

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

**Submission No:** 14  
**Submitted by:** Queensland Mental Health Commission  
**Publication:** Making the submission and your name public  
**See attached:**



# Police Powers and Responsibilities and Other Legislation Amendment Bill 2023

Submission by the Queensland Mental Health Commission

---

## Introduction

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a brief submission to the Legal Affairs and Safety Committee on the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023* that was introduced on 21 February 2023 by Hon Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services.

The Commission is committed to preventing and reducing the significant harm and costs associated with alcohol and other drug use.

## About the Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. Under the Act, the Commission must focus on systemic mental health and substance misuse issues.

The Commission works in four main ways:

- Developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drug use
- Undertaking reviews and research to inform decision-making, build the evidence base, support innovation and identify good practice
- Facilitating and promoting mental health awareness, prevention and early intervention
- Establishing and supporting statewide mechanisms that are collaborative, representative, transparent and accountable.

The Commission promotes policies and practices that are aligned to the vision of:

- *Shifting minds: Queensland Mental Health, Alcohol and Other Drugs Strategic Plan (2018–2023)* (*Shifting minds*)
- *Achieving balance: The Queensland Alcohol and Other Drugs Plan (2022–2027)* (*Achieving balance*), and

- *Every life: The Queensland Suicide Prevention Plan (2019–2029) (Every life)*.

The Commission is supported by the independent Queensland Mental Health and Drug Advisory Council (Advisory Council) which acts as a champion for people living with mental health issues, problems related to alcohol and other drug use, or affected by suicide.

## Strategic context

*Shifting minds: The Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018–2023 (Shifting minds)* sets the overarching strategic direction for mental health, alcohol and other drugs and suicide prevention in Queensland. *Shifting minds* is supported by two sub-plans, *Achieving balance* and *Every life*.

*Achieving balance* was released in October 2022. It is the whole-of-government alcohol and other drugs plan that sets the direction for a more coordinated system to achieve balance across the pillars essential to minimising harm: demand reduction, harm reduction and supply reduction. Across five strategic priorities, the plan will improve outcomes for Queenslanders by:

1. Strengthening prevention and early intervention
2. Enhancing treatment and support systems
3. Expanding diversion
4. Reducing stigma and discrimination
5. Reducing harm.

Each priority is complemented by a set of evidence-based cross-sector actions.

Development of *Achieving balance* included wide consultation with stakeholders, including the alcohol and other drugs sector, government agencies, non-government agencies and people with a lived experience of alcohol and other drug use.

## Expanding diversion – strategic alignment

The Commission welcomes the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023* that includes the expansion of the Police Drug Diversion Program to include:

- people in possession of any illicit substance for personal use
- a tiered approach to diversion that consists of:
  - **First minor drug-possession offence** – a police officer issues a warning, accompanied by a drug warning notice and a police referral to a support service
  - **Second and third minor drug-position offence** – a police officer offers the opportunity for the person to participate in mandatory Drug Diversion Assessment Program
  - **Fourth minor drug-possession offence** – a police officer issues the offender with a notice to appear in court.

This amendment aligns with priority three of *Achieving balance* to ‘Expand diversion’. Key priority actions under this pillar in *Achieving balance* include expanding the eligibility criteria of the current Police Drug Diversion Program and increasing the availability of health responses for people experiencing problematic alcohol and other drug use.

Justice focused approaches are inconsistent with contemporary evidence, best practice and the harm reduction pillar of the *National Drug Strategy 2017–2026*, which seeks to reduce the negative consequences of drug use for individuals and the community. The strategy further identifies diversion

initiatives as an evidence-based approach to reducing the adverse health, social and economic consequences associated with drug use, thereby providing a supportive national policy framework.<sup>1</sup>

Expanding the Police Drug Diversion Program also aligns with the Mental Health Select Committee recommendations from the *Inquiry into the opportunities to improve mental health outcomes for Queenslanders*.<sup>2</sup> Recommendation 13 of the final report was to 'Strengthen illicit drug diversion initiatives'. The Committee recommended the Queensland Government review illicit drug diversion initiatives, including the Police Drug Diversion Program and the Illicit Drugs Court Diversion Program, and identify opportunities to strengthen the initiatives.

## Supporting the shift to a health-based model

Justice focused approaches to personal drug use and dependence are ineffective and often counter-productive, with criminal justice responses often exacerbating social, financial and legal harm.

Research demonstrates that drug diversion programs more effectively address the underlying factors that influence drug use. Intervening early with health-based pre-court actions can reduce drug use, and improve individual physical, mental and social wellbeing outcomes. Intervening early to divert people from the criminal justice system also interrupts a potential trajectory of recidivism and reduces the ongoing consequences of convictions, for example on future employment.

There is widespread evidence that criminalisation of alcohol and other drug use also negatively impacts the health outcomes for people who use drugs, and can reduce engagement with harm reduction supports and services for fear of arrest. Alternative models help to minimise the social exclusion of people who use drugs, and create a climate where they are less fearful of seeking and accessing treatment and utilising harm reduction services.

Criminal justice responses to illicit drug use are also expensive (approximately \$500 million per year for justice agencies alone), result in major pressures on police and correctional services, and can be counter-productive due to the social, financial and legal damage that ensues when people are involved in the criminal justice system. Drug convictions currently contribute to more than 60 per cent of criminal cases in the Magistrates Court and to a significant growth in numbers of sentenced prisoners.

Diverting people from the criminal justice system and investing in treatment and prevention is a cost-effective strategy with high returns. Research shows the estimated return is \$18 for every \$1 spent on prevention, and \$7 for every \$1 spent on treatment.

According to the Queensland Productivity Commission *Inquiry into Imprisonment and Recidivism* (2019), Queensland makes use of imprisonment for drug offences more than other jurisdictions, and imprisons more than twice as many people for drug possession/use than the rest of Australia combined. The report proposed drug policy reforms (including expanding drug diversion programs) with the potential to reduce the prison population by as much as 30 percent by 2025, and to deliver substantial net benefits to the community.

Drug diversion schemes and other health-based models including decriminalisation of possession of drugs for personal use are implemented across Australia and internationally, and the evidence is building to support these approaches.

## Opportunities to ensure effective implementation

### Monitoring and evaluation of the expanded Police Drug Diversion Program

---

Careful monitoring of the expanded Police Drug Diversion Program will be required to understand the benefits and potential unintended consequences of the policy, as well as identification of additional reforms required to optimise the approach. Monitoring and evaluation of the expanded Police Drug Diversion Program is a priority action within *Achieving balance*, and collaborative data practices that support the collection and analysis of data to capture the impacts of the policy change to the community will be vital to support this action. Indicators of success should be aligned with harm reduction goals and informed by a wide range of stakeholders, including people who use drugs.

Evidence of 'best practice' models and the benefits of diversion should be shared with stakeholders, including the police and policy makers.

### **Supporting the Queensland Police Service**

Consideration and alignment of police procedures and practices is essential to effectively implement the expanded drug diversion program. This includes a clear recognition of drug use as a public health issue and acknowledgement of the important function police play in addressing drug use and associated problems. This may be perceived as a shift from the police's primary role as law enforcement, to facilitating access to health and support services.

Providing support to the Queensland Police Service to ensure policy, practice and cultural alignment will be important. This includes addressing any barriers to implementation, such as addressing stigma against people who use drugs and increasing knowledge and understanding of drug use and harm reduction. Widespread training of police and embedding drug diversion training as part of police core business could help facilitate the change required. Increasing feedback to police on progress and efficacy of drug diversion may also help support the new approach.

### **Drug diversion for children**

Under the current Bill amendment, police retain discretion in relation to diversion of minors in possession of illicit substances. Therefore, there is a risk of differential application of diversion for minors, which means that children could be treated more harshly than adults.

Further consideration and clarification are needed to ensure alignment with the *Youth Justice Act 1992* (Qld). We propose provision be added to the bill that ensures eligible children can be diverted with a warning or another alternative under the *Youth Justice Act 1992* and retains the ability for the court to dismiss charges if the court determines they should have been given a warning or diverted.

### **Potential impacts on those most vulnerable**

It is acknowledged that people who are most vulnerable, including those that experience problematic substance use, are most likely to end up with a fourth minor drug possession offence and may need to appear in court. The approach requires measures to ensure people who require treatment, harm reduction and social services are supported to access it. This may include training for magistrates to further support a health-based response to drug use.

In regard to the proposed changes related to trafficking, threshold quantities need to align with contemporary evidence on drug use patterns and possession practices. This includes considerations of people who engage in drug supply without reward of a commercial nature, to not be considered as drug traffickers.

### **Treatment, harm reduction services and non-health social supports for people who use alcohol and other drugs**

Historically, the alcohol and other drugs treatment and harm reduction services sector has been severely underfunded where demand significantly outstrips supply. In particular, rural and remote communities have limited alcohol and other drug treatment and harm reduction services.

The Commission welcomes *Better Care Together: A plan for Queensland's state-funded mental health, alcohol and other drug services to 2027* that is backed by significant investment in alcohol and other drug treatment services. The expanded drug diversion program offers further opportunity re-invest savings from criminal justice responses into treatment and harm reduction supports, and make steps towards a greater balance of investment across supply, demand and harm reduction.

### **Consideration of additional drug law reforms**

Whilst expansion of drug diversion is a positive move towards a health-based approach, drug possession for personal use remains a criminal offence. Alternative options should be considered, including removing simple drug possession from criminal law, therefore potentially maximising benefits of diverting people away from the criminal justice system.

Many countries have followed models of drug use decriminalisation, and the ACT has recently decriminalised possession of all illicit drugs for personal use. Evidence to support decriminalisation continues to build and will need to be considered by Queensland in the coming years.

## **Conclusion**

The Commission welcomes the *Police Powers and Responsibilities and Other Legislation Amendment Bill 2023* that includes the expansion of the Police Drug Diversion Program. The expansion of the program and move towards a health-based approach is supported by evidence both in Australia and internationally and aligns with the Queensland Government's strategic policy directions.

The Commission believes that expansion of evidence-based responses that divert people away from the criminal justice system will have widespread benefits, including positive health and social outcomes for people who use drugs, reduced recidivism, and an opportunity to increase investment in prevention, treatment and harm reduction. Realising the potential of the expanded Police Drug Diversion Program however will ultimately depend on effective implementation which will require careful monitoring and evaluation in collaboration with partners across the health, police and correctional settings.

### **Contact details:**

This submission is made of behalf of the Queensland Mental Health Commission, and has been approved by the Mental Health Commissioner, Ivan Frkovic.

It is submitted on behalf of the Commission by:

Amelia Callaghan

Acting Executive Director.

PO Box 13027

George Street

Brisbane QLD 4003

Email: [REDACTED]

Ph: [REDACTED]