

Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

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Submitted by: Queensland Network of Alcohol and Other Drug Agencies Ltd
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Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

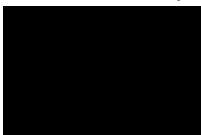
Dear Committee Members

Thank you for the opportunity to provide a submission on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023*. The Queensland Network of Alcohol and other Drug Agencies (QNADA) submission is attached.

QNADA represents a dynamic and broad-reaching specialist network within the non-government alcohol and other drug (NGO AOD) sector across Queensland. We have more than 55 member organisations, representing the majority of specialist NGO AOD providers. This submission is made following consultation with QNADA members.

QNADA is pleased to provide further information or discuss any aspect of this submission. Please don't hesitate to contact me at [REDACTED] or by calling [REDACTED].

Yours sincerely



Rebecca Lang

CEO



Submission to the *Police
Powers and Responsibilities
and Other Legislation
Amendment Bill 2023*

March 2023

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its content is informed by consultation with QNADA member organisations providing alcohol and other drug treatment and harm reduction services across Queensland, as well as a review of relevant research and reports.

QNADA welcomes the opportunity to provide feedback on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023*, and recognises the proposed expansion of the Police Drug Diversion Program (PDDP) as an important step toward reducing the potential for harms associated with AOD use in Queensland. This submission focuses on:

- the significant individual, social and economic harms caused by the criminalisation of people who use drugs;
- shortcomings in the operation of the current PDDP to effectively divert people who use drugs who would otherwise not come to the attention of police away from the criminal justice system;
- the importance of practice change within the Queensland Police Service (QPS) that takes into account the experiences of people who use drugs and their interactions with police, and seeks to address the impact of stigma and discrimination embedded in policing practices;
- issues with the Bill, including with respect to the potential for inequity in the response to children and young people;
- opportunities to learn from the implementation challenges identified with the current approach to improve quality assurance processes and establish a strong, independent monitoring and evaluation framework; and
- other opportunities to further reduce the harms associated with the current policy approach to drug use, including the increasing shift towards decriminalisation across multiple jurisdictions.

At the outset, it is important to note that the presumption that an expanded PDDP will help prevent people developing a substance use disorder is flawed, as research shows that the vast majority of people who use drugs do so without problems,¹ with estimates indicating that 88-89% of people who use illicit drugs do not experience dependence or require a treatment intervention.² Experiencing problems with alcohol and other drugs is instead often predicated by experiences of trauma and influenced by the social, cultural and structural determinants of health.

Accordingly, while the PDDP may represent an opportunity for intervention for a small proportion of people who may be experiencing problematic use, for the significant majority of people who use drugs, the risk of harm to both themselves and the community is primarily the result of social, political and legislative responses to drug use, rather than the substance use itself. One of the most serious of these harms is contact with police. Involvement with the criminal justice system can have a range of adverse individual, social and cultural consequences such as disrupted relationships, isolation from community, and reduced access to educational opportunities, employment, housing and international travel.

¹ United Nations Office on Drugs and Crime, "Global Overview of Drug Demand and Supply: Latest Trends, Cross-Cutting Issues," World drug report 2018 (Vienna: United Nations, 2018), quoted in (QNADA), "Effective Responses to Drug Use Position Paper.

² United Nations Office on Drugs and Crime. World Drug Report 2017. accessed March 1, 2019 https://www.unodc.org/wdr2017/field/Booklet_2_HEALTH.pdf

Current law enforcement practices in Queensland result in a high rate of arrests and convictions for people who use, rather than supply, drugs. Despite the introduction of drug diversion in Queensland over two decades ago, offences related to possession or administering drugs for personal use still account for 88% of drug-related arrests.³ Queensland also accounts for the largest increase in people detected for drug use or possession offences in Australia and the highest rate of people being sentenced to prison for use or possession alone.⁴ Indeed, illicit drug related offences were the most common principal offence in Queensland during 2021-22 (21% or 17,036 people).⁵ In its recent inquiry into imprisonment and recidivism, the Queensland Productivity Commission also highlighted that from between 2012 and 2018, 89% of the increase in reported offences for women was associated with drug offences, and the number of women who were primarily imprisoned for drug offences increased by 219% in the same time period.⁶

It is clear that changes in the prevalence of illicit drug use is not a driver for this increase in Queensland in and of itself. The driver is instead better conceptualised as a consequence of the current policy approach adopted by successive governments to illicit drug use, which has had a net widening effect. While this approach has been in place for many decades in Queensland, it has proven ineffective at reducing the consumption of illicit drugs and has never achieved a sustained reduction in supply. In fact, research and recent inquiries have consistently shown that the criminalisation of some drugs has contributed significantly to both costs and harms.⁷

There have been multiple opportunities to improve our approach to drug diversion in Queensland. As part of our *Responsive Systems* project, QNADA identified that since 2010, at least eight reports and three strategies have highlighted the importance of supporting or extending existing drug diversion processes in Queensland. As per Attachment A:

- since 2010, a total of 42 recommendations were made, and actions committed to, which related to expanding or improving diversion opportunities for people who use drugs in Queensland;
- of the 28 recommendations that required a response from government, over half were accepted in full (25%), in part (7%) or in principle (25%);
- of the 28 recommendations that required a response from government, there was publicly available information to suggest that five (18%) had been implemented and one (4%) partly implemented; and
- recommendations to increase or improve drug diversion which related to workforce development and training were most likely to be at least partly implemented, while those requiring changes to regulation and legislation were least likely to be implemented.

³ Australian Criminal Intelligence Commission, "Illicit Drug Data Report 2019-2020," (Canberra: ACIC, 2021).

⁴ Hughes, C., Seear, K., Ritter, A. & Mazerolle, L. (2019). Monograph No. 27: Criminal justice responses relating to personal use and possession of illicit drugs: The reach of Australian drug diversion programs and barriers and facilitators to expansion. DPMP Monograph Series. Sydney: National Drug and Alcohol Research Centre, UNSW Sydney. <http://doi.org/10.26190/5cca661ce09ce>

⁵ Australian Bureau of Statistics (2022)

⁶ Queensland Productivity Commission, (2019) "Inquiry into Imprisonment and Recidivism."

⁷ For example the Queensland Productivity Commission's Inquiry into Imprisonment and Recidivism

Importantly, while we recognise workforce development and training is important, we note it is unlikely to be effective in the absence of other structural changes (such as through legislative amendments⁸ or program improvements⁹).

A significant issue in Queensland is the frequency and nature of police interactions with people who use drugs, and in particular, with those already experiencing socioeconomic disadvantage. Australian research has found that people who use drugs commonly report experiences of stigma and discrimination, and in some cases violence and degradation, when coming into contact with police.¹⁰ People who use drugs also report being subject to police targeting if they were known to have a history of problematic substance use.¹¹

This is supported by local survey findings. In 2020, QNADA was funded to undertake work in collaboration with Queensland Injectors' Voice for Advocacy and Action (QuIVVA) and the Queensland Aboriginal and Islander Health Council (QAIHC) to engage with, and improve our understanding of, the experiences of people who use drugs across Queensland. This survey identified reports of police harassment, loss of a sense of safety when coming into contact with police, and police "overreaching" with irrelevant charges when interacting with people who use drugs.¹²

Stigma and discrimination can influence how and when resources are allocated to a particular issue and may result in the targeting of certain people or populations. Other research shows that although higher income is associated with an increased likelihood of drug use,¹³ socioeconomically disadvantaged people are more likely to come into contact with the criminal justice system for drug related offences.¹⁴

A potential issue with the proposed amendments to the PDDP is the use of police discretion in offering drug diversion to a child or young person caught in possession of a small quantity of drugs. While positively police will be required to offer a drug diversion warning or participation in the PDDP, it will still be open to police to pursue charges for a first offence (subject to their consideration of the circumstances of the offence and any prior criminal history).¹⁵ This raises a potential risk of inequality and inconsistency in responses by individual officers, comparative to the relevant provisions in place for adults.

As outlined within the Explanatory Notes, the Bill seeks to amend the *Youth Justice Act 1992* to clarify the range of alternatives to prosecution that police *must* consider before starting a proceeding against a child for a minor drug offence including:

- take no action,
- issue a caution,

⁸ Recommendations 97 and 98 of Women's Safety and Justice Taskforce, (2022), Hear Her Voice: Report Two – Women and girls' experiences across the criminal justice system.

¹⁰ Recommendations 6 and 7 of Social Development Committee, (2010), Inquiry into Cannabis-Related Harm in Queensland Report No. 10.

¹⁰ Lancaster, K., Seear, K., & Ritter, A (2017) Reducing stigma and discrimination for people experiencing alcohol and other drug use, National Drug and Alcohol Research Centre

¹¹ Lancaster, K., Seear, K., & Ritter, A (2017) Reducing stigma and discrimination for people experiencing alcohol and other drug use, National Drug and Alcohol Research Centre

¹² Queensland Network of Alcohol and Other Drug Agencies, (2020), Peer Peak Body Scoping Project Final Report. Queensland, Australia. https://qnada.org.au/wp-content/uploads/2020/12/Fin_20201117_Peer-Peak-Scoping-Project-Final-Report_Approved.pdf

¹³ Louisa Degenhardt et al., "Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the Who World Mental Health Surveys," *PLoS Medicine* 5, no. 7 (2008).

¹⁴ Queensland Productivity Commission, (2019) "Inquiry into Imprisonment and Recidivism."

¹⁵ Officers are required to have regard to the circumstances of the alleged offence and the child's criminal history, including any previous cautions administered to the child for an offence and, if the child has been in any other way dealt with for an offence under any Act, the other dealings.

- refer the young person to a restorative justice process,
- offer a young person a drug diversion warning, or
- provide the young person with an opportunity to participate in a drug diversion assessment program.

While this provision is included to provide police with a number of diversionary options that they must consider, including to take no action, explicit direction should be provided to officers to clarify that police should not progress to prosecution for a minor drug offence, without all alternative options having first been utilised.

Although the foundational principle of diverting children and young people away from the criminal justice system is embedded within the Youth Justice Act, recent proposed amendments as part of the *Strengthening Community Safety Bill 2023* emphasise a policy shift towards increased enforcement of young people by police. Combined with increased investment in high visibility policing in certain areas of Queensland, these amendments are likely to increase the number of young people coming to the attention of police, and subsequently being detected for offences (including minor drug offences). Indeed, a 2022 review of youth justice reforms in Queensland found that the recent introduction of hand-held metal detection wands for use by police to increase detection of knives also increased detection of illicit drugs among young people.¹⁶

While the proposed legislative amendments are an important step forward for Queensland, to ensure that they are effective in achieving their stated intent, implementation needs to be accompanied by:

- strong governance and leadership, alongside a focused effort by the QPS and partner agencies to support sustained changes to police practice;
- training for officers and other staff which reflects current evidence around drug use and harms, and is focused on improving understanding of the primary purpose and intent of cautioning and diversion initiatives — that is to divert people *away* from the criminal justice system and not *to* another system;
- an independent monitoring and evaluation framework which supports the prompt identification of any unintended consequences, and timely responses to practice issues among individual officers, stations or districts in the QPS; and
- the establishment of mechanisms to routinely collect participant feedback and involve people with a lived experience of substance use and criminal justice system involvement in ongoing program implementation and review processes.

While expansion of the PDDP presents greater opportunities for people who use drugs to be diverted from the criminal justice system at an early point, it will not reduce the likelihood of people who use drugs coming into contact with police. It is clear there is a need to adopt further evidence-based strategies to reduce initial police contact with people for minor drug offences, to reduce individual and community harms, and alleviate resourcing demands on police.

The investment required to enforce illicit drug possession laws in Queensland is significant and growing, and has been estimated to cost approximately \$222 million per year.¹⁷ Compared with

¹⁶ Department of Children, Youth Justice and Multicultural Affairs, (2022) Youth Justice Reforms Review. Queensland, Australia. <https://www.cyjma.qld.gov.au/resources/dcsyw/about-us/reviews-inquiries/youth-justice-reforms-review-march-2022.pdf>

¹⁷ Queensland Productivity Commission, (2019) "Inquiry into Imprisonment and Recidivism."

criminal justice system responses, health-based responses to problematic substance use are more effective and have a strong return on investment. It is estimated that for every dollar invested in alcohol and other drug treatment and harm reduction services, there is a seven dollar return via improved health status, improved psychological wellbeing, and participation in the community.¹⁸ It is important however that alcohol and other drug treatment and harm reduction services are delivered across the spectrum of harm, recognising that no or minimal intervention may be required for people who occasionally use substances or do not experience intensive or dependent use. To support effective relationships and engagement, services also need to be voluntary and delivered in a way that ensures people feel safe.

In recognising the harm caused by contact with the criminal justice system, and that most people who use drugs do not require treatment, there is a growing shift towards decriminalisation of drug use across jurisdictions. In 2019, the then Queensland Productivity Commission (now the Office of Productivity and Red Tape Reduction within Queensland Treasury) recommended that the Queensland Government adopt this approach and reform drug laws by:

- adopting a more effective approach for managing the supply and use of illicit drugs (Recommendation 6);
- legally regulating cannabis and MDMA (Recommendation 7); and
- removing imprisonment as a sentencing option for higher harm drugs (Recommendation 7).¹⁹

The primary benefit of decriminalisation is that it reduces the significant resource impost on the criminal justice system and allows for a greater focus on the supply and trafficking of illicit drugs.²⁰ By recalibrating the Queensland system towards responses better informed by the evidence, there is an opportunity to improve health and wellbeing for Queensland communities, make substantial budget savings and ensure police resources are better allocated to keeping the community safe.

With rising social, political and economic challenges to policing's operational environment both locally and internationally, the Australia New Zealand Policing Advisory Agency (ANZPAA) itself recently recognised the need for consideration as to where police may, or may not be, best suited to lead responses to complex social issues such as substance use.²¹ They also highlighted that changing community attitudes around alcohol and other drug use are contributing to a heightened public discourse which is likely to shape the operational policing environment into the future.

This is supported by the most recent findings of the National Drug Strategy Household Survey, which reflect changing community attitudes towards alcohol and other drug use, and our responses to it. In particular, this longstanding representative community survey of people aged over 14 found:

- increased support for the legalisation of cannabis (41% of respondents; up from 35% in 2016), reaching almost double the level of support in 2007 (21%);
- a decline in support for prison sentences for all drug-possession offences;
- almost 3 in 5 Australians supported the delivery of pill-testing (drug checking) services at designated sites; and

¹⁸ Alison Ritter et al., "New Horizons: The Review of Alcohol and Other Drug Treatment Services in Australia," (Sydney: University of New South Wales, 2014).

¹⁹ Queensland Productivity Commission, "Inquiry into Imprisonment and Recidivism."

²⁰ Caitlin Elizabeth Hughes and Alex Stevens. "What can we learn from the Portuguese Decriminalization of Illicit Drugs?" *British Journal of Criminology* 50, (2010), 999-1022.

²¹ Australia New Zealand Policing Advisory Agency, (2019). "Megatrends Impacting Police".

- for the first time, community perception that more money should be allocated to education than law enforcement in response to illicit drug use problems in the community.

Attachment A: Summary of relevant recommendations

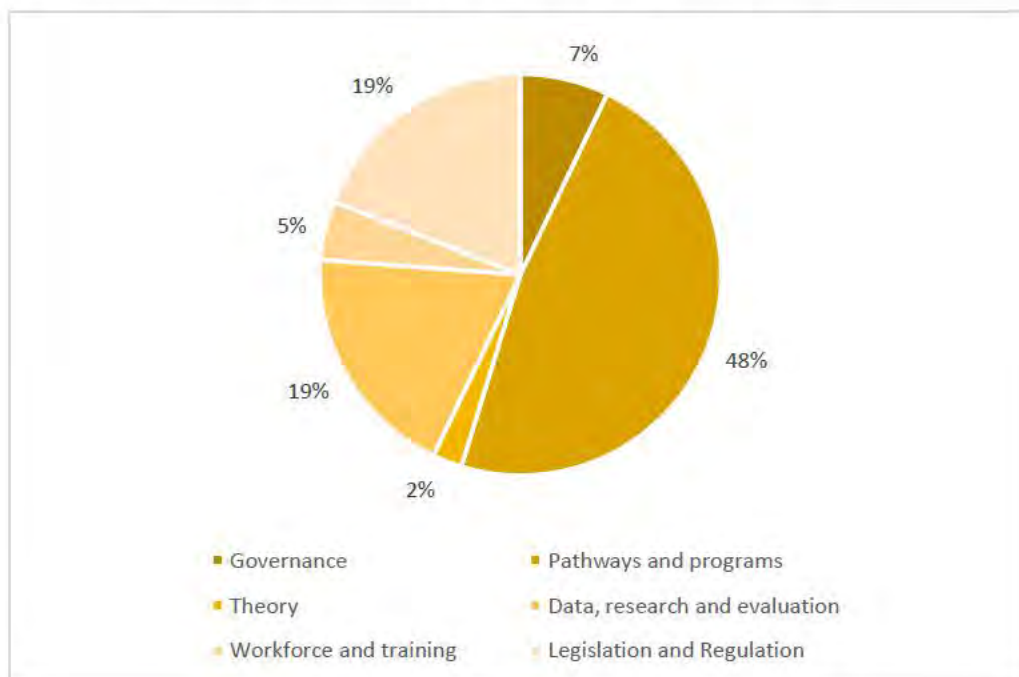
To inform QNADA's response to this Bill we have conducted further analysis of relevant reports and inquiries using an analytical framework developed in 2021 as part of our *Responsive Systems* project. Since 2010, a total of 42 recommendations have been made, and actions committed to, which relate to expanding or improving drug diversion for people who use drugs in Queensland. These recommendations and actions were published in eight reports and three strategies, the majority (n=7) after 2019 (up until 2022).

Reports and strategies that have made recommendations for the expansion of, or improvement to, drug diversion in Queensland since 2010 include:

- Inquiry into addressing Cannabis-Related Harm in Queensland (2010)
- Drug and Specialist Courts Review Report (2016);
- Action on Ice (2018);
- Drug Policy Monitoring Program Monograph No. 27 (2019);
- Women in Prison 2019: A human rights consultation report (2019);
- Queensland Productivity Commission Inquiry into Imprisonment and Recidivism (2020);
- Queensland Corrective Services Drug and Alcohol Action Plan (2020);
- Youth Justice Reforms Review Report (2021);
- Hear Her Voice: Report Two (2022);
- Inquiry into the Opportunities to Improve Mental Health Outcomes for Queenslanders (2022); and
- Achieving Balance: The Queensland Alcohol and Other Drugs Plan 2022-2027 (2022).

As illustrated in Figure 1, the majority of recommendations fell under the domain of pathways and programs (48%) and focused on program accessibility, development and expansion. This was followed by recommendations relating to data collection, research and evaluation (19%); and legislative or regulatory change (19%).

Figure 1. Recommendations to expand diversion and relevant domains.

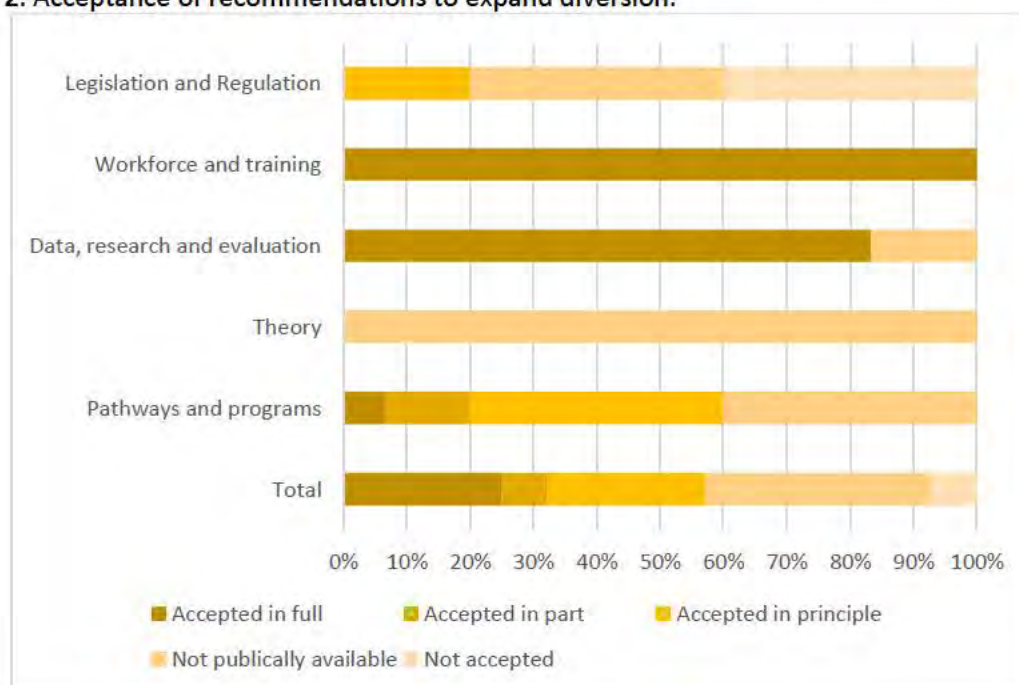


Of the 42 recommendations related to drug diversion since 2010, over half (n = 28) required a response from the Queensland Government.²² Of these, over half were accepted in full (25%), in part (7%) or in principle (25%).

For over a third (36%) there was no publicly available information to determine whether the recommendation had been accepted, and a small proportion of recommendations (7%) were not accepted (see Figure 2).

Significantly, while all of the recommendations to expand or improve diversion programs which fell within the domain of *workforce and training* were accepted in full, none of the recommendations which fell under the domains of *legislation and regulation* or *theory* were accepted in full or in part.²³ Within the domain of *pathways and programs*, where most recommendations fell, less than a fifth were accepted in full (7%) or in part (13%).

Figure 2. Acceptance of recommendations to expand diversion.



Among the 28 recommendations to expand or improve diversion programs that were within scope of a response from the Queensland Government, there was publicly available information to suggest that 17% had been implemented and another 4% had been partly implemented (see Figure 3).

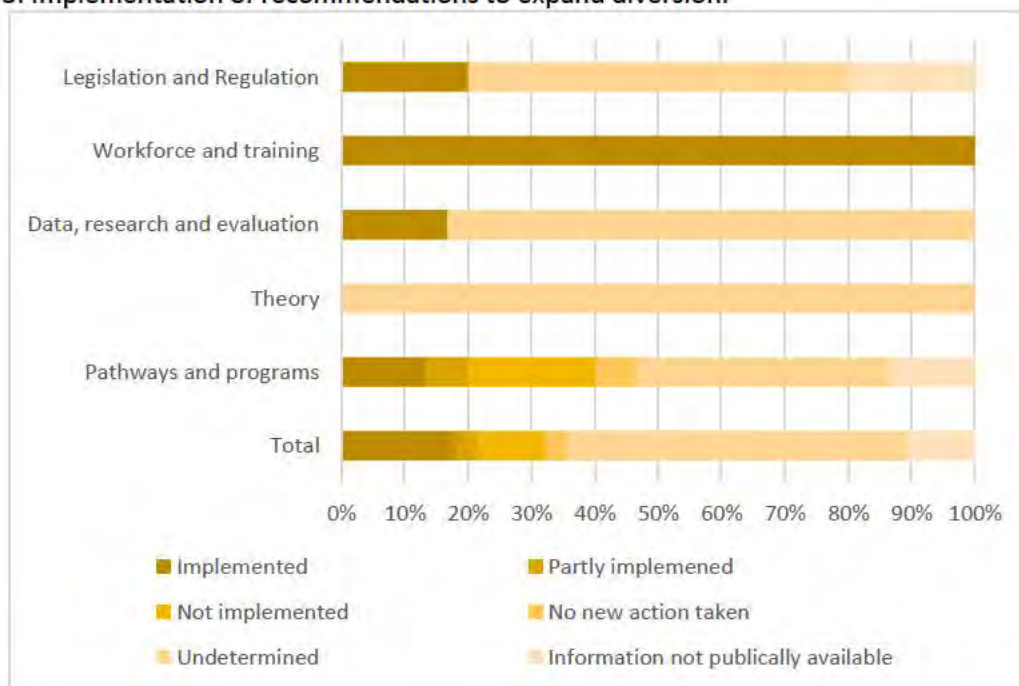
Recommendations which fell within the domain of *workforce and training* were once again most likely to be at least partly implemented (100%), while those within the domains of *regulation and legislation* (20%), and *theory* (0%) were less likely to be implemented.

Within the domain of *pathways and programs*, where most recommendations fell, there was evidence to suggest that 13% of recommendations to expand diversion since 2010 have been implemented.

²²Of the 42 recommendations, the remaining 14 were listed within government strategies or research monographs and did not require a government response.

²³ Notably while the Queensland Government response to the Hear Her Voice Report 2 did not accept some of the relevant recommendations, and instead 'noted' them, this Bill arguably fulfills their intent.

Figure 3. Implementation of recommendations to expand diversion.



About this data

QNADA’s *Strategic Plan 2021-2023* prioritises actions that aim to: enhance system alignment to reduce harms associated with alcohol and other drug (AOD) use; engage with systems that intersect with AOD treatment and harm reduction services to promote the use of effective responses in planning and design; and promote system responses that address the social, cultural, and structural determinants of health.

QNADA’s *Responsive Systems* project commenced in 2021, following continued feedback from our members which identified the need to:

- better understand and respond to the impact of broader system pressures on service provision;
- enhance existing partnerships, and develop new connections to improve cross-sectoral coordination and collaboration;
- enhance understanding of effective responses to AOD use in generalist agencies;
- better position the non-government AOD treatment and harm reduction sector to be aware of, and more actively involved in, relevant reform initiatives; and
- be adequately positioned to advocate for broader system improvements.

This project sought to consider broader system responses to individuals, families and communities affected by AOD use outside of the treatment and harm reduction sector. As part of this work, we conducted a review of Queensland strategies, inquiries, reports and reviews into the criminal justice, youth justice and child protection systems from 2010 onwards. A database containing relevant recommendations and actions was then developed and used to inform the findings presented within this document. Further information about this project, and our analytical framework, is available in our [Responsive Systems Summary Paper](#).