

DRUG POLICY MODELLING PROGRAM
MONOGRAPH 16

**A SUMMARY OF DIVERSION PROGRAMS
FOR DRUG AND DRUG-RELATED
OFFENDERS IN AUSTRALIA**

Caitlin Hughes and Alison Ritter
National Drug and Alcohol Research Centre

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Drug Policy Modelling Program Monograph Series

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THE DRUG POLICY MODELLING 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:

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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

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.

A handwritten signature in black ink that reads "Alison Ritter". The signature is written in a cursive, flowing style.

Alison Ritter
Director, DPMP

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EXECUTIVE SUMMARY

Aims

The diversion of illicit drug users and drug-related offenders comprises an important component of Australia's policy response to illicit drugs. Identifying the programs and their key characteristics poses a formidable task for policy makers and researchers, particularly following the recent expansion of diversionary responses.

This project aimed to summarise the current state of diversion in Australia: its nature and design. The analysis was guided by the following questions:

1. What programs are currently utilised for the diversion of illicit drug users and drug-related offenders?
2. What are the key characteristics of the diversion programs?
3. What are their similarities and differences?

Results

This project identified 51 programs operating for the diversion of drug and drug-related offenders throughout Australia. By examining their key features we noted that diversion expanded considerably since 2000, and that there was an expansion not only in the number, but also the type of programs.

Diversion is now provided across the full spectrum of the diversion system, via police, courts and specialist courts. Accordingly 31% programs were for police diversion, 22% for court diversion and 18% drug courts (29% were multi-targeted). Some programs targeted drug offences. But the majority either targeted drug related offenders or were accessible for any offender. This was just one indication of the diversity of program features.

In spite of the diversity an increasingly similar set of diversionary responses was provided in Australia. The five major types ranged from police cautioning to drug court mandated treatment programs.

In most jurisdictions three forms of police drug diversion were offered:

- Police diversion for cannabis (29% programs)
- Police diversion for other illicit drugs (25% programs)
- Police diversion for drug or drug-related offenders (46% programs)

Police diversion programs were complemented by two main types of court diversion programs, which targeted primarily minor drug users/drug-related offenders:

- Court diversion for minor drug/drug-related offenders (63%)
- Court diversion for serious drug/drug-related offenders (37%)

Each program type had a unique design, not only in diversionary mechanism, but also in terms of who could access the program and their typical program requirements. In theory this facilitated the provision of diversion across a spectrum of people.

It became increasingly clear through this project that while there was a movement towards having five main types of diversion in each jurisdiction, there remained considerable differences in jurisdictional systems. Jurisdictions differed in their priorities towards for example the provision of court or police diversion and in the level of emphasis upon drug courts. Moreover, we identified gaps in some systems for particular types of users. Both factors have potential impacts

upon who accesses diversion, the types of outcomes and the overall cost-effectiveness of diversion systems.

Research and policy implications

There has been a concerted commitment to provide diversionary responses across Australia and to the development of a more systematic and targeted approach. This bodes well for the improvement of current designs.

This project also enabled better insight into the nature of diversion in Australia today. It is clear that Australia's diversionary response has shifted in recent years, in an arguably positive direction. Key features of the current response include firstly that diversion is predominantly used for therapeutic purposes – to divert drug and drug-related offenders *into* drug education and treatment, rather than *out* of the criminal justice system. Second, diversion is increasingly systematic. Jurisdictions provide a range of programs for different types of drug users and offenders. Third, jurisdictions have used eligibility criteria and program requirements to target the level and type of intervention according to the type of drug users (cannabis versus other drug users) and severity of drug use/drug-related offending. Such a system brings many advantages including increased potential to address the causes of drug use and offending, to provide a more equitable response, and to maximise the cost-effectiveness of diversion. But there are also potential dangers particularly of complacency or assuming that Australia's diversionary response is working as best it can.

By documenting the major types of diversion and their unique features we have identified key similarities and differences. The challenge is to facilitate the improvement of Australia's diversionary response by increasing knowledge of what design features contribute towards the provision of effective diversion and which do not. This demands attention not only to the major types of diversion, but also to the diversionary systems. This represents key challenges, not least of which is the need for new tools and methods to expand this knowledge and provide practical guidance as to the future of Australia's diversion system.

A number of avenues for future consideration include:

- For whom are drug diversion systems most effective and most ineffective?
- To what extent and how do programmatic features e.g. eligibility criteria and minimum requirements impact upon program outcomes?
- To what extent are current systems meeting current needs?
- How can jurisdictions best meet future needs?
- How can jurisdictions maximise the cost-effectiveness of drug diversion systems?

It is hoped this document will spark future research and debate concerning the nature and effectiveness of Australian drug diversion programs, and inform Australia's diversionary response to drug and drug-related offenders, now and in the future.

INTRODUCTION

Australia takes a multi-faceted approach to drugs, involving supply reduction, demand reduction and harm reduction. This is part of the overall aim of minimising the harms of drug use/misuse to individuals and society (MCDS, 2004, p. 144). One important policy intervention is the diversion of illicit drug users. Diversion involves the use of the criminal justice system to provide alternate responses, including referral to education and treatment. This policy intervention has gained increased prominence in recent years.

The diversion of drug users and offenders is not a new initiative. Indeed diversion and the use of police discretion towards drug users (and other offenders) has been mainstream police practice, particularly for youth offenders (Morrison & Burdon, 2000). Moreover, since the adoption of the National Campaign Against Drug Abuse in 1985 there has been an explicit aim to minimise harms towards drug users (Department of Health, 1985). This led to a practice or at least rhetoric of focusing criminal justice intervention on drug traffickers, rather than drug users. Yet, implementation largely rested on informal mechanisms of diversion such as police discretion to not charge an offender and/or *ad hoc* formal jurisdictional programs (ADCA, 1996; Morrison & Burdon, 2000).

Throughout the 1980s and 1990s states and territories devised a number of schemes explicitly aimed at diverting drug offenders. Two of the earliest schemes were introduced in South Australia: the Drug Assessment and Aid Panels and the Cannabis Expiation Notice Scheme. The former introduced in 1984 provided assessment and treatment for users of illicit drugs (excluding cannabis) prior to sentencing in court and the latter introduced in 1987 provided cannabis users with expiation notices as an alternative to prosecution in court (ADCA, 1996). While other jurisdictions developed other schemes these largely developed independently of one another. Early responses were therefore relatively *ad hoc*.

Opportunities to expand the diversion of drug users and drug-related offenders increased in the late 1990s. This was driven by multiple factors, including an over-burdened criminal justice system, an international therapeutic jurisprudence movement led by the United States towards the introduction of specialist drug courts (McMahon & Wexler, 2002) and increased research showing that diversion could be a useful tool to address drug use and drug-related crime (ADCA, 1996; Bull, 2003). This led to the emergence of new programs, including the Victorian bail scheme CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment) and the NSW Drug Court, Australia's first specialist drug court. Their designs, and choice of a generalist versus specialist court system, were indicative of both the different styles of diversion and the individualistic approach to their adoption.

April 1999 marked a shift towards a more national approach towards diversion. For the first time the states, territories and Commonwealth agreed to a national commitment to provide diversion for illicit drug users (Council Of Australian Governments, 1999). The agreement known as the Council Of Australian Government-Illicit Drug Diversion Initiative (COAG-IDDI) was aimed at the diversion of minor drug users 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 to enable an expansion of treatment places (Howard, 1999, 2002). This has enabled a significant roll out of new and expanded IDDI funded diversion programs into all states and territories and the development of a more systematic approach to diversion.

Diversiory options for the diversion of serious drug and drug-related offenders have been less systematic. The major diversiory responses to such offenders, involving assessment, treatment and supervision via drug courts, have been devised on a state by state basis. As of 2007 drug courts have been established in all but two jurisdictions (Northern Territory and Tasmania). Only a few have received funding through the IDDI. Diversiory options in Australia have thus expanded considerably over the last twenty years. Their designs reflect the continuing tension to meet individual state and territory needs and the desire for a more nationally consistent approach.

Understanding the nature of diversion in Australia

Diversion has multiple meanings. As noted by Cohen (1979) and Cressey and McDermott (1973) traditional or “true” diversion involves diversion out of the system, with no further treatment, conditions or follow up. In contrast, the “new” diversion involves diversion into a program. These approaches reflect different rationales for diversion: to minimise the harmful effects of formal intervention or to provide opportunities to address drug use/offending. The first reflects deconstructing rationales (see for example Polk, 1987) whereas the latter reflects therapeutic rationales (see for example McMahon & Wexler, 2002).

The definition of diversion has important implications for the type of diversion that is adopted, particularly whether diversion is utilised to divert away from the criminal justice system or into programs. Both approaches have advantages and disadvantages. Traditional methods of diversion avoid unnecessary intervention and can increase the efficiency of the criminal justice system, but their major risk is they may not address the causes of problematic drug use or offending. The principal advantage of diversion into education/treatment (therapeutic responses) is the increased potential to address the causes of drug use and crime. For occasional drug users it offers the opportunity to deter and educate about the risks of prolonged drug use and for dependent drug users a therapeutic response can address the causes of drug use and crime.

History has shown that therapeutic modes of diversion bring considerable risk of net-widening. They may not therefore “divert” offenders away from the criminal justice system, but “supplement the existing system or else expand it by attracting new populations” (Cohen, 1979, p. 347). In so doing they may widen the net, increasing the number of offenders in contact with the criminal justice system, the severity of punishment, and the certainty of punishment. This is particularly likely if there is compulsory diversion since individuals who fail to comply may be recalled back into the criminal justice system (hence not diverted) (Polk, Adler, Muller, & Rechtman, 2005). Understanding the philosophical rationales and benefits and risk is vital for maximising the effectiveness of diversion.

Best practice principles

Many researchers have identified best practice principles of diversion. These include the need for a broad range of diversion programs with different levels of interventions, access for all offenders regardless of age, gender, ethnicity or substance of use and careful targeting using clear eligibility criteria (ADCA, 1996; Bull, 2005). There is a particular need to ensure responses do not infringe on client rights and hence that responses are not more onerous or intrusive than the traditional criminal justice response. Finally, there is a need for clear aims and documented procedures for diversion. Indeed Bull (2003) has documented that there is not only national but also international agreement that such principles are essential to attain “best practice” diversion.

Impacts

It is increasingly clear that while there has been a national expansion of diversionary responses in Australia, the types of programs vary from jurisdiction to jurisdiction, and program to program. Many evaluators have pointed out the diversity of program design in Australia. As noted by the first evaluator of the Illicit Drug Diversion Initiative there are vast differences in the programs, target groups, mechanisms and program requirements (Health Outcomes International et al., 2002a).

As characterised by Spooner, Hall and Mattick (2001) diversion programs in Australia are offered at multiple stages of the criminal justice system:

- pre-arrest – when an offence is first detected e.g. fines and cautions
- pre-trial – when a charge is made, but before the matter is heard in court e.g. treatment as a condition of bail
- pre-sentence – when a plea is entered, but sentencing is delayed e.g. deferred sentencing
- post-sentence – when participation is a substitute for or condition of sentence e.g. some drug courts
- pre-release – following completion of sentence e.g. parole

Moreover, drug diversion programs target a number of different individuals:

- People committing drug offences – use/possession of drugs or drug equipment (consumer offences) and drug cultivation, manufacturing and trafficking (trafficking offences)¹
- People committing drug-related offences – offences committed under the influence or to fund drug use e.g. burglary
- People committing minor offences – offences that are indirectly related to drug use e.g. graffiti

Finally, there are multiple mechanisms of diverting drug users: provision of warnings, cautions, youth conferences, referrals for education sessions or intensive case management, treatment and supervision.

There is now a substantial body of research into the effectiveness and outcomes from Australian drug diversion programs. To date there has been one national evaluation of the Illicit Drug Diversion Initiative which was conducted in 2002 (Health Outcomes International et al., 2002a, 2002b). Evaluations have also been conducted in each state and territory (although not of all programs) (Alberti, King, Hales, & Swan, 2004; Ali et al., 1999; Baker & Goh, 2004; Cant, Downie, & Henry, 2004; Crime Research Centre, 2007; Cunningham, 2007; Department of Justice, 2006; Eardley et al., 2004; Fetherston & Lenton, 2007; Freeman, 2002; Freeman & Donnelly, 2005; Freeman, Lawrence Karski, & Doak, 2000; Harkin, Fletcher, & O'Brien, 2007; Heale & Lang, 2001; Health Outcomes International Pty Ltd, 2005; Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre, 2004; Hunter, 2001; Indermaur, Roberts, Morgan, & Valuri, 2006; Lind et al., 2002; Makkai & Veraar, 2003; McLeod Nelson and Associates Pty Ltd, 1999; Northern Rivers University Department of Rural Health, 2003; Orchard, Porter, & Francis, 2005; Payne, 2005; Skrzypiec, 2006; Sutton & Hawks, 2005; Taplin, 2002).

Research to date has suggested that drug diversion programs can reduce drug use and criminal behaviour, and improve physical health, mental health and relationships with significant others

¹ People committing indictable offences such as drug trafficking are generally excluded from such programs unless they can be dealt with summarily.

(Bull, 2003; Health Outcomes International et al., 2002a; O'Callaghan, Sonderegger, & Klag, 2004). For example, the Queensland Police Diversion Program had considerable impacts upon the level of drug use (Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre, 2004). The proportion of offenders described as regular cannabis users decreased from 95% to 74% over six months.

Drug diversion programs can increase the efficiency and/or cost-effectiveness of the criminal justice system (Baker & Goh, 2004; Northern Rivers University Department of Rural Health, 2003). Studies of the MERIT program revealed that drug diversion offered likely savings equivalent to \$2.98 for every \$1 invested (Northern Rivers University Department of Rural Health, 2003). This was attributed to the reductions in the costs of police investigation, hospitalisation, criminal activity and prison and probation supervision costs. Drug diversion programs therefore offer a number of benefits over the traditional criminal justice response.

Studies have also shown that diversion programs can have counter-productive impacts. Many drug diversion programs have been found to result in net-widening (Roberts & Indermaur, 2006). The most infamous example is the South Australian Cannabis Expiation Notice Scheme which resulted in a 280% increase in expiable cannabis offences (from 6,231 in 1987/88 to over 18,000 in 1996/97 (Christie & Ali, 2000). Reviewers have also highlighted concerns over the equity of diversion (particularly for Indigenous drug users), access (particularly in rural areas) and consistency of program implementation (Bull, 2003; Health Outcomes International et al., 2002b; Holloway, Bennett, & Farrington, 2005; Loxley, 2005; O'Callaghan et al., 2004; Spooner et al., 2001). Evaluators suggested that program design may affect the likelihood of counter-productive impacts (Bull, 2003; Payne, 2006). Hence, optimising the effectiveness of diversion programs requires an understanding of programmatic designs and the impact of similarities/differences. For an overview of other evaluations see Wundersitz (2007).

The major drawback to the evaluations of diversion programs has been that they have often been based on poor methodological quality. Evaluations have been conducted with varying objectives and methods of measuring success/failure (Harvey, Shakeshaft, Hetherington, Sannibale, & Mattick, 2007; Wundersitz, 2007). Many were conducted on pilot programs, with small sample sizes and with only short term follow up. Moreover control groups when used tend to be poorly matched which means that effect sizes are overestimated.

Fortunately, evaluators have increasingly adopted more sophisticated methodologies, particularly in relation to the evaluation of drug courts. Arguably the best evaluation was conducted of the NSW (Adult) Drug Court. This included three studies. The first study was a process evaluation, which described the operation of the Court, problems in its operation and steps taken to resolve the problems (Taplin, 2002).

The second study was an outcome evaluation of the health and wellbeing of participants, throughout 12 months of participation in the Drug Court. This showed that prior to entrance drug court participants had much poorer levels of physical and emotional health than the general population, with over half having a chronic illness (Freeman, 2002). Throughout the program participants improved significantly in the health, drug use and social functioning. But the study also indicated that 62% participants left the program prior to completing it. This suggested that the impacts from the drug court could be enhanced by increasing program retention.

The third study was a cost-effectiveness study, which compared the cost-effectiveness of reducing drug-related crime using the drug court as opposed to sanctioning through the

traditional court. The study was conducted using a randomised control trial, the first used in Australia and revealed that there was little difference in the cost of increasing the time taken to commit a first offence (Lind et al., 2002). But there was a significant difference in terms of reducing the *rate* of offending. Using conventional standards it costs an extra \$4,921 to prevent one additional shop stealing offence and an extra \$19,040 to prevent one additional use/possess opiate offence. The study also showed that while the average cost per day on the drug court was \$144, it was significantly greater for those who were terminated (\$180) and much less for those who graduated (\$79). This led to further recommendations to identify and remove those who were less likely to complete the program. Follow up studies have since been conducted in NSW and other states to establish the characteristics of non-completers (see for example Freeman & Donnelly, 2005; Skrzypiec, 2006).

Such a comprehensive spread of evaluations has produced a valuable pool of information about the NSW drug court: what worked; why; and avenues to improve the cost-effectiveness of the program. This provides a useful example of the benefits of adding to the empirical evidence-base and of improving the methodological quality of evaluations conducted into diversion programs.

The current project

It is evident from this brief overview that diversion offers benefits but also risks. There is a considerable need to understand how diversion is implemented across Australia. Yet, the federal system and rapid expansion of diversion in Australia poses significant challenges to identifying and understanding the vast array of diversion programs in Australia:

- What are the programs?
- In which jurisdictions do they operate?
- Who do they target?
- What are their similarities and differences?

We endeavoured through this project to identify the current state of play concerning Australian drug diversionary responses. Towards this end *all* diversion programs for drug and drug-related offenders operating throughout Australia as of July 2007 were sourced for this report. The major types of diversion offered through police and courts were identified and their key characteristics summarised according to the stage of criminal justice intervention, eligibility criteria, program mechanisms and requirements. Detailed overviews are provided for each jurisdiction by type of diversion (police or court). These are listed at the end of the report. Summary overviews of the major program types, their similarities and differences are also provided. We conclude by raising a number of issues and implications for researchers and policy makers concerning the nature and design of Australia's current diversionary approach.

This should provide a useful tool for policy makers and researchers wishing to identify what is going on throughout Australia, compare jurisdictional approaches and/or inform future decision making concerning the diversion of drug and drug-related offenders.

METHOD

Prior to commencing this project the literature on drug diversion programs was reviewed. This led to the identification of four domains of interest that guided the development of the drug diversion overview: referral source; eligibility criteria; program characteristics; and administrative details. The definition of each domain is described below.

- 1. Referral source:** the gatekeeper(s) to diversion programs – the individuals/institutions responsible for determining eligibility and giving access to diversion programs
- 2. Eligibility criteria:** criteria pertaining to which individuals are given access to diversion programs and in what circumstances. The eligibility criteria of interest included:
 - age: the restrictions, if any, on whether offenders are youth or adults
 - residential location: the restrictions, if any, on where eligible offenders reside
 - current offence: the types of offence for which offenders are eligible to participate
 - threshold rules/quantities: the rules or restrictions pertaining to the amount of drug that can be possessed or circumstances surrounding the offence
 - offending history: the rules, if any, concerning past offending
 - diversion history: the number of times an offender can partake in an individual program or state/territory diversion system
 - judicial requirements: the requirements on program entry, if any, set by the court e.g. to plead guilty/ be eligible for bail
- 3. Program characteristics:** criteria pertaining to the operation of the diversion programs: their mechanisms, rules and incentives. The program characteristics of interest included:
 - Diversionary mechanism: the response(s) to offenders who undertake the diversion program e.g. assessment for voluntary treatment
 - Requirement: the obligations on individuals who undertake the diversion program
 - Assessor: the organisation(s) responsible for determining client eligibility
 - Program length: the time required (if specified) to undertake and complete a diversion program²
 - Program conditions: the conditions imposed on and options offered to individuals who undertake a drug treatment program e.g. to undergo urinalysis
 - Treatment options: the types of treatment available for offenders who undertake a drug treatment program
 - Criminal justice incentives: the enticement(s), if any, offered by the criminal justice system for offenders who successfully complete the diversion program e.g. reduced sentence
 - Response to non-compliance: the responses, if any, to offenders who fail to comply with program conditions/minimum requirements
- 4. Administrative details:** other details including the date of program commencement, the specific legislative basis, if applicable, through which the diversion program operates and a link to further information. Information was also provided on whether the program received funding through the Illicit Drug Diversion Initiative and hence was part of the COAG-IDDI agreement, or funded elsewhere.

² Program length was not specified for most police diversion programs.

Once the fields were established, data were sought to populate tables for each jurisdiction.

Data on drug diversion programs were obtained through publicly available means. Program information was of variable quantity and quality, which necessitated the use of a number of sources of data. Legislation and policy documents produced by police, Magistrates and state/territory drug and alcohol offices were the primary sources of material. The second source of information consisted of publicly available literature and conference presentations. The final source included more informal sources, available through internet web searches. Where information conflicted emphasis was placed upon the primary source.

To maximise the accuracy of the information a draft of this report was circulated to key informants in each state and territory. Where possible links have also been provided to enable the interested researcher or policy maker to check the original sources of information and/or find extra information.

It should be noted that the current project has deliberately adopted a different approach to previous reviews of diversion programs. Previous reviews have examined subsets of diversion programs: programs funded through the IDDI (Health Outcomes International et al., 2002a; Spooner et al., 2001); programs provided for youth (Polk et al., 2005); and programs operating through specialty courts e.g. drug courts (Payne, 2006). While helpful, such reviews provide only a selected view of diversion programs. This can provide a skewed picture of the nature of diversion in Australia and/or mask the similarities between programs.

For example, in Australia's federated system jurisdictions have sometimes adopted differing legislative approaches. Decriminalisation has been a notable feature of the ACT, Northern Territory, South Australia and Western Australia responses to cannabis use/possession. Such jurisdictions offer cannabis expiation programs for minor cannabis offences, and provide civil penalties instead of criminal penalties (For a complete review see NDARC Fact Sheet: Cannabis and the law, National Drug and Alcohol Research Centre, n.d.). It is clear that in spite of their distinct legislative basis and approach they nevertheless provide an alternate or diversionary response to drug users. In this sense they are "diversion" programs.

We sought through this review to extend the previous reviews and identify and examine the full spectrum of programs diverting drug and drug-related offenders in Australia. It therefore includes all programs operating in Australia aimed at drug users/drug-related offenders detected for use/possession offences or for other crimes, regardless of funding arrangements, legislative basis, program type, age, sex or eligibility criteria of the offenders. The primary exclusion from this report was programs of a pre-release nature such as parole programs.

RESULTS

A total of 51 programs were identified (as of July 2007) operating throughout Australia for the diversion of illicit drug users and drug-related offenders. Table 1 provides a list of all the diversion programs (page 12-13). The following provides an overview of the key characteristics of these programs, Australia-wide and then by program type.

The state of diversion in Australia

Diversion is not a new concept in Australia. In every jurisdiction schemes for diverting drug and drug-related offenders have been provided for at least ten years. There was a significant expansion in such schemes following 2000, particularly in the provision of court diversion:

- 16 programs (12 police and 4 court) were introduced prior to 2000 (31%)
- 35 programs (11 police and 24 court) were introduced from 2000 onwards (69%)

The majority of programs were funded through the COAG-IDDI Agreement. This suggests that the introduction of the COAG-IDDI agreement has facilitated the expansion of diversion. That said, many programs received no funding through this source:

- 30 programs were funded by the IDDI (59%)
- 21 programs were not funded by the IDDI (41%)

A notable feature of Australia's diversionary response was that while there was a preference for diversion via the front-end, particularly via police diversion, options were offered throughout all stages of the criminal justice system, via police, courts and the specialist drug courts. Moreover, while most programs targeted one stage of the criminal justice system, a number of programs offered multiple avenues for referral:

- 16 were for police diversion (31%)
- 11 were for court diversion (22%)
- 9 were for drug court diversion (18%)
- 15 were for police and/or court and/or self diversion (29%)

A minority of programs solely targeted drug use/possession offences. The vast majority (67%) did not solely target drug offences. They nevertheless offered avenues for diverting drug and drug-related offenders:

- 17 programs targeted drug use/possession offences (33%)
- 6 programs targeted drug-related offences/offenders (12%)
- 28 programs were inclusive of any offence, including drug and drug-related offenders (55%)

Restrictions on the type of drug used were uncommon. The exception was amongst programs that solely targeted drug use/possession offences. As the following demonstrates, of the 17 programs targeting drug use/possession offences, most were aimed at cannabis users, but a few programs were also open to individuals misusing licit drugs:

- 7 programs targeted cannabis users (41%)
- 5 programs targeted users of any illicit drug or illicit drugs excluding cannabis (29.5%)
- 5 programs targeted users of any illicit drug or misuse of any licit drug (29.5%)

Some programs targeted youth alone, or both youth and adults. But adults were the major target of Australian diversion programs:

- 14 programs targeted youth (27.5%)
- 23 programs targeted adults (45%)
- 14 programs targeted both youth and adults (27.5%)

A number of mechanisms were used for responding to drug and drug-related offenders. The most popular mechanism involved assessment and compulsory drug treatment, but assessments for voluntary treatment were also popular. Fines in contrast were rare. This illustrates that the vast majority of Australian diversion programs (74%) used an educative/ therapeutic mechanism for responding to drug and drug-related offenders. Non-therapeutic responses, while less common, were still notable:

- 10 programs resulted in a warning/formal caution/family group conference (20%)
- 3 programs resulted in a fine (6%)
- 1 program resulted in a fine or attendance at an education session (2%)
- 4-5 programs resulted in cautions and referrals to education sessions (8-10%)³
- 8-9 programs resulted in assessment and voluntary treatment (16-18%)
- 25 programs resulted in assessment and compulsory treatment (49%)

The typical client is likely to be an adult who has been detected for drug-related offences. Diversion is likely to result in a therapeutic intervention such as assessment and compulsory drug treatment. Yet, while this may be the typical experience, it is by no means representative of all diversionary experiences in Australia. The heterogeneity of responses necessitates a more constructive insight into the features of Australian diversionary programs.

³ One program offers a graduated system of response with cautions and education for first time offenders/cannabis users and assessment and voluntary treatment for repeat offenders/other illicit drug users

Table 1: Programs operating within Australia as of July 2007 for the diversion of drug and drug related offenders by jurisdiction, referral source and name

Program number	Jurisdiction	Referral source	Program name
1	ACT	Police	SCONS (Simple Cannabis Offence Notice Scheme)
2	ACT	Police	ACT Policing Early Intervention and Diversion (PEID) program
3	ACT	Police/Court	Children & Young People Act 1999
4	ACT	Court	CADAS (Court Alcohol and Drug Assessment Service)
5	ACT	Court	TRP (Treatment Referral Program)
6	NSW	Police	Adult Cannabis Cautioning Scheme
7	NSW	Police/ Court	Young Offenders Act
8	NSW	Police/Court/Self	MERIT (Magistrates Early Referral Into Treatment)
9	NSW	Police/Court/Self	Rural Alcohol Diversion (RAD) Pilot Program
10	NSW	Drug court	Youth Drug and Alcohol Court
11	NSW	Drug court	(Adult) Drug Court
12	NT	Police	Cannabis expiation scheme
13	NT	Police	Northern Territory Illicit Drug Pre-Court Diversion Program
14	NT	Police	Juvenile Pre-Court Diversion Scheme
15	NT	Police/ Court	Youth Justice Act
16	NT	Court	CREDIT NT (Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory)
17	Qld	Police	Police Diversion Program for Minor Drug Offences
18	Qld	Police/Court	Juvenile Justice Act 1992
19	Qld	Court	Illicit Drug Court Diversion Program
20	Qld	Police/Court/Self	QMERIT (Queensland Magistrate's Early Referral into Treatment)
21	Qld	Drug court	Drug Court Program
22	SA	Police	Cannabis Expiation Notice
23	SA	Police	PDDI (SA Police Drug Diversion Initiative)
24	SA	Police/Court	Young Offenders Act 1993
25	SA	Police/Court	CARDS (Court Assessment and Referral Drug Scheme)
26	SA	Police/Court	Youth CARDS (Court Assessment and Referral Drug Scheme)

Program number	Jurisdiction	Referral source	Program name
27	SA	Drug court	SA Drug Court
28	Tas	Police	Police Drug Diversion
29	Tas	Police/Court	Youth Justice Act 1997 ⁴
30	Vic	Police	Cannabis cautioning program
31	Vic	Police	Drug diversion program
32	Vic	Police	Victoria Police Cautioning Program
33	Vic	Police	Rural outreach diversion
34	Vic	Police/Court/Self	CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment)
35	Vic	Court	Koori Drug Diversion
36	Vic	Court	Deferred sentencing
37	Vic	Court	Juvenile Justice Group Conferencing
38	Vic	Court/ Self/ DHS	Children's court clinic drug program
39	Vic	Drug court	Drug Treatment Order
40	WA	Police	CIN (Cannabis Infringement Notice) Scheme
41	WA	Police	All Drug Diversion
42	WA	Police/Court	YPOP (Young Person's Opportunity Program)
43	WA	Police/Court	Young Offenders Act 1994
44	WA	Court	POP (Pre-sentence Opportunity Program)
45	WA	Court	IDP (Indigenous Diversion Program)
46	WA	Court	STIR (Supervised Treatment Intervention Regime)
47	WA	Court	GASR (Geraldton Alternative Sentencing Regime)
48	WA	Drug court	Children's Court Drug Court
49	WA	Drug court	DCR (Drug Court Regime)
50	WA	Drug court	PSO (Pre Sentence Order)
51	WA	Drug court	CSI (Conditional Suspended Imprisonment) Order

⁴ Tasmania introduced a Court mandated drug diversion program in August 2007.

Types of diversion – key features

In recent years the Australian diversionary response has not only expanded but has become increasingly structured around distinct types of diversion. Every state and territory has introduced a range of diversion programs, which target different stages of the criminal justice system (police and courts) and different categories of offenders (minor, serious, drug, drug-related). Most jurisdictions provide 5 or 6 programs. At the time of analysis Tasmania was an exception since it offered two police diversion programs, but no court diversion programs. In August 2007 Tasmania introduced its first court diversion program. Examining the whole set we identify the major approaches, the key features of each program type and their similarities and differences.

For ease of comparison we examine firstly police diversion, then court diversion, but within this distinguish three main types of police diversion and two main types of court diversion. Detailed overviews of each diversion program are listed in Tables 4-19, commencing on page 45.

Police diversion

Three main types of police diversion are offered for drug users in Australian jurisdictions, two of which target illicit drug use/possession. The third type of diversion is not aimed at specific offences, but can be utilised to provide drug or drug-related offenders (predominantly youth) with diversionary options. A significant proportion of the police diversion programs offered in Australia fall into the latter category, making it an important tool for diverting drug and drug-related offenders:

- 7 programs target cannabis use/possession only (29%)
- 6 programs target use/ possession of other illicit drugs (25%)
- 11 programs are open to drug or drug-related offenders (detected for non-specific offences) (46%)

Police diversion for cannabis only

Every state except Tasmania has one specific cannabis police diversion program. Tasmania provides diversion for cannabis users as part of its broader Police Drug Diversion program for illicit drug use/possession offences. There are two main mechanisms of cannabis diversion provided in Australia: cannabis cautioning and cannabis expiation. The former involves the provision of an “on the street” formal caution or warning, whereas the latter involves the issuing of an expiation fee of between \$100 and \$300.

The cannabis cautioning scheme provides a more educative, one-off response, whereas the cannabis expiation scheme offers multiple non-therapeutic opportunities for diversion. Education and referral schemes are attached to all cannabis cautioning schemes, but only to one cannabis expiation scheme (WA). The nature of the education schemes vary. For example in NSW offenders are provided with information on the health and legal consequences of using cannabis and a telephone number for the Alcohol and Drug Information Service. In contrast, offenders in Victoria receive an education brochure plus a referral for a face-to-face 2 hour cannabis education session (Cautious with Cannabis). In most of the schemes undertaking the more intensive education session is optional.

A variant of the cannabis cautioning scheme operates in Queensland. In this jurisdiction offenders detected for cannabis possession will be arrested. Police may then discontinue arrest proceedings, and indeed are required to offer all eligible offenders with the opportunity to do so, on the proviso that they agree to attend and complete a 1-2 hour drug diversion assessment program involving assessment, education and counselling. Offenders that accept that offer are

obliged to sign an agreement notifying them that if they fail to attend the program they will be guilty of another offence of failing to comply with the direction of a police officer, punishable with 40 penalty units = \$3,000. Compared to the traditional cannabis cautioning program the Queensland Police Diversion Program therefore offers much less discretion surrounding who gets offered a diversion opportunity and who attends the drug diversion assessment program.

The number of times an offender can enter a cannabis cautioning program is limited to one or two. In contrast there are no limits on the number of times offenders can enter expiation schemes. One variant of this is the Western Australian Cannabis Infringement Notice (CIN) Scheme which makes unlimited access for repeat offenders conditional on attending Cannabis Education sessions.

Unrestricted access to cannabis expiation schemes tends to be offset by penalties for individuals who fail to comply with the schemes. Failure to pay expiation fees can result in additional penalties including a fine or suspension of a drivers licence (Western Australian Cannabis Infringement Notice Scheme) or an automatic criminal conviction plus a fine (South Australian Cannabis Expiation Notice Scheme). In contrast, most cannabis cautioning schemes do not impose additional penalties or follow up non-compliance e.g. failure to attend an education session. The exception is the Queensland Police Diversion Program for Minor Drug Offences which may impose additional penalties failing to comply with the directive of a police officer.

For both schemes eligible offenders must be detected using or possessing small quantities of cannabis. All programs use threshold quantities to restrict access to cannabis users. The threshold quantities for these programs vary, but not widely. The lowest threshold is 15 grams (NSW), the highest is 100 grams (SA). Most jurisdictions have a threshold of 50 grams.

Cannabis diversion schemes tend to operate on the basis of police discretion. Accordingly, police can offer eligible offenders access to cannabis diversion programs or provide an alternate response e.g. an informal caution. Two exceptions to this are the Queensland Police Diversion Program and the South Australian Police Drug Diversion Initiative (which only diverts young cannabis offenders). It is mandatory under both scheme for police to offer diversion to eligible offenders.

Police diversion for other illicit drugs

Similar to the cannabis diversion programs, police diversion programs are also provided for individuals detected for use/possess of other illicit drugs. These programs are provided in every state/territory except Queensland and NSW. In such jurisdictions offenders may instead be offered diversion through the courts.

Police diversionary mechanisms for individuals detected for use/possess of other illicit drugs are similar, and involve a compulsory assessment of their drug use behaviour with a drug treatment service and education/counselling. It is difficult to know what is expected of diverted clients and/or what in practice constitutes the typical diversion episode. This is because most programs leave the extent of client involvement to the discretion of the individual offender. Most jurisdictions impose a similar set of minimum requirements: attendance at one session (education or counselling) (ACT), attendance at two sessions of counselling (Vic) or attendance at three sessions of counselling (WA). The extent of involvement could however vary greatly. For example, in one program clients are required to undertake an education session then at least commence treatment, but treatment may last for up to 8 weeks (NT).

One program differs from the norm: the Police Drug Diversion program which operates in Tasmania. The primary difference is that it provides a range of responses to cannabis and illicit drug users within the one program. These include a formal caution, brief intervention and assessment and compulsory treatment. The Police Drug Diversion program enables up to 3 diversions and tailors the type of diversionary response to the type of drug used and stage of diversion. For example if someone is detected for a first cannabis offence they may receive a formal caution, but a second offence may result in a brief intervention. In contrast, all offenders detected for use/possession of illicit drugs will be offered an assessment and compulsory education and treatment. In theory the provision of diversion of both cannabis and illicit drug users through the one scheme enables a more individually tailored and streamlined program than the traditional police drug diversion scheme.

It is notable that all jurisdictions provide diversion for both youth and adults. Most jurisdictions divert both youth and adults through the same scheme and provide them a similar type of responses. One jurisdiction differs. In Western Australia the police diversion program for illicit drugs is restricted to adults, but youth are provided with an alternative – diversion through the Young Person’s Opportunity Program. The alternate program is managed through the Juvenile Justice Team, and provides access to assessment and education (see next section).

In general police diversion for other illicit drugs is restricted to individuals detected for use/possession of *illicit* drugs, but three states also permit diversion for individuals detected for the misuse of pharmaceutical drugs or other licit drugs (ACT, SA and Vic). Similarly to the cannabis diversion scheme most jurisdictions use threshold quantities to restrict access to those found in possession of drugs for personal use. Eligible offenders can possess between 0.5 grams and 2 grams for amphetamines, cocaine, ecstasy or heroin.

The final difference between the programs for illicit drug users is eligibility criteria concerning an individual’s offending and diversion history. Victoria and South Australia are the only states that have no restrictions on offending histories. In other states individuals are ineligible for diversion if they have convictions for violent offences (ACT, NT and WA), convictions for drug trafficking (WA), or convictions for drug offences (NT). A number of programs also place restrictions on the number of times offenders can enter a diversion program and limit involvement to one diversion (WA) or two diversions (ACT, Vic). Opportunities to enter diversion programs are unrestricted in the Northern Territory and in South Australia. The Tasmanian Police Drug Diversion program has a different set of restrictions; eligible offenders are allowed to have up to three “drug events” including both drug offences and diversionary experiences.

Police diversion for drug/drug-related offenders

In addition to the drug-specific diversion programs, all jurisdictions provide police diversion programs that are open to individuals detected for *any* offence, including drug or drug-related offences. What distinguishes these from other forms of police diversion is they target primarily youth, through Young Offender Acts⁵, and there is more discretion over who enters the program and the types of responses and minimum requirements for completing a diversion session. A range of sanctions including warnings, cautions or youth group conferences are provided – all of which tend to be non-therapeutic. There are no limits on the number of times offenders can enter programs and minimum thresholds for individuals who commit drug offences are rare.

⁵ Victoria also provides a rural outreach diversion.

There are two notable exceptions, which have more restrictive mechanisms or rules than for other Young Offender Acts: the NSW Young Offenders Act and the Western Australian Young Person's Opportunity Program (YPOP). Both schemes target any young offender, including those who commit drug or drug-related offences. However, YPOP offers only one means of diversion, namely to undergo a drug assessment and optional education, motivational interviewing and treatment. Access to the scheme is not limited by prior attendance. The NSW Young Offenders Act offers a range of sanctions like the other Young Offenders Acts, but imposes threshold quantities on individuals found in possession of illicit drugs, and limits to three the number of times someone can receive a diversion. In this regard these programs appear to be hybrids of the police diversion schemes targeting specific and non-specific drug offences.

In summary, a number of police diversion schemes are provided for drug and drug-related offenders. Three distinct schemes operate, targeting cannabis users, illicit drug users and youth. There are more programs for detecting individuals for drug use/possession offences, than for drug-related offences.

Court diversion

Throughout Australia the police diversion programs for drug and drug-related offenders are supplemented by a diverse range of court diversion programs. Most states and territories have multiple court diversion programs. The most prolific is Western Australia with 8. On the other extreme, Tasmania and the Northern Territory each have one program. This may reflect the size of the populations in these jurisdictions, or the level of development of their diversionary systems. As noted previously the Tasmanian scheme only developed following data analysis. Due to this a full analysis of this program has not been provided in this report.

The diversity of the court diversion programs proved a challenge in classifying the programs. Programs operated through different courts (both traditional and drug courts), at different stages of the criminal justice process (pre-trial, pre-plea, post-sentence) and for different types of offenders (minor, serious). The traditional distinction categorised programs according to the stage of criminal justice process: pre-trial, pre-sentence and post-sentence programs (Spooner et al., 2001). Yet, the majority of Australian court diversion programs were pre-sentence:

- 7 pre-trial programs (23%)
- 16 pre-sentence programs (54%)
- 4 post-sentence programs (13%)

While such a categorisation could identify some common diversion characteristics, it grouped together programs with very different mechanisms including juvenile justice group conferencing, sentence deferral and the majority of drug court mandated treatment programs. In addition, programs targeting serious and minor offenders were undifferentiated.

Arguably a more useful means of identifying common properties and features is to categorise court diversion programs according to target offender and the severity of use/offending. Through such a system the majority (63%) of court diversion programs in Australia target minor offenders:

- 12 programs target minor drug/drug-related offenders (44%)
- 5 programs are open to any minor offender, including drug/drug-related offenders (19%)
- 10 programs target serious drug/drug-related offenders (37%)

Categorising according to target offence is more subjective than categorising according to the stage of criminal justice processing or by the type of illicit drug used (cannabis or other illicit),

however most programs identify whether the target offender is an occasional or dependent user and/or whether they are “first time” or recidivist offenders. This system of categorisation is used to highlight the key features of Australian court diversion programs.

Court diversion for minor drug/drug-related offenders

The dominant court means of responding to minor drug/drug-related offenders is through referral for assessment and education/treatment. The earliest such program was CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment) which was trialled in Victoria in 1998, but similar schemes have been subsequently rolled out in most other jurisdictions. There are notable similarities between the programs; most are pre-plea, of 3 to 4 months duration and have a strong emphasis upon the use of counselling. All court diversion programs require that an individual is eligible for bail.

A notable feature of court and drug court diversion is that individuals are often required to live close to the courts. Such a requirement reflects the intensive nature of programs and requirements for often weekly attendance at specified courts. The number and locations of programs therefore impacts upon access into the diversion programs.

All jurisdictions with the exception of the Northern Territory provide a court diversion program that operates on a state-wide or near state-wide basis. The Northern Territory court diversion program, Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory, operates in two locations at present: Darwin and Alice Springs. Two other programs remain accessible only to individuals residing in or near big cities. The SA Youth Court Assessment and Referral Drug Scheme operates in the capital city of Adelaide only and the Queensland Magistrate’s Early Referral Into Treatment program operates only in Maroochydore and Redcliffe. Three jurisdictions supplement these mainstream programs, with programs targeting rural areas (NSW, Vic and WA). Of these Western Australia is the most notable since it has three programs specifically targeting offenders from rural areas: the Supervised Treatment Intervention Regime, Indigenous Diversion Program and the Geraldton Alternative Sentencing Regime.

While programs are expected to last for 3-4 months, it is rare that programs specify or impose minimum requirements on clients. There are however a number of exceptions. It is a requirement of the South Australian court diversion schemes, CARDS (Court Assessment and Referral Drug Scheme) and Youth CARDS to attend a minimum of 4 sessions of counselling. Counselling patients in the Northern Territory scheme, Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory are required to attend a minimum of six sessions. The ACT Court Alcohol and Drug Assessment Service requires that clients complete a treatment plan, which may include up to 8 counselling sessions, 2-6 education modules and other treatment programs.

Court diversion programs for minor drug and drug-related offenders differ in their eligibility criteria concerning criminal history, age and patterns of drug use. This is likely to affect who accesses each court diversion program. Most jurisdictions limit access to programs to those without past or current violent or sexual criminal histories. Individuals are therefore required to have no charges or convictions for *any* violent or sexual offences. Programs in Western Australia also exclude individuals with charges or convictions for indictable offences. Three jurisdictions have enhanced access for individuals with criminal histories. The jurisdictions of ACT and Victoria place no restrictions on past offences. NSW is also an exception. While it has restrictions

on criminal histories, access is limited to individuals with current or outstanding charges for *significant* violence, drug supply or sexual offences.

Programs are sometimes also restricted to particular ages. Programs in three jurisdictions are accessible only to adults (NSW, Qld and WA⁶). The other jurisdictions either have programs that are open to youth and adults (ACT, NT and Vic) or have a separate adult and youth program (SA). The Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory has a further restriction on individuals with major mental conditions if it is likely to impede program participation.

Finally, court diversion programs have different rules regarding patterns of drug use. Most programs require that an individual has a recognisable drug problem. However, drug dependence, not merely a drug problem, is required in two programs (WA Supervised Treatment Intervention Regime and Queensland Magistrate's Early Referral Into Treatment program). To gain access to the programs most jurisdictions require that the drug problem be of an *illicit* nature. But, individuals with *licit* drug problems can be accepted in three programs. The ACT Court Alcohol and Drug Assessment Service diverts both offenders who have illicit problems and those with licit drug problems for example alcohol or benzodiazepines. The primary requirement is they must have and admit to having a drug problem. The NSW Rural Alcohol Diversion Pilot Program provides diversion for individuals with demonstrable alcohol problems. The WA Geraldton Alternative Sentencing Regime provides diversion for offenders with drug or alcohol problems, but also for individuals displaying other social problems such as gambling or domestic violence.

In spite of the differences in eligibility criteria, the court diversion programs tend to have similar designs. Most operate pre-plea for a period of 3-4 months. Programs provided in three jurisdictions exhibit different characteristics. Western Australia provides two programs (Pre-sentence Opportunity Program and Indigenous Diversion Program) that are shorter in duration (4-8 weeks) than the norm and operate on a post-plea basis.⁷ Nevertheless, such programs provide assessment, counselling and treatment similar to the other court diversion schemes. In contrast, the Illicit Drug Court Diversion Program in Queensland operates through the courts and provides a 2.5 hour assessment and short intervention involving education and motivational interviewing. Optional referrals are provided to treatment for receptive individuals. Due to its short nature it is more like a police diversion scheme than a court scheme, and is explicitly aimed at individuals detected for drug possession offences.

Information on the new Tasmanian court diversion program was lacking at the time of analysis, but it deserves mention since it differs significantly to the standard court diversion program. The principle difference is that a number of diversionary options are provided within the one scheme. While all options provide assessment and treatment the length of involvement and program conditions vary. The new court diversion program can function as a bail program or as an order supervised by Community Corrections or Youth Justice Services. Either of these options lasts approximately 12 weeks. Alternatively it can function as a drug treatment order lasting 12-18 months. In this regard the scheme appears an amalgam of programs aimed at both minor and serious drug and drug-related offenders.⁸

⁶ The Geraldton Alternative Sentencing Regime is an exception to the other three WA diversion programs since it is open to adults and youth.

⁷ These schemes are offered in addition to STIR which provides offenders with the option of diversion for 3-4 months counselling/treatment. STIR, POP and IDP all require offenders to enter a plea of guilty prior to acceptance onto the program.

⁸ For more information on the program see:

http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/court_mandated_diversion.

In addition to the programs targeting minor drug offenders, cautioning or referral programs are also provided through a range of courts: Children's courts, Koori courts and Magistrates courts. In many ways these programs are similar to the programs described above since sentencing can be deferred on the condition that assessments and treatment are undertaken. Offenders can receive orders of up to six months. A key difference is that there are less restrictions on criminal histories, but offenders are required to plead guilty to be accepted onto such programs.

Court diversion for serious drug/ drug-related offenders

The dominant means of responding to serious drug/drug-related offenders is through drug courts which are offered in five jurisdictions (NSW, Qld, SA, Vic and WA). In addition a similar scheme is provided in the ACT (Treatment Referral Program) which was introduced in 1989. Most programs target adults, but Youth Drug Courts have been established in two jurisdictions (NSW and WA). Access to drug courts is more restrictive than for court referral programs, and is usually limited to the major cities. The ACT is an exception with state-wide access.

Most drug court programs and related schemes target serious drug dependent offenders, whose offending is directly related to their drug use. There are three exceptions. The WA Drug Court Regime targets moderate/serious offenders. They are nevertheless required to be drug dependent. The two youth drug courts target serious offenders with *demonstrable* drug problems. Dependency is therefore not required to enter the programs. Finally, the SA Drug Court targets serious drug dependent offenders plus offenders who are currently abstinent but have a high probability of returning to drug use. This enables individuals who have been forced to become abstinent e.g. in prison to enter the program.

Individuals with *illicit* drug problems are the target of most drug court programs, but individuals with *licit* drug problems are accepted in three programs (ACT, NSW and Vic). The ACT Treatment Referral Program excludes those with alcohol problems, whereas the NSW Youth Drug and Alcohol Court and the Victorian Drug Court do not.

Drug court programs are intended for use as an alternative to a sentence of imprisonment. Consequently most require that the current offence be serious enough to warrant a sentence of imprisonment. Individuals with convictions for violent offences are excluded in all jurisdictions except Victoria and sometimes NSW. Individuals with convictions for violent offences may be accepted into the NSW (Adult) Drug Court if the offence is deemed trivial, or if on assessment of the drug court psychologist or psychiatrist the offender is deemed to pose a low risk to the community. Some jurisdictions also exclude individuals with convictions for sexual offences (NSW, Qld and WA) or indictable offences (SA). The NSW Drug Court specifically excludes individuals with offences involving firearms, manslaughter or murder. While the Victorian drug court has no exclusions on past histories, it does exclude individuals if their current offence involves bodily harm or sexual offending.

Drug court programs utilise an intensive regime involving drug treatment, case management, supervision and urine testing. Access to a range of rehabilitative programs such as anger management, relapse prevention and life skills is also provided. Offenders are provided with individual program plans detailing core and program conditions. These include not taking drugs, not committing offences, and the requirement to report to case managers, appear in court and attend drug treatment on a specified basis e.g. weekly. It is also a condition of the SA Drug Court that offenders are placed on home detention while they complete the program. While access to

all drug courts is “voluntary,” drug users and drug-related offenders are required to comply with all conditions in order to fulfil the requirements of the programs.

The NSW and Victorian Drug Courts have adopted a three phased approach to addressing drug use: Phase 1 - initiation/stabilisation, phase 2 - consolidation and phase 3 - re-integration. Offenders are given different objectives and program conditions for each phase of their order. For example conditions for phase 1 of the NSW (Adult) Drug Court include three drug tests per week, one court appearance per week and the creation of a case management plan. Conditions for phase 2 include two drug tests per week, one court appearance per fortnight and undertaking an employment and education course. Conditions for phase 3 include that offenders must have gained or be ready for employment, be drug free and have accepted a drug-free lifestyle.

Youth Drug Courts operate in a similar manner to adult drug courts, but are more informal. There is also a strong focus on finding suitable accommodation for offenders and attending to their educational and vocational needs, particularly basic needs concerning literacy and numeracy.

Western Australia is unique since it provides an array of four different drug court programs. The Children’s Court Drug Court targets young serious offenders aged 12-18 who display demonstrable drug problems and the typical program lasts for up to 12 months. The other three drug courts target adults with varying degrees of offence seriousness. The Drug Court Regime targets adult offenders with a moderate to serious level of offending not warranting imprisonment and is imposed for 4 to 6 months. The Pre Sentence Order targets adult offenders with a high level of offending and is imposed for up to 12 months. The final drug court order, the Conditional Suspended Imprisonment Order, targets individuals who have already been sentenced to up to five years imprisonment. The drug court or superior courts can then substitute that sentence with the Conditional Suspended Imprisonment Order for up to 12 months.

The maximum program length for drug court programs varies from 6 to 24 months (median of 12 months). The program length reflects in part whether a pre or post-sentencing program is used, since the maximum length for the former is 12 months. The maximum length for the youth drug court program is shorter than that for the adult drug court in NSW (6 months compared to 12 months) but in Western Australia the youth drug court program is longer than the program targeting adult minor offenders (12 months compared to 6 months).

Drug court programs operate pre and post-sentencing. There are five pre-sentencing programs. The two youth drug courts are both pre-sentence programs (NSW Youth Drug and Alcohol Court and WA Children’s Court Drug Court). There are an additional three adult drug courts that operate pre-sentence (SA Drug Court, WA Drug Court Regime and WA Pre Sentence Order). Entrance to these programs requires that an offender consents to enter the program, is eligible for bail and pleads guilty to an offence that is likely to result in imprisonment.

In addition to these programs there are five post-sentence programs (ACT Treatment Referral Program, NSW (Adult) Drug Court, Qld Drug Court, Vic Drug Court and WA Conditional Suspended Imprisonment Order). Entrance to these programs requires that offenders have been sentenced to a period of imprisonment which is then suspended to enable program participation. In the case of the NSW (Adult) Drug Court offenders also have the option of receiving a provisional sentence involving imprisonment through the drug court then undertaking the program. In Queensland offenders must have expressed interest in the order *prior* to the

sentencing phase. If they have not undertaken an assessment and been found eligible, they are not able to suspend their sentence and enter the drug court.

All pre-sentence programs operate on the basis of bail legislation. Post-sentence programs operate either on the basis of drug court specific legislation (NSW (Adult) Drug Court and Qld Drug Court) or through generalist legislation. Two post-sentence programs operate through the sentencing act (Vic Drug Court and WA Conditional Suspended Imprisonment Order) and one through drug legislation (ACT Treatment Referral Program).

Two jurisdictions offer both pre and post-sentence programs. In NSW the Youth Drug and Alcohol Court uses a pre-sentence program whereas the (Adult) Drug Court is a post-sentence program. In Western Australia three of the four drug court programs are pre-sentence programs (Children's Court Drug Court, Drug Court Regime and Pre Sentence Order) and one operates post-sentence (Conditional Suspended Imprisonment Order).

Both pre and post-sentence programs offer incentives for program participation. For pre-sentence programs successful completion may result in a non-custodial sentence. However, given that sentencing has not been undertaken there is also a risk that such offenders would not have received a sentence of imprisonment i.e. that a drug court order will be used as a substitute for a non-custodial sentence. For post-sentence programs successful completion will result in a non-custodial sentence or reduced period of imprisonment. Participation in the WA Conditional Suspended Imprisonment Order may eliminate the need to serve any of the imposed sentence.

Drug court programs have a much more extensive range of non-compliance options than the other forms of diversion and offenders participating in the drug courts do not have the right to appeal sanctions. Sanctions include the withdrawal of privileges, increases in supervision/treatment or serving up to 14 days imprisonment. The WA Children's Drug Court program has a "breach point" system where points can be earned or subtracted according to behaviour. Finally, while all programs have the option of terminating offenders from the program and/or requiring offenders to receive/serve a sentence of imprisonment this is reserved as the final option.

DISCUSSION

This exercise began with the problem that diversionary responses to drug and drug-related offenders had expanded so rapidly and were of such variable designs that it was difficult to know the current state or nature of diversion in Australia. Towards this end we have documented the identities and key characteristics of 51 diversion programs operating in Australia. This is information that is rarely sourced together.

It is clear that across Australia diversionary options have expanded for drug and drug-related offenders. Since 2000 there has been a threefold increase in formal diversion programs. There has also been increasing diversification so that drug and drug-related offenders are now provided with five main mechanisms of diversion.

This demonstrates that there has been a common commitment to the idea of diversion, and to the provision of alternate, potentially more effective responses for drug and drug-related offenders. Moreover, there has been a commitment towards improving the effectiveness of diversionary programs, by providing different options to suit the multiple types of drug and drug-related offenders. This is a notable achievement.

The documentation and description of the current diversionary approach provides an opportunity to reflect on the *nature* and *design* of diversion programs in Australia. What are the key features of Australian diversion programs? How have these changed in recent years? And where might Australia's diversion system go from here? How in particular could we improve the design of Australian diversion programs? The following explores these issues and the implications for policy makers and researchers.

What is the nature of diversion in Australia?

A number of features of Australia's diversionary approach to drug and drug-related offenders stand out.

First, diversion programs are primarily utilised for therapeutic purposes. In fact 74% programs provide diversion *into* education and treatment, often for compulsory treatment. Diversion programs providing fines or informal warnings which simply divert offenders out of the criminal justice system are in the minority.

Second, diversion is targeted. All jurisdictions provide a range of diversion programs targeting different stages of criminal justice intervention and drug use/offending. Alongside this it is not uncommon for programs to specify 7-9 eligibility criteria, concerning who can and cannot access a program.

Third, Australia's diversionary approach is increasingly formal and rule-driven. Programs operating on an informal or discretionary basis are rare. Instead programs have a vast array of rules concerning who is and is not given access, the type and length of response, minimum requirements for completion and responses to individuals who fail to comply. There is also a strong emphasis upon the documentation of such rules.

Finally, jurisdictions provide, at least in rhetoric, a systematic approach to diversion. States and territories provide a largely similar set of responses, which are designed to meet the full spectrum of needs. There is thus an emphasis upon building and improving integrative *systems* of diversion.

Such features are important for understanding the nature of diversion in Australia. It is clear that the state of diversion in Australia in 2008 is substantially different to what it was pre-2000. Diversion into education and treatment has become more clearly and systematically codified. There are greater opportunities to provide diversion, the process is simpler for police and prosecuting authorities to use, and therapeutic forms of diversion are seen as a valuable tool in the criminal justice response to drug use and crime. Consequently, the use of diversion is less likely to rely on the sentiments of the police officer or judge and their individual assessment as to whether it is in the offender's interest. Instead, drug and drug-related offenders are much more likely to be offered opportunities to undertake diversion and hence to address their drug use and crime.

Australia's diversionary system today has a number of advantages.

- It has increased opportunities to deter, educate or treat drug users and drug-related offenders, and the likelihood that interventions are matched according to the user/offence. Such an approach reflects the evidence base showing that not all drug users/offenders are the same. Different responses will therefore maximise the potential to address the causes of drug use/offending.
- Australia's diversionary system has also enhanced the capacity to adopt and foster evidence-based approaches. Best-practice principles illustrate that a discretionary approach can be arbitrary and may limit access to or over target particular groups. More documented and clearer guidelines should therefore reduce the opportunity for inequality in responses, justice by design or discrimination at the hands of the police or courts. In this vein the adoption and following adherence to best practice principles is important.
- Moreover, it has increased opportunities to improve the evidence-base. This is because firstly there is greater emphasis upon best practice, and secondly it is easier to conduct research into diversion programs if they are documented and operate in a predictable manner. This increases the potential to inform policy makers on what works, how and why, and where resources should be directed for the most cost-effective outcomes.

However, a few notes of caution are also warranted.

- First, a therapeutic and formal model of diversion brings both benefits and risks. Principally, diversion may produce counter-productive impacts on drug users or drug diversion systems e.g. net-widening, disproportionate responses.
- Second, while there is a commitment to best practice there are clear barriers to adopting this, one of which is the absence of the right type of research. We have clearly illustrated that drug and drug-related offenders are provided with a number of different types of diversion. Yet there remain jurisdictional differences in the design of individual programs. There is an urgent need to establish what differences facilitate and what hinder the operation of diversion programs and systems.
- Third, one thing that became apparent through undertaking this analysis was that the boundaries around diversion are unclear. This analysis has shown many different types of programs operating for diverse targets. However, the dominant view is that programs that do not have the word drug in their title are not for the diversion of drug or drug-related offenders. Programs for non-drug specific offenders such as youth or Indigenous people tend not to be included. However, some jurisdictions do include such programs. This shows that the boundaries are idiosyncratic, reflecting in particular the policy machinations. This has implications for the capacity for system coordination and integration. It may also reduce the

capacity to examine the operation of alternate models, even models which may offer preferable responses to particular sub-sets of drug and drug-related offenders.

We suggest that there is much to be admired about the key features and direction of Australia's diversionary approach to drug and drug-related offenders. While there is a danger of producing a self-reinforcing system, the commitment towards a more systematic and evidence-based approach to drug diversion ought to be encouraged.

Improving program design

We have documented five major types of diversion operating in Australia. Each diversionary approach has unique design features and there are similarities and differences in each approach. This provides opportunities to raise awareness on the diversity of program and system design and about other potentially more effective approaches that could be adopted. The following section discusses program design. We then consider system design.

Police diversion for cannabis only

Diversion responses to cannabis users vary, in the program mechanisms, eligibility criteria and program rules. Cannabis cautioning programs tend to provide a more therapeutic one-stop approach, whereas greater opportunities for non-therapeutic diversion are provided through cannabis expiation schemes.

One notable feature of the responses to cannabis users is the use of differing mechanisms: cautioning and expiation. These are expected to influence the type of clients accepted and the behavioural outcomes of diverting cannabis users. The SA Cannabis Expiation Notice scheme is notable since it targets an older population than most cannabis cautioning programs (average age is 28 compared to 26 in most programs) (Hunter, 2001). This appears largely due to the scheme diverting individuals for cannabis cultivation offences. These make up 14% notices and are predominantly for older offenders. Yet, in spite of differing mechanisms studies of the Queensland Police Diversion Program and the WA Cannabis Infringement Notice Scheme suggest they may target similar offenders. In the former 54% were aged 16-25 and in the latter 53% were aged 18-24. Moreover, in both schemes 98-100% offenders are diverted for offences involving possession of cannabis or cannabis equipment. What remains less clear is whether cannabis users differ in terms of their pre or post offending levels and the extent to which this can be attributed to the program itself.

The Queensland Police Diversion Program differs to other cannabis diversion programs since it is compulsory for police in Queensland to offer diversion. Queensland has a much greater number of referrals than for any other diversion program. For example, during the pilot programs the number of cautions issued in the Queensland Police Diversion Program was 506 per month, compared to 257 per month in the NSW Cannabis Cautioning Program (Baker & Goh, 2004; Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre, 2004). Yet, it remains unclear whether this impacts only on the *number* of participants, or also on the *type* of individuals that are diverted. Demographically the client pools of the Queensland and NSW programs appear similar. There are more males in the NSW program than the Queensland program (87% compared to 76%) but the majority of clients in both programs are under the age of 26. What remains unclear is whether compulsory diversion results in differences in the levels of drug use or offending of participants.

The Western Australian Cannabis Infringement Notice Scheme differs from other expiation schemes since it provides access to education. Results to date suggest that the scheme has enhanced the capacity for educational/attitudinal change. Pre-post comparisons of public attitudes, knowledge and use suggest that the WA public see cannabis use as more harmful to health in 2007, than they did in 2002 before the scheme was introduced (Fetherston & Lenton, 2007). At the same time the level of cannabis use over the past 12 months declined from 19% to 12%, particularly amongst youth (from 13% to 2%). Importantly, recent users of cannabis reported that the scheme had little or no impact on their level of drug use, but that it had increased the likelihood that cannabis users would seek help for dependence.

Cannabis diversion programs differ in the extent to which and *how* programs provide therapeutic interventions. One particular difference is whether client involvement is voluntary or compulsory. This appears to impact upon the capacity for knowledge acquisition. For example client involvement is voluntary for all first recipients of cautions in the NSW Cannabis Cautioning Program but compulsory in the Queensland Drug Diversion Program. Evaluations of the NSW Cannabis Cautioning program showed only 0.4% of all first cautions (and 0.7% of all cautions) led to contact with the Alcohol and Drug Information Service (Baker & Goh, 2004). In contrast, 81% offenders cautioned through the Queensland Police Drug Diversion Program led to attendance at an education session (Health Outcomes International Pty Ltd and Turning Point Alcohol and Drug Centre, 2004). While this suggests that compulsory interventions will enhance knowledge uptake, uptake may also be influenced by other factors, including the type of intervention. NSW uses a health information line whereas Queensland uses a face to face education session. Data from the Victorian Cannabis Cautioning Program which uses a voluntary model (similar to NSW), suggests the type of intervention may be influential. It uses a face to face education session and had higher rates of attendance (10.5%) (Drug and Alcohol Office, 2007).

There is considerable contention as to whether more therapy results in less reoffending, and hence to what extent the type and extent of therapeutic intervention matters. Evaluators of the Illicit Drug Diversion Initiative noted that there did not appear to be differences in the rates of re-offending between states with and without an education component to cannabis cautioning (Health Outcomes International et al., 2002a). They argued that it may be the deterrent effect, not education that affects the likelihood of being re-arrested. Clients involved in the Queensland Police Diversion Program reported reductions in offending, particularly selling or possessing drugs (from 14.4% to 4.7%), but such data was based on self-reports and was collected for only 6 months after program completion. Long-term impacts from this and other educative programs are not available. Such information is important to ascertain the benefits of providing and mandating education for cannabis users.

A number of programs place increased onus on cannabis offenders, either to attend an education session or pay a fine, and may follow up non-compliance. This may increase the likelihood of net-deepening. In 2000 following changes to the SA Cannabis Expiation Notice scheme to reduce the possibility of net-deepening, 46% notices continued to be forwarded to court for expiation, resulting in automatic convictions for such offenders (Hunter, 2001). Another program which follows up non-compliance is the Queensland Police Diversion Program. Evaluators illustrated that individuals who complied with the diversion program and attended an education session were less likely to have a subsequent court appearance for a minor possession offence in the 2 years following the programs commencement than those who failed to comply (85% compared with 75%). Yet, the likelihood of re-offending was greater for those who were diverted and failed to comply, than for those who were *not* diverted (85% compared with 75%). This provides some evidence that program conditions may increase the likelihood of net-deepening.

Police diversion programs vary in their demands upon police time. The type and extent of demands appear to impact upon the likelihood of saving police time and money. For example, the NSW Cannabis Cautioning Program is notable because it has limited involvement with offenders and no follow up for non-compliance. Evaluators of the NSW Cannabis Cautioning Program showed that each year of the scheme saved over 6,000 police hours and resulted in 880 fewer people being convicted in court (Baker & Goh, 2004). In contrast, in their study of the WA Cannabis Infringement Notice Scheme, Sutton and Hawks (2005) predicted that savings from the scheme would be less than expected because of amendments to the original “on the spot” notice design.⁹ The review of the WA scheme has since called for a return to an “on the spot” design (Drug and Alcohol Office, 2007).

Police diversion for other illicit drugs

Illicit drug users diverted through police diversion tend to receive a similar type of response, namely compulsory assessment and education/counselling. Programs differ in their eligibility criteria concerning past offending and their responses to sub-groups of offenders. A notable feature of such programs is that few have been publicly evaluated. This is in marked contrast to all other forms of diversion and reduces the capacity to make meaningful analyses of differences in program design.

Victoria is only of only two states that place no restrictions on the offending histories of illicit drug users. A restriction on individuals with drug priors (a criterion which is applied in three other programs) was deliberately removed following the evaluation of the pilot program. Stakeholders felt the restriction hampered access for people who would benefit from drug treatment and was ill-conceived given the relapsing nature of illicit drug use (McLeod Nelson and Associates Pty Ltd, 1999). This suggests that removing restrictions on offending histories may be beneficial for diverting illicit drug users.

Responses to youth and adult illicit drug users vary. Most jurisdictions provide a similar response to both youth and adults, but some treat youth and adults differently. Evaluators of the Victorian Drug Diversion Pilot Program, which diverted youth and adults through the same way, suggested that the program had a differential impact on youth compared to adults. Youth were a much more problematic group of drug users, more likely to be using heroin and to be using on a daily basis (60% compared to 42%) (McLeod Nelson and Associates Pty Ltd, 1999). Youth were more likely to complete the program (90% compared to 78%) and to undertake/seek further treatment (50% compared to 35%). But, following program completion they were more likely to reoffend. For example, 40% clients aged under 21 and 13% clients aged over 21 reoffended during the 3.5 month follow up period. It remains unclear whether different responses for youth and adult would increase the capacity for behavioural change. Evaluations of the WA program which provides specialist adult and youth schemes would facilitate such an assessment.¹⁰

Most programs target *illicit* drug users only, but individuals detected for misuse of *licit* drugs are eligible for diversion in some schemes. It remains unclear to what extent this facilitates access to the programs, particularly given access remains restricted to “use,” “possession” and/or “administration” offences. Individuals misusing pharmaceuticals were eligible for diversion through the Victorian Drug Diversion Program, but the pilot evaluation suggests that no one was diverted through the pilot scheme for this offence (McLeod Nelson and Associates Pty Ltd,

⁹ To increase accountability and reduce allegations of misconduct Western Australian Police opted to take offenders to the station, weigh the cannabis and interview offenders.

¹⁰ An evaluation has been conducted of the South Australian Police Drug Diversion Initiative. It is unclear whether this will be made publicly available.

1999). Instead it reports that the program was a practical response to illicit drug users and that 95% of clients used heroin, 3% amphetamines and 2% ecstasy. It is unclear whether this was due to lack of demand, police attitudes or eligibility criteria concerning the nature of the offence. Comparisons of the number of people misusing licit substances in programs with broader offence criteria may facilitate such an assessment.

The police diversion scheme in Tasmania provides up to three opportunities to be diverted and a range of responses to cannabis and illicit drug users. This would appear to enable the provision of a targeted and more proportional response. Yet the ability to examine this is limited by the absence of publically available evaluations of the scheme in question. Early indicators from the evaluation of the Illicit Drug Diversion Initiative showed that the vast majority of offenders were diverted only on one occasion (Health Outcomes International et al., 2002b). The 18% of cautions in the Tasmania Police Drug Diversion scheme were second and third cautions, but some of these cautions may have been administered to first time offenders. Caution is needed in interpreting these results, since the level of repeat offending may be a consequence of a low likelihood of re-detection. Alternatively, the schemes may indicate that the majority of first-time offenders cease offending after being detected. In this case a caution may be an adequate deterrent for the majority of first-time offenders. The drop off between second and third interventions supports the notion that increasing the level of intervention for second and then third offenders may be an effective strategy and good use of resources. But it may also indicate a low likelihood of re-detection. Further analysis of data on first, second and third time offenders would be beneficial.

Police diversion schemes for illicit drugs vary in extent and type of minimum requirements for undertaking counselling or treatment. The Victorian Drug Diversion Program requires clients to undertake an assessment and one treatment session. Further treatment is optional. In the pilot program 78% completed the minimum requirements (McLeod Nelson and Associates Pty Ltd, 1999). Of these 43% offenders completed only the required assessment and treatment sessions, 22% attended additional treatment and 13% were on a waiting list for additional treatment. Examination of programs such as the WA All Drug Diversion program may provide insight into the benefits and costs of mandating a higher level of program involvement for illicit drug users.

Police diversion for drug/drug-related offenders

Drug and drug-related offenders diverted through non-specific police diversion schemes are provided in the main an informal/ discretionary approach involving a range of non-therapeutic responses. But some are more formal or more therapeutic:

Most programs focus on reducing drug use/offending behaviour through deterrence or treatment. A key difference with the Victorian Rural Outreach Diversion Program is it also tries to address issues contributing to drug use/offending. It therefore provides treatment for drug and alcohol issues but also assistance with other issues including unemployment, childhood sexual abuse, mental health issues, marginalisation and family and relationship conflict (Orchard et al., 2005). These are recognised as particularly important to address for young offenders. This more holistic approach to reducing offending has the potential to have more lasting impacts. Yet, impacts upon drug use and crime remain unclear.

The WA Young Person's Opportunity Program differs from the norm since it offers a therapeutic intervention. Offenders therefore receive an assessment of their patterns of drug use. It is not known to what extent this increases treatment uptake, whether repeat offenders are

more or less likely to undertake treatment and whether this model has costs/benefits over the standard Young Offenders Acts or drug specific diversion programs.

The NSW Young Offender Act provides a range of non-therapeutic sanctions and up to three opportunities for diversion for drug and drug-related offenders. Evaluations of the scheme highlight a number of benefits to this type of approach. The principal advantages were that it put a strong emphasis on family involvement thereby strengthening family and youth ties, encouraging insight and awareness into the harms caused by the offence, and increased respect of young offenders for the law (Chan, Doran, Maloney, & Petkoska, 2004). For example, 49% of youth who attended a caution and 66% who attended a conference said their respect for the law had increased. This suggests that such a program may offer some advantages for minor drug and drug-related offenders over the use of therapeutic interventions. Comparisons of client groups diverted through this and more therapeutic schemes, their likelihood of re-offending and the cost of diversion would appear warranted.

Diversion programs for drug and drug-related offenders have broader eligibility criteria than the other forms of police diversion. This appears to enhance access to particular sub-sets of offenders such as Indigenous offenders. For example the analysis of conference participants diverted through the NSW Young Offender Act revealed 24% participants were Indigenous (Chan et al., 2004). Moreover, in the Northern Territory Juvenile Pre-Court Diversion Scheme 59% of diverted youth were Indigenous (Cunningham, 2007). In contrast, the first evaluation of the Illicit Drug Diversion Initiative showed that across Australia the percentages of Indigenous participants in diversion schemes were all less than 10% (Health Outcomes International et al., 2002b). This suggests that broader eligibility criteria may similarly enable increased access for other under-represented groups.

Court diversion for minor drug/drug-related offenders

Court diversion for minor drug and drug-related offenders provides assessment and 3-4 months of education/treatment, particularly counselling. Programs differ in their eligibility criteria concerning criminal history and patterns of drug use. Differences also existed in the program length, the presence or absence of minimum requirements for completion and whether programs operate pre or post-plea.

Most court diversion programs target drug-related offenders with drug problems. The Queensland Illicit Drug Court Diversion Program is unique since it diverts drug users (with or without drug problems) detected for possession offences. This appears to impact upon both program referral numbers and the type of drug-related offenders diverted. During the eleven month pilot, a total of 801 people were referred to the program (Health Outcomes International Pty Ltd, 2005). In comparison, during the twenty four month pilot, the NSW Magistrates Early Referral Into Treatment program only received 368 referrals (Northern Rivers University Department of Rural Health, 2003). Referrals to the Queensland program subsequently increased to an average of 1,949 referrals a year (Irwin, 2006). The client pool in the Queensland Illicit Drug Court Diversion Program is substantially younger and exhibits less serious drug problems. Sixty-two per cent of clients were less than 26 years of age, compared to 31% in the NSW sample. Cannabis was the principal drug of concern for 47% Queensland clients, compared to only 23% NSW clients. In contrast, heroin was the principal drug of concern for 54% NSW clients, compared to only 7% Queensland clients.

The primary criterion for entrance into programs is a recognisable drug problem, but two programs require drug dependence (WA Supervised Treatment Intervention Regime and Qld

Magistrates Early Referral into Treatment). Evaluators of the WA Supervised Treatment Intervention Regime noted 75% of participants completed the program, that levels of offending reduced considerably (the percentage of drug charges reduced from 54% to 8% pre and post program referral) and that justice and treatment stakeholders believed the program had achieved over 80% of its aims (Crime Research Centre, 2007). Conversely the program was affected by low numbers of program referrals, and evaluators contended that this was a barrier to more cost-effective treatment. It therefore remains unclear whether the requirement for “drug dependence” facilitates program targeting or whether it has other counter-productive impacts. The Queensland Magistrates Early Referral into Treatment program is currently undergoing evaluation.

Programs tend to have numerous eligibility criteria, particularly restrictions on individuals with criminal histories. Evaluators of the SA Court Assessment and Referral Drug Scheme noted that the prohibition on individuals with “charges or convictions for violent offences” prevented access to many offenders who could have benefited from the program, particularly Indigenous offenders (Harkin et al., 2007). In contrast, evaluators of the NSW Magistrates Early Referral for Intervention and Treatment program applauded the use of the less restrictive criteria which prohibited individuals with “charges for *significant* violence” (Northern Rivers University Department of Rural Health, 2003). This enabled magistrates to consider the safety of participants, program staff and the community while also providing individuals with a low risk of committing violent acts the opportunity to undertake treatment.

Most programs operate for 3-4 months. Evaluators of the Western Australian programs showed that shorter programs were considerably cheaper. Per client the Pre-sentence Opportunity Program (4-8 weeks), the Indigenous Diversion Program (6-8 weeks) and the Supervised Treatment Intervention Regime (3-4 months) cost \$2,416, \$3,396 and \$9,049 respectively (Crime Research Centre, 2007). Yet, stakeholders also noted that the shorter length was a barrier to providing effective treatment in some cases. This was particularly for the Indigenous Diversion Program where clients had substantial criminal histories and social issues. Program length was also an issue in the Queensland Illicit Drugs Court Diversion Program, but stakeholders found that a shorter intervention, lasting up to 4 weeks was desirable for their clientele of mostly cannabis users (Health Outcomes International Pty Ltd, 2005). This suggests that variance in the length of court diversion programs may be beneficial, provided the length is matched with the nature of the client group.

It is rare for programs to specify or impose minimum requirements for program completion, but these are used in four programs for clients undergoing counselling. Two of the four programs are currently undergoing evaluation (ACT Court Alcohol and Drug Assessment Service and Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory). Evaluators of the SA Court Assessment and Referral Drug Scheme identified a number of issues with the use of minimum requirements (Harkin et al., 2007). Clients and treatment providers tended to misinterpret the requirement to complete “four treatments” as *the* treatment regime, rather than it being the minimum requirement. This affected the type of treatment provided (predominantly counselling) and the number of sessions provided. For example, of those who attended treatment 36% attended four times and only 18% attended on more than four occasions. This was seen by both treatment providers and clients as reducing the capacity to addressing the causes of drug use. One third of clients recommended increasing the number, frequency and/or duration of treatment sessions. Another issue was that the specification of a minimum number of sessions was perceived to have decreased the number of referrals to the program, due to fears that the program increased the capacity for punishing non-compliance. This suggests that imposing

minimum requirements may have counterproductive impacts. Further research is warranted into the other schemes.

Court diversion programs provide offenders with an often intense period of treatment and case management. For all programs consent is a condition for participation. Yet, programs differ in whether they require offenders to also plead guilty (WA Pre-sentence Opportunity Program and the Indigenous Diversion Program). Evaluators of the latter programs did not note any specific impacts of the requirement to plead guilty. However they noted both programs were affected by low levels of referrals and an increasing tension between encouraging program participation versus promising a reduced sentence (Crime Research Centre, 2007). They noted that too much emphasis upon the criminal justice benefits of participation can result in referrals of individuals who lack the motivation to address drug issues.

A number of issues have arisen over the merits of providing drug treatment as a condition of bail. First, lawyers are sometimes reluctant to refer people to programs since it may increase the chances of being caught for a bail offence (Harkin et al., 2007). Second, there is concern over the implicit promise of a reduced sentence. A number of recent evaluations have demonstrated that program completers sometimes fair worse than non-completers. In the SA Court Assessment and Referral Drug Scheme a higher proportion of non-completers received no penalty at all (n=10, 32.3%) than completers (n=6, 14.0%) (Harkin et al., 2007). Non-completers in the Indigenous Diversion Programs were more likely to receive a fine compared to completers (50% compared to 17%) (Crime Research Centre, 2007). As a consequence, while Magistrates involved in the SA Court Assessment and Referral Drug Scheme which operates as both a bail or bond option, said they prefer the bail option, they have increasingly moved away from this (Harkin et al., 2007). Instead they have adopted a new approach – “inviting” program participation (rather than making it a condition of bail) while sentencing is adjourned. This is argued to have the benefits of the bail scheme (voluntary attendance) and reduce the capacity for punishing non-completers.

Court diversion for serious drug/drug-related offenders

Court diversion responses to serious drug/drug-related offenders provide intensive case management, supervision and compulsory drug treatment for up to 24 months. Programs differed in the type of offenders they targeted, program length, program conditions and whether diversion was provided pre or post-sentencing.

Most drug courts target serious offenders. Two programs target less serious offenders, namely the WA Drug Court Regime which targets more moderate to serious level of offenders, and the North Queensland Drug Court which prevents access to people who had been imprisoned for over 12 months. It appears the type of offenders diverted through drug courts impacts upon the number of referrals and the ease of providing treatment. Evaluators of the North Queensland Drug Court. noted that the eligibility criteria had been tightened, following prior experience with the South East Queensland Drug Court where too many people were referred to the program (Makkai & Veraar, 2003). But the new criteria created a new problem, namely it prohibited access to most offenders who would benefit from the program and reduced the incentive for eligible offenders to persist with the Intensive Drug and Rehabilitation Order (Payne, 2005). This is reflected in the data showing a lower number of referrals (243 compared to 555) and a significantly higher number of sanctions used (an average of 9 compared to 3 per 365 days). Stakeholders from the NSW (Adult) Drug Court similarly found more serious offenders were more motivated and mature (Taplin, 2002). They therefore argued that it was more beneficial and a better justification of cost if offenders were highly likely to go to prison.

The program length of drug courts varied considerably. Evaluators of the NSW Youth Drug and Alcohol Court noted that almost 47% participants opted for further involvement with the program (for an average of 2.4 months) following the mandatory 6 month completion period (Eardley et al., 2004). This suggested that graduation and attaining desired outcomes, particularly concerning vocational goals was likely to take longer than the specified period. In spite of this they argued against extending the program length from 6 to 12 months, saying it would deter potential applicants and may make the scheme too onerous. This suggests that the program length should match the client group, and reflect the sentences that are likely to be imposed through traditional sentencing.

Programs varied in their use of urine testing. Urinalysis has been seen by stakeholders as essential for increasing compliance and by many drug court participants as beneficial for monitoring progress (Taplin, 2002). But evaluators of the NSW Youth Drug and Alcohol Court noted numerous concerns with the use of urinalysis (Eardley et al., 2004). This includes that tests may not be accurate, picking up some legal drugs e.g. panadeine, that excessive use of urinalysis may encourage switching to drugs that stay in the system for shorter periods (from cannabis to ecstasy or heroin), that there was inconsistent use and responses to urinalysis by program staff. Stakeholders argued against the use of urinalysis, and said that talking to participants was a better mechanism for monitoring patterns of drug use. This suggests there is a need for more evaluation into the relationship between urinalysis drug screening and program outcomes.

Programs provide a range of sanctions for non-compliance. Programs vary in when and how these are applied. The first evaluation of the NSW (Adult) Drug Court noted that the use of incarceration can be a counter-productive sanction. It breaks ties that drug offenders are trying to re-establish and can impede drug treatment (Taplin, 2002). It is also a greater punishment on carers (usually women) with children. This led to a change in the use of imprisonment in the NSW drug court so that rather than serving many short periods of custody participants could accumulate up to 7 days of imprisonment. The “balance” of imprisonment could also be deducted from by court. This led to a number of benefits, by reducing the counterproductive impacts of the sanction and increasing the efficiency of the drug court operation (Lind et al., 2002). In contrast, imprisonment was the most frequently used sanction in both of the Queensland Drug Courts. Notably, differences in the use of imprisonment in Queensland were reflected in the time taken to complete a drug court. In the South East Queensland Drug Court where imprisonment was used for 55% sanctions, participants took 451 days to complete a drug court order. This was compared to 329 days in the North Queensland Drug Court where imprisonment was used for 38% sanctions (Makkai & Veraar, 2003; Payne, 2005). This provides some evidence that the greater use of imprisonment may impede drug treatment.

Half of the programs operated pre-sentence. Evaluators of the NSW Youth Drug and Alcohol Court noted that while pre-sentence programs provide more flexibility to take into account participants actions during the program, they also have legal ramifications (Eardley et al., 2004). First, the lack of an actual or estimated sentence prevents potential participants from deciding on the relative costs and benefits of entering the program. Second, the use of sanctions while on the program, particularly termination from the program or detention, may create a situation of double sanctioning. As the evaluators concluded “care should be taken to determine first whether sanctions in a pre-sentence scheme inherently create a two-sentence procedure and secondly whether such a procedure is lawful” (Eardley et al., 2004, p. 144). This has led for some calls for the youth court to be switched to a post-sentence model.

There are only two examples of drug courts operating on drug court specific legislation. Having legislation is deemed to increase accountability, increase the potential for review of decisions and encourage judicial and community support for the program. Evaluators of the NSW (Adult) Drug Court noted that referrals of eligible offenders increased after Legal Aid advised unsupportive magistrates of their obligations to refer offenders (Taplin, 2002). Yet the major drawback to legislation is it reduces the ability to adapt programs (Northern Rivers University Department of Rural Health, 2003). That said evaluators of the NSW (Adult) Drug Court found that this was much less of a problem than originally envisaged. Most problems were identified and resolved in the first 12 months of operation, through two legislative amendments (Taplin, 2002). Conversely evaluators of the NSW Youth Drug and Alcohol Court noted that operating drug courts on the basis of bail legislation has advantages since it is a pre-existing scheme that is well understood, gives the court considerable flexibility and enables breaches to be readily followed up (Eardley et al., 2004). The major problem concerns the fairness and legality of using bail, particularly in relation to non-compliance. Operating drug courts on the basis of bail legislation may affect future the bail applications of drug court participants and hence disadvantage drug court participants. This suggests that operating drug courts on a legislative basis is not essential, but it may offer particular benefits in increasing criminal justice support and forcing legislators to consider the impacts of drug court participation on drug court participants. Further research into the advantages and disadvantages of providing a legislative basis, particularly from the perspective of drug court participants appears warranted.

Improving drug diversion systems

Australian jurisdictions have created their own diversion systems: some responses are more complex than others. Some use more generalist systems, some target more Indigenous offenders and so on. Heterogeneity creates the potential to facilitate or hinder diversionary approaches. There is thus an imperative for jurisdictions to evaluate their approaches, and indeed to assess how current designs are working, to identify gaps, to examine differing jurisdictional approaches and consider avenues for improving existing arrangements.

Towards this end we have identified a number of areas in which current state/territory diversionary systems vary. These include the number of diversion programs, access to diversion programs, delineation of diversion programs, jurisdictional priorities and modes of coordination.

Number of programs

While all jurisdictions provide a range of diversionary options there were clear differences in the number of programs provided by jurisdictions, from 3 to 12. A smaller number of programs may be a sign that a jurisdiction has a smaller/less complex drug problem, a lower population, a smaller geographic area to cover or that their diversionary response is in its infancy. All factors appear influential in the design of Tasmania's diversionary system. On the other hand, both the number of programs (12) and diversity of options in Western Australia's diversion system appears to reflect that this is the largest jurisdiction in Australia and an area with a complex set of drug and alcohol-related problems.

This report suggests that having more programs may be beneficial, through enhancing the capacity to capture a range of drug and drug-related offenders. On the other hand, having more programs may be counter-productive, particularly if demand is small and/or the system is too complex or costly. Having a larger number of court and drug court diversion programs may create particular challenges. The number of referrals for such programs is often lower than expected. For example during 2002/03 the number of referrals to the Victorian Court Referral for Evaluation and Drug Intervention and Treatment program remained at 963, which was 53% below target (Alberti et al., 2004). This was despite this program operating as the sole court diversion program for drug and drug-related offenders at the time and moved well beyond the pilot phase. Given such a pattern it is not surprising that referrals to all of the Western Australian court diversion programs – Pre-sentence Opportunity Program, Indigenous Diversion Program and the Supervised Treatment Intervention Regime – were lower than expected. During 2003-2005 the total number of referrals for the three programs amounted to 587 (Crime Research Centre, 2007). It is unclear to what extent having multiple court diversion programs compounds the difficulty of ensuring programs are adequately utilised.

Access to diversion programs

All jurisdictions have expanded their access to diversion programs. Jurisdictions have increasingly identified and addressed gaps in access for different types of drug and drug-related offenders. For example South Australia introduced its Court Assessment and Referral Drug Scheme to provide diversion for minor drug-related offenders, a group who could not access the Police Drug Diversion Initiative and the Drug Court (Courts Administration Authority, 2004). Tasmania has recently introduced its first court diversion program, to fill the identified need for diverting serious drug and drug-related offenders (Tasmania Law Reform Institute, 2006).

As a consequence the five main forms of diversion targeting different types of drug users (cannabis and other drugs), different levels of drug-related offenders (minor and serious) and

young drug users are now provided in most jurisdictions. Gaps are evident in only three jurisdictions: police diversion for use/possession of other illicit drugs (NSW and Qld); and, court diversion for serious drug-related offenders (NT) (see table 2).

Table 2: Availability of the five types of diversion programs, by jurisdiction

	Police diversion for cannabis only	Police diversion for other illicit drugs	Police diversion for drug/ drug-related offenders	Court diversion for minor drug-related offenders	Court diversion for serious drug-related offenders
ACT	+	+	+	+	+
NSW	+	-	+	+	+
NT	+	+	+	+	-
Qld	+	-	+	+	+
SA	+	+	+	+	+
Tas	+	+	+	+	+
Vic	+	+	+	+	+
WA	+	+	+	+	+

The absence of such diversion programs will not necessarily reduce access. For example, in Queensland individuals detected for use/possession of other illicit drugs are ineligible for police diversion, but eligible for diversion through the Illicit Drug Court Diversion Program. But, if individuals are not provided with alternate forms of diversion then they may be more likely to receive a criminal justice sanction than in other jurisdictions. This appears the case in NT for serious drug-related offenders, and to a lesser extent in NSW where individuals detected for use/possession of illicit drugs are likely to be ineligible for referral through the Magistrates Early Referral for Intervention and Treatment due to the requirement that offenders have a “demonstrable drug problem.”

This analysis indicates that access to diversion programs is also affected by eligibility criteria, particularly the type of criteria used.

Evaluators of diversion programs have identified a number of eligibility criteria that appear to have restricted access to diversion programs. This has led a number of programs to remove or call for the expansion of their criteria:

- Recommendations following the evaluation of the Victorian Drug Diversion Pilot led to the removal of the requirement for individuals to have no drug priors (McLeod Nelson and Associates Pty Ltd, 1999).
- Evaluators of the NSW Youth Drug and Alcohol Court argued that unless eligibility requirements were relaxed it was likely to remain serving a limited pool of offenders (Eardley et al., 2004). Stakeholders believed that the program was not intended for “hardened” offenders, but the eligibility criteria meant this was who was given access.
- Most jurisdictions have targeted their diversion programs at *illicit* drug users and drug-related offenders, however in more recent years some have expanded access to individuals misusing licit substances including alcohol and pharmaceuticals. One jurisdiction is notable since three of its IDDI funded diversion programs are open to individuals misusing licit substances (ACT).

It is becoming increasingly clear that the exclusion of individuals arrested for licit drug and drug-related offences has become a major impediment to access. This is particularly true for Indigenous offenders who are far more likely to be detected for alcohol-related offences. As noted by the Crime Research Centre (2007, p. 143) the “exclusion of alcohol and volatile

substances presents a systemic barrier to participation by Indigenous offenders.” See also Orchard et al. (2005).

At least two jurisdiction (SA and WA) have indicated their desire to expand eligibility criteria and provide access to court diversion for individuals arrested with volatile substance misuse and alcohol problems (Crime Research Centre, 2007; Harkin et al., 2007). Funding requirements of the COAG-IDDI agreement are perceived to prevent this (Crime Research Centre, 2007).

Other jurisdictions have noted that strict interpretation of eligibility criteria can be counterproductive. It can reduce access to intended targets, work counter to the philosophy of the program or reduce the cost-effectiveness of programs. This has led to less rigid application of eligibility criteria in some jurisdictions:

- The NSW (Adult) Drug Court found that vast majority of individuals had some sort of mental health problem or condition including depression and being victims of abuse (Taplin, 2002). This resulted in a shift from excluding such dual diagnosis people to managing them.
- Staff involved in the SA Court Assessment and Referral Service noted that eligibility criteria concerning criminal history, particularly the criteria for violent offenders can benefit treatment providers, but that a blanket restriction on individuals with violent offences reduced access to many offenders who could benefit from the program (Harkin et al., 2007). This has led program staff to assess all individuals with histories of violent offences on a case by case basis.
- Restriction on all offenders with convictions for violent offences disproportionately affected Indigenous offenders access to the NSW (Adult) Drug Court (Taplin, 2002). Evaluators recommended admitting Indigenous offenders with violent antecedents on the condition that they attend an Anger Management Course.

Finally, historic difficulties providing access to particular sub-groups of drug and drug-related offenders have led to a number of jurisdictions introducing programs to target Indigenous and rural offenders.

- Indigenous drug and drug-related offenders – The WA Indigenous Diversion Program and Vic Koori Drug Diversion program
- Rural drug and drug-related offenders – WA Geraldton Alternative Sentencing Regime and Supervised Treatment and Intervention Regime, NSW Rural Alcohol Diversion Program and Vic Rural Outreach Diversion

These programs operate using less restrictive eligibility criteria than the traditional diversion programs. They also use more flexible methods e.g. rural outreach and address particular needs through the provision of Indigenous case workers. Evaluators have demonstrated this has increased access and retention of traditionally hard to reach offenders (see for example Orchard et al., 2005).

Delineation of diversion programs

Jurisdictions differ in the extent to which they describe the aims, eligibility criteria and operation of each diversion program, and more particularly how the programs operate as a system. The evaluators of the Illicit Drug Diversion Initiative noted the need for clear delineation:

Experience to date has shown that unless there is a clear delineation between the various programs, with clearly defined eligibility criteria and referral pathways, confusion may arise, leading to a lack of referrals, inappropriate referrals to diversion programs that are not consistent with the needs of offenders (Health Outcomes International et al., 2002a, p. 26).

The evaluation of the Western Australian court diversion programs provided evidence of why delineation is important. The court diversion programs targeted different groups of offenders: “minor offenders” and “moderate offenders.” But the evaluation showed cross-over in the client groups: 26% clients in the program targeting moderate offending had less than five prior arrests and 27% clients in the program targeting minor offending had 10 or more prior arrests (Crime Research Centre, 2007). This led to the conclusion that the eligibility criteria for “minor” or “moderate” offending were too imprecise, leading to inappropriate referrals.

One avenue taken by some jurisdictions has been to make eligibility conditional on not being eligible for other diversion programs. Examples of this include the Queensland Court Drug Diversion Program, which excludes individuals who are eligible for the Queensland Police Drug Diversion Program, and the NSW Youth Drug and Alcohol Court which excludes individuals who are eligible for sentencing through the Young Offenders Act. Evaluators of the NSW Youth Drug and Alcohol Court found no evidence that offenders were entering the drug court instead of cautioning/conferencing (UNSW Evaluation Consortium, 2004). This suggests such a mechanism can reduce the chance of inappropriate referrals.

Evaluators of court diversion programs in Victoria called for a more macro approach to delineation. They noted that while the court diversion programs appeared to operate in a coordinated systematic approach, there was no obvious relationship between them (Alberti et al., 2004). This led to calls for an overarching and systematic description of the state’s court diversionary response:

Given the range and extent of diversion programs now in place, and the issues identified in the course of this review, it is our view that some form of unifying program framework may now be appropriate (Alberti et al., 2004, p. 33).

Other jurisdictions may similarly benefit from producing frameworks describing the operation and interaction of the individual programs for diverting drug and drug-related offenders. This is particularly if there is evidence of confusion concerning eligibility criteria, low or inappropriate referrals, or if jurisdictions have a large number of programs.

Jurisdictional priorities

While jurisdictions have increasingly adopted similar sets of programs, there are continuing differences. Jurisdictional priorities shape the relative emphases on police versus court diversion, the choice of eligibility criteria, the program requirements. To some extent this is inevitable and may well be necessary. Yet, jurisdictional priorities and/or peculiarities can have important consequences. Three areas of potential impact are access and equity of diversion systems and the risk of counterproductive effects such as net-widening.

Jurisdictions differ in the relative spread of diversion programs. Some jurisdictions place strong emphasis on the use of drug courts (see table 3). Others have greater emphasis upon court programs aimed at minor drug users and drug-related offenders.

Table 3: Spread of diversion programs offered, by type of program and jurisdiction

	Police diversion for cannabis only	Police diversion for other illicit drugs	Police diversion for drug/ drug-related offenders	Court diversion for minor drug-related offenders	Court diversion for serious drug-related offenders
ACT	+	+	+	+	+
NSW	+	-	+	++	++
NT	+	+	++	+	-
Qld	+	-	+	++	+
SA	+	+	+	++	+
Tas¹¹		+	+		+
Vic	+	+	++	+++++	+
WA	+	++	+	++++	++++

Key: Number of programs offered in each jurisdiction is denoted by the number of +.

A system with multiple programs offering intensive drug treatment, case management and supervision is more likely to benefit serious drug and drug-related offenders, but it may create gaps in access for less serious drug offenders. Alternatively a system with only one court diversion program is more likely to provide diversion for minor drug and drug-related offenders. While this may reflect a desire to favour early intervention and hence prevent the escalation of drug use and drug related crime, serious drug and drug-related offenders may have limited opportunities to address the causes of their offending.

Jurisdictions differ in their preference to divert youth and adults through the same or different systems. The ACT is the jurisdiction that is most homogenous in its diversionary approach, diverting both youth and adults through its Simple Cannabis Offence Notice Scheme, ACT Policing Early intervention and Diversion Program and the Court Alcohol and Drug Assessment Service. Other jurisdictions provide youth with alternate forms of police diversion (NSW, SA and WA), court diversion (SA) or youth specific drug courts (WA and NSW). Moreover, youth in some jurisdictions are also provided with more graduated sets of responses (SA Police Drug Diversion Initiative) and shorter interventions (NSW Youth Drug and Alcohol Court) than adults. These differences in design reflect attitudes as to whether it is better to separate youth and adults and whether youth *need* different sets of responses.

Jurisdictions differ too in the level of discretion provided to the judiciary, in both their gate-keeping and sentencing roles. Eligibility criteria specifying the current offence, offence circumstances and exclusions on particular offences and diversion history are used to guide judicial responses to drug and drug-related offenders. Discretion is essential but is constrained by the eligibility criteria. Yet, jurisdictions differ in the types of eligibility criteria used, both in the number of criteria and in the preciseness of the criteria. Some jurisdictions e.g. ACT and Victoria use few criteria for their court diversion programs. Others have multiple e.g. NT.

Some eligibility criteria are deliberately vague, increasing the role of the judiciary in deciding who is and is not referred to a program. For example in the NSW Magistrates Early Referral for Intervention and Treatment program the eligibility criteria exclude individuals with “significant violence.” This places less emphasis upon the precise offence and more on the features of the offence/offender and allows magistrates to assess cases on an individual basis. Similarly the WA Pre-sentence Opportunity Program uses the eligibility criteria of “minor offender.” Other programs target “moderate offenders.” The advantage of such an approach is firm rules are often

¹¹ Tasmania provides only three diversion programs. But, cannabis and illicit drug users are diverted through the police drug diversion program and minor and serious drug-related offenders are diverted through the court diversion program.

somewhat arbitrary and lead to the exclusion of individuals who would otherwise benefit from the program, particularly Indigenous offenders (Northern Rivers University Department of Rural Health, 2003). The disadvantage is greater capacity for inequitable and/or differential application. This was a particular problem with the WA system (Crime Research Centre, 2007).

The judicial role in sentencing also differs, particularly in the use of pre or post-sentence drug courts. Jurisdictions favouring the latter provide greater certainty, but reduce the potential to reward successful participation. As evaluators of the NSW Magistrates Early Referral for Intervention and Treatment program argued, predictable guidelines e.g. a fixed discount on sentencing may encourage more passive compliance (Northern Rivers University Department of Rural Health, 2003).

It appears that some systems create increased potential for counter-productive impacts, most notably net-widening or net-deepening. Comparisons of police diversion programs for cannabis users illustrate a notable difference in the likely jurisdictional response for cannabis users who are detected for a second or third offence. Cannabis expiation schemes have no restrictions on the number of times a cannabis offender can enter the program, whereas cannabis cautioning programs limit to one or two the number of entrances. The primary risk with the latter is that cannabis users detected for the second or third time may be referred to court or intensive court diversion programs. As noted in the evaluation of the Illicit Drug Diversion Initiative some second time cannabis offenders were diverted through drug courts (Health Outcomes International et al., 2002b).

The likelihood of net-deepening is further influenced by the design of the back-end of the jurisdictional system. A system which provides brief court interventions such as counselling is arguably less likely to result in net-deepening, since it can provide appropriate responses to drug users detected for 2 or more occasions. However a system which provides primarily intensive drug court treatment, case management and supervision creates greater risk that drug users will be sent into such programs and receive disproportionate responses. The likelihood of this happening is of course dependent not only on system priorities/spread of programs, but also the degree to which criteria are followed.

Finally, the likelihood of net-deepening/net-widening occurring is at least partly dependent upon the application of eligibility criteria – whom is referred and whom is deemed eligible. In this regard systems have two key gatekeepers. The primary gate-keepers to the system – police and courts – affect the inflow to the diversion system. They affect the number of eligible individuals but also the number of ineligible individuals. The secondary gatekeepers – independent drug treatment assessors – determine the access to diversion programs. They affect the number and type of people who access diversion programs.

Net-widening/net-deepening is more likely if the primary gate-keepers detect and refer more drug users than they would have if diversion programs were not provided and/or the system is designed with stringent eligibility criteria at the front-end. Conversely, net-widening/net-deepening is less likely if the secondary gatekeepers follow eligibility criteria. In the latter case, net-widening may result in more people being referred to a referral agent, but then deemed ineligible. This may still create negative effects of increasing the demand on referral services and the cost of providing diversion, however it minimises the application of disproportionate responses, and potential counter-productive impacts of increased drug use and crime and reserves resources for those who are most likely to benefit.

Modes of coordination

While in theory jurisdictions provide proportional and targeted responses to drug and drug-related offenders, the capacity to deliver this is dependent upon how the programs are implemented. In this regard coordination between programs is critical to enable consistency in program implementation, minimise the risk of applying disproportionate responses and to avoid duplication of efforts.

This analysis has highlighted a number of jurisdictions with large number of diversion programs. Such jurisdictions create increased challenges for coordinated responses. The number of programs appears to reflect three factors: the level of development of the system, the diversity of jurisdictional needs, and a preference for adapting programs through expanding program numbers. In such a way the mainstream program is copied and applied for new populations involving for example youth or Indigenous offenders. Such a strategy is not universal, since other jurisdictions have introduced “one-stop shop” programs serving the needs of a range of clients: youth and adults, cannabis and illicit drug users. At least in theory, such an approach ought to facilitate a more coordinated approach. As a consequence an individual is more likely to be referred to the most appropriate intervention, and for this to occur on the first occasion.

The capacity for coordination may also be affected by governance or funding arrangements. In gathering information for this report it was clear that in some jurisdictions the governance of diversion programs was split between the Departments of Health, Police and Attorney Generals. Other jurisdictions had more centralised systems, with Health delegated as the lead department. Gathering data in jurisdictions where governance was split was often more difficult, since each department had knowledge of only one part of the system. Further, programmatic information was more readily available for certain types of programs, particularly COAG-IDDI funded programs. This may reflect funding requirements and/or simply that the programs were newer. Regardless, it would appear that policy design and service delivery may be facilitated or hindered by the type of governance or funding arrangements.

Research and policy implications

This report has highlighted a number of research and policy implications. These include the need for documentation of procedures, to build the evidence-base on diversion, to critically analyse alternate models of diversion, and to find or develop new tools for assessing the impact of design.

Need for documentation of procedures

Well thought-out program criteria and objectives are essential for all diversion programs. Collecting the data for this report turned out to be far more difficult than first thought. Not all program criteria were clearly established. While the absence of written guidelines may aid program flexibility, it is detrimental to accountability and to the adoption of a clearly delineated and coordinated set of diversion programs. Some jurisdictions had more documented guidelines. Even then there was considerable variability in the breadth of such guidelines. Information on eligibility criteria and program characteristics was often not listed. Further, many guidelines were dated. Revising guidelines at timely intervals would appear a wise step, particularly given the changing nature of diversion. This would not only facilitate good program and system design but also program comparisons and evaluations.

Need to build the evidence-base on diversion programs

There is considerable evidence that diversion programs in Australia have been influenced by the evidence-base. Many jurisdictions have introduced new programs following the recommendation of evaluators. For example the evaluators of the Victorian Court Referral for Evaluation and Drug Intervention and Treatment identified gaps and problems reaching Indigenous populations. This facilitated the introduction of the Koori Drug Diversion program. This shows the benefits of state/territory evaluations.

Program evaluations have been critical in improving the design of Australia's diversionary system. Early models of for example the Victorian Drug Diversion Pilot program and the Victorian Court Referral for Evaluation and Drug Intervention and Treatment were devised in the relative absence of existing models. Evaluations helped identify areas for improving program design. For example the evaluation of the Victorian Drug Diversion Pilot Program recommended that the program be expanded across the state (McLeod Nelson and Associates Pty Ltd, 1999). However they also noted that during the eight month pilot only 60 people had been accepted into the program. Many potential clients had been deemed ineligible since they had prior drug charges. This led to the removal of the ban on individuals who had one or more prior drug charge or conviction.

Evaluations have also been influential for cross-jurisdictional knowledge and policy transfer. There are numerous examples of cross-jurisdictional policy transfer. For example, Victoria's Court Referral for Evaluation and Drug Intervention and Treatment gave rise to the NSW Magistrate's Early Referral Into Treatment program and the Court Referral for Evaluation and Drug Intervention and Treatment, Northern Territory. The Queensland Magistrate's Early Referral Into Treatment program was then based on the NSW program.

Yet there remain many more evaluations of pilot programs than of ongoing programs. Pilot programs often face particular challenges which are identified and reduced in ongoing management. Moreover, many evaluations remain out of the public domain. This hinders the capacity to build the evidence-base within and across jurisdictional boundaries. There is thus an imperative to continue the evaluation of diversion programs in Australia and to build the publicly available evidence-base on diversion programs.

Need to critically analyse alternate models of diversion

We have demonstrated that there are multiple models of diversion provided in Australia. Different models have much potential for demonstrating different rationales and approaches for diversion. It is not surprising therefore that many of the programs used today are amalgams of two different approaches. While the dominant approach is clearly therapeutic and formalised, many programs in use today reflect elements of the less formal or less therapeutic approaches. Such programs offer particular advantages, particularly for young or first time drug and drug-related offenders.

Changes in the criminal justice system will bring new opportunities to learn and/or expand diversion. The court system continues to expand through the introduction of specialist courts such as Koori courts and Family Domestic Violence Courts. These offer increased opportunities to access drug and drug-related offenders. It will be worth monitoring which drug users are accessed through these schemes and the relative advantages of such routes compared to the programs targeting drug crimes. For example King (2006) has noted that the Geraldton Alternative Sentencing Regime had particular advantages in gaining access to Indigenous offenders over and above the Western Australia drug courts.

Diversion for non-therapeutic purposes may provide a better alternative for some types of drug offenders, particularly if drug education or treatment is incorrectly targeted. This creates the need to critically analyse not only the dominant therapeutic models, but also alternative models: their aims, their design features, what works, for whom and why, and to consider their potential application for diverting drug and drug-related offenders.

Need for better tools to assess system design and impact of design

We have highlighted that there is considerable knowledge about the characteristics of diversion programs, but very little about how jurisdictional systems are put together. Yet it is system design which arguably has the greatest capacity to influence access to diversion programs, the cost-effectiveness and the net gains for the overall criminal justice system. Understanding system capacity to facilitate and hinder diversion is therefore critical. This demands a different approach to evaluation and to examining system impacts.

Evaluation is essential, not only of the individual programs but of the systems themselves. We have identified two avenues where evaluations can enhance understanding of the impacts of drug diversion systems: cross-jurisdictional evaluations and within jurisdiction multi-program evaluations. Examples of the former are (Harkin & O'Brien, 2006) and of the latter are (Alberti et al., 2004; Crime Research Centre, 2007). These produced novel insight and policy recommendations to improve the number and/or appropriateness of referrals, reduce the level of net-widening and enhance the benefits from diverting drug and drug-related offenders. Notably all three evaluations centred on court diversion programs. There remain no publicly available evaluations of a jurisdiction's entire system for diverting drug and drug-related offenders ie. via police, courts and drug courts. Such an evaluation offers considerable policy insights.

A related issue is establishing the cost-effectiveness of providing diversion. There have been increasing numbers of cost-effectiveness studies of particular forms of diversion, particularly drug courts. This has demonstrated that the cost-effectiveness of drug courts is highly affected by the ratio of completers to non-completers and the level of use of sanctions (Lind et al., 2002). Providing police diversion for cannabis users provides the opportunity for much more savings, in time and resources. Yet the benefits are affected by the number of people put through the program. Programs which widen the net, sending through more low risk offenders than would otherwise be responded to, are more costly. Programs that follow up non-compliance similarly affect the level of savings. Finally, whether or not a system brings in money (i.e. cautions or is an expiation) affects resources.

The big unknown remains the cost-effectiveness of entire jurisdictional systems of drug diversion. This requires a new level of analysis. Given that each jurisdiction has a different system of responding this creates valuable opportunities to consider what is a cost-effective diversion system? What are the main drivers? What are the major barriers? Could resources be better targeted? This requires knowledge on the costs of current systems and increased skills to assess the costs and cost-benefits of changing system design.

New methods are also needed to examine the causes of and means of minimising the level of net-widening or net-deepening. Understanding such issues may require a systems approach, to see how differences in system design such as eligibility criteria and program requirements upon the level and type of inflow, and the level and type of outflow. Given the vast number of variables affecting program operation researchers and policy makers may benefit from devising computer simulations or models of diversion programs and/or systems (Hughes, 2007). This could provide

insight into the likely impact of increasing the number of minor drug offenders who are diverted to education and treatment or of restricting access to serious offenders.

Finally, new methods are needed to understand the capacity of Australia's diversionary system to meet current and future needs. Such knowledge would be helped by consideration of the capacity of the current system to respond to a change in the number of methamphetamine users, or drug users with mental health issues or an increase in the overall number of drug users. Could the current system meet such need? If not, should it and what would be the optimum strategy to meet new needs? Should for example policy makers redirect resources, introduce new programs or adapt current ones?

Need to consider barriers to adopting evidence-based approach

The expansion and design of Australia's diversionary systems has clearly been driven by factors other than the evidence-base alone. This is likely to continue. Nowhere is this clearer than in jurisdictional responses to cannabis users.

While there is no doubt that diversion is an evidence-based approach, the choice of diversion program, the programmatic features and particularly its aims reflect assumptions about the way drug users and drug-related offenders should be responded to. In the Australian federal system there is often a push for a homogeneous approach. But such a push tends to be based upon dominant assumptions of what diversion *should* look like. Debates over for example whether to expand and increase federal funding for drug courts reflect in part beliefs over whether Australia should shift from a focus on minor drug and drug-related offenders towards serious drug and drug-related offenders. This may contribute towards a particular approach of diversion in Australia, even it is not proven to be the most effective, appropriate or resource efficient.

Expanding and promoting the evidence-base on diversion is thus critical. It is important to expand current tools and knowledge on "what works." However, it is also important to recognise the limits to what evidence can tell us. What works for one jurisdiction will not necessarily be adopted or work for another jurisdiction. Jurisdictional idiosyncrasies e.g. in geography, drug problems, demographics, politics and health/criminal justice institutions will continue to play critical roles in shaping the nature of and outcomes from diversion programs.

Limitations

The primary limitation with the current project is that the findings here are based on written policy. These cannot tell *how* diversion programs are put into practice. It should also be noted that the information pertaining to diversion was by necessity distilled. For this reason links were provided for interested individuals to follow up on programs. Any errors are the authors. Finally, the findings are related to diversion programs as of July 2007. As was noted with the introduction of the Tasmanian court diversion program, programs and systems change. Nevertheless, this provides the best possible snapshot of diversion as of 2007.

CONCLUSION

We have documented 51 programs that divert drug users and drug-related offenders in Australia. Their existence and recent growth is indicative of a clear commitment by all states and territories to divert drug users and drug-related offenders. A range of programs operate throughout Australia, from on-the-spot police cautions and referral for cannabis education to intensive drug court treatment and case management programs. In total these amount to five different forms of diversion: police diversion for cannabis; police diversion for other illicit drugs; police diversion for drug or drug-related offenders; court diversion for minor drug/drug-related offenders; and court diversion for serious drug/drug-related offenders. In theory this provides multiple opportunities to address the causes of drug use and crime.

We have highlighted a number of key features that make up the Australian system of diversion. The first is the preference to use diversion for therapeutic purposes in Australia. The majority of programs therefore offer diversion *to* education or treatment, rather than *out* of the criminal justice system. The second is the emphasis upon targeting diversion programs to particular types of drug users/offenders. The third is that jurisdictions have increasingly adopted more systematic and pragmatic approaches to diverting drug users and drug-related offenders. While such a system maximises the potential to address the causes of drug use and offending, the capacity to achieve this will be limited without the adoption of evidence-based and best practice program designs.

Australia's diversionary system comprises a rich diversity of design. By documenting the major types of diversion we have shown the programs have unique features concerning target groups, eligibility criteria and program requirements. We have also demonstrated that jurisdictions differ in their diversion systems: their priorities, the number of programs provided and accessibility of the programs. Finally, they vary in the extent to which programs are delineated and coordinated. As demonstrated in the discussion policy makers face significant trade-offs in their choice of programs and associated features. Such trade-offs are likely to influence the capacity for and impacts from diverting drug and drug-related offenders.

Much research is needed to inform future policy decisions. Two priorities are to expand the evidence-base on diversion programs and to develop methods for examining the operation of jurisdictional systems of diversion. This knowledge is essential to enhance the capacity to reduce net-widening, to increase the level of integration in diversion systems and to improve the cost-effectiveness of diverting drug and drug-related offenders.

We hope that this report will provide a tool to facilitate informed debate and policy advice on the current and future directions of Australia's diversionary response and lead to the development of more effective drug diversion systems.

DIVERSION PROGRAMS IN AUSTRALIA

Table 4: Programs for the diversion of drug-related offenders in ACT – Police diversion¹²

Program name		SCONS (Simple Cannabis Offence Notice Scheme)	ACT Policing Early Intervention and Diversion (PEID) program	Children & Young People Act 1999
Eligibility criteria	Age	Youth and adults	Youth and adults	Youth
	Residential location	Statewide	Statewide	Statewide
	Current offence	Drug offence: Poss drug/plants	Drug offence: Poss drug	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	Cannabis only	All illicit drugs or illicit use of licits	All illicit drugs
	Threshold quantities/rules	≤ 25g dried cannabis or 2 non-hydroponic or artificially cultivated cannabis plants	≤ 25g non-hydroponic cannabis, ≤ 0.5g heroin, cocaine or amphetamines	n.a.
	Offending history	No charges/convictions for violent offences	No convictions for violent offences	n.a.
	Diversion history	No limits on the number of times can be diverted through the program	Limit to 2 diversions	No limits on the number of times can be diverted through the program
	Judicial requirements	Must admit offence	Must admit offence	n.a.
	Other	Must consent to caution	n.a.	n.a.
Program characteristics	Diversionary mechanism	Fine of \$100	Assessment plus vol treat/educ	Warning or formal caution or family group conference
	Requirement	Payment of fine within 60 days	Attendance at either one education or counselling session	n.a.
	Assessor	ACT Police	Assessment and Coordination Team	ACT Police
	Program length	n.a.	n.a.	n.a.
	CJ incentives	Avoid criminal charges provided fine paid within 60 days	Avoid criminal charges	Avoid criminal charges
	Response to non-compliance	Non-payment may be followed up with summons to court	Discretionary - hands of AFP	Discretionary
Administrative details	Date of commencement	1992	Dec-2001	1999
	Specific legislative basis?	Yes - Drugs of Dependence Act 1989 (DoDA)	No	Yes - Children & Young People Act 1999

¹² While all efforts have been made to check the accuracy of the information, DPMP does not guarantee that the information is correct. Links are provided to enable the interested policy maker or researcher to check the original sources of information or find extra information.

	IDDI Funded?	No	Yes	No
	Further information	http://www.legislation.act.gov.au/a/alt_a1989-11co/current/pdf/alt_a1989-11co.pdf	http://www.health.act.gov.au/c/health?a=da&did=10038160&pid=1058841259	http://www.legislation.act.gov.au/a/1999-63/current/pdf/1999-63.pdf

Table 5: Programs for the diversion of drug-related offenders in the ACT – Court diversion

Program name		CADAS (Court Alcohol and Drug Assessment Service)	TRP (Treatment Referral Program)
Eligibility criteria	Age	Youth or adults	Adults
	Residential location	Statewide	Statewide
	Current offence	Drug-related offence	Drug-related offence OR offence committed under the influence
	If drug offence, type of drug	All illicit drugs & licit drugs e.g alcohol and benzodiazepine	All illicit drugs & illicit use of licit drugs excluding alcohol
	Threshold quantities/ rules	Must have drug problem	Offending must be directly related to drug use
	Offending history	No restrictions	No convictions for violent offences
	Diversion history	No limits on the number of times can enter program	No limits on the number of times can enter program
	Judicial requirements	Must be eligible for bail	Program participation must be substitute for or part of sentence of imprisonment
	Other	Must admit to having drug problem & consent to enter program	Must consent/ be willing to enter program
Program characteristics	Diversionary mechanism	Assessment plus comp treat/educ	Assessment plus comp treat
	Requirement	Complete treatment plan which can include ≤ 8 counselling sessions, 2-6 education modules, and withdrawal and residential rehabilitation programs	Undertake assessment & comply with program plan (intensive treatment and supervision are part of sentence)
	Assessor	Court Alcohol and Drug Assessment Service (CADAS)	Treatment Assessment Panel (ministerial appointment)
	Program length	Dependent upon treatment provider	6-24 months
	Program conditions	Case management and supervision	Case management and Intensive supervision
	Treatment options	Detoxification, Counselling and Residential Rehabilitation	Detoxification, Counselling and Residential Rehabilitation
	CJ incentives	May mitigate sentence	Non-custodial sentence or reduced period of imprisonment
	Response to non-compliance	Discretionary (by Magistrate)	May result in a warning or extension of order or the order may be revoked resulting in the requirement to serve the custodial sentence
	Administrative details	Date of commencement	Oct-2000
	Specific legislative basis?	No – Court Practice Direction	Yes - Drugs of Dependence Act 1989
	IDDI Funded?	Yes	Yes
	Further information	http://www.health.act.gov.au/c/health?a=da&did=10038160&pid=1058841259	http://www.health.act.gov.au/c/health?a=da&did=10038160&pid=1058841259

Table 6: Programs for the diversion of drug-related offenders in NSW – Police diversion

Program name		Adult Cannabis Cautioning Scheme	Young Offenders Act
Eligibility criteria	Age	Adult	Youth (under 18 at time of offence)
	Residential location	Statewide	Statewide
	Current offence	Drug offence: Use/ poss drug or equip	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	Cannabis only	All illicit
	Threshold quantities/rules	≤ 15 g cannabis leaf	In cases involving drug use/possession: ≤ 15 g cannabis leaf, ≤ 0.5g heroin, amphetamines or cocaine or ≤ 0.4g ecstasy
	Offending history	No charges/convictions for violent offences	No convictions for indictable drug offences or violent offences
	Diversion history	Maximum of 2 cannabis cautions	Maximum of 3 cautions
	Judicial requirements	n.a.	Must admit offence
	Other	Consent to caution/ to enter program	Consent to caution/ to enter program
Program characteristics	Diversionary mechanism	Caution plus health/legal information and referral number	Warning, caution or family group conference
	Requirement	Contact to Alcohol and Drug Information Service (ADIS) is optional for recipients of 1st caution, but for 2nd caution recipients must contact ADIS within 14 days and complete a telephone education session	Referral to conference requires completion of an outcome plan
	Assessor	NSW Police	NSW Police
	Program length	n.a.	n.a.
	CJ incentives	No criminal record	No criminal charges/prosecution
	Response to non-compliance	Failure to contact ADIS is put on record and brought to attention of court if subsequently re-offend	May result in summons or warrant for arrest
Administrative details	Date of commencement	Apr-2000	1997 (amended Dec-2001)
	Specific legislative basis?	No	Yes - Young Offenders Act, 1997 (amended)
	IDDI Funded?	Yes	No
	Further information	http://www.druginfo.nsw.gov.au/diversion/cannabis_cautioning_scheme/cannabis_cautioning_scheme_in_nsw_summary	http://www.legislation.nsw.gov.au/viewtop/inforce/act+54+1997+FIRST+0+N

Table 7: Programs for the diversion of drug-related offenders in NSW – Court diversion

Program name		MERIT (Magistrates Early Referral Into Treatment)	Rural Alcohol Diversion (RAD) Pilot Program	Youth Drug and Alcohol Court	(Adult) Drug Court
Eligibility criteria	Age	Adult	Adult	Youth	Adult (18+)
	Residential location	Statewide	Restricted - rural areas	Restricted - Western Sydney	Restricted - South Western Sydney
	Current offence	Not necessarily drug-related	Not necessarily drug-related	Not necessarily drug-related	Drug offence: Use/ poss or traffick (summary offence)
	If drug offence, type of drug	All illicit	Alcohol only	Licits and illicit	All illicit
	Threshold quantities/rules	Must have demonstrable drug problem, not necessarily dependence and minor offender	Must have demonstrable alcohol problem and be minor offender	Must have demonstrable drug problem, be serious offender and be illegible for sentencing through Young Offenders Act	Must be drug dependent, serious offender
	Offending history	No current or outstanding charges for significant violence, drug supply or sexual offences	No current or outstanding charges for significant violence, drug supply or sexual offences	No convictions for sexual offences	No convictions for violent or sexual offences, or offences involving firearms, manslaughter or murder
	Diversion history	No limits on the number of times can enter program	No limits on the number of times can enter program	No limits on the number of times can enter program	Preference given to new participants. Previous participants only accepted if > 3 years since terminated from drug treatment program/ completed imprisonment.
	Judicial requirements	Must be eligible for bail	Must be eligible for bail	Must intend to plead guilty, be eligible for bail and be likely to receive sentence of imprisonment	Must have been convicted & received sentence of 18-36 months imprisonment or plead guilty & receive a provisional sentence by the drug court
	Other	Must consent to enter program & drug problem must be deemed treatable	Must consent to enter program & drug problem must be deemed treatable	Must consent to enter program & drug problem must be deemed treatable	Must consent to enter program & lack mental conditions that may impede participation
Program characteristics	Diversionary mechanism	Assessment plus vol treat/educ	Assessment plus vol treat/educ	Assessment plus comp treat	Assessment plus comp treat
	Requirement	Undertake assessment & treatment with aim of stabilisation of use/offending.	Undertake assessment & then comply with program plan (treatment & supervision	Undertake assessment & then comply with program plan (intensive treatment &	Sentence suspended on condition that remanded for detoxification & assessment

Program name		MERIT (Magistrates Early Referral Into Treatment)	Rural Alcohol Diversion (RAD) Pilot Program	Youth Drug and Alcohol Court	(Adult) Drug Court
		Participation is a condition of bail.	are a condition of bail)	supervision are a condition of bail)	& undertake 3 phases: initiation, consolidation & reintegration.
	Assessor	MERIT Team	Court Treatment Assessment Panel	Joint Assessment and Review Team	Corrections Health Service
	Program length	3 months	3 months	≤ 6 months	≤ 12 months
	Program conditions	Requirement to not take drugs or commit further offences and undergo case management and intensive supervision	Requirement to not take drugs or commit further offences and undergo case management. Welfare support optional	Requirement to undergo case management, intensive supervision and urine sampling. Access to other programs e.g anger management is optional.	Requirement to not take drugs or commit further offences and undergo case management, intensive supervision, urine sampling. Welfare support and access to other programs e.g anger management is optional.
	Treatment options	Detoxification, Counselling, Pharmacotherapy, Residential Rehabilitation and Relapse Prevention	Detoxification, Counselling, Pharmacotherapy, Residential Rehabilitation and Relapse Prevention	Counselling, Pharmacotherapy and Residential Rehabilitation	Counselling, Pharmacotherapy, Residential Rehabilitation and Abstinence-based treatment
	CJ incentives	At Magistrate's discretion participation in program may be taken into account on sentence as indication of rehabilitative prospects	At Magistrate's discretion participation in program may be taken into account on sentence as indication of rehabilitative prospects	May reduce sentence and usually results in non-custodial sentence	Court reconsiders sentence at end of order. Sentence may be reduced and non-custodial sentence is common.
	Response to non-compliance	Response to non-attendance at treatment is discretionary but other breaches may result in end of MERIT participation or loss of bail	Discretionary but further offences may result in loss of bail	Privileges may be withdrawn, supervision or treatment increased, program extended or offender breached from program	Privileges may be withdrawn, supervision or treatment increased, up to 14 days imprisonment imposed or original sentence enacted
Administrative details	Date of commencement	Jun-2000	Dec-2004	Jul-2000	Feb-1999
	Specific legislative basis?	No	No	No	Yes - Drug Court Act 1998 and Drug Court Regulation 1999
	IDDI Funded?	Yes	Yes	Yes	No
	Further information	http://www.druginfo.nsw.gov.au/diversion/merit	http://www.lawlink.nsw.gov.au/lawlink/cpd/merit.nsf/pages/merit_rad	http://www.druginfo.nsw.gov.au/diversion/youth_drug COURT	http://www.communitybuilderns.nsw.gov.au/drugs_action/download/diveng.pdf

Table 8: Programs for the diversion of drug-related offenders in NT – Police Diversion

Program name		Cannabis expiation scheme	Northern Territory Illicit Drug Pre-Court Diversion Program	Juvenile Pre-Court Diversion Scheme	Youth Justice Act
Eligibility criteria	Age	Adults	Youth and adults	Youth	Youth
	Residential location	Statewide	Statewide	Statewide	Statewide
	Current offence	Drug offence: Use/ poss drug	Drug offence: Use/ poss drug	Property offence	Summary offences
	If drug offence, type of drug	Cannabis	All illicit	Not drug specific	Not drug specific
	Threshold quantities/rules	≤ 50 g cannabis, ≤ 10 g cannabis resin, ≤ 10 g hash, ≤ 1 g hash oil or ≤ 2 cannabis plants	≤ 50 g cannabis, ≤ 2 g heroin, amphetamines, ecstasy	≤ \$100 worth of property	n.a.
	Offending history	n.a.	No convictions for violent offences or drug offences	n.a.	n.a.
	Diversion history	No limits on the number of times can enter program	n.a.	No limit although more intensive intervention provided for repeat offenders	No limits on the number of times can enter program
	Judicial requirements	n.a.	Must admit to offence	n.a.	n.a.
	Other	n.a.	Must consent to enter program	n.a.	n.a.
Program characteristics	Diversiónary mechanism	Fine of \$200	Assessment plus comp educ/counselling/treat	Warning, caution, family group conference or referral to formal diversion program	Warning, caution, family group conference or referral to formal diversion program
	Requirement	Fine must be paid within 28 days	Undertake assessment, attend 1 hour education session and at least commence recommended treatment (may be counselling) within 30 days of assessment	If offered conference or referral to formal diversion program required to partake and comply	If offered conference or referral to formal diversion program required to partake and comply
	Assessor	NT Police	Assessment Provider	NT Police	Police Diversion Unit
	Program length	n.a.	Variable - treatment may be provided for ≤ 8 weeks	n.a.	n.a.
	CJ incentives	Avoid criminal charge	No criminal charges	No criminal charges	No criminal charges
	Response to non-compliance	Failure usually results in debt to state, and no conviction, but may result in prosecution	Non compliance will be reported & summons initiated	May result in prosecution	May result in prosecution

Program name		Cannabis expiation scheme	Northern Territory Illicit Drug Pre-Court Diversion Program	Juvenile Pre-Court Diversion Scheme	Youth Justice Act
Administrative details	Date of commencement	1996	Dec-2002	Aug-2000	Aug-2006 (replaced Youth Justice Act 2005)
	Specific legislative basis?	Yes - Misuse of Drugs Act 2006	No	Yes - Police Administration Act	Yes - Youth Justice Act (replaced Youth Justice Act 2005)
	IDDI Funded?	No	Yes	No	No
	Further information	http://notes.nt.gov.au/dcm/legislat/legislat.nsf/341afd77c15dc4692565a6000e3509fe5b92fa2070344f69257111000f29c4?OpenDocument	http://www.pfes.nt.gov.au/index.cfm?fuseaction=page&p=133	http://www.pfes.nt.gov.au/index.cfm?fuseaction=page&p=133	http://www.nt.gov.au/justice/docs/legservs/youth_justice_questions_answers.pdf

Table 9: Programs for the diversion of drug-related offenders in NT – Court Diversion

Program name		CREDIT NT (Court Referral and Evaluation for Drug Intervention and Treatment, Northern Territory)
Eligibility criteria	Age	Youth and adults
	Residential location	Restricted - must be willing to attend Darwin or Alice Springs based court and treatment program
	Current offence	Minor offence but may also include indictable offences
	If drug offence, type of drug	All illicit
	Threshold quantities/rules	Must have substance use or illicit drug problem and be first timer
	Offending history	No charges/convictions for violent offences
	Diversion history	Must not have ≥ 2 prior admissions to CREDIT NT within past 12 months
	Judicial requirements	Must be ineligible for NT IDPCDP but eligible for bail and not subject to court order with drug treatment component
	Other	Must consent/volunteer to enter program and lack major mental condition that may impede participation
	Program characteristics	Diversiory mechanism
Requirement		Undertake assessment, attend 1-2 hour education session and at least commence recommended treatment within 30 days of assessment. Counselling clients are required to attend ≥ 6 sessions.
Assessor		Assessment Provider
Program length		Dependent upon treatment: ≤ 12 weeks of pharmacotherapy or residential rehabilitation, less for counselling clients
Program conditions		Requirement to not take drugs or commit further offences and undergo case management, intensive supervision and urine sampling. Welfare support and access to other programs e.g. case management is optional.
Treatment options		Detoxification, Counselling, Pharmacotherapy, Residential Rehabilitation, Residential Withdrawal and Home-based withdrawal.
CJ incentives		May reduce sentence and usually results in non-custodial sentence
Response to non-compliance		Discretionary, but major breach may result in discharge from program
Administrative details	Date of commencement	May-2003
	Specific legislative basis?	No
	IDDI Funded?	Yes
	Further information	Forthcoming

Table 10: Programs for the diversion of drug-related offenders in Qld – Police Diversion

Program name		Police Diversion Program for Minor Drug Offences	Juvenile Justice Act 1992
Eligibility criteria	Age	Youth and adults	Youth
	Residential location	Statewide	Statewide
	Current offence	Drug offence: Poss drug or equip	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	Cannabis	All illicit
	Threshold quantities/rules	≤ 50g cannabis	n.a.
	Offending history	No current related indictable offences and no prior convictions involving violence against the person	n.a.
	Diversion history	Limit of one diversion opportunity. NB. Offenders who fail to attend program are also ineligible for future diversion	No limits on the number of times can enter program
	Judicial requirements	Must admit the offence and sign an agreement to attend diversion program	Must admit offence to participate in conference
	Other	It is mandatory for police to offer eligible offenders with the option to enter the Police Diversion Program	Must consent to receive caution/participate in conference
Program characteristics	Diversionary mechanism	Assessment plus comp brief intervention (educ/counselling)	Warning, formal caution or family group conference
	Requirement	Attend DDAP (Drug Diversion Assessment Program) and undertake 1 session involving assessment of drug use, education and counselling. If found to be dependent then further treatment may be recommended but is optional.	If offered conference required to partake and comply with conference agreement
	Assessor	Queensland police	Queensland police or courts
	Program length	2 hours	n.a.
	CJ incentives	Avoid criminal charge	Avoid criminal charge
	Response to non-compliance	Proceedings may be commenced under section 791 of the Police Powers and Responsibilities Act 2000 for failure to comply with the direction of a police officer. Maximum penalty = 40 penalty units (\$3000)	Discretionary - no response, additional caution or charges may be laid
Administrative details	Date of commencement	Jun-2001	1992
	Specific legislative basis?	Yes - section 379 of Police Powers and Responsibilities Act 2000 (amended in 2006)	Yes - Juvenile Justice Act 1992
	IDDI Funded?	Yes	No
	Further information	http://www.police.qld.gov.au/Resources/Internet/services/documents/gen_brochure.pdf	http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/J/JuvenJusA92.pdf

Table 11: Programs for the diversion of drug-related offenders in Qld – Court diversion

Program name		Illicit Drug Court Diversion Program	QMERIT (Queensland Magistrate's Early Referral into Treatment)	Drug Court Program
Eligibility criteria	Age	Youth or Adult	Adult	Adults (17 plus)
	Residential location	Statewide	Restricted - Maroochydore and Redcliffe	Restricted - Must reside within 25 kms of drug courts - Beenleigh, Ipswich, Southport, Cairns or Townsville
	Current offence	Drug offence: Poss drug or equip	Drug-related offence	Any simple or indictable offence - likely to result in sentence of imprisonment
	If drug offence, type of drug	All illicit	All illicit	n.a.
	Threshold quantities/rules	≤ 50 g cannabis, ≤ 1 g heroin, cocaine or amphetamines	Must be drug dependent and offence must relate to illicit drug dependency	Must be drug dependent and be serious offender
	Offending history	No charges/convictions involving sexual offences and no prior convictions involving violence against the person	No charges/convictions for violent or sexual offences	No convictions for violent or sexual offences AND in Nth QLD: no record of imprisonment of ≥ 12 months
	Diversion history	Maximum of two diversions including police diversion and court diversion	No limits on the number of times can enter program	No limits on the number of times can enter program
	Judicial requirements	Must admit offence and plead guilty	Must be eligible for bail	Must undergo and pass assessment for IDRO pre-sentencing. At sentencing must plead guilty and agree to undergo Intensive Drug Rehabilitation Order as substitute for a sentence of imprisonment.
	Other	Must consent to enter program	Must have a treatable drug problem, be assessed as suitable and consent to enter program	Must lack mental health conditions that may impede program participation
Program characteristics	Diversionary mechanism	Assessment plus comp brief intervention (educ/counselling)	Assessment plus vol treat/educ	Assessment plus comp treat/educ
	Requirement	Attendance and undergoing a brief intervention - DAES (Drug Assessment and Education Session) – involving assessment of drug use, education and counselling on recognisance. If found to be dependent then further treatment may be recommended but is optional.	Attendance at assessment, which is used to determine eligibility/suitability for treatment and propose a treatment plan. Participation in the prescribed treatment program is voluntary but is set as a condition of bail.	Completion of IDRO (Intensive Drug Rehabilitation Order): treatment, courses and intensive supervision
	Assessor	Court Diversion Officer	QMERIT team	2 departments: Queensland Health and Community Corrections
	Program length	2.5 hours	12-16 weeks	12-18 months

Program name		Illicit Drug Court Diversion Program	QMERIT (Queensland Magistrate's Early Referral into Treatment)	Drug Court Program
	Program conditions	n.a.	Requirement to not commit further offences and undergo case management. Welfare support is optional.	Requirement to not take drugs or commit further offences and undergo case management, intensive supervision and urine sampling. Access to other programs e.g. case management is optional.
	Treatment options	n.a.	Detoxification, Counselling, Pharmacotherapy, Residential Rehabilitation and Relapse Prevention	Detoxification, Counselling, Pharmacotherapy and Residential Rehabilitation
	CJ incentives	No conviction if attend session	May mitigate sentence	May result in new sentence being imposed e.g. community-based sentence instead of imprisonment
	Response to non-compliance	Court warrant issued for original drug offence	May result in changes to bail conditions or revocation of bail and prosecution for original offence	May result in increased supervision, more drug tests, community service or 14 days imprisonment
Administrative details	Date of commencement	Mar-2003	Aug-2006	Jun-2000
	Specific legislative basis?	Yes – Amendments made to Penalties & Sentences Act 1992 and Schedule to Drugs Misuse Act 1986	Yes – Amendments made to Bail Act 1980	Yes - Drug Rehabilitation (Court Diversion) Act 2000 (Qld)
	IDDI Funded?	Yes	No	No
	Further information	http://www.justice.qld.gov.au/courts/factsht/courtDiversion.htm	http://www.courts.qld.gov.au/PracticeDirections/Magistrates/MC-PD-2of2008.pdf	http://www.justice.qld.gov.au/courts/factsht/C10DrugCrt.htm

Table 12: Programs for the diversion of drug-related offenders in SA – Police diversion

Program name		Cannabis Expiation Notice	(PDDI) SA Police Drug Diversion Initiative	Young Offenders Act 1993
Eligibility criteria	Age	Adult	Youth or Adults	10-18 yrs (over 10 and under 18)
	Residential location	Statewide	Statewide	Statewide
	Current offence	Drug offence: Use/ poss drug or equip or cultivation	Drug offence: Use/ poss /administer drug or equip	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	Cannabis	<u>Youth:</u> possession, use and administration of all illicit AND illicit use of prescription drugs <u>Adults:</u> possession, use and administration of all illicit excluding cannabis	n.a.
	Threshold quantities/rules	≤ 100g cannabis, ≤ 20g cannabis resin or ≤ 1 non-hydroponic plant intended for own use	≤ 50g cannabis or ≤ unspecified quantity of illicit drugs	n.a.
	Offending history	n.a.	n.a.	n.a.
	Diversion history	No limit to number of times can be diverted through program	No limits on number of times can be diverted through program	No limits on the number of times can be diverted
	Judicial requirements	n.a.	n.a.	Must admit offence
	Other	n.a.	Mandatory police referral. Consent of parents/guardians required for youth diversions. Consent may also be required to enter intervention (dependent on service provider).	n.a.
Program characteristics	Diversionary mechanism	Expiation fee of ≤ \$300: \$150 for smoking in public place, possession of <25g cannabis or <5g cannabis resin or possession of equipment, \$300 for possession of 25-100g cannabis, 5-20g cannabis resin or cultivation of plant	Diversionary mechanism dependent upon age of offender <u>All Youth (illicit and prescription drugs):</u> 1 st and subsequent diversions: Referral to drug assessment/intervention (may include assessment, up to 8 sessions of on-going counselling, educational material and referral to services). <u>All Adults (illicit drugs, excluding cannabis)</u> 1 st and subsequent diversions: Referral to drug assessment/intervention (may include assessment, up to 8 sessions of on-going counselling, educational material and referral to services).	Informal caution, formal caution, family group conference or Youth Court
	Requirement	Payment of expiation fee and receipt of educational material ≤	Attendance (and participation) in drug assessment/intervention appointment	Any undertaking imposed e.g. restitution, community service

Program name		Cannabis Expiation Notice	(PDDI) SA Police Drug Diversion Initiative	Young Offenders Act 1993
		30-60 days. N.B. Offenders can apply to pay fee in instalments through community service.		must take place within 12 mths
	Assessor	SA Police	PDDI Assessor(s)	SA Police or Courts
	Program length	n.a.	intervention may consist of up to 8 on-going counselling sessions	n.a.
	CJ incentives	Offence expiated and criminal charges avoided if expiation fee is paid	Avoid criminal charge if diversion is complied with	Avoid criminal charge
	Response to non-compliance	Failure to pay results in reminder notice and additional fee. Subsequent failure to pay results in automatic conviction for a cannabis offence plus a fine equivalent to the unpaid expiation fee.	Matter referred to SA Police and individual may be charged with original offence	May result in charges and prosecution
Administrative details	Date of commencement	Apr-1987	Youth: Sep-2001 Adults: Oct-2001	1993
	Specific legislative basis?	Yes - Controlled Substances Amendment Act, 1984	Yes - Controlled Substances Amendment Act, 1984	Yes - Young Offenders Act 1993
	IDDI Funded?	No	Yes	No
	Further information	http://www.austlii.edu.au/au/legis/sa/consol_reg/csoscor2002662/index.html#s7	n.a.	http://www.austlii.edu.au/au/legis/sa/consol_act/yoa1993181/

Table 13: Programs for the diversion of drug-related offenders in SA – Court diversion

Program name		CARDS (Court Assessment and Referral Drug Scheme)	Youth CARDS (Court Assessment and Referral Drug Scheme)	SA drug court
Eligibility criteria	Age	Adults	Youth	Adult
	Residential location	Restricted - Adelaide, Christies Beach, Elizabeth, Mount Barker, Murray Bridge & Port Adelaide	Restricted - Adelaide only	Restricted - Adelaide only
	Current offence	Drug offence: Use/ poss drug OR Drug-related offence OR Offence committed under influence		
	If drug offence, type of drug	All illicit	All illicit	All illicit
	Threshold quantities/rules	Must have demonstrable drug problem and be minor offender	Must have demonstrable drug problem and be minor offender	Must have current or prior dependency and be serious offender likely to be imprisoned
	Offending history	No charges/convictions for violent offences or charges for sexual or indictable offences		No charges/convictions for violent offences or convictions for indictable drug offences
	Diversion history	No limits on the number of times can enter SA Court Drug Diversion Programs		
	Judicial requirements	Must be eligible for bail/bond & not subject to other court orders	Must be eligible for bail/bond & not subject to other court orders	Must plead guilty to most serious & majority of offences
	Other	Must admit to having drug problem and consent to enter SA Court Drug Diversion Programs		
Program characteristics	Diversionary mechanism	Assessment plus comp counselling	Assessment plus comp counselling	Assessment plus comp treat/educ
	Requirement	Attendance at ≥ 4 sessions of counselling and optional referral to treatment	Attendance at ≥ 4 sessions of counselling and optional referral to treatment	Undertake 12 month intensive program, while on home detention
	Assessor	CARDS Assessment Officer	CARDS Assessment Officer	Drug Court Team
	Program length	3 mths	3 mths	12 mths
	Program conditions	Access to welfare support and other programs e.g. anger management is optional	Access to welfare support and other programs e.g. anger management is optional	Case management, intensive supervision and urine sampling. Access to welfare support and other programs is optional.
	Treatment options	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, Abstinence-based treatment and Relapse Prevention	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, Abstinence-based treatment and Relapse Prevention	Detoxification, Counselling, Pharmacotherapy, Residential Rehabilitation and Relapse Prevention
	CJ incentives	May mitigate sentencing		
	Response to non-compliance	May result in arrest and prosecution	May result in arrest and prosecution	Sanctions, further conditions, expulsion from program or imprisonment
Administrative details	Date of commencement	Jun-2004	Nov-2005	May-2000

	Specific leg basis?	No	No	No
	IDDI Funded?	Yes	Yes	No
	Further information	http://www.courts.sa.gov.au/courts/magistrates/cards.html	http://www.courts.sa.gov.au/courts/magistrates/cards.html	http://www.courts.sa.gov.au/courts/drug_court/index.html

Table 14: Programs for the diversion of drug-related offenders in Tas – Police diversion

Program name		Police Drug Diversion	Youth Justice Act 1997
Eligibility criteria	Age	Youth and adults	Youth
	Residential location	Statewide	Statewide
	Current offence	Drug offence: Use/ poss drug	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	All illicit	All illicit
	Threshold quantities/rules	≤ 50g cannabis or unspecified quantity of other substances	n.a.
	Offending history	Limit to 3 "drug events" including prior drug offences, drug diversions or other diversions in 10 year period	n.a.
	Diversion history		No limits on the number of times can enter program
	Judicial requirements	Must admit offence	Must admit offence
	Other	Must consent to caution/ to enter program	Must consent to caution/ to conference
Program characteristics	Diversionary mechanism	Dependent on type of drug and number of interventions <u>Cannabis use/poss</u> 1 st diversion: Formal caution 2 nd diversion: Brief intervention (counselling) 3 rd diversion: Assessment plus comp treat/educ <u>Use/poss of all other illicit</u> 1 st and subsequent diversions: Assessment plus comp treat/educ	Warning, formal caution or community conference
	Requirement	Dependent on stage of intervention	Any undertaking imposed e.g. community service must be completed within 6 mths
	Assessor	Alcohol and Drug Service (ADS)	Tasmania Police or Courts
	Program length	Up to six weeks for third level diversion	n.a.
	CJ incentives	Avoid criminal charges	Avoid criminal charges
	Response to non-compliance	Summons to court	Summons to court
Administrative details	Date of commencement	Feb-2000	1997
	Specific legislative basis?	No	Yes - Youth Justice Act 1997
	IDDI Funded?	Yes	No
	Further information	http://www.dhhs.tas.gov.au/services/view.php?id=936	http://www.austlii.edu.au/au/legis/tas/consol_act/yja1997185/

Table 15: Programs for the diversion of drug-related offenders in Vic – Police diversion

Program name		Cannabis cautioning program	Drug diversion program	Victoria Police Cautioning Program	Rural outreach diversion
Eligibility criteria	Age	Adult (17 plus)	10 plus	Youth	≤ 25
	Residential location	Statewide	Statewide	Statewide	Restricted - rural areas
	Current offence	Drug offence: Use/ poss drug	Drug offence: Use/ poss drug	Any, except sexual offence	Non-drug related offence
	If drug offence, type of drug	Cannabis	Illicit drugs excluding cannabis & misuse of pharmaceutical drugs		
	Threshold quantities/rules	≤ 50 g dried cannabis & not detected committing other offence	≤ 1 g heroin, cocaine, amphetamines & not committing other offence	n.a.	Drug use contributing to offending behaviour
	Offending history	n.a.	n.a.	n.a.	No convictions for indictable drug offences
	Diversion history	Max of one prior diversion (inc drug diversion)	Max of one prior diversion (inc cannabis)	No limits on the number of times can enter program	No limits on the number of times can enter program
	Judicial requirements	Must admit offence to enter Victorian Police Diversion Program			
	Other	Must consent to caution or to enter Victorian Police Diversion Program			
Program characteristics	Diversionary mechanism	Formal caution plus education and optional referral	Assessment plus comp treat	Warning or formal caution	Assessment plus vol treat/educ
	Requirement	Receive caution notice and educational brochure with referral information for optional cannabis education session (Cautious with Cannabis)	Undergo assessment and attend ≥ 1 treat session	Generally no conditions, but may receive referral to other service	Undergo assessment of drug treatment, health & welfare needs. Treatment optional.
	Assessor	Victoria Police	Community Offenders Advice and Treatment Service(COATS)	Victoria Police	Rural Outreach Diversion Worker (RODW)
	Program length	2 hours if undertake cannabis education session	n.a.	n.a.	n.a.
	CJ incentives	Avoid criminal charges	Avoid criminal charges	Avoid criminal charges	May reduce sentence
	Response to non-compliance	n.a.	Summons and court hearing	n.a.	Taken into account in sentencing
Administrative details	Date of commencement	1997	Sep-1998	Introduced in 1960s but formalised in 1977	2002
	Specific leg basis?	No	No	No	No
	IDDI Funded?	Yes	Yes	No	Yes
	Further information	http://www.health.vic.gov.au/drgservices/services/fs_index.htm	http://www.health.vic.gov.au/drgservices/services/fs_index.htm	n.a.	http://www.health.vic.gov.au/drgservices/services/fs_index.htm

Table 16: Programs for the diversion of drug-related offenders in Vic – Court diversion

Program name		CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment)	Koori Drug Diversion	Deferred sentencing	Youth Justice Group Conferencing	Children's court clinic drug program	Drug Treatment Order - Drug Court
Eligibility criteria	Age	Youth or Adults	Adults	17-25 yrs	10-18 yrs	10-17 yrs	Adult
	Residential location	Restricted - 11 Magistrates Courts	Restricted to Koori Courts: Mildura, Bairnsdale, Broadmeadows, Latrobe Valley, Shepparton and Warrnambool	Statewide	Statewide	Restricted - Children's Court	Restricted - Dandenong
	Current offence	Not necessarily drug related	All except family violence and sex offences	Not necessarily drug related	All except homicide, manslaughter, sex offences or serious crimes of violence	Not necessarily drug related	Summary offence or indictable offence that can be dealt with summarily. Must be punishable upon conviction by imprisonment, but not be a sexual offence or involve bodily harm.
	If drug offence, type of drug	n.a.	n.a.		n.a.		All illicit and alcohol
	Threshold quantities/ rules	Must have recognisable problem that contributes towards offending	Drug use must contribute towards offending behaviour	Drug use must contribute towards offending behaviour	n.a.	Must have substance use issue	Drug use must contribute towards offending behaviour
	Offending history	n.a.	n.a.	n.a.	No convictions for sexual offences or for murder or manslaughter	n.a.	n.a.
	Diversion history	No limits on the number of times can enter Victorian court drug diversion programs					
	Judicial requirements	Must be eligible for bail and not subject to other court orders, although clients on orders	Must not be subject to other court orders	Must have plead/been found guilty and not be subject to other court orders	Must have plead/been found guilty and be likely to receive probation or a	Not subject to other court orders involving drug treatment	Must have plead guilty, agreed to undertake Drug Treatment Order and not be subject

Program name		CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment)	Koori Drug Diversion	Deferred sentencing	Youth Justice Group Conferencing	Children's court clinic drug program	Drug Treatment Order - Drug Court
		requiring accom will be assisted.			youth supervisory order		to other orders: a Parole Order, Combined Custody and Treatment Order, Intensive Corrections Order, Community Based Order or Sentencing Order of County or Supreme Court
	Other requirements	Must consent to enter program	Must plead guilty to enter Koori court	n.a.	n.a.	n.a.	Must consent to enter program
Program characteristics	Diversionary mechanism	Assessment plus comp treat/educ	Assessment plus comp treat/educ	Assessment plus comp treat/educ	Youth justice group conference	Assessment plus comp treat/educ	Assessment plus comp treat/educ
	Requirement	Assessment and treatment set as condition of bail	Sentence deferred on condition that attend drug treatment	Sentence deferred on condition that attend drug treatment	Sentence deferred on condition that attend conference and complete undertakings	Sentence deferred following assessment & undertaking to undergo treat	Drug Treatment Order involves a treatment/ supervision part and a custodial part which is suspended for duration of order. DTO results in an intensive 3 phase program: stabilisation, consolidation and re-integration
	Assessor	CREDIT Clinician or suitably qualified and experienced community based drug assessor	Suitably qualified and experienced community based drug assessor.	Suitably qualified and experienced community based drug assessor	Youth Justice Court Advice Worker	Children's Court Drug Clinicians	Drug Court Officer
	Program length	≤ 4 months	Until sentencing	≤ 6 months (until sentencing)	2 hours	≤ 4 months (until sentencing)	2 years
	Program conditions	Case management required. Access to other programs e.g.	n.a.	n.a.	n.a.	Access to supported accommodation	Requirement to not take drugs or commit further

Program name	CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment)	Koori Drug Diversion	Deferred sentencing	Youth Justice Group Conferencing	Children's court clinic drug program	Drug Treatment Order - Drug Court	
		supported accommodation optional			optional	offences and undergo case management, intensive supervision, urine sampling. Access to other programs optional.	
	Treatment options	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal and Youth outreach	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, Youth outreach and Relapse Prevention. Referral, advice and linkage provided by Koori Alcohol and Drug Workers.	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, and Youth outreach	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, and Youth outreach if required	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal, Home-based Withdrawal, and Youth outreach	Counselling, Pharmacotherapy, Residential Rehabilitation, Residential withdrawal and Home-based Withdrawal
	CJ incentives	May result in non-custodial sanction or reduce sentence	May reduce sentence	May reduce sentence	May avoid receiving supervisory order	May reduce sentence	Substitute for sentence of imprisonment
	Response to non-compliance	Treatment conditions may be varied or client removed from program	May result in warning or client may be removed from program, resulting in return to court	Non-attendance may result in one follow up opportunity and may affect sentencing	Conference may be re-scheduled or result in requirement to undertake supervisory order e.g. good behaviour bond	Discretionary	May increase supervision, result in ≤ 7 days imprisonment or cancellation of order and requirement to serve unexpired part of sentence
Administrative details	Date of commencement	Nov-1998	2004	Jun-2005	1995	2001	May-2002
	Specific legislative basis?	No	Yes - Magistrates' Court (Koori Court) Act 2002	Yes - Sentencing Act 1991	Yes - Children, Youth and Families Act 2005	No	Yes - Sentencing (Amendment) Act 2002
	IDDI funded?	Yes	Yes	Yes	No	Yes	No

Program name		CREDIT (Court Referral and Evaluation for Drug Intervention and Treatment)	Koori Drug Diversion	Deferred sentencing	Youth Justice Group Conferencing	Children's court clinic drug program	Drug Treatment Order - Drug Court
	Further information	http://www.health.vic.gov.au/drugservices/services/fs_index.htm	http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Courts/Victorian+Courts/JUSTICE+-+Koori+Court	http://www.health.vic.gov.au/drugservices/services/fs_index.htm	http://www.office-for-children.vic.gov.au/_data/assets/pdf_file/0014/44303/yj_factsheet_group_conferencing_23042007.pdf	http://www.health.vic.gov.au/drugservices/services/fs_child.htm	http://www.magistratescourt.vic.gov.au/CA256CD30010D864/page/Specialist+Court+Jurisdiction-s-Drug+Court?OpenDocument&1=60-Specialist+Court+Jurisdiction~&2=40-Drug+Court~&3=~

Table 17: Programs for the diversion of drug-related offenders in WA – Police diversion

Program name		CIN (Cannabis Infringement Notice)	All Drug Diversion	YPOP (Young Person's Opportunity Program)	Young Offenders Act 1994
Eligibility criteria	Age	Adults	Adults	10-18 yrs	Youth
	Residential location	Statewide	Statewide	Statewide	Statewide
	Current offence	Drug offence: Use/ poss drug, equip or cannabis plants	Drug offence: Use/ poss drug or equip	Minor offence (not-necessarily drug related)	Summary offence or indictable offence that can be dealt with summarily
	If drug offence, type of drug	Cannabis	Illicit drugs excluding cannabis and prescribed medication	All illicit drugs and prescribed medicine	Not drug specific
	Threshold quantities/rules	≤ 30g cannabis, ≤ 2 non-hydroponic plants	≤ 2 g amphetamine, cocaine, MDMA, heroin	Must have substance abuse problem and preferably be a first timer	n.a.
	Offending history	n.a.	No convictions for violent or drug dealing offences	No charges or convictions for violent, sexual or indictable offences	n.a.
	Diversion history	No limits on number of times can enter program	Max of 1 per person	No limits on the number of times can enter program	No limits on the number of times can enter program
	Judicial requirements	n.a.	Must admit guilt	Must admit responsibility and be currently managed by Juvenile Justice Team	n.a.
	Other	n.a.	Must consent to enter program	Must consent to YPOP being listed on JJT action plan	n.a.
Program characteristics	Diversionsary mechanism	Fine of ≤ \$200 that can be substituted by education	Assessment plus compulsory educ/counselling	Assessment plus vol educ/treat	Formal caution or referral to Juvenile Justice Team
	Requirement	Must pay fine or attend cannabis education session (CES) within 28 days. Recipients of 2 prior CINS in 3 year period must attend CES.	Mandatory education and attend 3 counselling sessions within 30 days	Undergo assessment of drug treatment needs. May also involve motivational interviewing and education. Treatment is optional.	n.a.
	Assessor	Approved Providers (drug treatment agencies)	Approved Providers (drug treatment agencies)	YPOP Project Officer	WA Police or Courts
	Program length	1.5 - 2 hrs	≤ 30 days	Variable. Clients can attend as many sessions as they deem necessary.	n.a.

Program name		CIN (Cannabis Infringement Notice)	All Drug Diversion	YPOP (Young Person's Opportunity Program)	Young Offenders Act 1994
	CJ incentives	Expiation - no charges	Expiation - no charges	May result in no charge (if arrest referral) or formal dismissal (if court referred)	Complaint dismissed if offender complies
	Response to non-compliance	Follow up through Fines Enforcement Registry (FER). Failure to pay may result in licence suspension	Summons for court	May result in referral by JJT back to referring source (police, prosecutor or court) and charges subsequently being laid	May result in charges subsequently being laid
Administrative details	Date of commencement	Mar-2004	2000	2004	1994
	Specific legislative basis?	Yes - Cannabis Control Act 2003 (CCA)	No	No	Yes - Young Offenders Act 1994
	IDDI funded?	Yes (but only Cannabis Education Component)	Yes	Yes	No
	Further information	www.dao.health.wa.gov.au/.../tabid/99/DMXModule/427/Default.aspx?EntryId=28&Command=Core.Download	http://www.dao.health.wa.gov.au/AboutDAO/WADiversionProgram/tabid/219/Default.aspx	http://www.dao.health.wa.gov.au/AboutDAO/WADiversionProgram/tabid/219/Default.aspx	http://www.austlii.edu.au/au/legis/wa/consol_act/yoa1994181/

Table 18: Programs for the diversion of drug-related offenders in WA – Court diversion – A

Program name		POP (Pre-sentence Opportunity Program)	IDP (Indigenous Diversion Program)	STIR (Supervised Treatment Intervention Regime)	GASR (Geraldton Alternative Sentencing Regime) (as utilised in Geraldton Magistrates Court)
Eligibility criteria	Age	Adult	Adult	Adult	Youth and adults
	Residential location	Statewide	Restricted - Kimberley and Gascoyne	Restricted - Rural areas (Metropolitan options may be added in future)	Restricted – Geraldton district
	Current offence	Minor offence	Minor offence not warranting mandatory imprisonment	Minor offence	Drug related offence OR other e.g. domestic violence or gambling
	If drug offence, type	All illicit drugs	All illicit drugs	Other illicit drugs (does not have to be a drug charge)	Illicit and licit drugs (does not have to be a drug charge)
	Threshold quantities/ rules	Must have substance abuse problem and be a first timer/minor offender	Must have substance abuse problem and preferably be a first timer	Must be drug dependent and have exhibited a moderate level of offending	Preferable that have a recognisable drug, alcohol, domestic violence or gambling problem
	Offending history	No charges or convictions for violent, sexual or indictable offences	No charges or convictions for violent, sexual or indictable offences	No charges or convictions for violent, sexual or indictable offences	No convictions for violent offences or charges for indictable offences
	Diversion history	No limits on the number of times can enter WA Court Drug Diversion Programs			
	Judicial requirements	Must have plead guilty to enter WA Court Drug Diversion Programs and be eligible for bail.			
	Other	Must consent to enter WA Court Drug Diversion Programs and not have psychological and/or psychiatric condition impeding program participation			
Program characteristics	Diversionary mechanism	Assessment plus comp educ/treat	Assessment plus comp educ/treat	Assessment plus comp educ/treat	Assessment plus comp educ/treat
	Requirement	Undertake assessment & treatment while on remand	Undertake assessment & treatment while on remand	Undertake assessment, treatment, case management and urinalysis while on remand	Undertake either a Brief Intervention Regime (BIR) or Alternative Sentencing Regime (ASR)
	Assessor	POP Project Officer	Indigenous Diversion Project Officer	STIR Project Officer	Juvenile Justice Team or Community Corrections Officer
	Program length	4-8 wks	6-8 wks	3-4 mths	3 mths (BIR) or ≤ 6 mths (ASR)
	Program conditions	Undergo case management. Access to other programs	Undergo case management. Access to other programs	Undergo case management, intensive supervision and	Requirement to not commit further offences and

Program name		POP (Pre-sentence Opportunity Program)	IDP (Indigenous Diversion Program)	STIR (Supervised Treatment Intervention Regime)	GASR (Geraldton Alternative Sentencing Regime) (as utilised in Geraldton Magistrates Court)
		e.g. anger management optional.	e.g. anger management optional.	urine sampling. Access to welfare support and other programs e.g. anger management optional.	undergo case management and intensive supervision (ASR only). Access to other programs e.g. anger management optional.
	Treatment options	Predominantly counselling. Detoxification, Pharmacotherapy, Residential rehabilitation, Residential withdrawal, Outreach and Therapeutic communities also available.	Counselling and Residential rehabilitation	Detoxification, Counselling, Pharmacotherapy, Residential rehabilitation, Residential withdrawal, Youth outreach and Therapeutic communities	Predominantly counselling
	CJ incentives	Mitigating factor in sentencing			
	Response to non-compliance	Ceases to become mitigating factor in sentencing	Ceases to become mitigating factor in sentencing	May result in termination from program	May lose or gain points through "breach point system". If lose too many program conditions may be altered or may be terminated from program
Administrative details	Date of commencement	Mar-2003	2004	Nov-2003	Aug-2001
	Specific legislative basis?	No	No	No	No
	IDD1 funded?	Yes	Yes	Yes	No
	Further information	http://www.dao.health.wa.gov.au/AboutDAO/WADiversionProgram/tabid/219/Default.aspx	http://www.dao.health.wa.gov.au/AboutDAO/WADiversionProgram/tabid/219/Default.aspx	http://www.dao.health.wa.gov.au/Publications/StrategicFramework/tabid/110/Default.aspx	http://www.dao.health.wa.gov.au/Publications/StrategicFramework/tabid/110/Default.aspx

Table 19: Programs for the diversion of drug-related offenders in WA – Court diversion – B

Program name		Children's Court Drug Court (as utilised in Perth Children's Court)	DCR (Drug Court Regime) (as utilised in Perth Drug Court)	PSO (Pre Sentence Order) (as utilised in Perth Drug Court)	Conditional Suspended Imprisonment Order (CSI) (as utilised in Perth Drug Court)
Eligibility criteria	Age	12-18 yrs	Adult	Adult	Adult
	Residential location	Restricted - Perth	Restricted - Perth	Restricted - Perth	Restricted - Perth
	Current offence	Typically serious offence or offences	Minor summary offence(s) or indictable offence(s) not warranting imprisonment or indictable offence(s) awaiting decision of superior court (for drug court case management)	Serious offence warranting imprisonment	Serious offence warranting up to 5 years imprisonment
	If drug offence, type	All illicit drugs (does not have to be a drug charge)	All illicit drugs (does not have to be a drug charge)	All illicit drugs (does not have to be a drug charge)	All illicit drugs (does not have to be a drug charge)
	Threshold quantities/ rules	Must have a recognisable drug problem	Must be drug dependent and have exhibited a moderate/ serious level of offending not warranting imprisonment. N.B. Preference is for moderate offending.	Must have recognisable dependency, high level of offending & history of imprisonment. Current offence must warrant but not mandate imprisonment.	Sentence of up to 5 years imprisonment must be imposed. Sentence may then be substituted with CSI
	Offending history	No charges or convictions for violent, sexual or indictable offences	No charges or convictions for violent or sexual offences	No charges or convictions for violent or sexual offences	No charges or convictions for violent or sexual offences
	Diversion history	No limits on the number of times can enter WA Court Drug Diversion Programs			
	Judicial requirements	Must have plead guilty and be eligible for bail	Must have plead guilty (for summary offence) or indicated intention to plead guilty (for indictable offence) and be eligible for bail	Must have plead guilty and be eligible for bail	Must have plead guilty/ been convicted and must not be subject to early release order or current or future term of non-suspended imprisonment
	Other	Must consent to enter programs and not have psychological condition impeding program participation	Must consent to enter programs and not have psychological condition impeding program participation	Must consent to enter programs and not have psychological condition impeding program participation	CSI can be imposed by Drug Court (for summary matters) or by superior courts (for indictable matters). Superior court can then nominate management by Drug Court as a program requirement.

Program name		Children's Court Drug Court (as utilised in Perth Children's Court)	DCR (Drug Court Regime) (as utilised in Perth Drug Court)	PSO (Pre Sentence Order) (as utilised in Perth Drug Court)	Conditional Suspended Imprisonment Order (CSI) (as utilised in Perth Drug Court)
Program characteristics	Diversiónary mechanism	Assessment plus comp educ/treat	Assessment plus comp educ/treat	Assessment plus comp educ/treat	Assessment plus comp educ/treat
	Requirement	Undertake assessment, treat & case management on remand	Undertake intensive program and monitoring while on remand	Undertake intensive program and monitoring while on remand	Undertake assessment & comply with program plan. Program monitoring is part of sentence.
	Assessor	CATS (Court Assessment and Treatment Service)	CATS (Court Assessment and Treatment Service)	CATS (Court Assessment and Treatment Service)	CATS (Court Assessment and Treatment Service)
	Program length	≤ 12 mths	4-6 mths	≤ 12 mths (standard, can be imposed for ≤ 24 mths)	≤ 12 mths (standard, can be imposed for ≤ 24 mths)
	Program conditions	Undergo case management and intensive supervision. Access to welfare support and other programs e.g. anger management optional.	Undergo judicial case management, intensive supervision & urinalysis. Access to welfare support and other programs e.g. anger management optional.	Undergo judicial case management, intensive supervision & urinalysis. Access to welfare support and other programs e.g. anger management optional.	Undergo judicial case management, intensive supervision & urinalysis. Access to welfare support and other programs e.g. anger management optional.
	Treatment options	Counselling, Residential rehabilitation, Residential withdrawal and Home-based withdrawal	Detoxification, Counselling, Pharmacotherapy, Residential rehabilitation, Residential withdrawal, Youth outreach and Therapeutic communities	Detoxification, Counselling, Pharmacotherapy, Residential rehabilitation, Residential withdrawal, Youth outreach and Therapeutic communities	Detoxification, Counselling, Pharmacotherapy, Residential rehabilitation, Residential withdrawal, Outreach and Therapeutic communities
	CJ incentives	Mitigating factor in sentencing	Mitigating factor in sentencing	Mitigating factor in sentencing	Offender is discharged on completion of order
	Response to non-compliance	May lose points through "breach point system". If lose too many points, may lead to program termination	May increase supervision or treatment, or result in program termination & imposition of initial sentence.	May result in termination from program and imposition of sentence of imprisonment by lower or upper courts.	Order may be revoked and offender required to serve sentence of imprisonment.
Administrative details	Date of commencement	Dec-2000	Dec-2000	Sep-2003	May-2005
	Specific legislative basis?	No	No	No drug court specific legislation, but is referred to in Sentencing Act (1995)	No drug court specific legislation, but is referred to in Sentencing Act (1995)
	IDDI funded?	Yes	No	No	No
	Further information	http://www.dao.health.wa.gov.au/Publications/StrategicFramework/tabid/110/Default.aspx	http://www.dao.health.wa.gov.au/Publications/StrategicFramework/tabid/110/Default.aspx	http://www.dao.health.wa.gov.au/Publications/StrategicFramework/tabid/110/Default.aspx	http://www.austlii.edu.au/au/legis/wa/consol_act/sa1995121/index.html

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