The interplay between Table 1 and 2 is important in considering responses available.
- *The nature of penalties available.* Cannabis possession attracts criminal penalties in most jurisdictions, but notably, in three jurisdictions (SA, NT and the ACT), use and possession of cannabis and cultivation of one non-hydroponic plant for personal use have been decriminalised. In these jurisdictions the penalties are more properly characterised as civil. This means that offenders have the option to pay a penalty notice (also called a cannabis expiation notice) of \$100–\$300 rather than receive a criminal conviction and fine and/or prison sentence of up to 2 years (SA and ACT) or prison sentence of up to 2 years (NT). It should be noted that in special and limited circumstances the available maximum penalties are even higher than those described in Table 1. For example, in the NT, there is a separate offence for possession of (a less than traffickable quantity of) drugs in a public place and this can attract up to 5 years for certain drugs including amphetamine, cocaine and ketamine.

#### **4.5 Drug diversion programs for use/possess offences**

As outlined earlier Australia has a long history of using drug diversion programs, either to redirect offenders away from conventional criminal justice processes or into education/treatment. Table 3 summarises the current set of diversionary programs in Australia that can be used for use/possess

offences. (We exclude from this drug court programs as they target serious offences only). This shows that there are many different diversionary programs that can be used for use/possess offences.

The two main sets of programs are the police drug diversion programs:

- All jurisdictions have police diversion for use/possession of cannabis (either by civil penalty schemes or cannabis caution schemes);
- Six jurisdictions have police diversion for use/possession of other illicit drugs. There is no police diversion for use/possession of drugs other than cannabis in Queensland or NSW.

**Table 3: Summary of police and court diversion programs in Australia that can be used for use/possession, by type and state**

	Police diversion for cannabis use/ possession	Police diversion for other illicit drug use/ possession	Police/court diversion for young offenders	Court diversion for minor drug or drug-related offences	Other non-AOD specific programs
ACT	√ *	√	√	√	√
NSW	√		√	√	
NT	√ *	√	√√	√	
Qld	√		√	√√	
SA	√ *	√	√	√	√√
Tas	√	√	√	√	
Vic	√	√	√√√√	√	√√√√
WA	√	√	√√	√√√√√	

Number of ticks shows number of programs offered in each state. \* Civil Penalty Schemes.

In addition:

- All jurisdictions provide youth specific diversion programs, open to offenders detected for any offence including minor drug offences. This can operate via police or courts. The nature of the diversion offered differs as between jurisdictions, with some offering youth diversion for cannabis only (e.g. Tasmania) and others offering it for cannabis and other illicit drugs (e.g. SA);
- All offer some form of court diversion program for drug-related offences. While these are open to people who possess drugs, their target group is offenders who have a recognisable drug problem. Exceptions to this are the Queensland Illicit Drug Court Diversion Program that targets offenders detected for use and possession.

All diversion programs have eligibility requirements including target group (adult versus youth), maximum amount of drug that can be possessed and number of times offenders can be diverted. Programs also differ in terms of whether they are specified in law or policy and as such whether it is compulsory or discretionary for police to offer diversion and whether there are any penalties for non-compliant offenders. Key requirements of Australian police drug diversion programs for use/possession are outlined in Table 4. For details of other programs (youth programs and court programs) see Appendix B and C. Comparison of the current set of police drug diversion programs shows a number of areas of variation:

- *Legislative or policy basis:* Most programs are based in policy: and hence are discretionary for police to use. A few programs are however based in law, making it compulsory for police to offer a diversion. South Australia is the only jurisdiction with both a cannabis diversion program and other drug diversion program specified in law.
- *Age:* Most drug diversion programs are for youth and adults. But there are exceptions to this which are for adults only (e.g. NSW Cannabis Cautioning Scheme) or for people aged 17 and

over only (e.g. NT Cannabis Expiation Notice Scheme and NT Illicit Drug Pre-Court Diversion Program).

- *Quantity of drug that can be possessed:* Most limit the amount of drug that can be possessed. e.g. 1 gram of MDMA or cocaine or 50 grams of cannabis. But there are some with lower limits e.g. 15 grams cannabis in NSW.
- *Number of times offenders can enter programs:* Most programs are limited to one diversion opportunity. Exceptions to this are the expiation schemes (ACT SCON, NT DIN and SA CEN) and the SA PDDI program with no limits of the number of times offenders can be diverted.
- *Priors and concurrent offences:* Consistent with the original IDDI agreement (which aimed for a degree of harmonisation), many jurisdictions do not allow concurrent offences or priors involving violence. But there are exceptions. For example, concurrent offences do not preclude a diversion in Tasmania or South Australia.
- *Mechanism:* Consistent with part 2, programs differ in whether they are therapeutic (e.g. WA CIN) or non-therapeutic (e.g. SA CEN), and the intensity of responses.

The impacts of eligibility restrictions are explored in Parts 5 and 6.

**Table 4: Key eligibility and program requirements of Australian police drug diversion programs, by state**

Jurisdiction	Name of program	Basis – law or policy	Type of program	Target group	Target drugs	Limit on quantity possessed?	Limit on number of diversion opportunities	Limits on priors/ concurrent offences	Other requirements?	Required actions by police*
Australian Capital Territory	Simple Cannabis Offence Notice (SCON)	Law	Expiation / infringement notice	Youth and adults	Cannabis	≤ 50g cannabis or ≤ 2 non-hydroponic plants	n.a.	No charges/ convictions for violent offences	Must pay expiation fee of \$100 within 60 days	Explain the offence notice, obtain agreement  Record why IDD not issued
	Illicit Drug Diversion (IDD)	Policy	Diversion with referral for assessment, education, counselling or other treatment as appropriate	Youth and adults	All illicit drugs	≤ 50g cannabis or 2 non-hydroponic plants 5g heroin 6g cocaine or methamphetamine, 10g MDMA	2	No charges/ convictions for violent offences	Must admit offence Must attend assessment program	IDD takes precedence over SCON if applicable  Notify the Alcohol and Drug Service of referral via SupportLink
New South Wales	NSW Cannabis Cautioning Scheme	Policy	Caution with optional / compulsory referral to telephone education	Adults only	Cannabis	≤ 15g cannabis or possession of smoking implements	2	No concurrent offences or prior convictions for violent or sexual offences	Must admit guilt People who receive a 2 <sup>nd</sup> caution are required to contact ADIS & undergo a mandatory education session about their cannabis use. Contacting ADIS is optional for a 1 <sup>st</sup> caution	Issue formal caution notice, which outlines legal and health consequences of cannabis use and includes a contact telephone number for the Alcohol and Drug Information Service (ADIS)
Northern Territory	Cannabis Expiation Notice Scheme	Law	Expiation / infringement notice	Adults or youth 17+	Cannabis	≤ 50g cannabis ≤ 10g hash ≤ 2 non-hydroponic plants <1 gram of cannabis oil	No limit/at the discretion of police officer	N/A	Must not involve use around schools Must pay infringement notice within 28 days	An infringement notice is issued by the police prescribing a fine (of 2 penalty units = \$310 in 2018)

Jurisdiction	Name of program	Basis – law or policy	Type of program	Target group	Target drugs	Limit on quantity possessed?	Limit on number of diversion opportunities	Limits on priors/ concurrent offences	Other requirements?	Required actions by police*
	Illicit Drug Pre-Court Diversion Program (NTIDPCD)	Policy	Diversion with referral for education, counselling and/or treatment	Adults and youth 17+	All illicit drugs	<p>≤ 50g cannabis</p> <p>≤ 1g hash oil</p> <p>≤10g of hash or seed</p> <p>≤ 2 non-hydroponic plants</p> <p>≤ 2g heroin, amphetamines, ecstasy</p>	1	No prior convictions for violent or other drug offences	Must admit offence	NT police use SupportLink to provide a centralised referral management for offenders to AOD services
Queensland	Police Drug Diversion program (PDDP)	Law	Caution with compulsory referral to a two-hour drug diversion education and assessment program	Adults and youth	Cannabis	<p>≤ 50g cannabis or possession of a thing that is used or has been used for smoking</p>	1	No concurrent offences or prior convictions for violent offences	<p>Must admit offence</p> <p>Must attend assessment program to complete diversion</p>	<p>It is mandatory for police to offer diversion to all eligible offenders</p> <p>Police make an appointment with the closest Drug Diversion Assessment Program (DDAP), using 24-hour service</p>
South Australia	Cannabis Expiation Scheme (CEN)	Law	Expiation / infringement notice	Adults only	Cannabis	<p>≤ 100g cannabis</p> <p>≤ 20g resin or</p> <p>1 non-hydroponic plant, or possession of paraphernalia or consumption in a private setting</p>	Unlimited		<p>Not required to admit guilt</p> <p>Pay infringement notice within 28 days</p>	<p>Police have no discretion over whether to divert</p> <p>Issue infringement notice: typical amount \$150-\$300</p>
	Police Drug Diversion Initiative (PDDI)	Law	Diversion and referral for health assessment, brief intervention and/or treatment	Youth (aged 10-17) and Adults	<p>Youth: All illicit drugs</p> <p>Adults: All illicit drugs</p>	<p>Youth: ≤ 50g cannabis or any quantity of illicit drugs</p> <p>Adults: any quantity of illicit drugs (but in</p>	None. But any adult receiving ≥ 2 diversions in 24 months must complete a therapeutic		<p>Consent of responsible adult required</p> <p>Not required to admit guilt, but</p>	<p>Police have no discretion over whether to divert</p> <p>Police refer the person to a nominated</p>

Jurisdiction	Name of program	Basis – law or policy	Type of program	Target group	Target drugs	Limit on quantity possessed?	Limit on number of diversion opportunities	Limits on priors/ concurrent offences	Other requirements?	Required actions by police*
					excluding cannabis	practice this means < trafficable threshold e.g. 2g heroin or cocaine)	undertaking (an agreed treatment plan involving treatment, education and/or rehabilitation for ≤ 6 mths)		cannot deny allegations Attend nominated assessment service	assessment service, call a 24-hour Drug Diversion Line to make an appointment and give the person a notice that sets out the date, place and time of appointment
Tasmania	Illicit Drug Diversion Initiative (IDDI)	Policy	There are three levels: L1: Caution (for 1 <sup>st</sup> cannabis offence) L2: Diversion & brief intervention (for 2 <sup>nd</sup> cannabis offence) L3: Diversion assessment, brief intervention & treatment (for 3 <sup>rd</sup> cannabis offence or other drug offences)	Adults only	All illicit drugs and licit drugs used illicitly	≤ 50g cannabis or 2 cannabis plants <1g meth/ amphetamine No more than 3 tablets	3 within 10-years	Concurrent offences do not preclude a diversion	Must admit offence For level 2 or level 3 diversion offender must make appointment with Alcohol and other Drug Service and attend	Police have discretion Explain the process and obtain agreement
Western Australia	Cannabis Intervention Requirement (CIR) <sup>4</sup>	Law	Diversion for referral for one-hour therapeutic intervention session	Adults and youth (aged 14 and over)	Cannabis	≤10g cannabis and/or possession of cannabis paraphernalia	Adults: 1 Youth: 2	Individuals who, as an adult, have been convicted previously of a minor cannabis	A person is required to attend a cannabis intervention session (one-to-one therapeutic intervention with a trained alcohol and	Police should be issue CIR unless extraordinary circumstances: if not used, required to record reason(s) for not issuing

<sup>4</sup> Note that the Cannabis Intervention Requirement Scheme (CIR) was introduced in August 2011. This replaced the Cannabis Infringement Notice scheme.

Jurisdiction	Name of program	Basis – law or policy	Type of program	Target group	Target drugs	Limit on quantity possessed?	Limit on number of diversion opportunities	Limits on priors/ concurrent offences	Other requirements?	Required actions by police*
								offence, would be ineligible to receive a CIR	drug counsellor) within 28 days	Police call Drug Diversion Line to make an appointment <sup>5</sup>  Prosecute if offender does not attend intervention session within 28 days
	Other Drug Intervention Requirement (ODIR)	Policy	Diversion for three 60-minute AOD sessions	Adults	All illicit drugs excluding cannabis. Includes cannabis resin and synthetic cannabinoids	25% or less of deeming weight for possession offences (eg 0.5g heroin, cocaine, methamphetamine) or up to two tablets  Officer discretion in regard to steroids & psilocin  Possession of other drug paraphernalia	1	No previous serious drug offences or convictions for serious violent or sex offences	A person is required to attend three other drug intervention sessions (ODIS) with a trained alcohol and drug counsellor within a 42-day period	Police call Drug Diversion Line to make an appointment  Will prosecute if offender does not attend 3 sessions within 48 days
Victoria	Cannabis Caution Program	Policy	Caution and 2.5-hour cannabis education session (cautious with cannabis)	Adults	Cannabis	≤ 50g cannabis (dried cannabis, material (leaf stem, stalk, or seed – not plants, hash or hash oil)	2	Cannot be subject to other charges that cannot be dealt with by a caution or infringement notice	Must admit offence and consent to participate	Provide education brochure and referral to cannabis education session
	Illicit Drug Diversion Program	Policy	Diversion and referral to assessment and treatment	Youth (aged 10 and over) and adults	Illicit drug excluding cannabis & illicitly held	≤ 1g heroin, cocaine, amphetamines	2 (inc cannabis caution)	No concurrent offences involved; unless they can be	Must admit offence  Attend nominated assessment service	Contact the Drug Diversion Appointment Line (DDAL) to make an appointment for the

<sup>5</sup> The requirement for WA Police to call the Drug Diversion Line was removed in April 2015: offenders now contact the diversion line.

Jurisdiction	Name of program	Basis – law or policy	Type of program	Target group	Target drugs	Limit on quantity possessed?	Limit on number of diversion opportunities	Limits on priors/ concurrent offences	Other requirements?	Required actions by police*
					pharmaceuticals			immediately dealt with via caution or infringement notice Prior convictions do not affect eligibility		assessment and treatment phase

## PART 5: ANALYSIS OF AUSTRALIAN BUREAU OF STATISTICS DATA ON AUSTRALIAN CRIMINAL JUSTICE SYSTEM RESPONSES TO USE/POSSESSION

In this chapter we analysed Australian Bureau of Statistics (ABS) data on the Australian criminal justice system response to use/possession: including the number of people detected, prosecuted and/or sentenced for use/possession, the number of people diverted away from criminal justice proceedings, and the populations that are most and least likely to receive a drug diversion by state/territory and demographic factors.

For this section:

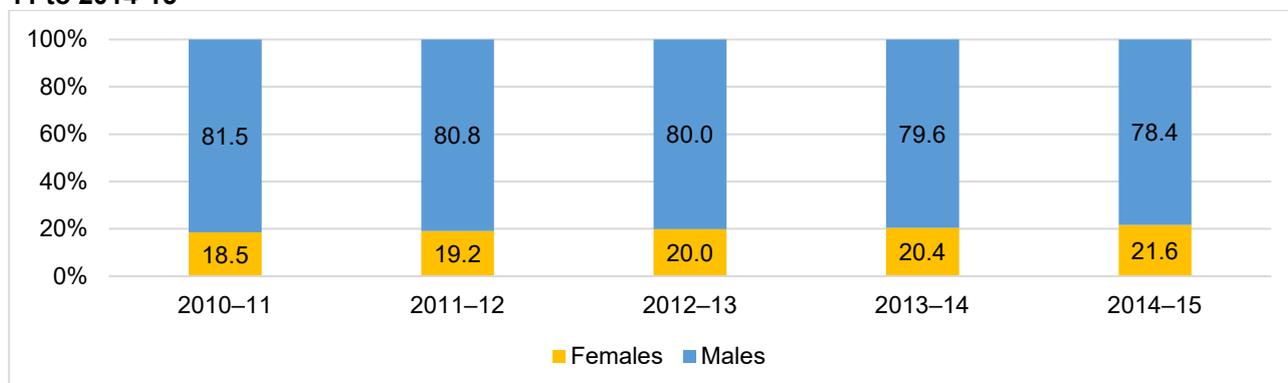
- An offender includes anyone detected for an offence of use/possession, irrespective of whether they were a) detected and diverted or b) detected and not diverted. Subsequent analysis differentiates those who received a diversionary option.
- An offence includes civil offences (e.g. ACT, SA & NT) and criminal offences.
- All offenders had a principal offence of use/possession. i.e. it was their *most* serious (or only) offence.
- The main unit of analysis is unique offenders i.e. an offender is only counted once per annum irrespective of how many offences they committed (or were detected for).
- While the main unit of analysis is offenders, “detections” are employed for some sections (see for example Figure 4). Here a detection means the number of times an offender was dealt with by police during the reference period.

Four factors that may affect diversion access were examined: state/territory, age, sex, prior detections.

### 5.1 Profiles of offenders detected with a principal offence of use/possession

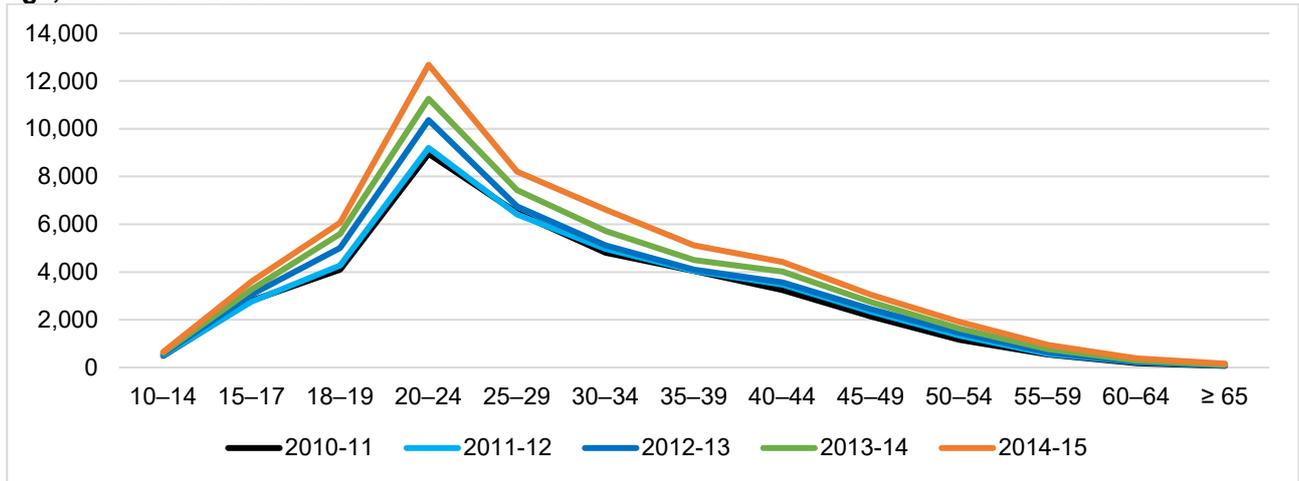
Over the period 2010-11 to 2014-15 there were 224,520 offenders detected with a principal offence of use/possession in Australia: an average of 44,904 each year. As shown in Figure 1 males accounted for the majority of offenders detected with a principal offence of use/possession in Australia: 79.8% offenders over the five-year period (78.4-81.5% per year). The proportion of females increased over time, but males continued to dominate.

**Figure 1: Proportion of males and females detected with a principal offence of use/possession, 2010-11 to 2014-15**



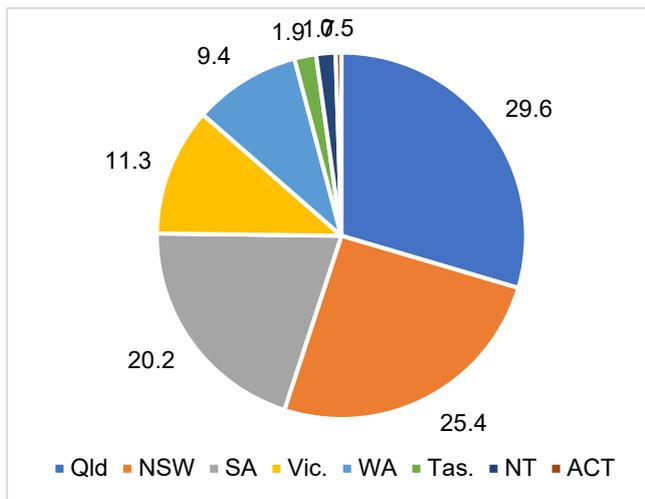
Most offenders were young adults. The peak age of those detected with a principal offence of use/possess in Australia was 20-24 (accounting for 23.4% of detections), and 50.3% were aged between 18 and 29 (see Figure 2). Only 7.2% offenders were aged less than 18.

**Figure 2: Number of offenders detected with a principal offence of use/possession in Australia, by age, 2010-11 to 2014-15**

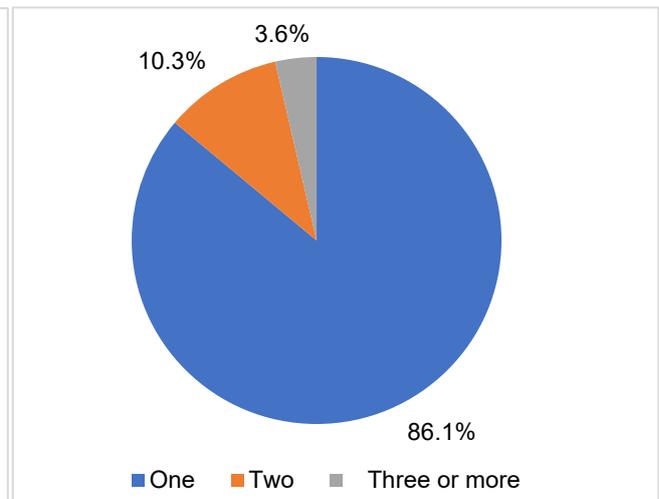


Most offenders were detected in three states: Queensland, NSW and South Australia. Over the five-year period these three states accounted for 74.3% of all detections, or 29.6%, 24.5% and 20.2% of detections respectively (see Figure 3). Most offenders had only one recorded police proceeding for use/possession in the last 12 months: 86.1%, with only 3.6% detected on three or more occasions (see Figure 4).

**Figure 4: Percentage of use/possess detections, by state, 2010-11 to 2014-15 inclusive**



**Figure 3: Percentage of offenders with multiple use/possession detections, 2010-11 to 2014-15 inclusive**



As such, over the five-year period the typical profile of people detected with a principal offence of use/possess in Australia was:

- Male (79.8%)
- Young: aged 18-29, peak age 20-24
- Detected on only one occasion (86.1%)
- Detected in Queensland (29.6%), NSW (25.4%) or South Australia (20.2%).

## 5.2 National trends in offenders with a principal offence of use/possess in Australia: 2010-11 to 2014-15

The number and rate of offenders detected with a principal offence of possess and/or use illicit drug in Australia from 2010-11 to 2014-15 is outlined in Table 5. This shows that both the number of offenders detected and the offender rate per 100,000 population of the ABS Estimated Resident Population (ERP) increased over the five-year period. For example, between 2010-11 and 2014-15 the number of offenders detected increased by 1.4-fold, or an extra 14,773 offenders per year. Moreover, the offender rate increased from 201.8 per 100,000 population to 261.5 per 100,000 population.

**Table 5: Number and rate of offenders detected with a principal offence of use/possession per 100,000 population in Australia, 2010-11 to 2014-15**

	2010-11	2011-12	2012-13	2013-14	2014-15
Number	39,042	40,239	43,439	47,987	53,813
Offender rate per 100,000 population	201.8	204.9	217.5	236.5	261.5

Analysis of trends over time shows large increases in Queensland: up from 10,297 offenders in 2010-11 to 17,599 in 2014-15, an extra 7,262 use/possess offenders detected per year (see Table 6). Smaller increases by number were observable in NSW, Victoria and Western Australia. Analysis of changes in the rate of detections per 100,000 population further shows the largest increase in detections in Queensland: up 1.57-fold over the five-year period. In contrast, the rate of detection of use/possess offenders decreased in Tasmania and Northern Territory (by 0.77 and 0.87-fold respectively) and remained stable in South Australia (1.07 fold).

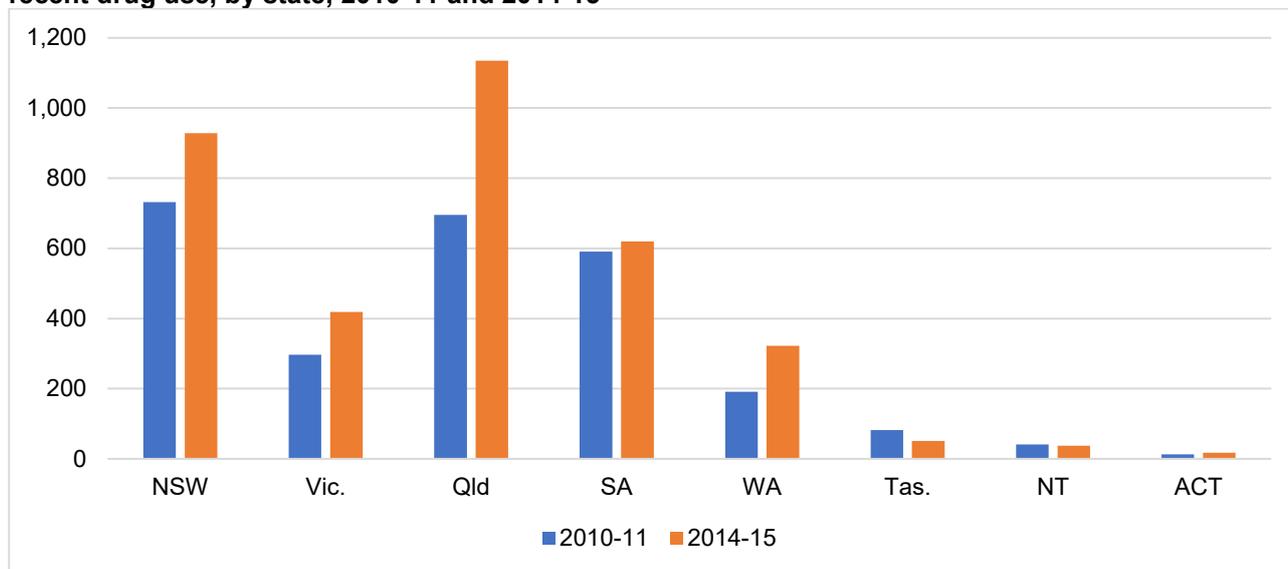
**Table 6: Number and rate of offenders detected for use/possession per 100,000 population in Australia, by jurisdiction, 2010-11 to 2014-15**

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
<b>Number</b>									
2010-11	10,102	4,061	10,497	8,797	3,553	981	878	172	39,042
2011-12	10,267	4,855	11,008	8,630	3,479	968	792	243	40,239
2012-13	11,325	5,198	12,365	8,900	3,971	802	622	249	43,439
2013-14	12,111	5,268	15,041	9,321	4,574	744	677	256	47,987
2014-15	13,189	5,982	17,599	9,728	5,471	766	821	268	53,813
<b>Rate</b>									
2010-11	161.3	84.3	273.1	610.6	175.9	219.4	452.0	53.8	201.8
2011-12	162.2	99.1	281.2	594.0	167.5	215.7	402.3	74.7	204.9
2012-13	176.8	104.1	309.8	607.4	185.9	178.6	307.7	75.2	217.5
2013-14	186.5	103.3	371.0	630.9	210.6	165.3	329.6	76.2	236.6
2014-15	200.3	115.0	428.4	653.2	249.6	169.8	398.8	78.8	261.6

One question is whether the trends in detections may be driven by changes in the prevalence of illicit drug use. It is very difficult to test the causal factors associated with the trend changes within jurisdictions. It may be related to epidemiological change, environmental/context change, policing change or other factors. We examined epidemiological, that is changes in drug use rates from the start to the end of the ABS analysis, by adjusting the population (ERP) by the prevalence of recent (last year) drug use in each state as reported in the National Drug Strategy Household Survey for the closest available year (AIHW, 2011, 2014a) (see Figure 5 and Appendix D). Taking into account changes in the prevalence of recent use (including a small growth in the prevalence of illicit drug use in Queensland from 15.1% in 2010 to 15.5% in 2013), the number of offenders detected still increased at a higher rate in Queensland, which does not appear attributable to changes in drug use patterns alone. This suggests that Queensland is an outlier state, with both the highest number of detections and increasing trends of

detections: both factors that could skew the national analysis. As such, where possible in subsequent analysis we separate out trends including and excluding Queensland.

**Figure 5: Number of offenders detected with a principal offence of use/possess per prevalence of recent drug use, by state, 2010-11 and 2014-15**



### 5.3 Incidence of police diversion for offenders detected with a principal offence of use/possess in Australia

In this section we used data about the actions of police (“method of proceeding”) and the type of legal action initiated by police (court action or non-court-action), for all states/territories except the Northern Territory. Data were not available for the Northern Territory as an internal review of recording practices and systems undertaken by the Northern Territory Police in 2015 highlighted concerns with their method of proceeding data.<sup>6</sup> That said the number of offenders in the Northern Territory was small: between 629 and 879 offenders per year.

Over the five-year period, on average 55.5% offenders detected with a principal offence of use/possession in Australia were diverted from court action (see Figure 6). This equates to an average of 24,499 offenders per year or 122,498 offenders over the five-year period. Excluding Queensland, (the outlier state with the highest detections and largest increase in detections), the proportion of offenders diverted by police increased to 63.8%. These data include a small number of offenders who failed to fulfil program requirements and later ended up in court. (See Section 5.4 for full details). This suggests that 55.5%-63.8% receive some form of drug diversion by police, at least in the first instance.

<sup>6</sup> The review showed that due to system constraints, an accurate method of proceeding (court or non-court action) could not always be determined.

**Figure 6: Percentage of offenders with a principal offence of use/possession given a police drug diversion – 2010-11 to 2014-15 inclusive – a) including Queensland and b) excluding Queensland**

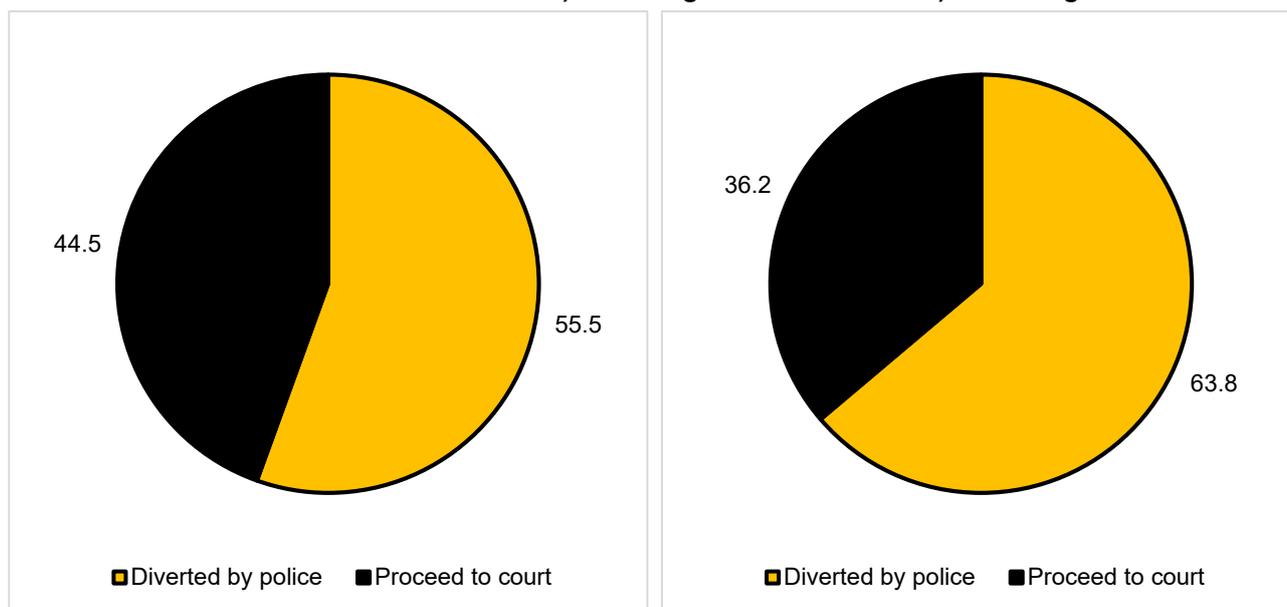


Table 7 outlines diversion trends from 2010-11 to 2014-15. This indicates that while the number of offenders receiving a police diversion has increased, the proportion that are diverted has declined. The proportion of offenders receiving a police diversion declined from 59.1% to 51.1% (or from 66.6% to 60.3% excluding Queensland). As such there are more offenders in recent years proceeding straight to court for use/possess alone.

**Table 7: National trends in the number and percentage of offenders that are a) diverted by police and b) proceed straight to court (including and excluding Queensland)<sup>7</sup>**

Year	Diverted by police	Proceed straight to court	Total	% diverted by police	% proceed straight to court
<b>Including Queensland</b>					
• 2010-11	22,561	15,607	38,163	59.12	40.90
• 2011-12	22,767	16,694	39,450	57.71	42.32
• 2012-13	24,130	18,690	42,810	56.37	43.66
• 2013-14	25,909	21,409	47,315	54.76	45.25
• 2014-15	27,131	25,856	53,003	51.19	48.78
• All years	122,498	98,256	220,741	55.49	44.51
<b>Excluding Queensland</b>					
• 2010-11	18,423	9,246	27,666	66.59	50.19
• 2011-12	18,509	9,941	28,442	65.08	53.71
• 2012-13	19,477	10,973	30,445	63.97	56.34
• 2013-14	20,613	11,661	32,274	63.87	56.57
• 2014-15	21,357	14,036	35,404	60.32	65.72
• All years	98,379	55,857	154,231	63.79	56.78

<sup>7</sup> This includes a small number of offenders who were diverted by police and failed to fulfil program requirements and later ended up in court.

## 5.4 Incidence of prosecutions for offenders detected with a principal offence of use/possess in Australia

The number of defendants finalised in Australian courts from 2010-11 to 2014-15 with a principal offence of use/possession is outlined below in Table 8, by court level. Over the five-years there were 101,610 defendants finalised in Australian courts for drug use or possession: an average of 20,322 defendants in any one year. The majority were processed in Magistrates' courts accounting for 97% defendants per year. But, 0.4-0.7% were processed in the Higher Courts. Similar to trends in police detections, there was an increased trend from 2010-11 to 2014-15 in the total number defendants finalised by the courts for use/possession alone.

**Table 8: Defendants finalised with a principal offence of use/possession, by court, 2010-11 to 2014-15 (including and excluding Queensland)**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
<b>Including Queensland</b>							
• Higher Courts	174	144	138	135	168	758	0.7%
• Magistrates' Courts	15,932	16,857	18,950	21,278	25,708	98,724	97.2%
• Children's Courts	421	405	395	441	467	2129	2.1%
• All Courts	16,528	17,408	19,480	21,853	26,341	101,610	100.0%
<b>Excluding Queensland</b>							
• Higher Courts	52	46	55	50	43	245	0.4%
• Magistrates' Courts	9,460	10,112	11,355	12,095	14,566	57,588	96.9%
• Children's Courts	329	321	297	324	325	1597	2.7%
• All Courts	9,843	10,480	11,703	12,471	14,936	59,434	100.0%

## 5.5 Incidence found guilty for use/possession in Australia

Table 9 outlines the method of finalisation of defendants with a principal offence of use/possession over the period 2010-11 to 2014-15. This shows that over the five-years 96,881 defendants were found guilty for use/possession: an average of 19,376 defendants per year. This means that on average 95% of defendants were proven guilty for drug use/possession per year. However, this differed by court level. For example, 83% of those in the Children's Court and Higher Courts were proven guilty, compared to 95% in the Magistrates' Court. In contrast, only 2.9% defendants had their case withdrawn by the prosecution and 0.8% were acquitted.

**Table 9: Method of finalisation of defendants with a principal offence of use/possession over the period 2010-11 to 2014-15 (including and excluding Queensland)**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
<b>Including Queensland</b>							
• Acquitted	185	174	157	155	147	818	0.8
• Proven guilty	15,677	16,534	18,626	20,881	25,163	96,881	95.3
• Transfer to other courts	103	88	88	145	192	615	0.6
• Withdrawn by prosecution	506	502	588	615	776	2988	2.9
• Total finalised	16,528	17,408	19,480	21,853	26,341	101,610	100.0
<b>Excluding Queensland</b>							
• Acquitted	171	149	136	121	112	689	1.2
• Proven guilty	9,367	9,933	11,209	11,957	14,357	56,824	95.6
• Transfer to other courts	31	41	37	69	98	275	0.5
• Withdrawn by prosecution	218	264	311	265	303	1361	2.3
• Total finalised	9,843	10,480	11,703	12,471	14,936	59,434	100.0

## 5.6 Sanctions of defendants for use/possession in Australia

The principal sentence of defendants with a principal offence of use/possession over the period 2010-11 to 2014-15 is outlined in Figure 7 and Table 10. Figure 7 shows that the majority of defendants who were proven guilty for this offence received non-custodial sanctions. This included 96.2% of all those sentenced, or 97.4% excluding Queensland. This meant that only 2.6% or 3.8% defendants received some form of custodial sanction, defined as imprisonment or a custodial sanction served in the community. (Rates were however higher in Queensland: 6.8% - see Appendix D). Trends over time show increasing numbers of defendants sanctioned for use/possession have received non-custodial orders, but the proportion receiving this sanction has remained unchanged.

**Figure 7: Custodial versus non-custodial orders for defendants with a principal offence of use/possession, 2010-11 to 2014-15**

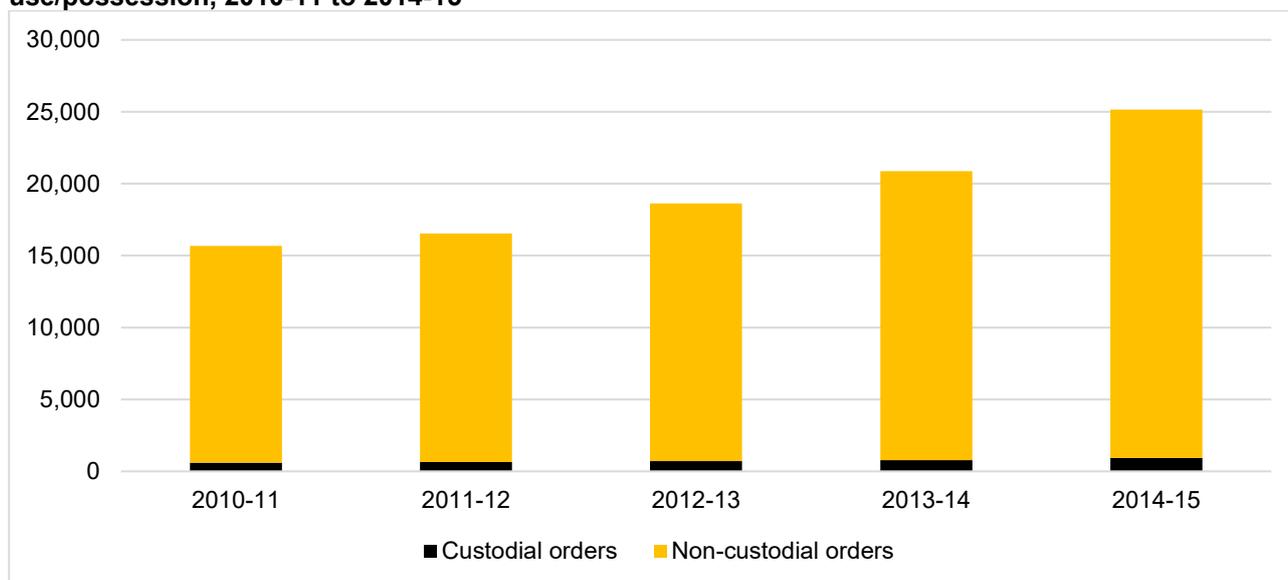


Table 10 disaggregates the type of sentences. This shows that across Australia 2.1% those sentenced were given a custodial sanction that involved imprisonment. This equates to 2089 defendants over the five-year period, or an average of 417 defendants per year. But the main sanction provided was monetary orders, given to 63.8% of all defendants.

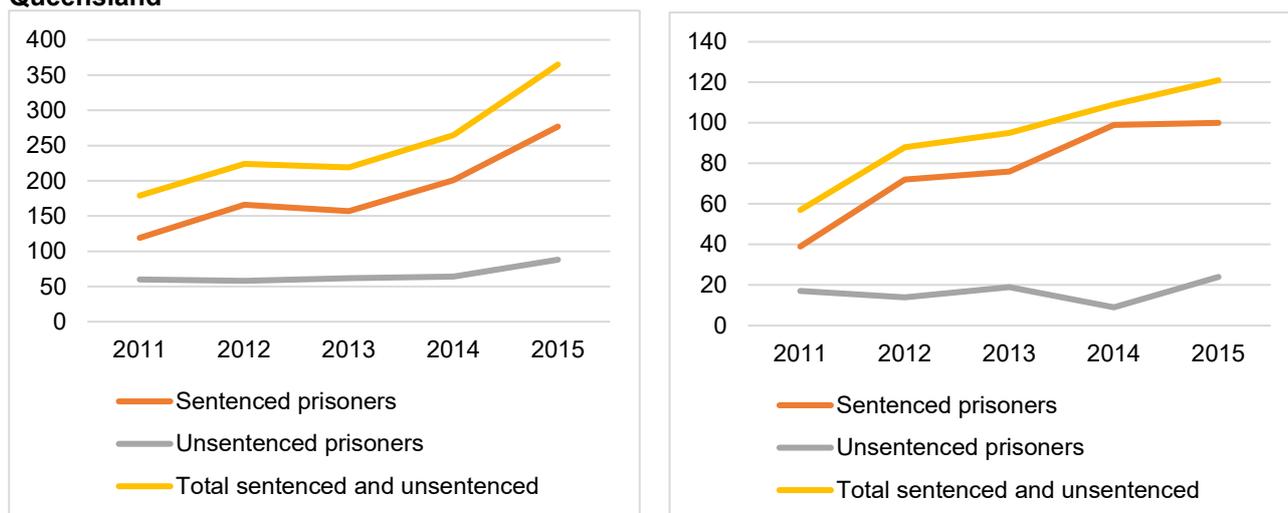
**Table 10: Principal sentence of defendants with a principal offence of use/possession over the period 2010-11 to 2014-15 (including and excluding Queensland)**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
<b>Including Queensland</b>							
Custodial orders	605	658	714	790	945	3,713	3.8
• Custody in a correctional institution	330	366	378	441	575	2,089	2.1
• Suspended sentence	275	292	336	349	371	1,624	1.7
Non-custodial orders	15,071	15,874	17,915	20,092	24,216	93,167	96.2
• Monetary orders	9,928	10,722	11,754	13,289	16,105	61,799	63.8
• Community supervision/work orders	632	649	676	905	1,098	3,960	4.1
• Other non-custodial orders e.g. good behaviour order	4,511	4,502	5,485	5,896	7,008	27,403	28.3
Total	15,677	16,534	18,626	20,881	25,163	96,881	100.0
<b>Excluding Queensland</b>							
Custodial orders	258	258	301	296	352	1,465	2.6
• Custody in a correctional institution	128	156	157	161	234	835	1.5
• Suspended sentence	130	101	144	135	118	630	1.11
Non-custodial orders	9,109	9,675	10,908	11,662	14,008	55,361	97.4
• Monetary orders	6,603	7,195	7,646	8,265	9,992	39,701	69.9
• Community supervision/work orders	125	134	128	180	213	779	1.4
• Other non-custodial orders e.g. good behaviour order	2,381	2,348	3,139	3,218	3,801	14,886	26.2
Total	9,367	9,933	11,209	11,957	14,357	56,824	100.0

## 5.7 Prison trends for use/possession in Australia

Figure 8 outlines the number of people imprisoned for use/possession, differentiating sentenced and unsentenced prisoners over the period 2011 to 2015. This shows that over the five years there were a total of 1252 people imprisoned with a principal offence of drug use/possession in Australia: of which 26.8% were unsentenced. Excluding Queensland there were fewer prisoners and fewer prisoners who were unsentenced (15.9%). (See Appendix D for Queensland data).

**Figure 8: Number of prisoners with a most serious offence of use/possession in Australia, 2011-2015, including those sentenced and those unsentenced a) including Queensland and b) excluding Queensland**



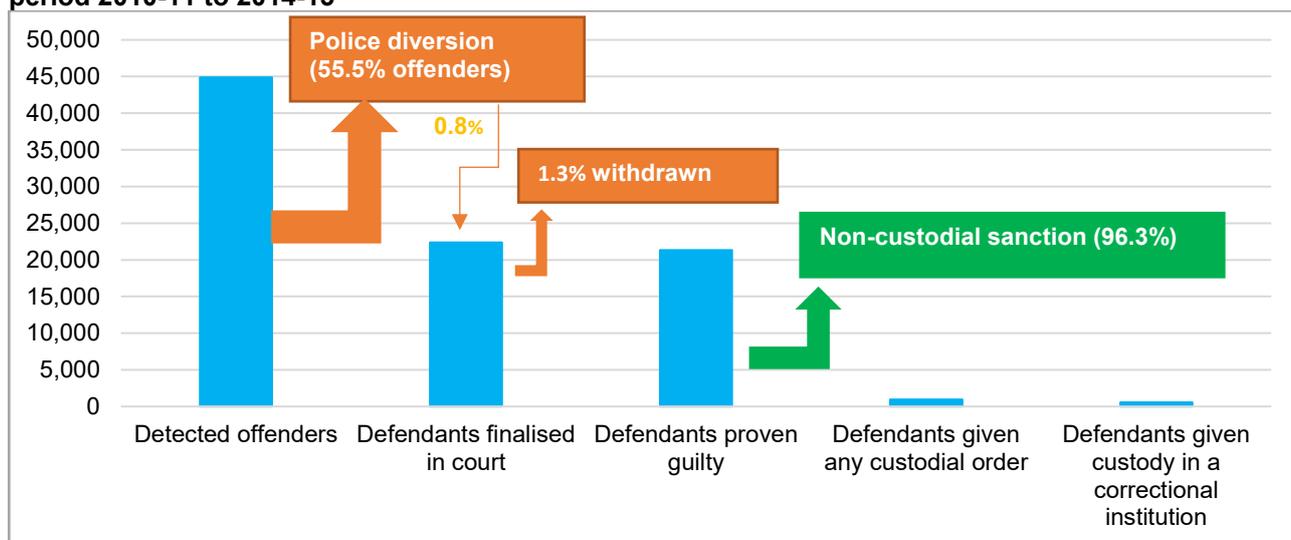
## 5.8 Aggregate movement of use/possess offenders through the Australian criminal justice system

In this final section we draw together each of the datasets to show the movement of defendants through the Australian criminal justice system: from the point of police detection to sentencing by the courts. Figure 9 shows the annual average movement of offenders with a principal offence of use/possession through the Australian criminal justice system over the period 2010-11 to 2014-15, including diversion from prosecution and diversion from imprisonment. This shows that:

- There were on average 44,904 offenders detected with a principal offence of use/possession in any one year.
- 55.5% were diverted in the first instance by police away from court.
- 45.3% proceeded to court (including a small number of offenders – 0.8% – who failed to fulfil their diversion program requirements).
- 43.2% all detected offenders, or almost all (95%) offenders who proceed to court were found guilty and sentenced.
- Of those sentenced, most (96.3%) receive a non-custodial order e.g. a monetary order (63.8%). Conversely, 2.2% of all those sentenced received custody in a correctional institution (with a median sentence length of 4 months).

As such this indicates clear evidence of both diversion of offenders from prosecution, and even stronger evidence of diversion from prison for this offence alone. Nevertheless, the data reveals that many use/possess offenders continue to proceed to court for this offence alone, and the potential benefits of increasing pre-court diversion in Australia.

**Figure 9: Annual average movement of use/possess offenders through the Australian criminal justice system, and points of diversion from prosecution (orange) and from imprisonment (green) over the period 2010-11 to 2014-15**



**Table 11: Australian criminal justice system response to use/possess offenders, 2010-11 to 2014-15**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total all years	Annual ave
Detected offenders	39,042	40,239	43,439	47,987	53,813	224,520	44,904
Defendants finalised in court	16,528	17,408	19,480	21,853	26,341	101,610	20,322
Defendants proven guilty	15,677	16,534	18,626	20,881	25,163	96,881	19,376
Defendants given <u>any</u> custodial order <sup>1</sup>	787	856	928	1,027	1,229	4,827	965
Defendants given custody in a correctional institution	429	476	491	573	747	2,716	543

<sup>1</sup> This includes custodial sanctions served in the community.

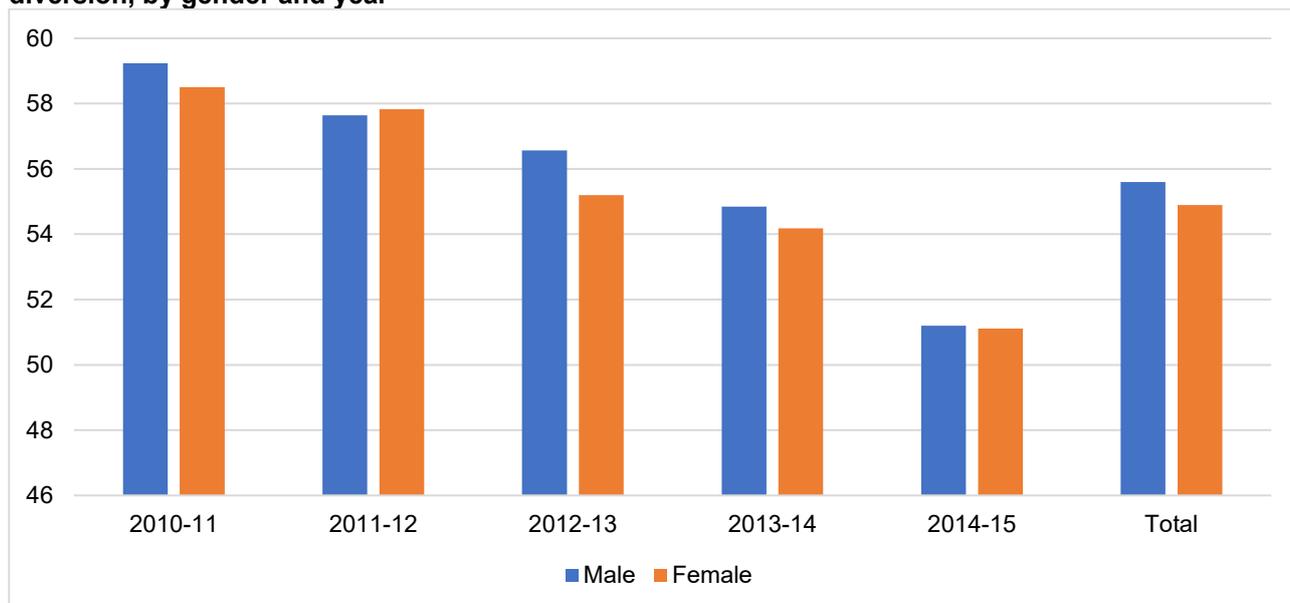
## 5.9 Factors that may influence receipt of a diversionary response

Here we examine four factors that may influence receipt of a diversionary response: gender, age, jurisdiction and prior criminal justice history.

### Gender

Figure 10 shows the proportion of offenders with a principal offence of use/possession receiving a police diversion, by gender and year. This shows that there were no significant differences in terms of the gender: with on average 55.6% of male use/possess offenders in Australia and 54.9% of females use/possess offenders given a police diversion. Moreover, while there was a decrease in the provision of diversion over time, the likelihood of males and females receiving a diversion has remained similar.

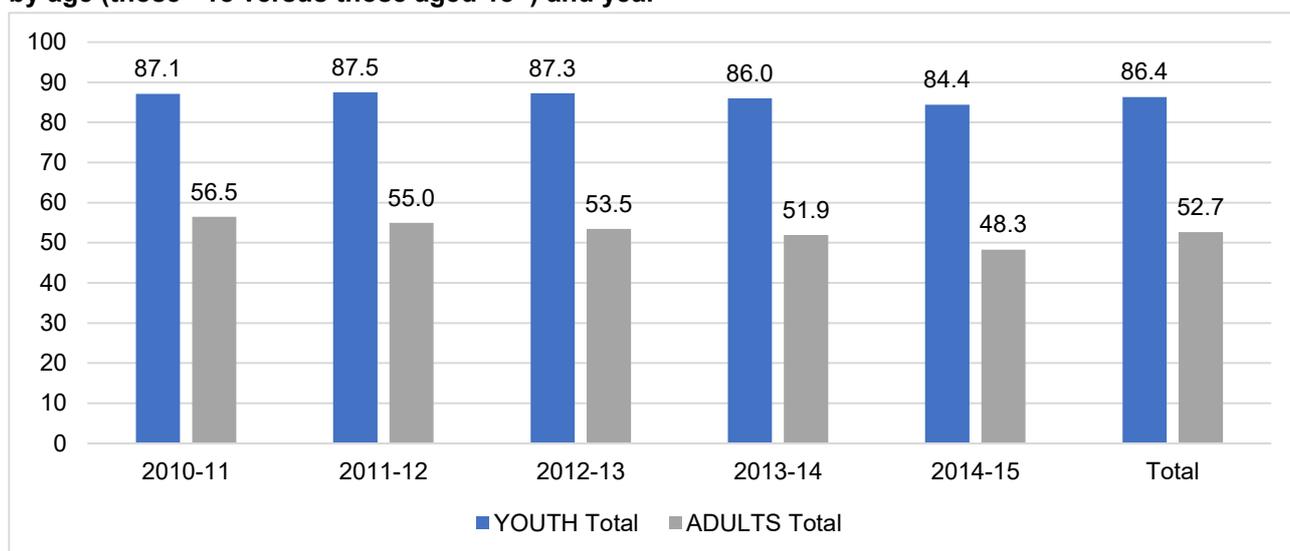
**Figure 10: Proportion of offenders with a principal offence of use/possession receiving a police diversion, by gender and year**



### Age

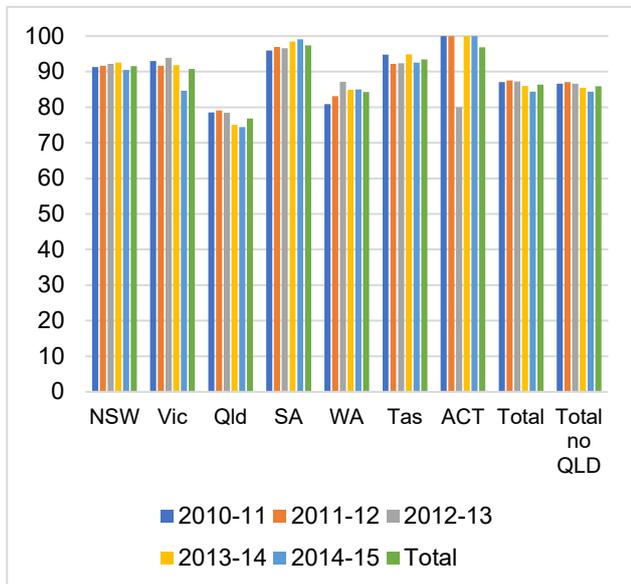
Figure 11 shows the proportion of youth (those aged under 18) versus adults (those aged over 18) receiving a diversion for a principal offence of use/possession in Australia. This shows that young people were significantly more likely to receive a diversion than their adult counterparts. For example, over the five-year period 86.4% of people aged under 18 detected for use/possession in Australia received a police diversion, compared to 52.7% of those aged 18 and over. Moreover, while there was a decrease in diversion of adults over time (from 56.5% to 48.3%), rates of youth diversion remained high ( $\geq 84.4\%$  in all years).

**Figure 11: Proportion of offenders with a principal offence of use/possession receiving a diversion, by age (those <18 versus those aged 18+) and year**

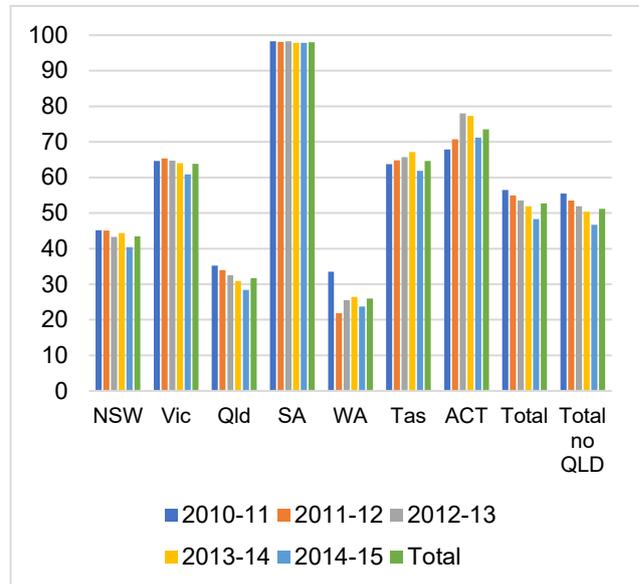


There were also clear differences in how states treat youth versus adults with a principal offence of use/possession. This is clearly illustrated in Figures 12 and 13.

**Figure 12: Proportion of offenders diverted amongst those aged <18, by state and year**



**Figure 13: Proportion of offenders diverted amongst those aged ≥18, by state and year**

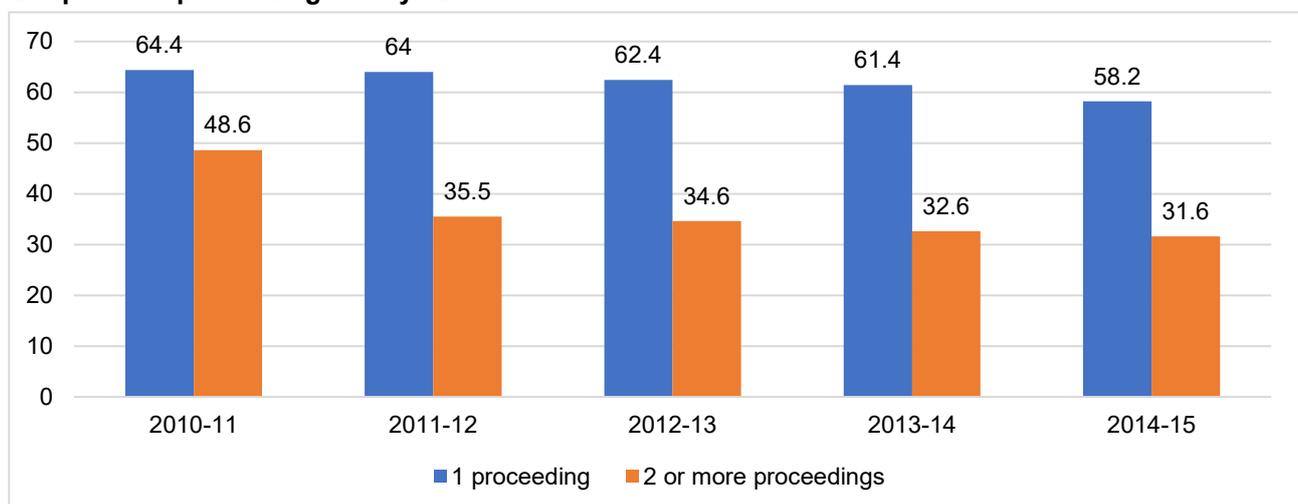


For example, SA diverted 97.4% youth and 98.0% adults over the five-year period. The ACT also diverted high rates of both youth and adults (96.8% and 73.5% respectively). In contrast, WA and Queensland diverted proportionally far fewer adults. For example, WA diverted 26.9% adults versus 84.3% of youth. In such states, youth were thus 2.4 or 3.1 times more likely to be diverted for this offence than their adult counterparts.

Prior criminal justice history

Figure 14 shows the proportion of offenders with a principal offence of use/possession who are diverted, by prior police proceedings for use/possession for all jurisdictions excluding the NT and WA. This shows that there is an association between the action taken by police and number of prior police proceedings received in the last 12 months for use/possession: with those with only one police proceeding significantly more likely to be diverted than those with two or more proceedings.

**Figure 14: Proportion of offenders with a principal offence of use/possession diverted, by number of use/possess proceedings and year**



While this would appear to be in part an artefact of the current program design (which focus on first-time offenders) a similar pattern of increased likelihood of court action for repeat offenders was evident in all jurisdictions and in all years excepting SA in 2014-15 (Table 12). Moreover, the difference in responses to first versus repeat offenders was most noticeable in NSW, Vic and Qld, which afford two, two and one diversion opportunities respectively. This indicates that it is not just states offering one diversion that have lower diversion rates.

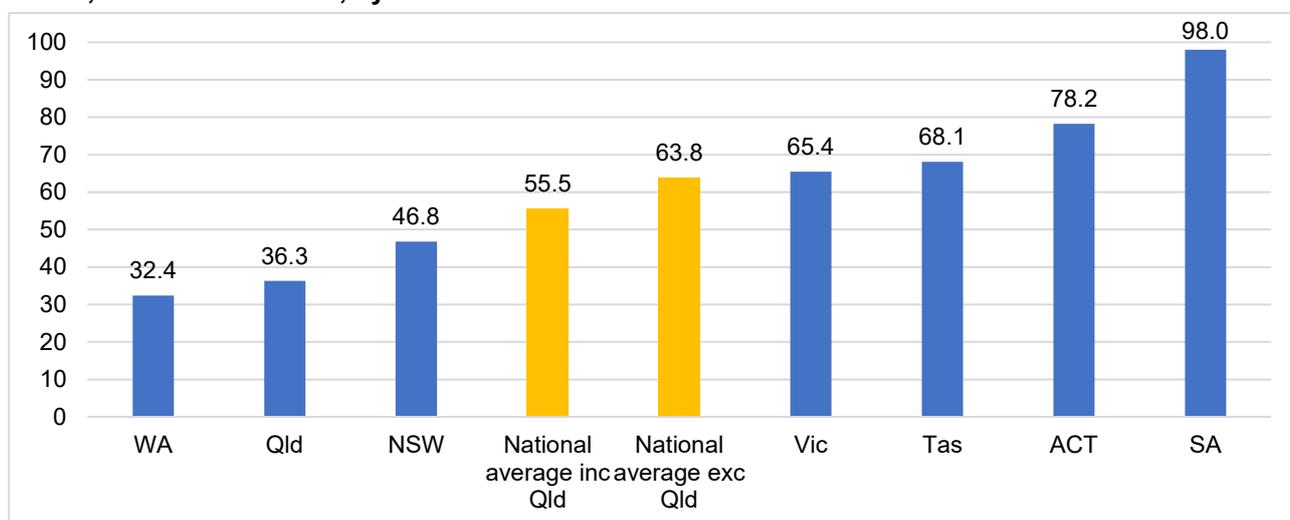
**Table 12: Percentage of offenders with a principal offence of use/possession receiving a police diversion, by number of proceedings and state, 2010-11 to 2014-15**

	2010-11		2011-12		2012-13		2013-14		2014-15	
	1	≥2	1	≥2	1	≥2	1	≥2	1	≥2
NSW	49.7	35.9	49.8	31.2	47.8	33.2	49.3	32.2	45.7	26.9
Vic	67.7	50.4	69.0	42.5	69.0	40.0	68.6	37.2	65.9	32.1
Qld	43.3	26.6	43.2	23.9	42.3	22.6	39.8	22.5	38.4	18.2
SA	98.3	94.9	98.3	94.1	98.4	92.8	98.3	92.4	98.0	97.7
Tas	70.1	52.9	69.6	62.2	70.0	64.8	72.5	66.4	66.6	59.2
ACT	70.2	56.5	78.2	85.7	79.4	61.1	83.6	80.0	79.1	42.9
National	64.4	48.6	64.0	35.5	62.4	34.6	61.4	32.6	58.2	31.6

#### State/territory

Without doubt the most important factor associated with diversion access was jurisdiction. Figure 15 shows the proportion of offenders diverted from 2010-11 to 2014-15 inclusive for all states excepting the NT (see Appendix D for 2014-15 date). This shows that while on average 55.5% of use/possess offenders are diverted by police from court action, there are large state differences in the incidence of diversion by police for use/possess offenders: ranging from 32.4% offenders diverted in WA to 98.0% offenders diverted in SA. Indeed, this indicates that people who are detected in WA are three times less likely to be diverted for this offence alone than their counterparts from SA. Moreover, while the analysis excludes the NT, analysis of the proportion of use/possess offenders who end up in court (see Table 15) indicates that the NT has the second highest level of pre-court diversion (with only 24.4% offenders proceeding to court). As such, we can conclude that three states have less than 50% of offenders diverted by police: WA, QLD and NSW. All are thus ‘out of sync’ with diversion practices in the rest of Australia. The reasons for this are explored in Part 6.

**Figure 15: Proportion of offenders with a principal offence of use/possession diverted from court action, 2010-11 to 2014-15, by state**



Looking over time shows some further difference in trends in the use of police diversion for use/possession across states (see Table 13). Of note, prior to 2014-15 the incidence of police diversion increased in the ACT and Tasmania but reduced in WA, Qld and NSW.

**Table 13: Proportion of offenders with a principal offence of use/possession given a police diversion by state and year**

Year	NSW	QLD	VIC	SA	WA	TAS	ACT	National average inc Qld	National average exc Qld
2010-11	48.51	39.42	66.26	98.18	39.85	66.56	73.26	59.12	66.59
2011-12	48.29	38.68	67.00	98.09	28.26	68.29	77.78	57.71	65.08
2012-13	46.57	37.63	66.41	98.08	31.91	69.20	80.32	56.37	63.97
2013-14	47.63	35.21	65.83	97.90	33.08	71.51	80.86	54.76	63.87
2014-15	43.64	32.81	62.35	97.96	29.85	65.40	77.24	51.19	60.32

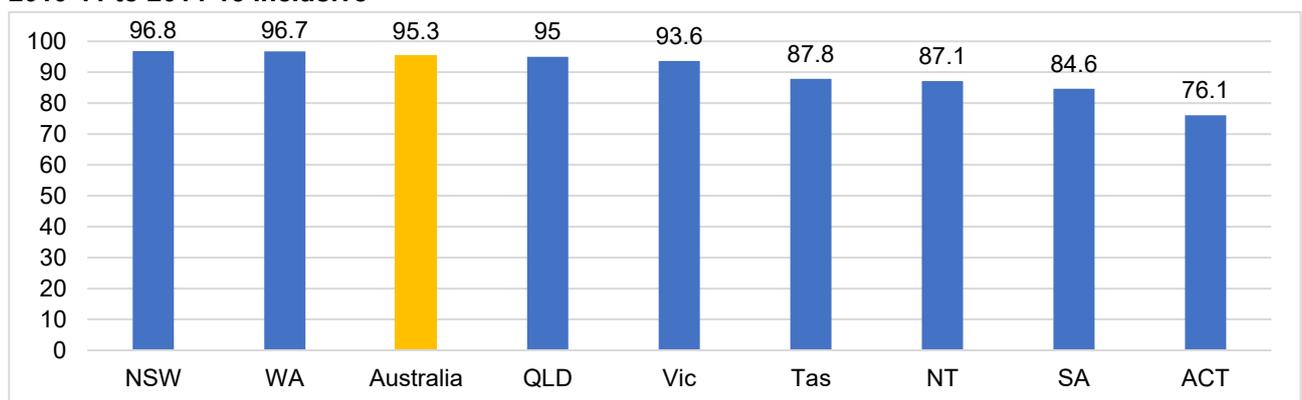
Table 15 shows the absolute number of offenders diverted in each year. This shows that the number of offenders diverted increased in most states from 2010-11 to 2014-15. But the rate of diversion has not kept pace with the number of offenders being detected by police.

**Table 14: Number of offenders given a police diversion for use/possession, by state**

Year	NSW	Qld	Vic	SA	WA	Tas	ACT	Total inc Qld	Total exc Qld
2010-11	4,900	4,138	2,691	8,637	1,416	653	126	22,561	18,423
2011-12	4,958	4,258	3,253	8,465	983	661	189	22,767	18,509
2012-13	5,274	4,653	3,452	8,729	1,267	555	200	24,130	19,477
2013-14	5,768	5,296	3,468	9,125	1,513	532	207	25,909	20,613
2014-15	5,756	5,774	3,730	9,530	1,633	501	207	27,131	21,357

State differences also occur in diversion at court: with more cases withdrawn by prosecution or acquitted in ACT, SA, NT and Tas. The one noted commonality is the high level of diversion away from prison. Here we see a very similar commitment in all states and territories (see Table 15), the slight exception being Queensland.

**Figure 16: Proportion of defendants proven guilty for use/possession of those that went to court, 2010-11 to 2014-15 inclusive**



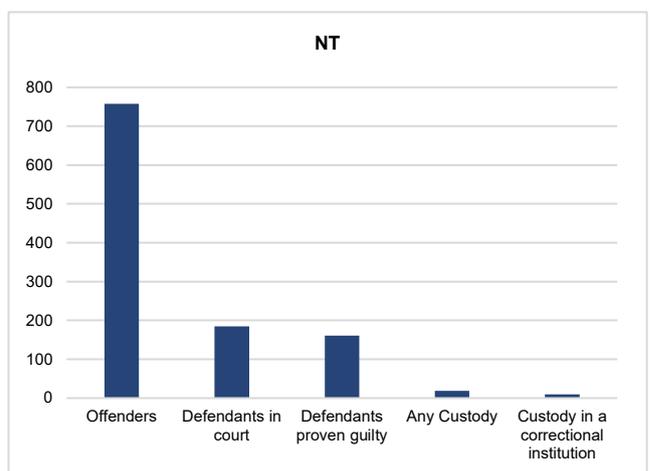
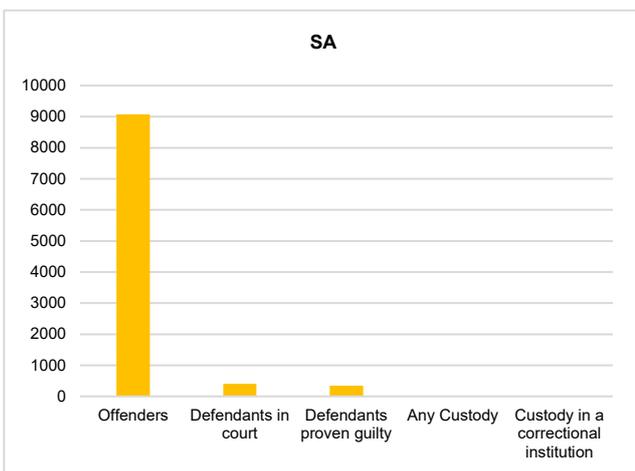
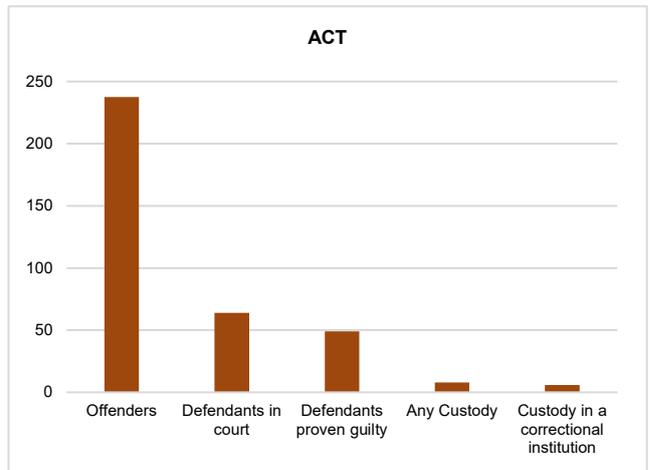
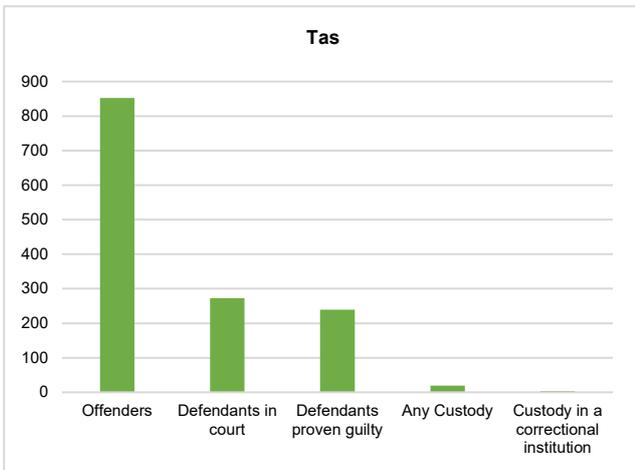
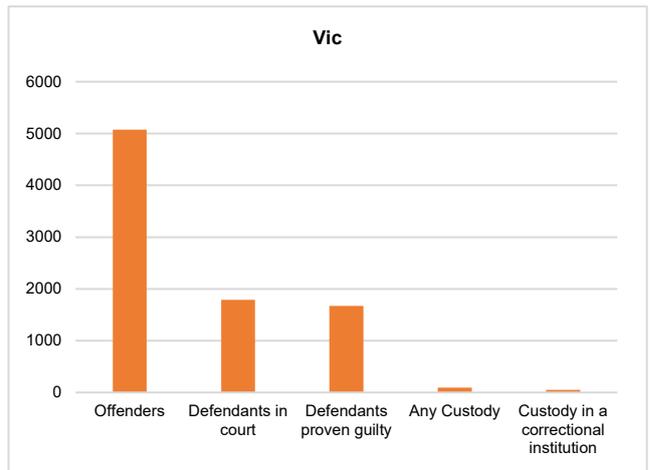
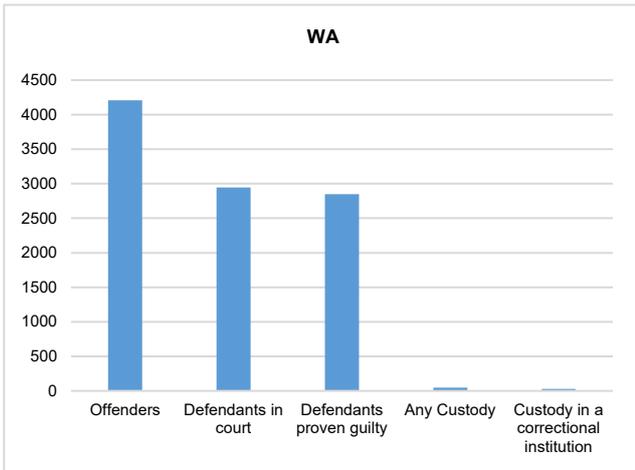
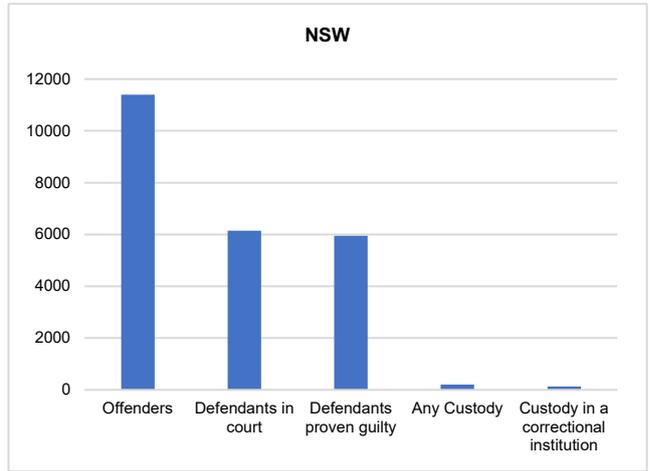
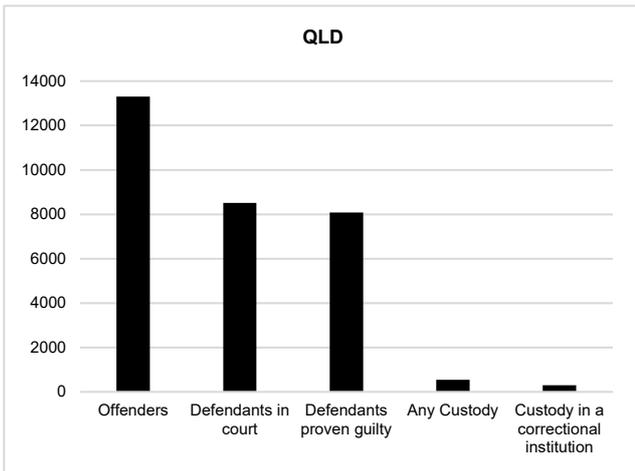
The net result is while the movement of use/possess offenders through the criminal justice system has a similar pattern across states, some jurisdictions have many more offenders who proceed to court. This appears to reflect the levels of policing of use/possession offenders, as well as the levels of police diversion and actions within the court. For example, SA has the third highest rate of detections but only 4.5% offenders proceed to court for this offence. WA in contrast has the fourth lowest rate of

detections of use/possess offenders, but due to the highest rate of defendants finalised in court (70.0%), has many more defendants in court and sentenced to prison for use/possession alone.

**Table 15: Australian criminal justice system response to use/possess offenders, annual average, 2010-11 to 2014-15 inclusive, by state/territory**

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT
Detected offenders	11,399	5,073	13,302	9,075	4,210	852	758	238
Defendants finalised in court	6,146	1,789	8,513	410	2,947	273	185	64
Defendants proven guilty	5,951	1,674	8,085	347	2,850	239	161	49
Defendants given <u>any</u> custodial order	206	96	540	28	46	19	19	8
Defendants given custody in a correctional institution	135	50	301	5	28	4	10	6

Graphical representations are shown below.



## 5.10 Limitations

There are a number of limitations with the analysis, many of which reflected the data that are currently available. First, the ABS do not collect data on drug type, and hence we were not able to see whether there were differences in responses to different drug types. Second, we were not able to examine the role of Aboriginal or Torres Strait Islander status and rural/regional/metropolitan residence, albeit expect both would affect who is and is not diverted. (We nevertheless asked our stakeholders about this in part 6). Third, while we had data on those who were prosecuted, found guilty and sentenced for use/possession, no data are collected about convictions by the ABS. As such as were not able to differentiate what proportion of use/possess offenders end up with a criminal conviction for this offence alone.

In Part 6 of this report, we examine stakeholders' perceptions of existing diversion options and trends. As we shall see, the specific machinations of the various diversion programs such as whether they are enshrined in legislation and their eligibility criteria, play an important role in shaping existing possibilities for rates of diversion across the country.

Unfortunately, the picture is less clear with regards to legislative approaches to use and possession. Existing ABS data do not distinguish between use and possession offences. It is not possible, in other words, based solely on ABS data, to know what proportion of people diverted by police were diverted for use offences and what proportion were diverted for possession offences. It is also not possible to know whether there are differences regarding patterns of use and possession detection between jurisdictions, and whether this impacts on who is eventually diverted.

These limitations in the available data impact our assessment in three main ways.

First, if we had data on drug type, we could differentiate how that impacts on diversion uptake. Given police diversion programs for cannabis use/possession is universal, but not for other illicit drugs we conjecture that people detected for cannabis use/possession will be much more likely to be diverted. This is supported by an unpublished analysis done for the National Drug Strategy Committee in 2017, based on detected offences, rather than detected offenders, that found police diversion of cannabis was double that of police diversion of other illicit drugs. Data on drug type would also be useful to elucidate whether diversion rates differ across other illicit drug types e.g. heroin versus methamphetamine.

Second, if we knew what proportion of overall detections were for use, as opposed to possession, we might be able to get a sense of whether it matters to have use as a standalone offence. That is, Queensland does not have a standalone offence for use/self-administration and yet, as we explored in Part 5, a relatively high number of people are detected for drug offences in Queensland. The likelihood, therefore, is that the absence of a standalone offence for use does not make much difference to the number of people detected and thus to overall patterns of diversion (i.e. it is neither an obvious barrier or enabler).

Thirdly, because we do not know how rates of detection for possession offences differ between the different jurisdictions, it is not possible to say how important different definitions of possession – including deemed possession – are, if indeed they have an impact. We cannot rule out the possibility that slight differences in the common law matter, but future work, including access to data that breaks down offences in this way will be useful.

## 5.11 Conclusion

In conclusion, analysis of ABS data has showed that over the period 2010-11 to 2014-15 on average 44,904 offenders are detected per annum with a principal offence of use/possession, with 55.5% of

offenders diverted by police, with an additional 1.3% diverted in court. Moreover, the data show that of those that go to court (an average of 22,288 in any one year) the majority are found guilty and sentenced for this alone, but that very few receive a custodial sentence for this offence alone.

We also see that key factors shaping who is and is not diverted include age and past criminal history, with adults much less likely to be diverted than their youth counterparts and those detected for a second or third offence of use/possession. Most importantly, we see the large role played by jurisdiction in terms of who is diverted, with police diversion rates varying from 32% in Western Australia to 98% in South Australia. That people with a principal offence of use/possession in Western Australia are three times less likely to be diverted than those in South Australia, and those in Queensland and New South Wales 2.6 and 2.1 times less likely to be diverted, reveals a striking inequity in current diversion responses. It also leads to a far greater burden on the police, prosecutors and courts in such states.

Queensland also warrants mention here as while diversion rates were higher than Western Australia, Queensland accounted for the largest increase in people detected for use/possession in Australia and the highest rates of offenders being sentenced to prison for use/possession alone. We note that such a finding reflects a longer trend, as evidenced by the recent analysis by the Queensland Sentencing Advisory Council that showed the number of offenders sentenced for possessing dangerous drug offences as their most serious offence more than doubled between 2005-06 to 2015-16 (Queensland Sentencing Advisory Council, 2017).

Finally, the data indicate that the use of diversion is reducing across most parts of Australia: down from 59.1% in 2010-11 to 51.1% in 2014-15. We note that this trend is echoed by unpublished data from the Victorian Crime Statistics Agency that showed cautions or warnings were used in one-quarter of alleged minor drug offences recorded by Victoria Police over the period 1 July 2007 to 30 June 2017, but that the proportion of use/possess offences receiving a caution or warning decreased, from 31% in 2010-11 to 24% in 2014-15 (Bathy & Fisher, 2018). What is driving these trends and gaps in diversion for specific groups as well as how diversion *can* be expanded is something we explore in the final section.

## **PART 6: BARRIERS AND FACILITATORS TO EXPANDING THE DIVERSION OF USE/POSSESSION OFFENDERS IN AUSTRALIA**

This section examines results from our expert consultations. A total of 24 people took part including police from all states (except Victoria and the Northern Territory), justice, health bureaucrats, non-government organisations and peak bodies. In advance all stakeholders were provided with a briefing paper outlining the key trends from the ABS data and details regarding laws and diversion programs from across Australia. They were then given the opportunity to comment on the findings, express views about the current reach of diversion and to identify barriers and enablers to expanding the diversion of use/possess offenders in Australia. Consistent with Part 2 participants had a range of views about the purpose of diversion: whether it involves diversion away from the criminal justice system or diversion into education/treatment or a combination for different offender groups. This shaped some of the views outlined, including the necessity of treatment, as well as resource implications and what kinds of messaging or evidence of success are necessary and appropriate.

### **6.1 Expert impressions about the state of diversion in Australia**

#### **Support for diversion**

The expert consultation highlighted unanimous support for the use of drug diversion in Australia, recognising that this is more cost-effective, pragmatic and consistent with a harm minimisation approach. Diversion was also favoured for its ability to reduce workloads and pressures on both police and courts, and to allow young people to avoid a criminal sanction that can have lasting deleterious consequences.

“Diversion is a lot better than going before court just to get a section 10 or a fine. Earlier intervention is much better.” (P19)

“Police like cautioning because it is administratively easy.” (P1)

“I think they should be given the opportunity to attend the program. A lot of people attend and have no clue about what is happening to them. Education is a tool and then they can make decisions.” (P20)

#### **Support for *expanding* diversion**

There was a universal view, including amongst jurisdictions with relatively low and relatively high levels of diversion, that there needs to be more diversion for possession for personal use in Australia:

“We cannot see any reason why – for those in possession of small quantities of drugs or equipment – it would not be 100% diverted or provided with the opportunity.” (P4)

“We would like it to be a lot more.” (P3)

“The other states have broadened the reach of diversion, so that’s the way forward.” (P12)

This view was echoed by Victoria Police in their recent parliamentary submissions, including to the *Inquiry into the supply and use of methamphetamines, particularly ‘ice’, in Victoria*, which stated that “there is clearly scope to further increase use of the IDDI by police” (Victoria Police, 2015, p. 21), and in the Northern Territory (Legislative Assembly of the Northern Territory, 2015).

The need for more diversion was particularly prompted by concerns about the declining national trend and the large divergence in diversion access across the country.

“The data clearly shows the “lottery” for people who use drugs based on which state you are in [...] In terms of a national approach [that divergence] is poor.” (P10)

It is worth noting that many states and territories are in the midst of – or have just completed – internal reviews about how to increase the reach of diversion several of which are in response to the calls from the National Ice Taskforce (Lay, 2015). Knowledge of the current state of diversion and an understanding of how to expand it is thus timely and important.

“There have been a lot of reviews and support between government, health, justice and police about expanding diversion [...] There is universal support. We just need to figure out what it means and get it approved.” (P13)

“We are reviewing and seeking to make our diversion programs more contemporary.” (P14)

### **Importance of data on *extent* and *nature* of police diversion in Australia**

Stakeholders were unanimous regarding the importance of having access to data on the extent of diversion in Australia, particularly breakdowns by each jurisdiction. As noted by one stakeholder, “this is the type of data that we have long wanted” (P8). Although individual jurisdictions undertook their own internal reviews regarding diversion, data exchange was not common. Many noted the importance of being able to compare between jurisdictions, to assess how similar or different their jurisdiction was to others, and to identify which jurisdictions were “most out of kilter”:

“I was aware of most of it, except for how different X was from the other states.” (P12)

“The data is compelling [...] we need to do more [diversions].” (P7)

“Being able to show that your state is out of kilter, that could influence behaviour.” (P3)

Stakeholders from ‘higher’ diversion jurisdictions saw the potential for them to divert offenders with even more frequency, after seeing data from other jurisdictions:

“I am interested in the state by state breakdown. Looking at the nature and type there is a lot of scope for us to have a conversation with government about increasing the reach of drug services [...] We could do more in our jurisdiction.” (P23)

Stakeholders also noted the importance of seeing trends, particularly the common pattern across several jurisdictions of declining rates of diversion (counter to the objective of increasing diversion) and the characteristics of who was and was not diverted. For example, one stakeholder noted that the data “show that police are arresting people for use/possession alone [...] which is counter to the perception that all have concurrent offences” (P7). It also shows most people are young, and that “most people who are diverted do not return again” (P2). As such, “they are important messages.”

Data on diversion were thus deemed vital to leverage policy change and to feed into the design of new and/or improved diversionary approaches (see also Part 6.3).

### **Impressions about diversion of Aboriginal and Torres Strait Islander Australians and people who reside in rural/regional areas**

As we noted in part 5 of this report, the ABS data reveal important demographic and jurisdictional differences in the provision of diversion, such as between youth and adults. We did not have access to data on other potentially important demographic factors, however, including the Aboriginal and Torres Strait Islander status of people offered diversion, and the geographical location (rural/regional versus metropolitan) of offenders. We thus sought feedback from stakeholders on rates of diversion for

Aboriginal and Torres Strait Islander populations within their jurisdiction and rates of diversion as between rural/regional and metropolitan offenders, where appropriate.

Many stakeholders identified geographical location as a factor that shapes access to diversion. Indeed, the lower rates of diversion in Western Australian and Queensland were attributed by experts in part to those jurisdictions having relatively larger rural/regional populations. At least four jurisdictions that we spoke to also noted they have started to trial new technologies to overcome access issues in regional areas. (These issues are discussed in more detail in Part 6.2, below).

Stakeholders from many jurisdictions noted Aboriginal and Torres Strait Islander Australians were less likely to be diverted. Reasons for this included: that they resided in a rural/regional area, that they were often ineligible for diversion due to priors, or that they were required to admit the offence and that they were unwilling or reluctant to do so for cultural reasons.

“People need to admit the offence and that is a problem in Indigenous communities.” (P12)

Other experts had the impression from their own data sources that Aboriginal and Torres Strait Islander people were diverted at similar rates to non-Aboriginal and Torres Strait Islander people, but that rates of compliance and expiation were far lower:

“There is no evidence of under-issuing [of diversion to Indigenous people] but 75% of non-Indigenous people expiate through treatment but this drops to 25% for Indigenous people.” (P3)

The lower compliance was attributed to structural barriers to attending and complying with the diversion, including the difficulty in locating / contacting Aboriginal and Torres Strait Islander people, greater distances required to travel and lack of support structures e.g. resources to travel.

### **Reasons for jurisdictional differences**

We sought feedback from stakeholders as to what might be driving the large variation in rates of diversion across jurisdictions. The consensus was that these differences are rarely the result of one factor alone.

“SA ... it is legislated...and there are no limits on offenders going through the program.” (P8)

“We only offer diversion to cannabis offences [...] and we can only offer diversions once, whereas other states offer several times.” (P12)

“We expect NSW to be lower than other states as we have only cannabis (i.e. have no diversion for drugs other than cannabis) and have strict rules (e.g. can't have concurrent offence). This gets back to original goal of program that was about keeping people out of court.” (P1)

The relatively low rates of diversion in Western Australia were for many a surprise, given that Western Australia has diversion programs available for both cannabis and other illicit drugs. Experts attributed the low rates of diversion in Western Australia to three factors. First, Western Australia switched from a cannabis infringement notice scheme to a therapeutic cannabis diversion scheme during the first year of analysis, stopping or limiting access during the transition period. As such, Western Australia had a Cannabis Infringement Notice scheme until 2011. On 1 August 2011, the Cannabis Intervention Requirement (CIR) came in:

“This partly explains the drop (in police referrals) between 2010-11 and 2011-12 (from 1416 to 983), as people were learning how to run the new program.” (P3)

Second, Western Australia had (and continues to have) strict eligibility factors about priors, threshold quantities and the number of times offenders could be diverted.

“In Western Australia, legislation rules out prior minor cannabis offences. There is no window of time on it.” (P3)

Third, implementation issues made charging offenders easier for police than diversion (due to both a lack of a 24-hour diversion line and a requirement that police schedule diversion appointments) (see discussion below). In the next section we turn to the barriers and facilitators raised across all states and territories.

## **6.2 Barriers to the use of drug diversion**

### **Absence of full spectrum of programs**

All stakeholders noted that gaps in diversion programs reduce access. Of note, NSW and Queensland do not have drug diversion for illicit drugs other than cannabis: which is deemed the leading cause of their lower rates of diversion (as compared to other jurisdictions except Western Australia).

“In the NSW context police have cannabis cautioning or MERIT but nothing in between and MERIT is inappropriate and too long (3 months) for most people for possession of drugs other than cannabis. And people know that getting a section 10 is easier (than attending MERIT).” (P1)

The breadth of available diversion programs also matters, including whether programs are open to anyone versus only adults. Lack of breadth was deemed by experts to be a major contributor to the large differences between jurisdictions.

### **Changes in drug trends and policing of drugs**

In recent years Australia has seen significant shifts in who is policed for drugs: with many more use/possess offenders detected for methamphetamine and cocaine and less for cannabis (Australian Criminal Intelligence Commission, 2018; Crime Statistics Agency, 2016; Queensland Sentencing Advisory Council, 2017). Experts deemed the changing patterns the leading cause of the reduction in the proportion of use/possess offenders being diverted in Australia. In a climate where some jurisdictions have diversion programs limited to cannabis and with narrower eligibility criteria surrounding diversion programs for other illicit drugs this inevitably restricts police’s capacity to divert. Some stakeholders also stated that methamphetamine offenders may in some situations be less suitable for diversion based on concerns about their mental health. Added to that is the expert perceptions of higher rates of methamphetamine use in regional communities (which as noted above stymies access and/or compliance) with therapeutic diversion programs. Overall, the consensus amongst experts is that changing patterns are a major driver of reductions in diversion, as is the inability of current programs to keep up with those trends.

One question is what is driving the changing patterns. Experts noted that changes in policing may be one factor, such as increased targeting of high-use settings such as festivals and night-time settings. Targeting high-use settings is known to have a direct impact on the number of people detected for use/possession, but experts also noted the changes in policing can have indirect impacts upon diversion access, as it can lead to many more people detected than can be diverted given current resources or more people detected for drugs for which there is no diversion options. This is supported by an earlier evaluation of the NSW Cannabis Caution Program that attributed variation in diversion

across local area commands to “the results of targeted operations” (NSW Auditor General, 2011, p. 14).

### **Narrow diversion eligibility criteria**

Narrow eligibility criteria curtail access. As noted by many stakeholders, there has been much learnt since the introduction of the Illicit Drug Diversion Initiative about how eligibility criteria can exclude offenders. For example, four programs limit people to having one diversion opportunity only (WA CIR, WA ODIR, QLD PDDP and NTIDPCD) and three others restrict people to only two diversions. Some jurisdictions include a requirement that offenders admit to the offence as a condition to being offered diversion; as we noted in Part 6.1, this can particularly disadvantage Aboriginal and Torres Strait Islander people, for both cultural reasons and a lack of trust in police. Rules regarding prior convictions can also be important barriers. For example, the WA CIR rules out anyone who has been convicted of a minor cannabis related offence as an adult.

Experts also noted the role of low threshold quantities. Of note while most states have threshold limits of 2 grams the current threshold quantity in the WA ODIR program is 0.5 grams. Work published by Hughes, Ritter et al. (2014a) has shown the importance of careful threshold quantity design in drug trafficking laws, that takes into account Australian consumer consumption and purchasing patterns. Similar principals apply to threshold quantities on drug diversion programs. For example, in the early part of the ABS analysis ACT police diversion for drugs other than cannabis were curtailed due to low threshold limits: 2 ‘ecstasy’ pills or 0.5 pure grams of heroin, amphetamine or cocaine, and lead to only 0-7.9% of eligible heroin, methamphetamine, ecstasy and cocaine use/possess offenders being diverted (compared to 70.9% of cannabis offenders) (Hughes et al., 2014b).

### **Cultural resistance within individual police officers and specific local area commands**

While diversion has now been around for many years, cultural resistance and beliefs that diversion is a “soft option” can and do remain. Some experts we consulted argued that this is exacerbated by a climate of media criticism or where beliefs are allowed to propagate that individuals don’t complete diversions or that diversion lacks benefits. We were also told how some police local area commands actively resist diversion. While this appears a minority occurrence, in a climate where diversion is ‘discretionary’ and up to individual officers, this can lead to differential application of diversion or what one stakeholder called “postcode discrimination”, and thus significantly curtail diversion in those regions. One stakeholder noted that “there is more diversion in affluent suburbs than in poorer suburbs. Whether that is because of ancillary criminal behaviours or police attitudes I couldn’t say” (P9). Concerns about differential application were also highlighted in the Victorian Parliamentary Inquiry into Drug Law Reform (2018, p. 167):

Certainly, what we have seen at a local level is that with police cautioning schemes and diversion programs they often rely on a local commander at a local station and what their attitude is. They shape the culture within their station and their officers follow their lead. So, you can get a wide range in approaches across different stations and different areas within the state and the same system.

It was noted by experts consulted how shifts in departmental priorities can contribute to declines in diversion. That said, some stakeholders argued that the role of police attitudes and resistance to drug diversion is overstated.

“The big question regarding NSW is why there hasn’t been an expansion in diversion given all efforts (and evidence gathered). Police attitudes is one factor but at end of day police are very

good at following the chain of command and hence if there were a clear diversion policy they would follow it. So, the fact that NSW hasn't got diversion programs for other drugs is mainly due to political reasons." (P1)

### **Programs that are too complex or cumbersome for police to use**

Experts argued that some diversion programs are too complex or cumbersome and can hinder police willingness to offer diversion: "If it is a process that is not very familiar, infrequent or convoluted [...] police like processes that are simple, clear and streamlined." (P4) and "the more complicated a regime is for dealing with people, the less inclined police will be to follow it if they have a choice" (P24). Of note we were advised that the WA programs cause some confusion for police as they require use of two different pads, for different diversion programs, which limits their uptake.

There can be specific barriers for programs that require diversion into education or treatment and establishment of appointments for alcohol and drug assessments. For example, several jurisdictions noted that if police detected someone for possession at 3am the services were not available to make appointments, and hence "police would revert to a court brief" (P3). This has particular importance for understanding the low rates of diversion in WA, as while the ODIR program was introduced in 2004 (originally titled the All Illicit Drug program), "it was not widely utilised until 2015" (Boyd, 2016). For example, during the period of analysis, there were 347 diversions issued in 2015 compared to only 33-79 diversions per year in 2010 to 2014, of which 24% ended up prosecuted. Changes in May 2015 removed the requirements for officers to contact the diversion line, in favour of offenders contacting the line: something that was deemed operationally easier in the context where the diversion line only operated during business hours.

### **Lack of access to treatment**

Many stakeholders noted that "treatment capacity is stretched" in Australia, which directly or indirectly impedes access to therapeutic diversionary responses. The shortages of treatment in Australia have been well demonstrated with estimates that only 50% of demand is being met (Ritter & Stoove, 2016). The extent to which treatment access is a barrier depends in part on how one understands diversion and whether one understands it as requiring education, counselling or some other form of treatment, as opposed to through payment of a fine, as well as the intensity of any treatment that is required.

Stakeholders were unanimous that access to therapeutic diversionary responses can be a particular challenge in remote parts of Australia due to long wait lists (of two to three months) and/or transportation issues in attending appointments.

"From 2007 to 2018 there has been a 37% increase in reported illicit drug use but no accompanying rise in treatment. The problem is particularly acute in rural areas where service access is a big issue... some people have to sit on a bus for 2 hours to get to treatment." (P1)

Even in contexts where brief interventions can be accessed, there are further challenges in trying to access more intensive, longer treatment.

"There are issues in the ACT too with availability of interventions. People have to sit on a 6 week wait list if they want or need anything more than a short intervention (i.e. something more than a one-hour brief intervention)." (P2)

"Availability of treatment is a major barrier, especially at the high level with problematic drug use... the availability of treatment and programmes had made it difficult. .... We heard there was a lack of services, especially if you are outside the metro area. In regional areas there are

very few avenues for that type of diversion... that higher end problematic drug use diversion.” (P9)

The shortage of treatment poses challenges for jurisdictions that are considering expanding access from police diversion for cannabis only to diversion for all illicit drugs:

“If everyone went to assessment and brief intervention it would have a significant impact on resources – we would need more resources and more staff.... The key question would be how to do this without overburdening an already overstretched system.” (P19)

Where it is a requirement to complete treatment as a condition of diversion, a shortage of treatment can further impact compliance and intensify the risk of criminalisation: “You end up net-widening people if there are no spots due to the failure to comply” (P2).

### **Lack of resourcing**

Several experts noted a desire by their jurisdiction to expand programs, such as to amend eligibility criteria so as to allow people to access diversion on more than one occasion. A key concern among some stakeholders involves the extra resources that might be required: both for treatment provision (where this is deemed appropriate) and for police to track and manage diverted clients. There are even further resourcing issues for jurisdictions that currently provide no diversion for drugs other than cannabis (NSW and QLD), which is deemed a major barrier to expansion. Many stakeholders noted that the original success of the Illicit Drug Diversion Initiative was aided by the national agreement and provision of large amounts of new money: \$305 million, but that funding had been tighter in more recent times:

“We all need funding to expand to provide more opportunities.” (P12)

“[Funding] is sufficient at low level numbers.... But if they increase it may need to be looked at.” (P14)

Importantly, stakeholders noted that there *may* be more cost-effective ways to expand diversion (see part 6.3).

### **Political opposition and law and order politics**

While we were told about programmatic and structural issues, one of the biggest perceived barriers was politics. Experts noted how conservative politics and law and order politics can lead to a complete block on efforts to expand drug diversion. Alternatively, it can lead to reforms that reduce diversion program scope. As such, while there is support to expand diversion in some police agencies, this has not been able to occur due to political resistance. Without political support, police are hamstrung in the extent to which they can utilise diversion options:

“The main factor is probably political resistance, rather than police resistance. The war on drugs is still emphasised.” (P4)

“X has a tricky set up with Police Minister who is very tough on crime and anti-diversion.” (P19)

### **Media criticism or commentary that diversion is ‘soft’**

In a related sense, some experts noted the police attitudes towards diversion, including their degree of comfort with the concept, can be impacted by external agents, particularly the role of media. We were advised that internal police surveys have found that police would like to divert more but feel pressured by media if they take a different approach. A special concern here is that police who offer diversion

might be seen to have been too “soft on crime”. As one expert noted, the police “are stung by media and [claims about] ‘law and order’ whenever they take a different approach” (P9). Crucially, in order to give police protection from such media critiques, “legislators need to give police the imprimatur” (P9) to expand diversion offerings. One expert noted that the “community is increasingly on board for change” (P13), but there is a disconnect between police practice, evidence about the benefits of alternative approaches, media reporting and public understandings of what diversion is and why it should be encouraged.

### **Challenges in obtaining timely and comprehensive legal advice**

Experts also noted how challenges in obtaining timely and comprehensive legal advice can restrict diversion access. This is particularly in jurisdictions that require people to admit guilt in order for them to be eligible for diversion. Although it is not essential, some people who may be otherwise eligible for diversion might wish to obtain legal advice and representation *before* deciding how to proceed, including *before* they admit responsibility for an offence. The accused may even be encouraged to accept diversion. In each of these instances, the ability of an accused to obtain timely legal advice and/or representation becomes imperative regarding the requirements of diversion and the consequences of admitting guilt, where such an admission is necessary. For people in a position to privately pay for legal advice, this will likely not be an issue. Others may need to rely upon services such as legal aid, a community legal centres (CLCs) and duty lawyer services for such advice.

There are at least two issues with accessing such services, however. First, people may be unable to obtain timely, on-the-spot legal advice (as where a police officer offers diversion and requires an immediate decision about whether or not to accept diversion). Secondly, people who defer a decision (and, for example, allow their matter to proceed to court pending legal advice and representation) may face challenges in actually securing advice or representation. A key reason for this is that Commonwealth government funding for legal aid has been in decline since 1997 (Flynn & Hodgson, 2017). As Flynn and Hodgson (2017, p. 3) have explained, these cuts have resulted in:

The creation of ‘advice deserts’, the merger of CLCs and the (forced) imposition of new, stringent eligibility policies which removed the capacity for vulnerable individuals who would previously have met the means and merit criteria of [legal aid commissions] to now apply for assistance. In Victoria and New South Wales (NSW), for example, individuals facing summary charges where imprisonment or detention order outcomes were unlikely were no longer able to apply for legally aided representation.

These problems may disproportionately impact particular populations (e.g. Aboriginal or Torres Strait Islander peoples and youth). This is because, as previously noted, there may be cultural barriers to admitting guilt (to police or courts, especially without legal representation and advice) but also because in some jurisdictions, such as NSW, a youth must be charged under the relevant legislation if they do not admit the offence.

## **6.3 Facilitators to the use of drug diversion**

### **Establishing diversion options for all illicit drugs in all states and territories**

Experts noted that the number one facilitator to expanding diversion would be to ensure all jurisdictions can provide diversion for all illicit drugs and that there is a comprehensive set of options available. Program breadth was noted by the experts we spoke to as particularly important in order to keep up with changing drug trends (particularly the decline in cannabis use and increase in use of

stimulants and other substances like magic mushrooms) and to counter the declining trends in the use of diversion.

Q: How important is it to have diversion for all drugs?

A: It is hugely important. The change in trends of drugs being used. If we went back to cannabis there would be no opportunity to educate on the effects of other drugs. (P20)

Breadth of diversion programs is thus vital to ensure that there is 'no wrong door' for diversion clients. Without this Australian drug diversion program access will continue to be stymied.

### **Introducing a legislative or hybrid legislative requirement to divert eligible offenders**

The second most talked about facilitator to expanding diversion was switching Australian drug diversion programs from a discretionary basis to a legislative basis or hybrid legislative basis. A strictly legislative approach to diversion would be one in which the concept of diversion is enshrined in a statute, as are the specific details of diversion, including things like: any eligibility criteria, any restrictions on the number of occasions a person can be diverted, and so on. In theory it is also possible to prescribe in a statute the details of any requirements for diversion (e.g. that a person be assessed and treated) and the consequences of non-compliance. In contrast, a hybrid model, would be where one or more of the elements above did not appear in legislation, but appeared in some other instrument, whether it be regulations<sup>8</sup> attached to/accompanying a statute or in an accompanying policy document, for example, by one or more government departments.

To date South Australia is the model exemplar of the benefits of a legislated approach, through firstly, their PDDI program that makes it a requirement for police to offer diversion to all adults detected for possession of drugs other than cannabis and secondly, their Cannabis Expiation Notice scheme that requires police to offer an expiation notice for all simple cannabis possession offences. The almost universal levels of diversion in this jurisdiction are directly attributable to these decisions.

“Asking police to caution people is good, but unless legislation says that (you must divert) police have the discretion to do what they want. Legislation provides a reason to overcome the discretion argument.” (P4)

Legislation has also been employed in Queensland (albeit for cannabis only), where it was deemed an important means to overcome initial resistance by police officers.

“For us ... it was a cultural thing. If we left it to police discretion it wouldn't have been successful. In 2000 it would have been a hard sell.” (P12)

The Victorian Parliamentary Inquiry into Drug Law Reform (2018, p.191) has recently proposed to follow such approaches, by “codifying and removing the discretionary elements currently in place”.

Benefits of a legislated or hybrid legislated approach are numerous: namely that it offers a means to entrench diversion and makes it much easier for police to use this approach, particularly in the face of criticism by media or other stakeholders, and to overcome some of the inherent cultural barriers that operate within police. It also increases access and equity of the program to any person who fits the eligibility criteria including to minority populations, such as Aboriginal and Torres Strait Islander offenders or people who 'do not fit the attitude test'. For example, one key goal in adopting a legislated approach in the SA PDDI was to increase access to Aboriginal or Torres Strait Islander offenders. Ten years of analysis showed 7% of those diverted were Aboriginal and Torres Strait Islander compared to

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<sup>8</sup> Regulations are a form of what's known as "delegated legislation" and can be much more easily amended than actual legislation - without having to go through an entire parliamentary process.

2% in the population (Millsteed, 2012). It can also reduce the potential impacts of changes in department policies on diversion or differences across local area commands.

The main concern raised with such an approach is that it could 'lock the program in' and make it harder to adjust. For example, legislative change would be required to expand the Queensland scheme from cannabis to other illicit drugs or to increase the limits on the number of times offenders can be diverted. As such several stakeholders noted merit in a hybrid legislative basis where diversion would be in law but rules about operation such as threshold limits would be in regulation. Legislating or hybrid legislating has added benefits in that by making it more routine it increases familiarity and ease of use and it would lessen the need to invest in ongoing training, education and operational incentives within police. Finally, if police do not offer diversion, magistrates can ask why when an offender goes before court: that is legislated diversion affords an additional option of quasi-judicial review of diversion processes, an opportunity that is lost in programs that operate on a purely discretionary basis.

It is important to note that not all the experts consulted agreed about the need for legislation:

“Discretion gives us flexibility and the fact that it’s not legislated is no hindrance to the program.” (P15)

But many are open to it, particularly to a hybrid model, albeit want police to be involved in the design of the schemes:

“Legislating diversion would be useful, but if adopted, police need to be fully involved in the design.” (P1)

“If (as seems to be the case) there is institutional or systemic reluctance to provide diversion, then some encouragement is required. (The carrot hasn't worked, so a stick is needed.) ... Legislated requirements should be enacted; but it could be done in a hybrid way, with the broad principles and directives being in legislation and the detail of the available options and procedures to access them being described in regulations, cascading down to procedural documents for the various agencies concerned.” (P24)

### **Identifying and removing known eligibility restrictions**

There was widespread agreement that making adjustments to eligibility criteria that impede access would enable police to expand opportunities for diversion. This would include removing where possible the requirement for offenders to admit the offence, as well as increasing limits on program access, and ensuring threshold quantities are high enough to take into account patterns of drug consumption in each state/territory. A number of states are looking at or have removed requirements to admit an offence (e.g. WA police did this for the ODIR in May 2015). WA police are also reviewing their threshold limits on the amount that can be possessed: it may be moved to 2 grams (similar to other states). They note that this was particularly important in the context of methamphetamine as the original threshold amounts may not fit current drug trends. We note here that it is possible to collect data on typical quantities possessed or purchased by consumers from sources such as the NDSHS, IDRS and EDRS to compare against current threshold limits, and how such knowledge has been used to raise threshold limits in the ACT for the drug diversion program and SCON program (Hughes et al., 2014b). Such changes appear to be one factor contributing to the increasing diversions in this jurisdiction.

Experts noted that expanding the number of times an offender can be offered diversion may also be advantageous. Importantly, the PDDI program shows that even with unlimited options for referral, 76% offenders only receive diversion once, 15% receive it twice and 5% receive it three times; in other

words, only 2% have more than three diversions (Millsted, 2012). This suggests that there may be merit in adopting limits of two or three, and that doing so is unlikely to exclude many use/possess offenders, nor risk disrepute of the program (over very high frequent flyers).

### **Evidence of what works, the reach of drug diversion and avenues for system improvement**

There was a unanimous view among the experts consulted that building the evidence-base on drug diversion and drug diversion systems is vital for increasing diversion. There are three different lines of evidence that could facilitate diversion provision.

First, evidence on program outcomes. In order to overcome the aforementioned attitudinal barriers among police, including police resistance to diversion more generally, and perceptions that it does not “work”, evidence that drug diversion “works” is important. Among other things, there might be increased police buy-in to diversion where police could be satisfied that diversion:

- a) Is cost effective: There is a real need or opportunity to “broadcast” benefits, such as studies by Shanahan, Hughes and McSweeney (2017a) showing that charging an offender for cannabis use/possession is six to 15 times more expensive than offering them diversion. In a related sense, the production and dissemination of evidence showing that offering diversion saves police time is helpful and will encourage police to offer diversion more frequently.
- b) Has beneficial impacts on the lives of clients.
- c) Reduces recidivism.

Secondly, stakeholders were interested in evidence showing the reach, nature and extent of diversion across Australia as documented for this report. As noted earlier, knowledge regarding the reach of diversion programs has been long sought after and is hard to come by. Stakeholders were thus unanimous that publishing this report in full would be one key means to facilitate diversion uptake. As was argued, this could “increase tools that are not currently at the disposal of people providing diversion” and help to trouble shoot / problem solve where rates are low or provide opportunities to learn from jurisdictions that have higher levels of diversion. Here we note that clearer reporting of diversions in the Illicit Drug Data Report (IDDR) may assist. It was noted by experts how the IDDR currently reports on the number of cannabis diversions that occur via expiation notice schemes in ACT, SA and NT as well as the number of cannabis infringement requirements given in WA, but it does not report on cannabis diversions that occur in other jurisdictions or on diversions for other illicit drugs. Making such data routinely available could facilitate analysis of reach across Australia and between jurisdictions, as well as “help raise the profile and credibility of drug diversion” in Australia (P3).

Thirdly, experts consulted were keen to see more evidence regarding the benefits of better diversion systems and approaches and what a ‘best practice’ system entails. For example, many noted that the SA ‘success story’ of close to 100% diversion of offenders with a principal offence of use/possession was not well known. Stakeholders noted that it would be good to celebrate successes and to learn more about the benefits (e.g. what are the cost savings from the SA approach and sending almost no one to court?) This is something that we concur with, as systems approaches (covering all programs within a jurisdiction) are seldom evaluated. Exceptions include the evaluation of drug diversion in the ACT (undertaken by CH, AR and others), which showed the reach, costs and impacts of different programs within the system, such as the cost savings of providing expiation notices versus therapeutic responses to cannabis use/possess offenders (Hughes et al., 2014b), common barriers and facilitators (such as low threshold limits affecting two programs), and how to reshape the jurisdictional approach for maximum effect. That said, experts note that the rich diversity of diversion approaches across Australia now

offers a unique means to take systems approaches one step further: to cross-jurisdictional analysis of police drug diversion systems. Doing so could build an empirical basis about the merits of different approaches: that could feed into greater reach as well as more cost-effective and efficacious approaches.

### **Better promoting the benefits of diversion**

A key theme – related to the need for more evidence about the benefits of diversion – was that it is important to better promote the benefits of diversion to police. In other words, if police are confident that diversion has benefits, they will be more inclined to support it. As noted by one stakeholder:

“Being able to say that 86% use/possess offenders are not seen again is amazing. We need to communicate this more as police often see/remember those who are repeat offenders.” (P2)

This is important to build police support but also to build political support. As we noted in Part 6.2, these are major barriers to the expansion of diversion.

“We need to render the benefits of diversion into very simple messaging so that we can point to the benefits of diverting people ... this will encourage uptake.” (P2).

Some participants noted that there is a problematic false dichotomy of ‘tough on crime’ and ‘soft on crime’ among some police, and that there is a need to overcome this in order to sell expansions to the community (P12). As one expert noted:

“It is a macho environment, so police need to be confident that it is not a soft option”. (P3)

### **Increasing education and training of police officers**

Experts argued that training about the purpose and merits of diversion is vital so that it is known of and used. For example, as argued by one stakeholder, “better resourcing of education and training would be helpful” (P3). Some experts from police agencies that had upward trends in diversions concurred and attributed this in part to the importance of regular and collaborative training:

Police: “We get a nurse from x Health to explain to the police what is involved and then they give statistics...”

Q: “If Health are in the room are there training benefits?”

Police: “Yes, members can understand the other side of things, what actually happens. And yes, it promotes the idea that the point is education and to give tools to people to make better life decisions, both criminally and for their health.” (P23)

That said, there are a few challenges to training of police. Police have busy schedules and there are time constraints. One stakeholder noted that there may be merit in providing online training modules. Another challenge is the rapid changeover of police personnel. Another stakeholder noted that there may be merit in embedding drug diversion – as part of broader alcohol and other drugs training – by making it part of police core business. This could not only help foster long term cultural change about drug diversion but also about alcohol and drugs more generally within the police. One example of this type of program is the ACT Mental health community police initiative 2011 which provided a three-day training program for frontline police officers to understand the issues surrounding mental health, particularly how to recognise, relate and respond to incidents involving mental health consumers. This service is argued to have significantly increased referrals to mental health services, and as such could be an exemplar for increasing drug diversion too.

## **Streamlining referral systems for police**

Streamlined referral systems are vital aids for police diversion, to ensure that it is actually quicker for police to use diversion than to charge an offender. While important for all programs, it is particularly important for therapeutic programs that require the establishment of appointments. We note for example that Victoria Police (2015) have previously acknowledged the necessity of “more effective referral mechanisms and timely feedback” and that, to this end, they are currently building a “more streamlined” system (Victoria Police, 2017). Our consultations revealed that there are a variety of options now employed, ranging from police calling telephone information lines, the offender having to make an appointment for themselves, and others using online referrals.

Moreover, while some jurisdictions have a referral system that operates 24 hours a day (e.g. ACT, SA, QLD), others have systems that only operate during business hours (e.g. Tasmania and Western Australia). States without 24-hour lines now get offenders to make their own appointments, which is less onerous for police but means there can be some drop off: people who don’t call and/or don’t turn up. Approaches that are both more centralised and instantaneous are deemed by most as favourable, as opposed to “handing over a piece of paper and telling someone to make a phone call”.

“Making diversion easy for police is important. If for example police can ring and get someone an appointment, they will use it.” (P1)

“Make it as simple as possible. Police are very busy.” (P23)

Two approaches that participants noted were best practice are outlined. The first used a 24-hour diversion line, which police call to make diversion appointments at any time of day (e.g. SA with PDDI). For PDDI, the referral occurs within 48 hours and an appointment within 30 days, with the diversion line also used to determine if there are specific linguistic needs that need to be met (Office of Crime Statistics and Research, 2008). The second is online, particularly via a 24-hour online SupportLink referral system that police use to log all new diversion clients. This is used in a number of jurisdictions, including the ACT and Northern Territory: “it is expensive, but efficient and easy to use” and “ensures that police issue a certificate with all details on it before a person leaves” (P12).<sup>9</sup>

“SupportLink is a one stop shop. Ease of access is critical.” (P23)

Moreover, this system provides feedback to officers about *whether* offenders comply:

“We get feedback from SupportLink; each attempt to contact the offender and then feedback about what happened to the offender... if the person is compliant.” (P21)

The support link service was supported by several other jurisdictions. One expert noted that it is an “excellent idea” as it simplifies the process about who to contact, makes it easy for police to refer and get appointments on the spot as well as providing police “bio feedback” about when the offender attends. (P1)

## **Increasing feedback mechanisms to police about drug diversion**

Given that police are the gatekeepers to the diversion system, there was a strong call to increase feedback to police on progress and efficacy of drug diversion. This is important at both the individual and jurisdiction-wide levels. For example, as noted by one stakeholder, “police want to know what happens to people”. And another “what we need is more feedback loops” (P3). This could occur via several mechanisms.

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<sup>9</sup> We note that Victoria now employs an e-Referral System which appears similar to this approach.

First, direct feedback on compliance. Some methods of referral (see above) provide direct feedback to officers that an offender has complied with the requirements of diversion. This is deemed beneficial for increasing support. Others have said they would like that.

“It would be good if police could know what has happened. If police are notified that people attend (as we understand might be the case with SupportLink) this would be good.” (P1)

Second, disseminate positive stories. For example, modelled off the ANCD positive stories approach, Western Australia police recently started including de-identified stories in a police newsletter that tells stories of positive change following drug diversion. This was echoed by another expert noting “police like to hear good news stories. For example, that the person who was diverted did not reoffend” (P4).

### **Adding drug diversion into performance monitoring systems**

A number of jurisdictions have currently (or have at some point in the past) included drug diversion in police performance monitoring systems. All concurred that this incentivises police to use diversion (especially where diversion is discretionary), builds compliance, and enables tracking/monitoring and problem solving if new issues arise. Performance monitoring systems can be either internal or external. On the internal front several jurisdictions reported that the use of operational performance monitoring was advantageous to build compliance and increase uptake:

Q: Do police priorities matter?

A: Yes we have a KPI which is 80 per financial year.

Q: Some states do have KPIs, others don't. Should jurisdictions that don't have them, adopt them?

A: It certainly builds compliance, then familiarity, and then trust. Sometimes people squirm at first, but it needs good messaging. Some are 100% KPIs but they are extreme. (P20)

It has also led to competition across local area commands to increase the number of diversions:

“We do get statistics (and there is a competition) service to service about the numbers of referrals and feedback.” (P21)

In a related sense, others noted that the removal of operational targets for the number of drug diversions for each operational district was one catalyst for a decline in the number of diversions, as it meant they stopped being monitored by supervisors.

“There was a removal of the (drug) diversion benchmarks for each operational district from our department and that was a catalyst for the decline [...] as they were no longer being monitored by supervisors.” (P14)

“At the start of IDDI we had a lot of reporting back to Commonwealth which was “very helpful” to increase numbers. But it had not been reported on for at least 7 years.” (P19)

Making it a requirement for all jurisdictions to report on diversion and then publishing it (such as in the IDDR) would be a key means to increase diversion uptake:

“If diversion is on performance monitoring systems then police will use it. The problem is that diversion is not on the system (at least in some states) [...] One key enabler would be to make it a requirement for all jurisdictions to have to report on it for the National Drug Strategy.” (P1)

## **More resourcing**

For some jurisdictions, resourcing of treatment is a key issue. Experts from those regions noted that if they were to expand diversion, they would need AOD money to provide therapeutic diversion:

“We all need funding to expand to provide more opportunity.” (P12)

“[Funding] is sufficient at low level numbers.... But if they increase it may need to be looked at.” (P14)

That said, other jurisdictions noted that given the over-stretched treatment system, there is a need to think more strategically about diversion, that considers ways to expand diversion “without putting everyone into intensive treatment if they don’t need it” (P18). In short:

“We need to think about less resource intensive ways to expand diversion and to deliver a system that is stepped up to target need.” (P18)

Such a view was echoed by both police and health:

“We would like to see a continuum of responses e.g. first option is caution / no response. Second option is counselling. Third is more.” (P1)

## **Considering newer models of diversion delivery**

The traditional models of therapeutic diversion have been face-to-face. As we explained in Part 6.2, many stakeholders noted that face-to-face modes of delivery can increase challenges for some populations to attend, particularly those residing in rural and regional areas, those without easy access to transport, and those who work during the day. As such, there is merit in considering newer modes of delivery to increase ease of access, such as via telephone, online or through smart phone applications. Of note, Queensland Police has piloted drug diversion by telephone across the state whereby both an assessment and brief intervention are conducted over the phone. As noted on the Queensland Police website, the goal was “to improve the accessibility and availability of the drug diversion program particularly where attending appointments in person can be challenging” (Queensland Police, 2018). Stakeholders noted this has led to “some really positive results in remote parts of the state” (P12). Moreover, the Queensland Police website notes that “the outcomes for brief health interventions delivered by telephone [are] just as effective as those delivered in person for people with low-moderate levels of substance use” (Queensland Police, 2018).

The use of online technologies has also been suggested as another way forward, particularly as the target age of those detected for use and possession (18-29) may be more adept at utilising modern technology. We are aware of at least three jurisdictions considering this mode of delivery:

“Queensland is looking at different options, new technology, having more people engaged electronically to look at other option...” (P12)

“The target age of 18-29 it all about technology so finding a better way for those interventions would help us all.” (P14)

“It would be good to consider options for alternate ways to respond that are not face-to-face. e.g. phone or online or apps [...] One option that would be worth considering are apps for doing brief intervention, which may actually better suit the target group or video interventions for regional areas. This would still require some resources but alternative models of deliver for service providers would be much more cost effective [...] may better suit clients against work hours.” (P18)

Given the paramount importance of resourcing, several stakeholders highlighted that diversion may be expanded by adopting less resource-intensive modes of diversion. It is also important to consider what type of diversion is needed for whom and how the response can be best matched to the need. There is thus a view amongst the experts we consulted that some responses have become too interventionist / too high needs for offenders or that jurisdictions are reluctant or unable to divert all offenders if a high-intervention therapeutic response is required. We note here that some responses are more intense than others for a first offence. For example, people who receive an ODIR (WA program) are required to complete three Other Drug Intervention Sessions (ODISs) within a 42-day period, and that is for a first diversion.

### **Considering ways to strengthen cross-sector relationships between police and health**

Strong relationships between police, health and relevant organisations (e.g. service providers) are vital to police drug diversion schemes. The development and maintenance of strong collaborations aid mutual understanding, help stakeholders from across the sector to problem solve any issues that may arise and allow them to identify potential changes in practice, such as new options and technology that could be used to expand accessibility and usability of diversion or new drugs for which diversion could be provided (such as magic mushrooms). For example, one police stakeholder noted that they have monthly meetings with health and that cross-sector relationships are “essential”:

“It is part of how to re reframe from policing/criminal justice and move to a health response. If we don’t, then it will fail, and police won’t have faith in the process.” (P12)

They further noted that such relationships were being used to drive changes including potential use of more contemporary (non-face-to-face technologies) to overcome some known access issues (see above).

“In terms of what works, we rely on health and they give us the evidence. For example, that the phone service was just as successful as face-to-face counselling.” (P12)

While many jurisdictions do this via informal relationships, some have formal coordination structures. Of note, South Australia has the Police Drug Diversion Initiative State Reference Group, which includes representatives of SA Police, SA Health, Education and SANDAS (Office of Crime Statistics and Research, 2008). SA Police have had a cross-agency diversion reference group involving police, DASSA and NGOs who provide treatment for 16 years. They meet on a monthly basis and look at data on trends e.g. number of referrals, compliance rate, and can track each month and over years as well as by drug type and by regions. SA Police said it has really helped to know who players are, different perspectives, identify and problem solve issues e.g. police forgetting to fax diversion sheet to AOD agencies. SA Police also note this close relationship with Health has led to some important program changes (e.g. the removal of the requirement to admit offence on the basis that this was counterproductive for health).

### **Demonstrating public support for diversion**

Experts noted that demonstrating high and increased public support for diversion is another potential aid particularly in contexts where there may be political reluctance to expand diversion. Of note here is that analysis of the National Drug Strategy Household Survey showed that in 2016, 77.3% of Australians supported a non-criminal response for someone who is detected with small quantities of cannabis for personal use, and 50-57% supported a non-criminal response for possession of ecstasy, methamphetamine or heroin (Hughes & Ritter, 2018). This analysis also showed that levels of support for non-criminal penalties have increased since 2010 albeit with different preferences about types of

response. Most Australians preferred no action/caution/civil penalty for possession of cannabis, but referral to education and treatment for possession of meth/amphetamine and heroin. From 2013 to 2016 there was also a shift in how the Australian public perceived drug budget resources should be allocated: away from law enforcement towards investment in drug education and treatment (from 60% to 64%).

### **A supportive national policy framework**

A final noted facilitator is a supportive national policy framework. Commitments to diversion and expanding diversion, such as through the National Drug Strategy 2017-2026 and National Ice Taskforce provide important means to spur action and drive change. This was deemed particularly useful to get political buy-in in jurisdictions where there are inherent blocks and to get diversion onto state and territory agendas. Many stakeholders noted the importance of the National Ice Taskforce recommendation no. 31: “Under the National Drug Strategy Framework, state and territory governments should review diversionary programmes to determine best practice approaches and consider options for improving and expanding existing arrangements” (Lay, 2015), in spurring their state to review their diversion practices:

Q: Do national inquiries, such as the National Ice Taskforce help?

A: “Definitely. They spearheaded our review and encouraged diversion, so all states and territories should do this. We were hoping for national recommendations about best practice, that we could cherry pick from, but the onus was put back on the states without national direction.” (P14)

While some viewed national leadership as less important, most stakeholders noted national leadership was an important means to spur action, and in creating the space to expand drug diversion in Australia:

“At the moment we are all on the same page. The National Drug Strategy and the National Ice Taskforce has focused us on that.... With all the talk the governments have come on board and communities are on board for change ...” (P12)

Knowledge that other jurisdictions are also engendering change is another. As such, building transparency and fostering exchange about efforts to expand diversion, is another important avenue to build diversion going forward.

## **6.4 Final reflections and next steps**

The analysis of diversion has reaffirmed the clear importance of this long-standing policy in Australia, and the potential and need to improve, reform and expand diversion programmes, particularly to counter declining reach and to increase equitable access across the country. It is clear that some policy dilemmas remain regarding the optimal approach to diversion, which may in turn impact the full reach of any changes and/or of the resources required to implement change. For example, one policy dilemma is whether people should be diverted if they have concurrent offences. For some this should not be an option as the goal of diversion should be to reduce the burden on the court system. But for others this is deemed important as it offers the opportunity to address drug use and potentially reduce the burden on the prison system:

“In other jurisdictions barriers include bundling offending together and not offering diversion for meth. Here we would split them. We would offer diversion for meth and deal separately with the other offences. There is some merit in having the ability to look at things holistically....

If the offender has complied with the diversion it might be put forward as a mitigation for a lighter sentence for the other offence.... A more therapeutic jurisprudence approach.” (P4)

Another policy dilemma is to what extent ought responses to use/possess offenders differ based on the drug detected versus some other assessment of need? While programs have traditionally differentiated those for cannabis from other illicit drugs, some experts pondered whether ‘one stop shops’ that target need may be the better way to go, irrespective of the drug an offender is detected with (e.g. the approach adopted in Tasmania). Equally, while therapeutic responses have become the dominant approach in Australia to use/possess offenders, several stakeholders pondered whether a hybrid approach comprising therapeutic and non-therapeutic responses may be more effective and ultimately sustainable?

Policy dilemmas aside this review has shown that there are now many factors that can shape who is and is not diverted for a principal offence of use/possession in Australia, particularly the key role played by jurisdiction in shaping access. It has moreover showed some of the key barriers to provision, including geography, narrow program design of eligibility criteria, lack of treatment access, cultural resistance within police agencies, the role of politics and media, but also the importance of well-designed systems that police will want to use. Importantly, it has also brought to light many different facilitators that can be used to expand diversion access across the country. The full list of barriers and facilitators is summarised in Table 16.

**Table 16: Summary of barriers and facilitators for expanding drug diversion in Australia**

<b>Barriers</b>	<b>Facilitators</b>
Absence of a full spectrum of programs	Establishing diversion options for all illicit drugs in all states and territories
Changes in drug trends and policing of drugs (particularly increased policing of drugs other than cannabis)	Introducing a legislative or hybrid legislative requirement to divert eligible offenders
Narrow diversion eligibility criteria	Identifying and removing known eligibility restrictions e.g. low threshold quantities
Cultural resistance amongst individual police officers and local area commands	Evidence of what works and the current and potential reach of diversion programs, and how to build better diversion systems
Programs that are too complex and cumbersome for police to use	Increasing education and training of police officers about drug diversion
Lack of access to treatment	Better promoting the benefits of diversion
Lack of resourcing: for treatment provision but also for police to track and manage diversion clients	Streamlining referral systems for police: particularly for scheduling appointments with alcohol and other drug services
Political opposition and ‘law and order’ politics	Increasing feedback mechanisms to police about drug diversion
Media commentary that diversion is ‘soft’	Adding drug diversion into performance monitoring systems
Challenges in obtaining timely and comprehensive legal advice	Increasing resourcing of treatment
Geography: namely the added difficulties in diversion access and compliance in rural / regional Australia	Considering newer models of diversion delivery via telephone, online or smart phone applications
That some programs do not suit specific populations: particularly Aboriginal and Torres Strait Islander people	Considering ways to strengthen cross-sector relationships between police and health
	Demonstrating public support for diversion
	Building and maintaining a supportive national policy framework for drug diversion

Throughout this review we have become aware of several proposed reforms to expand drug diversion across Australia, many of which are in line with the facilitators detailed in this report. Key shifts include efforts to expand the breadth of drugs covered, revisiting limits on the number of opportunities for diversion, expanding threshold limits pertaining to the quantity of drugs that can be possessed and removing the rules around the requirement for offenders to admit an offence. For example, following the Ice Taskforce Review changes that are being debated in WA include allowing two diversions instead of only one (Boyd, 2017). We also note that Victoria Police is currently “also undertaking a project to strengthen its diversion programs” (Victorian Department of Health and Human Services, 2018), including by making the approach “more streamlined, consistent and equitable” (Victoria Police, 2017).

Such reforms are to be applauded. We however note that different approaches are being adopted in different states and embracing a holistic response that includes the key facilitators outlined here, particularly adopting a legislated or hybrid legislative approach to police drug diversion offers the potential for a more dramatic and ultimately sustainable expansion of diversion practices. Doing so will increase the likelihood of realising an expanded and efficacious diversion system, and lead to commensurate benefits to people who use drugs, to police, to health and to the Australian community.

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## APPENDIX A: KEY STATUTORY DEFINITIONS OF POSSESSION

State/ Territory	Definition	Legislation
ACT	<p>"Possession", of a thing, includes the following:</p> <ul style="list-style-type: none"> <li>(a) Receiving or obtaining possession of the thing;</li> <li>(b) Having control over the disposition of the thing (whether or not having custody of the thing);</li> <li>(c) Having joint possession of the thing.</li> </ul> <p>NB: Although the main drug offences appear in the <i>Drugs of Dependence Act</i>, this definition of possession appears in s600 of the <i>Criminal Code</i> and pertains to 'serious drug offences'.</p> <p>For the purposes of section 600, "obtain" is further defined in section 363D of the <i>Criminal Code</i>, and includes to:</p> <ul style="list-style-type: none"> <li>(a) Get or keep for oneself (directly or indirectly); or</li> <li>(b) Get or keep for another person (directly or indirectly).</li> </ul>	<p><i>Drugs of Dependence Act 1989 (ACT)</i></p> <p>And</p> <p><i>Criminal Code 2002 (ACT), sections 363D, 600.</i></p>
NSW	<p>For the purposes of this Act and the regulations, a prohibited drug, Schedule 9 <u>substance</u> (not being a <u>prohibited drug</u>) or <u>prohibited plant</u> in the order or disposition of a person, or that is in the order or disposition of the person jointly with another person by agreement between the persons, shall be deemed to be in the possession of the person. (s7)</p> <p>A person who has a prohibited drug in his or her possession is guilty of an offence. (s10)</p>	<p><i>Drug Misuse and Trafficking Act 1985 (NSW), section 7 and section 10.</i></p>
NT	<p>"Possession", in relation to a person, includes being subject to the person's control notwithstanding that the thing possessed is in the custody of another person.</p>	<p><i>Misuse of Drugs Act (NT), section 3.</i></p>
QLD	<p>"Possession" includes having under control in any place whatever, whether for the use or benefit of the person of whom the term is used or of another person, and although another person has the actual possession or custody of the thing in question.</p> <p>NB: The above definition appears in s1 of the <i>Criminal Code</i>. It is effectively imported into the relevant drug law, by virtue of section 116 of the <i>Drugs Misuse Act</i>, which states that 'The <i>Criminal Code</i> shall, with all necessary adaptations, be read and construed with this Act'.</p>	<p><i>Drugs Misuse Act 1986 (QLD), section 116</i></p> <p>And</p> <p><i>Criminal Code 1899 (QLD), section 1.</i></p>
SA	<p>"Possession" of a substance or thing includes—</p> <ul style="list-style-type: none"> <li>(a) Having control over the disposition of the substance or thing; and</li> <li>(b) Having joint possession of the substance or thing.</li> </ul>	<p><i>Controlled Substances Act 1984 (SA), section 4.</i></p>
Tas	<p>Without restricting the generality of the expression "possession", a controlled substance is taken to be in a person's possession for the purposes of this Act so long as it is on any land or premises occupied by the person, or is enjoyed by the person in any place or is in the person's order and disposition, unless the person proves that he or she had no knowledge of the substance.</p>	<p><i>Misuse of Drugs Act 2001 (Tas), section 3(3).</i></p>

Vic	Without restricting the meaning of the word "possession", any substance shall be deemed for the purposes of this Act to be in the possession of a person so long as it is upon any land or premises occupied by him or is used, enjoyed or controlled by him in any place whatsoever, unless the person satisfies the court to the contrary.	<i>Drugs Poisons and Controlled Substances Act 1981 (Vic), section 5.</i>
WA	To possess includes to control or have dominion over, and to have the order or disposition of, and inflections and derivatives of the verb "to possess" have correlative meanings.	<i>Misuse of Drugs Act 1981 (WA), section 3.</i>

## APPENDIX B: OTHER POLICE DIVERSION PROGRAMS

Jurisdiction	Name of program	Type of program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion opportunities	Other requirements	Required actions by police	Legislation or policy
ACT	Aboriginal and/or Torres Strait Islander Liaison Officer	Case management and support for AOD, Mental Health and Aboriginal and or Torres Strait Islander services	Youth and adults arrested and/ or charged with drug or alcohol related offences	N/A	N/A	N/A	[unknown]	Police may refer to the Aboriginal and/or Torres Strait Islander Liaison Officer.	<i>Children and Young People Act 2008</i> <i>Crimes Act 1900 (ACT)</i> <i>Drugs of Dependence Act 1989</i> <i>Criminal Code 2002</i> <i>Medicines, Poisons and Therapeutic Goods Act 2002 (ACT)</i>
NSW	Young Offenders Act 1997 (NSW)	Warning, caution, or youth conference	Youth	All illicit drugs.	<p>Not more than the small quantity applicable to that drug (other than cannabis); Or not more than half the small quantity of cannabis; Or in exceptional circumstances more than half but not more than the total small quantity.</p> <p>Small quantity of each drug is as per Col 2 Sched 1 of the <i>Drug Misuse and Trafficking Act 1985</i></p>	No. The options to give warnings, cautions are largely discretionary and previous offences under the Act don't preclude them.	Must admit offence in case of a caution or conference (s19, s36).	Must give a warning, a caution, or arrange a conference, in place of being charged for the offence.	<i>Young Offenders Act 1997 (NSW)</i> <i>Drug Misuse and Trafficking Act 1985</i>

Jurisdiction	Name of program	Type of program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion opportunities	Other requirements	Required actions by police	Legislation or policy
NT	Youth Justice Act /Youth Diversion Units (YDU)	Warning, caution, or youth conference	Youth	Applies to all offences other than excluded offences (serious Road traffic offences).  With serious offences (defined in the Youth Justice Regulations) police have the discretion to offer pre-court diversion or proceed by prosecution.	Applies to all drug offences however police have discretion to prosecute if it is a serious offence per Reg. 5 of the Youth Justice Regulations.  If it is a trafficable quantity, it is deemed by the regulations to be a serious offence.  If a serious offence, then police have the option of proceeding down the diversion pathway or putting the matter before the court.	Not eligible if on 2 previous occasions has been dealt with by Youth Justice Conference.	The youth and a responsible adult must consent to diversion.  Diversion may be denied if the offence is a serious offence or if the youth has some other history that makes diversion an unsuitable option.	Unless exclusions apply, police must give a verbal warning, written warning, convene a Youth Justice Conference, or refer to a diversion program.	<i>Youth Justice Act NT</i>  <i>Misuse of Drugs Act NT</i>  Youth Justice Regulations NT  General Orders
NT	Youth pre-court diversion	Warning, youth justice conference, diversion program	Youth charged with an offence	Includes all offences, including drug offences if illicit drug diversion is not available.		2 (including youth justice conference or other diversion). Police may still offer diversion but have the discretion to prosecute.	Diversion may be denied if the offence is a serious offence or if the youth has some other history that makes diversion an unsuitable option.	Police must give verbal or written warning convene a youth justice conference or refer to a diversion program unless circumstances are such that they have a discretion to prosecute.	<i>Youth Justice Act</i> <i>Youth Justice Regulations</i>  <i>General Orders</i>
QLD	<i>Youth Justice Act</i>	Police caution and restorative justice program	Youth (18 or under)	Offences that are not serious offences, which includes	Drug offences that may be dealt with summarily including possession of	See <i>Drugs Misuse Regulations 1987 Schedules</i> .	Must admit offence and consent to the caution/restorative justice.	If caution not appropriate, then may refer to Chief Executive for RJ,	<i>Youth Justice Act 1992 (QLD)</i>

Jurisdiction	Name of program	Type of program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion opportunities	Other requirements	Required actions by police	Legislation or policy
				offences under the <i>Drugs Misuse Act</i> that may be dealt with summarily.	dangerous drugs less than specified quantities e.g. cannabis 50g, heroin 1g, cocaine 1g			or, alternative diversion program (not drug related.)	<i>Drugs Misuse Act</i> <i>Drugs Misuse Regulation 1987</i>
QLD	<i>Police Powers and Responsibilities Act 2000</i>	Police drug diversion assessment program	Adults and youth (who have previously been dealt with via caution under the Youth Justice Act and are now before the police for a second time)	Cannabis	Minor drug offence includes: <=50 g cannabis or possessing a thing to use cannabis	1	Must admit offence.  Must consent.  Has not committed another indictable offence related to the minor drugs offence or previously sentenced to imprisonment or committed/ sentenced for a violent offence.	If they are a youth and they were previously cautioned under the <i>Youth Justice Act</i> , police may offer a drug diversion program.  May be offered any time prior to court.  Must be given a written requirement to attend.	<i>Police Powers and Responsibilities Act 2000.</i> (s379)  <i>Drugs Misuse Regulation 1987</i>
SA	<i>Young Offenders Act 1993</i>	Cautions or Family Conferences	Youth (aged 10-17 years) who commit minor offences. Police have guidance for discretion to determine what constitutes a minor offence.	N/A Applicable to all types of offending by youths	N/A – except when youth diverted under PDDI has not complied with diversion requirement	No limits.	Must admit offence.	May informally caution, proceed to formal caution or have a family conference arranged.	<i>Young Offenders Act 1993</i>  <i>Policy guidance re application of police discretion</i>
TAS	Youth Justice Act 1997	Caution or community conference program	Youth who have committed an offence (that is not a prescribed offence e.g. murder, sexual assault)	N/A	N/A	At police discretion.  Arresting / charging officer makes recommendation, based on prior offending / attitude	Youth must admit the offence.  Youth must agree to formal caution or community conference.	Police may issue an informal caution, formal caution, or referral to community conference.	<i>Youth Justice Act 1997</i>

Jurisdiction	Name of program	Type of program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion opportunities	Other requirements	Required actions by police	Legislation or policy
						of youth (i.e. likelihood of caution being effective); authorised officer / sergeant in charge of Early Intervention Unit decides.			
VIC	ROPES Program (Pre-court diversion)	Diversion	Youth	N/A	As per offences triable summarily.	No prior convictions.	Must admit offence.  No prior convictions.  Offence must be triable summarily.	Must complete a rock-climbing program with police or informant.	Policy.
WA	Young Offenders Act 1994	Caution program or referral to Juvenile Justice Team (see below)	Youth under 18 who commits a summary offence.	N/A	NB Unlike adults, youth over 14 are ineligible for drug diversion other than under CIR.	The number of previous offences may make it inappropriate to issue a caution.	The number of previous offences may make it inappropriate to issue a caution.  Certain offences listed in Schedules 1 and 2 of the <i>Young Offenders Act</i> cannot be the subject of a caution or referral e.g. certain serious sexual and violent offences.	Discretionary power of the police to caution or refer to juvenile justice team; subject to the hierarchy of young offender management in the Act.	<i>Young Offenders Act 1994</i>
WA	Juvenile Justice Team Diversion	Diversion program	14 years or over	N/A	NB Unlike adults, youth over 14 are ineligible for drug diversion other than under CIR.	The discretion should only be exercised if a young person has not previously offended against the law.	Youth must agree that they have done something wrong.	Discretionary referral by police or the Children's Court.  Misuse of Drugs Act provides that if a juvenile does not complete their CIR the preferred next	<i>Young Offenders Act 1994</i>

Jurisdiction	Name of program	Type of program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion opportunities	Other requirements	Required actions by police	Legislation or policy
								course is referral to JJT.	

## APPENDIX C: COURT DIVERSION PROGRAMS

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/ referral opportunities	Program requirements	Required actions	Legislation or policy
ACT	Aboriginal and/or Torres Strait Islander Liaison Officer	Case management and support services for AOD, Mental Health and Aboriginal and/or Torres Strait Islanders	Adults and youth arrested and/or charged with drug or alcohol related offences. Must want assistance with drug use issues.	Any alcohol or drug	N/A	Not known	Support and liaison for clients who want help with AOD issues.  Assessment is face-to-face or over phone approx. 1 hour.  Individual treatment plans then developed in collaboration with other AOD services. (Service also provides support to family and support persons.)	Magistrates may refer to the Aboriginal and/or Torres Strait Islander Liaison Officer	Policy
ACT	Court Alcohol and Drug Assessment Service (CADAS)	Treatment services & programs both during court proceedings and as part of sentencing orders	Adults and youth charged with drug or alcohol related offences. Must have a drug problem.	Any alcohol or drug	N/A	There is no limit on the number of referrals	Immediate short-term intervention/ assessment and then engagement in recommend treatment/education plan.  Length of treatment is dependent on service provider. Anyone (self, lawyers, police) can ask the Magistrate or Judge to refer them.	CADAS clients are referred by the Magistrate or Judge	Policy
NSW	Magistrates Early Referral into Treatment (MERIT)	Treatment program	Adults charged with an offence suspected of using drugs or have a history of drug use. Not necessarily drug dependent.	Usually illicit drugs, but alcohol at some courts	N/A	Appears to be unlimited.	Treatment assessment by MERIT Team, for entry into voluntary 3-month program.  Must be eligible for bail or not requiring bail.  No concurrent sexual or strictly indictable offences	A Magistrate must approve entry	Policy and Local Courts Practice Note Crim 1 as amended 26 June 2017  <i>Bail Act</i>

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/ referral opportunities	Program requirements	Required actions	Legislation or policy
							<p>or have like offences pending before the court.</p> <p>Must usually reside within the catchment area (or have sufficient connection to the area).</p>		
NT	Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory (CREDIT NT)	12-week bail (pre-sentence) program to divert offenders into drug treatment.	Adults who have pleaded guilty to illicit drug related charges. Must have illicit drug problem.	Any alcohol or drug	N/A	Must not be subject to any other court order with a drug treatment component	<p>Court clinician decides treatment in conjunction with offender. Must attend 12-week program tailored to client's needs may include a residential program, counselling, pharmacotherapy.</p> <p>Must be a summary offence or indictable with no possibility of imprisonment.</p> <p>Must have illicit drug problem and enter voluntarily; must not have a significant history of violence; must not have a mental disorder at a significant level which cannot be managed in drug treatment programme.</p>	Magistrate makes referral	It has no specific legislative basis but operates in accordance with the <i>Bail Act</i> , the <i>Sentencing Act</i> , the <i>Alcohol Court Act</i> .
QLD	Queensland Magistrate's Early Referral into Treatment (QMERIT)	Pre-plea diversion program.	Adults who are on bail or eligible for bail. Must have an illicit drug use problem.	Any illicit drug	N/A	May participate multiple times at the discretion of the court	<p>12-16 week voluntary treatment program determined after initial assessment.</p> <p>Must have charges relating to illicit drug use. Must be tried summarily before the Maroochydhore or Redcliffe.</p>	The Magistrate must approve the diversion	<p>Policy</p> <p>See also Magistrates Court Practice Direction 1 of 2016.</p>

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
							Must live in an area where they can attend treatment and support.		
QLD	Illicit Drugs Court Diversion Program	Diversion for health intervention	Adults who have been charged with particular offences under the <i>Drugs Misuse Act 1986</i> . No requirement for drug dependence – primarily aims to divert early drug use.	Any illicit drug	See schedule 1 of the <i>Penalties and Sentences Regulation 2015</i> for listing of all quantities eg Cannabis <=50g, Amphetamine <= 1.0g.	2 (including police diversions)	2-hour assessment plus education /counselling session.  Must plead guilty to all offences.  Must have no pending charges or convictions for sexual offences, indictable drug offences, or involving violence against another person, other than certain offences in the PSA.	The Magistrate must approve the diversion.	<i>Drugs Misuse Act 1986</i> <i>Penalties and Sentences Act 1992.</i> <i>Penalties and Sentences Regulation 2015</i>
QLD	Youth Justice Act	Diversion for health intervention/ education	Children charged with eligible drug offences as per <i>Drugs Misuse Act</i> . No requirement for drug dependence.	Any illicit drug	As per adult schedule.	2 (including police diversions)	With consent of child, must attend a drug assessment and education session by date ordered by court.  Must be a finding of guilt.  Cannot have a disqualifying offence pending, or, have been convicted of a disqualifying offence.	The court may refer with the consent of the child	<i>Youth Justice Act 1992</i> <i>Drugs Misuse Act 1986</i> <i>Penalties &amp; Sentences Act</i> <i>Penalties &amp; Sentences Regulations</i>
SA	Youth Court Treatment Intervention Program (replaces CARDS and YCDP)	Psychological counselling	Youth who have mental impairment and/or substance dependence and are ineligible for a family conference referral due to the nature of their offending. Must be link between drug use and/or	N/A	N/A	Successful completion of TIP requires no fresh charges	Treatment is accessed from private psychologists. Referral from General List for assessment to establish eligibility.  Phase 1 (2 months): • Simple bail • Fortnightly court reviews • Weekly or fortnightly contact with Program Supervisor (face-to-face and via telephone)	Program staff assessment; recommendation for approval by Youth Court	<i>Bail Act,</i> <i>Sentencing Act,</i> <i>Criminal Law Consolidation Act,</i> <i>Interventions Orders Act</i>  Policy - Magistrates Court

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
			mental impairment and offending.				<ul style="list-style-type: none"> <li>• Random supervised drug urine testing at least twice per week</li> <li>• Referral to drug treatment services including individual therapy and/or group therapy.</li> </ul> Phase 2 (4 months): <ul style="list-style-type: none"> <li>• Monthly court reviews</li> <li>• Supervised random urine testing once a week</li> <li>• All aspects of therapeutic intervention continue as per Phase 1</li> <li>• Rehabilitation and recovery plan implementation is revised and updated</li> <li>• Contact with Program Supervisor reduced to fortnightly unless more support required</li> </ul> Completion requirements: <ul style="list-style-type: none"> <li>• No fresh charges</li> <li>• Attended and engaged in treatment sessions</li> <li>• Demonstrated willingness and ability to cease or significantly reduce substance use.</li> </ul>		
SA	Treatment Intervention Program (TIP)	Health intervention prior to sentencing	Adults who are charged with an offence where there is a link between offending behaviour and drug use <i>(and/or have a mental impairment and are charged with an offence that is</i>	N/A	N/A	[Unknown]	Court program supervisor makes assessment. If suitable, defendant attends 6-month program for drug use only defendants (alternative programs exist for those with co-morbidity). May include group therapy, supervision, case management and urine testing.	On application to the Christies Beach Magistrates' Court or Elizabeth Magistrates' Court, a referral may be made from the general magistrates' list to the TIP	<i>Bail Act, Sentencing Act, Criminal Law Consolidation Act, Interventions Orders Act</i>  Policy - Magistrates Court

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
			<i>related to the mental impairment.)</i> Must be assessed as requiring an intervention to address illicit drug use.				The defendant must plead guilty to the majority of offences, or in the case of those with mental illness, agree that the facts are not contested.		
SA	Port Adelaide Nunga Court Treatment Program	Deferral of sentencing for a health intervention.	Defendants appearing in the Port Adelaide Nunga Court. Must have underlying illicit substance abuse problems.	N/A	N/A	[Unknown]	The defendant must consent to address substance use issues in a 6-month therapy and relapse prevention group; with twice weekly random urine testing.	Defendants are offered this option if identified by the court as having an underlying illicit drug problem	Intervention programs are set out in the <i>Bail Act Sentencing Act Criminal Law Consolidation Act and the Interventions Orders Act</i>  and Policy - Magistrates Court
TAS	Court Mandated Drug Diversion	Drug treatment order in lieu of imprisonment.	Adults who plead guilty/found guilty. Must have a history of drug use and offending is linked to drug use.	N/A	N/A	[Unknown]	A court diversion officer assesses suitability and acts as case manager.  Drug Treatment order can last for 24 months (3 phases) and usually requires: random urinalysis, face-to-face meetings with diversion officer, counselling and group programs. May have residential rehab and medically supervised withdrawal.  Must have appeared in the Magistrates' Court and be willing to participate.	Magistrate refers	<i>Sentencing Act 1997.</i>

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
							Ineligible if they have a current or outstanding sexual or significant violent offence, or, are subject to a Supreme Court Order or Parole Order.		
VIC	Children's Court Youth Diversion (CCYD)	Diversion program (pre-plea and post adjournment of criminal proceeding).	Young people charged with low-level offences with little or no criminal history who would otherwise receive a non-custodial sentence. No requirement for drug-use/dependence.	N/A	N/A	Unlimited	<p>Diversion order may contain range of conditions aimed at harm reparation.</p> <p>Must take responsibility for the offence.</p> <p>The prosecution and accused must consent to the diversion.</p>	The Court must first consider: the seriousness and the nature of the offending; the seriousness and the nature of any previous offending; the impact on the victim (if any); the interests of justice and any other matter the Court considers appropriate. The Magistrate will then make a referral to the CCYD coordinator.	<i>Children Youth and Families Act 2005</i>
VIC	Youth Justice Group Conferencing	Pre-sentence (deferral of sentence) group conferencing.	Youth aged 10 to 18 found guilty of an offence not including certain serious offences. No requirement for drug-use/dependence.	N/A	N/A	Unlimited	<p>Must consent to participate in approx. 2-hour conference.</p> <p>May occur if the court is considering imposing a sentence supervised by the youth justice service.</p>	Must be assessed by the Department of Justice and Regulation youth justice service. If the court is considering a sentence of detention, the young person may be remanded in custody for up to two months to complete the group conference.	<i>Children, Youth and Families Act 2005</i>

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
VIC	Court Integrated Services Program (CISP)	Short term support services before sentencing for those with health and social needs.	Adults No requirement for drug dependence to access CISP as it offers various services.	N/A	N/A	Unlimited	Case management for up to 4 months; will refer to drug and alcohol support services as required.  Must be on summons, bail or remand pending a bail hearing.  Available regardless of plea or intent to plead.  Accused must consent to the program.	Referrals to CISP can be made by the police, legal representatives, magistrates, court staff, support services, family, friends, or the defendant.	Policy (DOJ and Magistrates Court joint venture.)
VIC	Aboriginal Community Liaison Officer Program (ACLO)	Short term support services before sentencing for Indigenous people with health and social needs.	Indigenous adults. No requirement for drug dependence to access KLO as it offers various services.	N/A	N/A	[Unknown]	Will provide access to services as client requires e.g.; referral to AOD services.  Must be on summons, bail or remand pending a bail hearing.  Available regardless of plea or intent to plead.  Accused must consent to the program.	Referrals to KLO can be made by the police, legal representatives, magistrates, court staff, support services, family, friends, or the defendant.	Policy (DOJ and Magistrates Court joint venture.)
VIC	Court Referral and Evaluation for Drug Intervention and Treatment/ Bail Support Programme (CREDIT/Bail Support)	Support program to support successful bail and place people in AOD treatment program.	Adults eligible for bail. Must have an illicit drug problem but may be at all stages of drug use.	N/A	N/A	[Unknown]	CREDIT clinician/ drug assessor makes assessment.  Up to 4-month treatment program is determined in conjunction with offender and may include counselling, pharmacotherapy, residential rehab etc.  No requirement to plead guilty.	Referrals may be made by a range of persons including police, magistrates and lawyers.	[Policy (DOJ and Magistrates Court joint venture.)]

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
							<p>Restricted to non-violent offences.</p> <p>Must be not subject to another court ordered drug treatment.</p>		
VIC	Criminal Justice Diversion Program (CJDP)	Diversion program prior to charges being laid.	Adults charged with offences triable summarily. No requirement for drug-use/dependence.	N/A	N/A	Generally, only first time offenders.	<p>Diversion plan is developed which may include requirement to attend counselling/treatment.</p> <p>Anyone can apply for the diversion but the prosecution must consent.</p> <p>Must acknowledge responsibility for offence. Prior convictions may be taken into account.</p>	Magistrate must deem a person suitable. If so, adjourns proceeding for period of diversion plan.	<i>Criminal Procedure Act 2009</i>
VIC	Deferred sentencing	Deferral of sentencing to allow assessment/treatment programs to occur.	Adults convicted of an offence. Drug use must contribute toward offending behaviour.	N/A	N/A	[Unknown]	<p>Deferral allows treatment to take place.</p> <p>Includes assessment, then compulsory treatment and education which may include counselling, pharmacotherapy, residential rehab etc.</p> <p>The maximum deferral/treatment period is 12 months and the offender must agree to treatment.</p>	The Magistrates' or County Court determines if sentencing should be deferred.	<i>Sentencing Act 1991 (s83A)</i>
WA	Juvenile Justice Team Diversion	Diversion from criminal justice system through an action plan.	Youth. No requirement for drug-use/dependence.	N/A	N/A	[Unknown]	Meetings arranged between offender, victim, police to set an action plan.	Referrals are made from police or the Children's Court. The discretion should be exercised if a	Policy

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
							To be accepted by a juvenile justice team, a young person must agree they have done something wrong and be prepared to make amends.	young person has not previously offended against the law.	
WA	Young Person's Opportunity Program (YPOP)	Diversion to health intervention	Low level offenders aged 14 to 18 years who are engaged with a Juvenile Justice Team. Must have emerging or significant Alcohol or Other Drug (AOD) related problems.	AOD	N/A	Unlimited	Assessment of AOD treatment needs, followed by voluntary education and/or motivational interviewing sessions (up to 3).	Referral to a Juvenile Justice Team, who then refers to the YPOP diversion officer.	Policy
WA	Youth Supervised Treatment Intervention Regime (YSTIR) Metro only	Pre-sentence voluntary drug treatment health intervention.	Youth aged 10 to 18 who plead guilty to an offence for moderate level offending in the Perth Children's Court. Must have emerging or significant AOD related problems.	AOD	N/A	Unlimited	<p>Youth Court and Assessment Treatment (YCATS) Officer co-ordinates a 3-month program (approx).</p> <p>Must see a drug and alcohol counsellor regularly, undergo urinalysis and other court requirements.</p> <p>Must attend court and see referring magistrate at regular intervals.</p> <p>Participants who plead guilty to an offence, and who would normally receive a CBO or ISO, are suitable for the program. Those charged with sexual offences, drug trafficking,</p>	Referral is at the magistrate's discretion.	Policy

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
							<p>offences with a high level of violence or those facing a mandatory prison sentence are not eligible</p> <p>Referrals can be requested by a magistrate, lawyer, police prosecutor, the offender or by someone else in the court room.</p>		
WA	Pre-sentence Opportunity Program (POP)	Pre-sentence voluntary diversion program	<p>Adults who plead guilty and who are attending court.</p> <p>Must have AOD related problems.</p>	AOD	N/A	Unlimited	<p>Initial assessment from diversion officer who then refers to an AOD treatment provider for counselling /treatment in an 8-12 week program.</p> <p>Must plead guilty to offence, and have otherwise received a fine or CBO.</p> <p>Anybody who has reason to address the court about the offender's case can request the offender be referred to POP.</p> <p>Those charged with sexual offences, drug trafficking, offences with a high level of violence or those facing a mandatory prison sentence are not eligible</p> <p>Must be on bail, or eligible for bail.</p>	Referral to the program is at the magistrate's discretion.	Policy
WA	Indigenous Diversion Program (IDP) Regional only	Indigenous pre-sentence voluntary	Indigenous adults who plead guilty and who are attending court.	AOD	N/A	Unlimited	<p>Initial assessment from Aboriginal Diversion Officer who will then refer to an AOD treatment</p>	Referral to the program is at the magistrate's discretion.	Policy.

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/referral opportunities	Program requirements	Required actions	Legislation or policy
		diversion program.	Must have AOD related problems.				<p>provider for counselling /treatment in a 8-12 week program.</p> <p>Early or low-level offenders who plead guilty to an offence, and who would normally receive a fine or CBO, are suitable for the program.</p> <p>Anybody who has reason to address the court about the offender's case can request the offender be referred to IDP.</p> <p>Those charged with sexual offences, drug trafficking, offences with a high level of violence or those facing a mandatory prison sentence are not eligible</p> <p>Must be on bail, or eligible for bail.</p>		
WA	Supervised Treatment Intervention Regime (STIR)	Pre-sentencing voluntary drug diversion program.	<p>Adults who plead guilty to moderate-level offences.</p> <p>Must have significant drug related problems.</p>	AOD	N/A	Unlimited	<p>Initial assessment from diversion officer who will then refer to an AOD treatment provider for counselling /treatment in a 3- 6-month program.</p> <p>Must plead guilty.</p> <p>STIR participants are placed on conditional bail which is supervised by a Senior Community Corrections Officer (SCCO). Includes attending court on a</p>	Referral to the program is at the magistrate's discretion.	Policy

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/ referral opportunities	Program requirements	Required actions	Legislation or policy
							<p>regular basis and being subject to random supervised urinalysis.</p> <p>Would normally receive a CBO or Intensive Supervision Order (ISO).</p> <p>Those charged with sexual offences, drug trafficking, offences with a high level of violence or those facing a mandatory prison sentence are not eligible</p> <p>Anybody who has reason to address the court about the offender's case can request the offender be referred to STIR.</p>		
WA	Mental Health Court Diversion and Support Program – Adult (Start) and Youth (Links). Metro only	<p>Pre-sentence voluntary program for people with mental health issues.</p> <p>Start Court – a specialised mental health therapeutic court for adults.</p> <p>Links – a mental health support service for children aged 10-17 who appear before the Childrens Court with complex emotional and</p>		N/A	N/A	Limited	<p><u>Adult Start Court Program</u> A program that combines judicial supervision and access to mental health treatment and support. Participants appear before the court regularly for up to 12 months. Indicated plea of guilty required. Moderate to serious offences.</p> <p><u>Links</u> A program offers a consultation / liaison model that offers clinical and psychosocial interventions.</p> <p>Referrals accepted from anyone who identifies an unmet need regarding the</p>	Referral is at magistrates discretion following clinical assessment	Not legislated.

Jurisdiction	Name of program	Type of Program	Target group	Target drugs	Limit on quantity possessed	Limit on number of diversion/ referral opportunities	Program requirements	Required actions	Legislation or policy
		mental health needs.					mental health of the person.		

## APPENDIX D: ADDITIONAL ABS DATA ANALYSIS

### Demographics of offenders detected with a principal offence of use/possession over the period 2010-11 to 2014-15 inclusive

	Proportion
Gender	
• Male	79.8%
Age	
• 10-14	1.3%
• 15-17	6.9%
• 18-19	11.2%
• 20-24	23.4%
• 25-29	15.7%
• 30-34	12.1%
• 35-39	9.7%
• 40-44	8.3%
• 45-49	5.7%
• ≥50	5.7%
Number of encounters for use/ possession in the last 12 months	
• One	86.1%
• Two	10.3%
• Three or more	3.6%

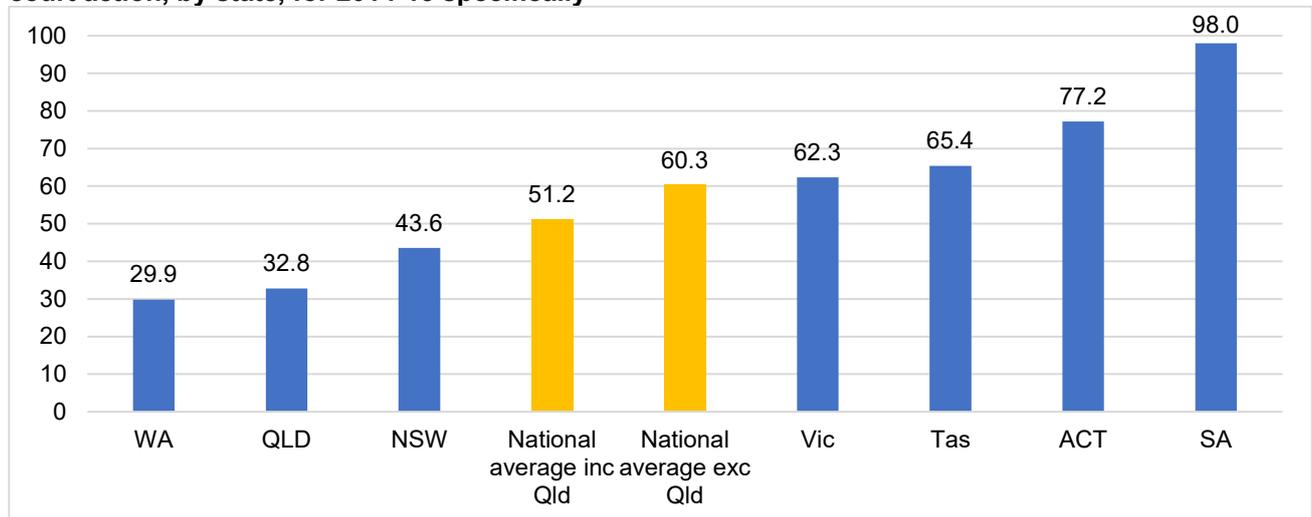
### Prevalence of illicit drug use in the last 12 months, by state, from the 2010 and 2013 National Drug Strategy Household Survey

	NSW	Vic.	Qld	SA	WA	Tas.	NT	ACT	Aust.
NDSHS 2010	13.8	13.7	15.1	14.9	18.6	12.0	21.3	13.9	14.7
NDSHS 2013	14.2	14.3	15.5	15.7	17.0	15.1	22.0	15.3	15.0

**Age of defendants in court with a principal offence of use/possession**

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
10–17 years	503	479	524	587	671	2764	2.7
18–19 years	1,216	1,293	1,544	1,738	2,071	7862	7.7
20–24 years	3,725	3,697	4,402	4,790	5,830	22,444	22.1
25–29 years	3,008	3,129	3,452	3,802	4,588	17,978	17.7
30–34 years	2,382	2,635	2,827	3,205	3,852	14,902	14.7
35–39 years	2,080	2,155	2,253	2,665	3,161	12,314	12.1
40–44 years	1,577	1,802	1,958	2,224	2,662	10,222	10.1
45–49 years	1,058	1,134	1,266	1,407	1,703	6,568	6.5
50–54 years	587	651	779	848	1,048	3,912	3.9
55 years and over	392	425	468	582	749	2,616	2.6
Total	16,528	17,399	19,474	21,848	26,334	101,582	100.0

**Proportion of offenders detected with a principal offence of use/possession diverted by police from court action, by state, for 2014-15 specifically**



## Queensland specific data

### Defendants in court in Queensland, by court, 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
Higher Courts	122	98	83	85	125	513	1.2%
Magistrates' Courts	6,472	6,745	7,595	9,183	11,142	41,136	97.5%
Children's Courts	92	84	98	117	142	533	1.3%
All Courts	6,685	6,928	7,777	9,382	11,405	42,176	100.0%

### Method of finalisation in Queensland, 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
Acquitted	13	25	21	34	35	128	0.3%
Proven guilty	6,310	6,601	7,417	8,923	10,806	40,057	95.0%
Transfer to other court levels	73	48	51	76	93	340	0.8%
Withdrawn by prosecution	288	238	278	349	473	1627	3.9%
Total finalised	6,685	6,928	7,777	9,382	11,405	42,176	100.0%

### Principal sentence in Queensland to those found guilty, 2010-11 to 2014-15

	2010-11	2011-12	2012-13	2013-14	2014-15	Total	Proportion
Custodial orders	348	401	413	494	593	2248	5.6%
• Custody in a correctional institution	203	210	221	280	341	1254	3.1%
• Suspended sentence	145	191	192	214	253	994	2.5%
Non-custodial orders	5,962	6,199	7,007	8,430	10,208	37,806	94.4%
• Community supervision/work orders	507	515	548	725	886	3,181	7.9%
• Monetary orders	3,325	3,528	4,108	5,024	6,113	22,098	55.2%
• Other non-custodial orders	2,130	2,154	2,347	2,678	3,208	12,517	31.2%
Total	6,310	6,601	7,417	8,923	10,806	40,057	100.0%

### Number of prisoners with a most serious offence of use/possession in Queensland, 2011 to 2015, sentenced and unsentenced

	2011	2012	2013	2014	2015	Total	Average
Sentenced	80	94	81	102	177	534	106.8
Unsentenced	43	44	43	55	64	249	49.8
Total	122	136	124	156	244	782	156.4