

## Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

**Submission No:** 12  
**Submitted by:** Alcohol and Drug Foundation  
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**See attached:**

10 March 2023

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

**By email:** [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Committee Members,

Re: Police Powers and Responsibilities and Other Legislation Amendment Bill 2023.

On behalf of the Alcohol and Drug Foundation, I provide our submission on the Police Powers and Responsibilities and Other Legislation Amendment Bill 2023, specifically regarding the expansion of the Police Drug Diversion Program (PDDP).

The Alcohol and Drug Foundation (ADF) delivers evidence-based approaches to minimise alcohol and other drug harm. We recognise the power of strong communities and the important role they play in preventing problems occurring in the first place. A community-centric approach is at the heart of everything we do. In Queensland we fund over 50 Local Drug Action Teams and support over 1,000 Good Sports clubs to reduce alcohol and drug harm.

We commend the Queensland government for expanding the PDDP, as drug diversion programs have been shown to have several benefits. These programs can reduce reoffending rates, save costs associated with criminal justice processing, and help individuals access appropriate health care services. By offering diversion instead of prosecution for low-level drug possession, individuals can avoid the negative consequences of a criminal record and instead receive evidence-based interventions to address their drug use. The ADF has several recommendations to improve the current amendment before this committee. These are listed below:

### **Recommendations**

1. Remove police discretion by removing S378(A)(1)(d) regarding police having 'reasonable belief'
2. Widen eligibility by removing S378(A)(1)(b) & (c) that limits individuals engaged in other offending at the time of detection, or with a history of offences from accessing the scheme
3. Clarify in the legislation that individuals should not have to admit guilt to be eligible for the PDDP
4. Align threshold quantities for eligibility for diversion with the existing supply thresholds in Schedule 3 of the *Drugs Misuse Regulations 1987*

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5. Incorporate the voices of lived experience in developing training and any future policy development
6. Ensure that the amendment interfaces with the *Youth Justice Act* in a manner that does not leave a young person worse off than an adult
7. High quality data about the scheme must be made available in a transparent and timely manner

Drug use is a health issue, and when people want to reduce or cease their use of drugs support will be most effective when delivered through the various alcohol and other drug services (AOD) treatment services and other healthcare options. The justice system does not specialise in providing healthcare and as such, is not an effective tool for helping people manage a health issue.

Interactions with the justice system often exceed the harms that may be associated with drug use itself. In addition to the stigma experienced by people who use drugs, which delays or prevents help-seeking, people who become involved in the justice system because of drug use can also experience long term negative impacts on their social, employment, housing, and travel opportunities.

These harms are disproportionately experienced by some of our most vulnerable communities such as Aboriginal and Torres Strait Islander communities, Culturally and Linguistically Diverse communities, and young people. Adopting an approach that frames drug use as a health issue can reduce the stigma and discrimination experienced by people who use drugs, making it more likely that people will reach out for help with their AOD use when they want it.

Australian public opinion is also in favour of this approach. The National Drug Strategy Household Survey 2019 asked Australians what action they believed should be taken against people found in possession of selected drugs for personal use. For each drug type, over two-thirds of Australians 18 years and older endorsed one of the following responses:

- a caution/warning/no action
- referral to treatment or education
- a fine.

For ecstasy (MDMA), 80.5% of people supported one of those three options. For meth/amphetamine – arguably the most stigmatised drug in Australia – 68.4% of people supported one of those three options. For cannabis, 92% of people supported one of those three, with over half supporting a caution/warning/no action.

Numerous reports in Queensland have recommended strengthening illicit drug diversion initiatives, including three in 2022 alone:

- Hear Her Voice: Report Two (2022)
- Inquiry into the Opportunities to Improve Mental Health Outcomes for Queenslanders (2022)
- Achieving Balance: The Queensland Alcohol and Other Drugs Plan 2022-2027 (2022).

Given this strong evidence, the rationale for the expansion of the PDDP is clear. However, there are some concerns about the details of the proposed amendment. Firstly, we are concerned that the discretion given to police officers under the scheme may undermine its effectiveness.

Specifically, police officers are required to have a 'reasonable belief' that the drugs detected with an individual are for personal use before an individual is eligible for diversion. We are concerned that police discretion may lead to inconsistent and unequal application of the diversion program. There are consistent findings in the academic literature that the discretionary actions of the police can be influenced by extra-legal factors including age, gender, and race of a suspect. Any system that relies on wide police discretion runs the risk of disproportionately targeting Aboriginal and Torres Strait Islander people and young people, particularly in lower socio-economic areas and regional towns.

This could undermine public trust in the program and reduce its effectiveness as a harm reduction strategy. If police believe that an individual is engaged in the supply of illicit drugs, then an individual should be charged with a supply offence which would automatically exclude them from the PDDP. This removes the need for the 'reasonable belief' clause and will allow individuals eligible for the PDDP to have certainty in a mandatory referral, and to encourage better outcomes for the program.

Additionally, we are concerned about the provision in the bill that limits eligibility for diversion based on whether an individual is engaging in other offending at the time of their detection with a small quantity of drugs. This provision creates an additional barrier to access for those who may be most in need of the diversion program, as it potentially excludes individuals who may be experiencing drug dependency and who are committing crime to support their drug use. People like these are in need of a health intervention. Excluding them undermines the principle of diversion as a harm reduction strategy and limits its potential impact on public health and safety.

Another potential barrier to people accessing the expanded PDDP is the need for them to admit to an offence. There is evidence from Australia and abroad that members of marginalised communities, such as young people, ethnic minorities and Indigenous people, mistrust or fear the police. Because of this mistrust and fear members of these communities may be reluctant to admit to police they have committed an offence. Thus, preventing them from accessing the PDDP. This will have the affect of excluding many who could benefit most from the diversion program accessing it. We therefore recommend that the legislation makes clear that an individual does not need to admit guilt to access the PDDP scheme.

Furthermore, we are concerned about the threshold quantities of drug possession that will be eligible for the diversion program. If the threshold quantities are set too low, individuals who are in possession of drugs for personal use may not be eligible for diversion and may instead face criminal charges. This would be counterproductive to the goals of the diversion program and could lead to a negative impact on public health and safety.

Ideally, the threshold quantities for diversion should be set at the level of current supply threshold quantities, as enumerated in Schedule 3 of the *Drugs Misuse Regulation 1987*. This will create a simple system that aligns with existing drug offences in Queensland. Setting thresholds for diversion below the existing supply quantities will create a system whereby some individuals detected with drugs for personal use will be eligible for diversion and others will not. This creates an inconsistent system that undermines the public health benefits of the PDDP.

If the threshold quantities are not set at the existing supply levels, they should be evidence based and established after consulting with academic experts, the AOD treatment sector and most importantly people with a lived experience of illicit drug use.

The voice of people with lived experience is also vital in designing and providing training to police officers on the implementation of the expanded PDDP. Only by involving people with a lived experience of drug use will it be possible to ensure that the expanded program is safe and non-judgemental. Training to police should therefore be co-designed and delivered in conjunction with a lived experience organisation like QuIVAA.

Lastly, we are concerned about the differing provisions for diversion offered to young people compared to adults. The legislation states that police "must" offer the diversion if adults are found in possession of illicit substances, whereas children "may" be offered diversion. While there are other options for youth justice diversion pathways, a young person should not be worse off and miss opportunities for intervention and support available to adults.

The ADF also believes the Queensland government and QPS should provide accurate, detailed, and up-to-date data about the functioning of the scheme to the public. It is fundamentally important for evaluating the outcomes of the program and identifying where there is room for improvement in the scheme. This data should be shared publicly in regular reporting, to allow stakeholders to understand the impacts of the scheme in detail.

In summary, while we welcome the expansion of the PDDP in Queensland to include all illicit drugs, we urge the Queensland government to reconsider the discretionary powers given to police officers and eligibility criteria for the program. Furthermore, we recommend that the Queensland government adopt threshold quantities that are set at the level of existing supply offences. Finally, a clear model for diversion for young people who are found to be in possession of illicit substances needs to be put in place.

Thank you for your consideration of our submission. If you require any further information, please do not hesitate to contact us. The ADF would be happy to give evidence before the committee.

Sincerely,



**Martin Milne**

QLD State Manager

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