

AUSTRALIAN DIVERSIONARY PROGRAMMES AN ALTERNATIVE TO IMPRISONMENT FOR DRUG AND ALCOHOL OFFENDERS

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I. THE AUSTRALIAN NATIONAL DRUG STRATEGIC FRAMEWORK

The National Drug Strategic Framework presents a shared vision and a basis for cooperation and coordinated action to reduce the harm caused by drugs in Australia. The Framework, running over a five year period, will be reviewed in 2002/03 and is expected to lead to a further iteration of the Framework informed by outcomes of the review.

Under the current Framework the National Drug Strategy Unit was established and my role as the Executive Liaison Officer, representing law enforcement issues, was created.

The current phase of the Framework places emphasis on extending the successful partnership between health and law-enforcement agencies to take in a broader range of partners such as the Australian Commonwealth Departments of Education, Science and Training and Customs, in addition to encouraging closer working relationships between government and the community.

II. HARM MINIMISATION

Harm minimisation is the key principle underpinning Australia's National Drug Strategy and refers to policies and programmes aimed at reducing drug-related harm. Harm minimisation aims to improve health, social and economic outcomes for both the community and the individual and encompasses a wide range of integrated approaches.

Australia's harm-minimisation strategy focuses on both licit and illicit drugs and acknowledges the poly drug use of individuals. It includes preventing anticipated harm as well as reducing actual harm. A comprehensive harm-minimisation approach has to take into account three interacting components:

- the individuals and communities involved;
- their social, cultural, physical and economic environment; and
- the drug itself.

Australia has a variety of localised drug markets and harm minimisation approaches vary according to different needs and the changing market environment. The Australian Government's harm reduction strategies specifically target the individual using drugs and promote initiatives that benefit both the user and the wider community.

III. SUPPLY REDUCTION

Supply-reduction strategies aim to disrupt both the supply of illicit drugs entering Australia and the production and distribution of illicit drugs within Australia.

The Australian Federal Police and the Australian Customs Service work in partnership as the key agencies in implementing strategies to reduce the supply of illicit drugs entering Australia. The Australian Federal Police have primary responsibility for the conduct of investigations, particularly

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offshore which aim to detect and seize illicit drugs, while Customs has primary responsibility for the detection of illicit drugs at Australia's border. Funding through the National Illicit Drug Strategy has also provided improved technology and communication capabilities that have provided more innovative approaches to the illicit drug trade and has contributed to significant increases in drug seizures particularly offshore.

State and Territory police services are responsible for dealing with drug use in their communities including the detection and seizure of illicit drugs in the Australian community. Of particular importance is the detection and dismantling of clandestine drug laboratory operations.

IV. DEMAND REDUCTION

Demand reduction is a broad term used for a range of policies and programmes which seek a reduction of the desire and preparedness to obtain and use illegal drugs.

Demand for drugs may be reduced through:

- prevention and education programmes to dissuade users or potential users from experimenting with illegal drugs and/or continuing to use them;
- drug substitution programmes (e.g. methadone);
- treatment programmes mainly aimed at facilitating abstinence, reduction in frequency or amount of use;
- diversion programmes offering education or treatment as alternatives to imprisonment. These can be offered at various stages of the criminal justice system; and
- broad social policies to mitigate factors contributing to drug use such as unemployment, homelessness and truancy.¹

V. HARM REDUCTION

Harm-reduction strategies are designed to reduce the impact of drug-related harm for particular individuals and communities. Levels of drug use among individuals and communities can vary greatly – from no use at all to consumption at harmful levels.

Needle and Syringe Programmes and non attendance of police at non-fatal drug overdoses are examples of Australian programmes that have been implemented to reduce drug related harm.

VI. SHIFT IN POLICY FOCUS TO DIVERSION

A. What is Diversion?

Diversion is a process that provides an alternative to criminal justice sanctions to modify individual behaviour. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence, and the personal circumstances of the offender.

B. Strategies

Diversion strategies aim to divert offenders from the traditional criminal justice process.

Opportunities for diversion occur throughout the criminal justice process:

- pre-arrest: when an offence is first detected, prior to a charge being laid;
- pre-trial: when a charge is made but before the matter is heard at court;
- pre-sentence: before sentencing;
- post-sentence: as part of sentencing; and
- pre-release: prior to release from a sentence, on parole.

¹ Demand Reduction: A Glossary of Terms, UNODCCP

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Drug diversion strategies are for offenders who have committed drug-related offences, and/or offences that are directly or indirectly related to drug use. Drug-related offences include drug offences, offences committed while the offender is intoxicated and offences committed to fund drug use. Drug offences include possession, use or trafficking of an illegal drug.

C. Background

In the last two decades, Australian governments have enhanced their policy positions and have developed various strategies and committed significant resources to address the drug problem within Australia. In my view it is fair to say that policing practices and policy shifts were influenced by the emergence of HIV and Hepatitis C as public health issues.

It is recognised that statutory diversion of people from the criminal justice system has been in place for some years in different jurisdictions. Police diversion has also occurred for many years in an informal setting and more recently, law enforcement agencies in particular have established protocols over time to acknowledge and formalise the processes. Similarly the health field has sought the best method of dealing with drug affected or dependent clients, including coerced clients. This has also seen a move to trialing various forms of treatment in an attempt to establish best practice standards.

A two year study which commenced in 1994 on diversionary practices in Australia examined six case studies of practice and held a national forum of fifty practitioners and policy makers who considered key issues, including the benefits of, the barriers to diversion and suggested principles of best practice. The study found that despite the obvious potential benefits of the range of diversion options that exist, there has been no systematic evaluation of the various models in use to date.

The report recognised five different opportunities for the diversion of offenders from the criminal justice system to treatment and rehabilitation currently being used.

- Victoria police were trailing informal police diversion which occurred at the time of the detection of an offence and may consist of informal warnings, confiscation of small quantities of drugs and communication with parents;
- Formal police diversion in which certain categories of offences are targeted for formal cautioning or other non judicial responses by senior officers;
- Statutory diversion in which offenders receive mandatory maximum dispositions, expiation notices or diversion to helping systems (e.g. Cannabis expiation scheme in South Australia);
- Prosecutorial diversion which occurs in situations where, upon reviewing the evidence, prosecutors have the discretion to refer the offender to treatment facilities rather than pursue prosecution. Under these circumstances prosecutors would agree not to take the matter to court as long as the helping intervention process is completed successfully. The prosecutor would act in the belief that the community good is best served by the offender entering into a helping situation, rather than the judicial process; and
- Judicial diversion which involves the use of discretion by magistrates and judges in dealing with offenders. The judiciary may order a range of dispositions and interventions, the nature of which is often dependent on the services available locally and the level of cooperation between local service providers, (e.g. Legislation such as the New South Wales' Inebriates Act 1912, provided significant scope for judicial officers to make drug treatment orders to any type of institution for any length of time up to twelve months).

This study, by the Alcohol and Other Drugs Council of Australia (ADCA) highlighted the following barriers to implementing effective diversion programmes at that time;

- Poor information dissemination between diversion programmes in each jurisdiction;
- Little explicit agreement between key stakeholders regarding appropriate outcomes for diversion programmes; and

- Little congruence in relevant legislation between jurisdictions.

The key principles defined in the ADCA study recognised that diversion of a person required the interaction of a number of agencies addressing different issues to instigate social change. They also emphasised the need for cooperation and coordination between agencies which would allow a range of adequately funded interventions to be readily accessible to drug users.

D. Further Developments

Following this study, interest in diversion increased around the nation with jurisdictions undertaking various initiatives in an attempt to engage drug dependent offenders into treatment, to minimise the harms caused by drug users, and to separate the interventions used for drug users from those who deal in substantial quantities of drugs.

In relation to cannabis use, most jurisdictions either fully instituted or trialed diversionary practices. In South Australia, the ACT and the Northern Territory expiation notices for simple possession offences were under trial evaluation or in full use. Victoria and Tasmania put cautioning systems in place for offenders in possession of a small amount of cannabis. A formal caution and education system for simple cannabis offences commenced trials in Western Australia. New South Wales used a “field court appearance notice”, rather than formal bail, to secure a person’s attendance at court where they were then dealt with by a magistrate.

In relation to illicit drugs other than cannabis, jurisdictions embraced a variety of programmes. New South Wales, as part of its Alcohol and other Drug Offender Diversion Model Project Proposal, planned to trial a Drug Courts Programme in early 1999. This programme involved an inter-departmental team approach designed to deal with offenders with related alcohol and other drug issues. The criteria for this trial, to determine the appropriateness of referring particular offenders to the diversion options included with the drug courts, required two assessments to take place. The first was a legal assessment to determine eligibility for participation (i.e. non-violent offence category, guilty plea, and willingness to participate). The second was a medical assessment to determine appropriate treatment options and likelihood of success. The Drug Court judge has discretion to decide if individuals are allowed to go through the Drug Court System.

There are two main ingredients for success of the Drug Court model. They are the provision of sufficient resources to ensure the earliest possible appearance of an offender before the court, together with comprehensive assessment, supervision and counselling with ready access to best practice treatment facilities. The second is the expectation that any relapse by the offender is to be expected, but should be dealt with quickly by the court.

Western Australia had a Court Diversion Service in place that manages approx. 450 referrals per annum. This service deals with persons who are considered to have a serious drug problem and intervened whilst they are on remand. If they successfully entered treatment the court could, and normally would, impose a community-based sentence with a condition that they remain in, and complete, the treatment regime. Western Australia also commissioned a consultant at that time to advise on the establishment of a Drug Court and other diversionary options.

South Australia has operated a pre-court diversion programme aimed at persons in possession of drugs (other than cannabis) for personal use since 1985. This programme, The Drug Assessment and Aid Panel, decides whether a person, detected in possession of a small amount of a drug, should be prosecuted or be diverted into the health/welfare system.

The ACT judicial system also provides for assessment and treatment of illicit drugs users and the ACT Drugs of Dependence Act provided for treatment as a sentencing option and for the court to take notice of progress in treatment. The ACT also considered on the spot, in-court assessment of offenders by drug and alcohol professionals to provide magistrates with the best advice on suitable dispositions.

Victoria undertook a project designed to develop early involvement of drug support interventions when an offender is arrested and placed before a court. It applied only to offenders who fell within a

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certain offence category, including possession of a drug of dependence or trafficking in a drug of dependence (to support their own dependence). These offenders had bail set by a court and were assessed by a specialist drug clinician and introduced into treatment prior to the charges being finally dealt with. This treatment and its outcomes were taken into account in the sentencing process. An interesting aspect of this model is that an amount of “treatment” money was allocated to the person at the time of bail. This money followed the person and paid for the treatment process. This trial project later became the successful Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) model of diversion.

Due to the success of the cannabis cautioning programme, Victoria also trialed a caution notice system for drugs other than cannabis. It was applicable to small quantities of illicit drugs and was dependent on the person attending a drug treatment agency for assessment and treatment within strict time lines. Treatment funding was also provided by health to that particular person. If the person completed the requirements, there was no criminal sanction attached to them.

Although Queensland had no formal drug diversionary programmes, police have the ability to caution juvenile offenders under 17 years of age, and in certain circumstances, may caution older persons for a first offence. Queensland has also instituted a process that permits police to release an alleged offender without going through a bail process. This in fact diverts a person from the watch house process. Persons in custody in police watch houses have constant access to medical assistance and a current project, The Cell Visitors Scheme, is designed to reduce the aggressiveness of prisoners by facilitating visits by relatives and friends who may access funding to reduce the duration of stay in police cells.

Whilst these interventions may be regarded as similar they all have some differences. It is worth noting that the issue of diversion practices was also being addressed by the Australasian Police Ministers' Council (APMC) and that the National Drug Crime Prevention Fund, in setting its future strategic directions also gave diversion projects a very high priority.

The National Community Based Approach to Drug Law Enforcement, at that time, was currently funding the following projects with the objective to further inform the field of diversion:

- *A Community Based Drug Law Enforcement Model for Intersectoral Harm Reduction*
- *Drug Harm Reduction Education for Police (since published as NDS Monograph No.41)*
- *Best Practice in the Role of Police in Diversion of Minor Alcohol and other Drug Offenders from the Criminal Justice System (since published as NDS Monograph No.40)*

Australian police services have practiced diversion for many years as they have exercised discretion in dealing with minor possession or use by drug offenders by informally warning the individual without keeping a record of the warning.² This was particularly the case with offenders who committed offences of a social nature and were assessed to be low risk with a high likelihood of not embarking on a career of illicit drug use and crime, e.g. young people committing what is regarded as a minor offence such as offensive behaviour.

In response to the reported growth in the use of illicit drugs, increases in opioid overdoses and increases in both violent and property crimes, together with emerging evidence that prison itself is a risk and harm in terms of initiation to drug use and exposure to blood borne viruses, in 1999 the Australian Commonwealth Government proposed a major shift in the practice of drug law enforcement and treatment to deal with drug users.

One of the logical outcomes of the changes that have occurred in public policy and debate on the illicit drug issue has been to develop programmes that divert people who are using illicit drugs from the criminal justice system to the health system.³

² Crime and the Criminal Justice System in Australia: 2000 and Beyond – Drug Trends and Policies

³ July 1999: Evaluation of the Drug Diversion Pilot Programme, Interim Report, Victoria Police

The shift in policy recognises the link between drugs and crime, particularly that users of illicit drugs (particularly, the harder drugs such as heroin) commit disproportionately more crimes than criminals who are not drug users. Whilst repeat offending is attributable to a small number of individuals that cohort commit a disproportionate amount of crime. Strategies aimed at preventing young first time offenders from pursuing a path of crime have the potential to dramatically affect crime rates.

This policy shift also recognises that in Australia, most people sentenced by the court rarely end up in prison. In 1997-98 a total of 74 810 Australians were sentenced, and of these 25% were given a prison sentence. While the crimes committed by these offenders may not be entirely attributable to drugs, it is clear that a large proportion of court time is spent on responding to offences, that in most cases, will not result in removing the offender from the community.

The Illicit Drug Diversion Initiative, has emerged and developed in Australia in response to a requirement to seek innovative approaches to redress increasing illicit drug use and crime rates while easing the burden on the Court process and the community by striving for rehabilitation and treatment. The Illicit Drug Diversion Initiative, commonly known as Police Diversion, is part of the Australian Commonwealth Government's approach to early intervention and prevention of illicit drug use.

VII. COUNCIL OF AUSTRALIAN GOVERNMENTS ILLICIT DRUG DIVERSION INITIATIVE

A. The Initiative

In its Communique of 9 April 1999, the Council of Australian Governments (COAG), as part of a package of new measures with a total cost of \$221million, "agreed to work together to put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment."

COAG agreed to a major shift in the practice of law enforcement and treatment and a clear message about the unacceptability of illicit drug use. The measures proposed to increase the availability of information about the dangers of drug use and the impact of police action.

A Commonwealth/State steering committee comprising central agency representatives and the Chair and Deputy Chair of the Intergovernmental Committee on Drugs was established to guide the development and implementation of the COAG Illicit Drug Diversion Initiative.

B. The Development Process

Joint planning arrangements commenced in April 1999, involving representatives of Central agencies in all jurisdictions and members of the Intergovernmental Committee on Drugs (IGCD), calling on the expertise of members of the Australian National Council on Drugs (ANCD) and other key experts.

The focus of these joint planning arrangements was on the development of a nationally consistent approach to the development of a diversion model covering illicit drugs in the community, as requested by Heads of Government, but with scope and flexibility to determine, through bilateral negotiations, the details of implementation in individual jurisdictions. Related measures, involving schools, health and family support, prisons and supply issues, are being developed separately.

For the purpose of this initiative diversion was defined as:

A process which provides an alternative to criminal justice sanctions to modify individual behaviour through assessment, education and treatment. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence, and the personal circumstances of the offender.

The diversionary scheme proposed by COAG has an emphasis on diversion by police at the initial apprehension stage as this will maximise the opportunities for early intervention with illicit drug users.

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It is recognised however that, in order to reduce the harm to both the individual drug user and the community, there needs to be opportunities to divert illicit drug users into assessment and treatment at all stages of the criminal justice process.

The introduction of a national approach to police diversion was seen to complement and broaden existing initiatives by providing early intervention in the criminal justice process and opportunities for individuals to access assessment, with a view to treatment, rather than progress through the criminal justice system. The diversion scheme offered another alternative to police in respect to the way in which they manage some illicit drug users. It did not change existing laws in respect of the use, possession or distribution of illicit drugs.

The commitment to a national approach to police diversion was based upon a recognition of the importance of consistency in drug policy. It also recognised, however, that law enforcement, drug assessment, education and treatment service systems are jurisdictionally based and have different legislative, practice and cultural circumstances. It was intended that a clear pathway from detection to assessment, education, treatment and post-treatment support be designed bilaterally in each jurisdiction under the national framework and that it would be based on the nineteen agreed principles.

It was clearly recognised that three key areas needed to be integrated to form a comprehensive approach to a national diversion scheme. They were:

- Joint planning and evaluation;
- Police and court diversion; and
- Assessment, drug education, treatment and post treatment support.

C. Funding

The costs associated with facilitating the COAG Illicit Drug Diversion Initiative are met by both the Commonwealth and State and Territory Governments.

In recognition of the shortage of treatment places, the Commonwealth Government provides funding for significantly expanded early intervention treatment and rehabilitation places linked to police diversion

The Commonwealth and State and Territory Governments fund the assessment services; and the State and Territory Governments provide the law enforcement basis for diverting offenders into treatment programmes and maintain their existing health and education effort. That is, police services were required to accommodate changed practices to effect implementation of diversion within their current resources.

The Commonwealth has contributed \$105 million to fund assessment, treatment, education and capacity building and training, and this has been progressively rolled out across the Australian states and territories since 1999 and will continue through to 2003. A range of Diversion programmes have now been developed and implemented in Australia and I will provide an outline of these later in this lecture.

This funding is appropriated to the Commonwealth Department of Health and Ageing and it is distributed to the jurisdictional health departments from the Commonwealth Departmental offices in each State and Territory.

D. Purpose

The primary objective of the Illicit Drug Diversion Initiative is to:

- increase incentives for drug users to identify and treat their illicit drug use early, before incurring a criminal record;
- increase the number of illicit drug users diverted into drug education, assessment and treatment;
- reduce the number of people appearing before the courts for use or possession of small quantities of illicit drugs; and

- decrease the social impact of illicit drug use within the community and to prevent a new generation of drug users committing drug-related crime from emerging in Australia, therefore leading to safer environments for all Australians.

E. Primary Target Group

The primary target group of this initiative is individuals who:

- have little or no past contact with the criminal justice system for drug offences; and
- are apprehended for use or possession of small quantities of any illicit drug.

Persistent or violent offenders are not entitled to participate in the diversion initiative. This is largely because the Australian community's perceptions and sentiment is that violent offenders be sent to prison. Many treatment agencies are reluctant to take these kinds of offenders as it could result in a potential law suit and courts and police are reluctant to send violent offenders to a programme that can result in the offender being 'at large' in the community. Violent offenders can therefore expect the criminal justice system to continue to be tough on drug-related crime.

The target group of offenders for drug-diversion strategies include a broad range of people, such as:

- people who use illicit drugs but are otherwise law-abiding citizens, as well as people with a significant criminal history;
- people with a range of patterns of drug use, from non-problematic use (apart from the offence) to dependent use;
- people who will not re-offend, people at risk of re-offending, and recidivist offenders; and
- people who have committed a range of offences, and are subject to a range of sanctions.

F. Benefits of the Illicit Drug Diversion Initiative

There are several benefits of the Illicit Drug Diversion Initiative. They include:

- assisting drug offenders to regain control over their lives;
- decreasing the enormous social cost of illicit drug use on individuals, families and societies;
- providing offenders with early incentives to address their drug use problems, in many cases before incurring a criminal record;
- reducing the number of people appearing before the courts for use or possession of small quantities of illicit drugs;
- obtaining a consistent national commitment within the criminal justice sector to divert drug offenders into treatment;
- enhancing capacity to monitor the outcomes of diversionary and treatment schemes;
- providing an opportunity to divert offenders out of the criminal justice track into an education and/or treatment track; and
- dramatically reducing the crime rate by providing strategies aimed at reducing victims' exposure to repeat criminal activity and strategies aimed at stopping young first time offenders from heading down a path of crime.⁴

These benefits allow more serious matters to be heard in court and frees up police resources.

G. Issues for Consideration to Ensure Successful Implementation

1. Net Widening

Consideration must be given to any net widening effect of a diversion intervention which increases the number of people involved in the criminal justice system or the consequences of offending for offenders.

For example, if a diversion programme is thought to be less burdensome than the usual criminal justice sanction, it might be applied to a person who would not otherwise be sanctioned at all. In such

⁴ A Sociology of Australian Society: Chpt 12 *Crime in Australia*, T. Makkai

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cases, diversion has increased rather than reduced the number of offenders exposed to criminal justice sanctions.

Net widening can also occur when offenders receive a more severe sentence if they commence and then fail in a diversion programme than they would have if they had accepted the usual criminal justice process in the first place.

2. Coercion into Treatment

There is evidence to suggest that coercion to treatment does not appear to be a barrier to the effectiveness of treatment programmes.

A World Health Organisation consensus view on the ethics of treatment under coercion is that compulsory treatment is legally and ethically justified only if the rights of the individuals are protected by 'due process', and if effective and humane treatment is provided. To this end it has been argued that offenders be allowed at least two types of 'constrained choice':

- a choice between treatment and the usual criminal justice process; and
- a choice as to the type of treatment they receive.

The drug dependence of some offenders contributes significantly to their offending behaviour and treatment under coercion is an effective way of treating that dependence, and thereby reducing the risk of re-offending.

There is evidence that heroin-dependent offenders tend to relapse to drug use upon release from prison, and hence re-offend, and return to prison. As treatment reduces relapse to heroin use and criminal recidivism, coerced treatment provides an alternative to prison that can reduce recidivism. It is less costly to treat drug-dependent offenders in the community than it is to incarcerate them and if offenders can be kept out of prison there is less chance of them contracting HIV or Hepatitis C.

Compared to voluntary treatment, coercion into treatment has been associated with increased entry to treatment and retention in treatment.

3. Families

Diversion strategies that keep offenders with drug abuse/dependence problems out of detention can place strain on their families and vice versa.

A custodial sentence for a family member with a drug-use problem can sometimes provide some benefit to family members who are responsible for, or affected by, that offender.

For example:

- partners of offenders who perpetrate drug-related domestic violence are likely to be subjected to continued violence unless an effective intervention is instigated;
- children of drug-dependent offenders might be subject to continued child neglect and abuse; and
- interventions to assist offenders with drug-related problems to either care for their children, or alternative arrangements if necessary, need to be incorporated into diversion strategy plans.

However, conversely consideration also needs to be given to the effect families have on the offenders as returning offenders to families and communities that have contributed to the person's drug use and offending behaviour can undermine the effectiveness of the diversion strategy.

Thus, diversion strategies that divert offenders from prison back to their family and community environment need to have the capacity to deal with the ramifications of the diversion.

Assessment of the need for interventions to address specific problems such as domestic violence and the care of dependent children, as well as a variety of support and therapy are important considerations.

4. Cultural Background of Offenders

Some groups in the Australian population are disproportionately represented in the criminal justice system. Within the State of New South Wales, for example, the imprisonment rate of Aborigines (938 per 100,000) is about 4.2 times higher than that for the non-Aboriginal population (224 per 100 000).⁵

Despite this over-representation, participation in diversion programmes in Australia for this population has been found to be disproportionately low.

Particular effort needs to be made to ensure that diversion programmes for over-represented groups in the prison system are delivered appropriately and effectively.

5. General Issues

While diversion provides drug users with an opportunity to re-dress their drug use, some offenders do not accept the diversion option because:

- they do not consider that they have a drug problem;
- they do not consider themselves to be addicted or dependent;
- they do not require counselling;
- they would prefer to attend Court, as they believe it to be easier to be either fined or imprisoned than to participate in a treatment regime;
- use of cannabis is for pain relief and they intend to continue to use; and prefer a fine.

6. Systemic Issues

Diversion requires significant changes to police practice, which if not achieved, present barriers to effective implementation.

The principle of harm minimisation and the strategy of diversion must be understood and supported by Police management, to ensure that it is accepted as a legitimate and common practice for dealing with illicit drug users.

To achieve this goal, it is necessary to develop comprehensive training for police, and indeed the judiciary, to ensure an adequate change process from the traditional view that a measure of success is a conviction for drug possession/use to a realisation that diversionary practices form a positive contribution to public health issues, including minimising harm to the individual and the community. Examples of these harms include:

- a conviction can often lead to failure to gain employment in later life;
- an exposure to unsafe injecting practices and blood borne viruses in a prison setting;
- removal of a family breadwinner from the community with its attendant consequences.

Police services need to be committed to extending and developing diversion programmes to offenders who may not be young and first time offenders. The general attitude must ensure that police are committed to providing offenders with an opportunity for treatment and rehabilitation.

The diversionary administrative processes must be efficient and no more onerous on police services than was previously the case. It is contested that effective diversion will lessen police time in court proceedings with subsequent savings.

Any significant shortages and gaps in the availability of drug-treatment services will have a detrimental effect on diversion as both police and the court system will become frustrated and turn to other ways of dealing with the problem.

⁵ Drug and Alcohol Review (2001) 20,281-294 *Diversion strategies for Australian drug-related offenders*. Spooner, Hall & Mattick 2001

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Services that are appropriate for cultural minorities such as Aboriginal people, services for specific problems such as cannabis dependence, and services for special needs groups, such as those with dual diagnosis, are particularly vulnerable to criticism if not adequately funded and staffed.

Another potential problem is a lack of intersectoral cooperation. While most sectors agree that an intersectoral approach is needed, there are many barriers to actually achieving this. For example, it takes time to develop and maintain interagency relations; to avoid territorialism and to circumnavigate the different values and political pressures found in the different systems.

H. Diversion Summary

Under the COAG Diversion Initiative illicit drug offenders may be diverted by police into compulsory drug education or assessment with a subsequent referral to treatment.

1. Stage One – Apprehension by Police

(i) *Minimum Criteria for Determining Eligibility for Diversion*

As stated, the primary target group is illicit drug users who:

- have little or no past contact with the criminal justice system for drug offences; and
- have been apprehended by police for possession and/or use of small quantities of any illicit drug (those quantities to be defined at the jurisdictional level).

It should be noted that the diversion programme applies to all illicit drugs and such other drugs as agreed and includes drug use such as abuse of pharmaceuticals such as benzodiazepines.

Eligibility criteria has been developed by each State and Territory police service and applied by the police. At a minimum it includes:

- sufficient admissible evidence of the offence;
- admission to the offence;
- use and or possession of illicit drugs (jurisdictions may go beyond this minimum level of drug offence); and
- no history of violence, as offenders with a violent history are not part of the target group.

There may be situations when this is not appropriate, e.g. when the history of violence is very much in the past; and informed consent is received from the offender to diversion.

Police make all reasonable attempts to ensure that the offender understands their rights and responsibilities under the diversion programme. Diversion must be appropriate given all of the circumstances (taking into account, within statutory limitations, the public interest whether to immediately proceed with criminal justice processes).

(ii) *Minimum Content of Notice of the Diversion*

Offenders diverted by police to assessment are referred to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services.

In some states/territories police divert certain offenders directly to drug education. At a minimum, a notice of the diversion provided by the police includes the following nationally consistent elements:

- admission of the offence by the offender;
- written agreement by the offender to participate in education or assessment and treatment where applicable;
- signed authority by the offender authorising release of their personal particulars and information about participation in the diversion scheme between police and relevant health authorities;
- the exchange of information about participation is used to gauge the compliance or non-compliance of the offender and to evaluate the initiative;

- a clear explanation of the minimum level of participation expected from an offender in a diversion programme to ensure that the offender is aware of what is expected from them in order for expiation to occur;
- appointment and agency details; and
- agreed police contact.

2. Stage Two – Compulsory Assessment

(i) *Preferred Provider Approach*

To ensure appropriate health related services it is noted that participation in this initiative by appropriate service providers who will provide value for money and select treatment is through a preferred provider arrangement.

Participation by service providers in the compulsory referral arrangements are subject to an approval process at the state/territory level which ensures quality control based on best practice.

While there is no restriction on the type of drug treatment service (i.e., public versus non-government) that is eligible for preferred provider status, preferred assessment, treatment and education providers agree to work within this national framework.

Examples of treatment available include:

- abstinence based;
- residential detoxification; and
- methadone treatment.

(ii) *Minimum Qualifications and Experience of Education, Assessment and Treatment Providers*

Eligibility criteria have been set and assessors, drug educators and key treatment staff are approved by the state/territory as suitable to conduct drug and alcohol assessment, education or treatment considering:

- relevant tertiary qualifications (including university or TAFE) in health, welfare, behavioural sciences or education; and
- experience in the alcohol and other drug field.

(iii) *Minimum Content of Assessment*

The aim of assessment is to develop sufficient understanding of the offender's circumstances and needs to enable a plan of future action, including an individual treatment plan where appropriate, to be determined and, where possible, agreed with the offender.

In determining an appropriate course of future action the assessor takes into account the following information:

- quantity, frequency and pattern of current drug use and route of administration. This includes an assessment of the:
 - use of all drugs, both licit and illicit;
 - circumstances in which drug use occurs; and
 - level of dependence.
- the extent and severity of previous drug use problems, including the outcome of any previous treatment attempts or self initiated periods of abstinence;
- drug related risk taking behaviour;
- family relationships and family drug history;
- social situation;
- legal issues, including any arrests, the nature of offences committed and sentences imposed prior to or following commencement of drug use;
- medical problems associated with or exacerbated by drug use;
- mental health or psychological circumstances; and
- motivation for change.

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(iv) *Role of Assessors*

- undertake, in a timely manner, an impartial assessment of the offender consistent with these national guidelines;
- deliver impartial assessment services. Each state/territory must demonstrate their impartiality or management of potential conflicts of interest;
- make at least one assertive attempt to contact offenders who do not present themselves for assessment;
- develop with the offender a plan of future action, including, where appropriate, an individual treatment plan. Wherever possible, this plan is agreed with the offender;
- make an appointment with the appropriate individual or agency who can deliver the prescribed education or treatment, to allow the offender to undertake the recommended course of action;
- in a timely manner, receive, complete and forward to the appropriate person all necessary paperwork;
- notify the police, in a timely manner, of offenders who fail to participate in the assessment or who, after an assertive attempt at contacting the offender, have failed to attend for assessment;
- comply with national and State/Territory best practice guidelines; and
- participate in the monitoring and evaluation of the initiative, including the collection of data.

(v) *Range of Assessment, Education and Treatment Services*

Offenders diverted under this initiative have access to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services such as counselling, withdrawal, residential rehabilitation and pharmacotherapies.

All assessment, drug education and treatment services are intended to be culturally, linguistically and gender sensitive. Wherever possible family involvement is encouraged.

Young offenders have access to youth-specific assessment, drug education and treatment services.

Indigenous offenders have the option of attending an appropriate indigenous agency for drug education or assessment and treatment.

3. Stage Three – Drug Education or Treatment Services

Additional funding has been provided for compulsory places to ensure that there is no displacement of voluntary admissions to assessment, education and treatment.

Diverted offenders may also be called upon to make financial contributions to their treatment where appropriate.

(i) *Role of Drug Education and Treatment Providers*

Drug education and treatment providers:

- act on the written assessment report and recommendation of the approved assessment provider (or, in the case of referral by police to education programmes, on their referral notice);
- make at least one assertive attempt to contact offenders who do not present themselves for education or treatment;
- provide timely access to education and treatment services;
- develop, with the offender, a discharge plan that includes:
 - planned follow up by the treatment agency;
 - assertive referrals to appropriate community services.

(Note: it is recognised that the vast majority of offenders receiving education only are unlikely to require discharge plans.)

- in a timely manner receive, complete and forward to the appropriate person all necessary paperwork;
- notify the police, in a timely manner, of offenders who:

- following an assertive attempt to contact them, have failed to participate in education or treatment;
or
- have met the necessary conditions to expiate their offence;
- comply with national and State/Territory best practice guidelines; and
- participate in the monitoring and evaluation of the initiative, including the collection of data.

(ii) *Minimum Requirements for Expiation*

Each state/territory determines the relationship between the offences for which they want to divert offenders and the requirement for expiation, taking into account the need to ensure that diverted offenders do not receive an expiation requirement significantly more or less onerous than the court based alternative.

The minimum expiation requirements for more serious drug related offences may vary. The minimum requirement for expiation of a use and/or possession offence is:

- where the offender is referred directly to education, full participation in the prescribed education programme; or
- where the offender is referred to assessment, undertaking a drug assessment and participation in the prescribed programme of education or treatment.

(iii) *Effect of Expiation*

Offenders who satisfy expiation have no criminal conviction for the offence recorded against them. However if an offender fails to satisfy expiation requirements, the criminal justice process will continue.

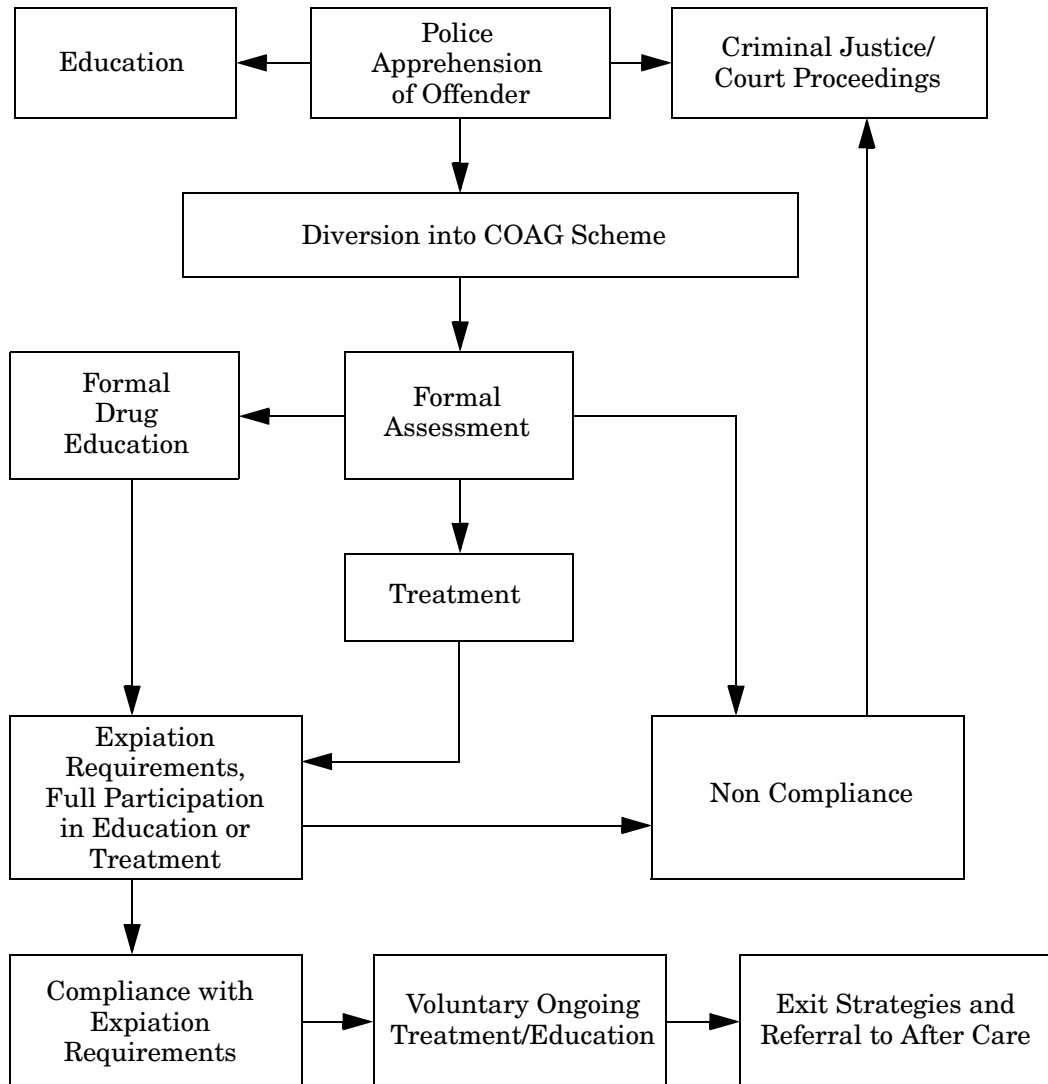
(iv) *Ongoing Treatment*

While expiation of the offence may occur before the completion of the treatment, offenders are encouraged to complete the course of treatment agreed with the assessor and Commonwealth funding is available for this treatment episode.

(v) *Post-treatment Support*

Treatment agencies have discharge plans, including planned follow-up in community settings, with appropriate referrals to a range of services, for example housing, employment and generalist health care. This involves consultation with the offender on their needs and the arrangement of appointments for the offender with community-based services, as appropriate.

COAG Illicit Drug Diversion Initiative



Source: <http://www.health.gov.au/pubhlth/nds/nids/diversion/index.htm>

VIII. TYPES OF DIVERSION

There are numerous diversion strategies used in Australia and I will examine a range of these strategies in turn, including strategies that have been implemented as a result of the Council of Australian Government's initiative:

A. Cannabis Infringement Notices

In the state of South Australia, and the territories of the Northern Territory and Australian Capital Territory, fines are given for minor drug offences such as possession of small amounts of cannabis.

Possession offences include:

- Cultivating not more than 5 cannabis plants for personal use; or
- Possessing not more than 25 grams – 50 grams of cannabis for personal use.

It is interesting to note that there is continued debate in South Australia on the quantities of cannabis material that should be allowed under an offence of personal possession and the legislation has changed a number of times.

I have mentioned the net widening effect and an example of this can be seen with the Cannabis Expiation Notice (CEN) scheme in South Australia which identified an increase in the number of minor cannabis offences for which CENs were issued from 6231 expiable offences in the 1987/88 financial year to a peak of 17425 offences in 1993/94. The increase appeared unrelated to the prevalence of cannabis use.

It did, however, appear to be related to changes in police procedures, possibly due to the less onerous work involved in issuing a CEN. CENs were associated with less negative consequences relating to employment, further problems with the law, relationships, accommodation and overseas travel

B. Cannabis Cautioning Scheme

This scheme operates across New South Wales, Victoria, Queensland, Western Australia and Tasmania and applies to adults apprehended for simple use/possession offences.

The scheme covers the offences of use and possession of small amounts of dried cannabis leaf, stalks, seeds, heads and equipment for administration of cannabis.

The scheme applies to adults only. Police may issue a cannabis cautioning notice that warns of the health and legal consequences of cannabis use. A person can only be cautioned if they have no prior convictions for drug offences or offences of violence or sexual assault. A person may not receive more than two cautions.

C. Drug Assessment and Aid Panel (DAAP)

In South Australia, under the South Australian Controlled Substances Act 1984, people alleged to be in possession of specified drugs of dependence (other than Cannabis) for personal use can be referred to a Drug Assessment and Aid Panel.

The Panel includes a legal practitioner and two others with extensive knowledge of drug misuse and treatment. The alleged offender must plead guilty to the charge of simple possession of an illicit drug to be eligible for DAAP.

The Panel assesses the offender and can require that the offender enter into a written undertaking, effective for up to 6 months, to undergo treatment and education. Non-compliance can lead to prosecution. No conviction is recorded if an offender successfully completes the undertakings.

D. Pre-Arrest Diversion

Pre-arrest diversion generally involves warnings or cautions by the police. Warnings are informal, cautions are formal. They may be used for disorderly offences associated with drunkenness, use or

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possession of illicit drugs and offences against public order. Warnings take place 'on-the-spot' without, in theory, any legal repercussions for the individual involved.

Cautions are normally formalised, in that there are usually set procedures to be followed and a record is kept of the incident. There are differences between the Australian States and Territories in police powers of discretion as well as the specific forms of police diversion programmes in place.

Arguments in support of the use of police discretion include:

- it reduces the high work-loads of police;
- releases court time for more serious cases;
- reduces the potential harms caused by police arrest and prosecution of offenders; and
- avoids a potential mismatch between sanction and crime, when criminal justice processes and sanctions are perceived to be disproportionate responses to minor offences.

Many of the arguments against the use of police discretion are related to the lack of consistency and accountability that is inherent in the use of discretion. For example: inconsistent use of discretionary powers between police districts can lead to a form of 'justice by geography'. Discrimination by individual police officers against certain classes of people, e.g. minorities, youth, can also occur. It is also argued that offenders could be denied access to treatment or other services that could be available through diversion at a later stage in the criminal justice system.⁶

Formal procedures for police diversion aim to address the problems with accountability and consistency. However, possible problems with formal police diversion include:

- the possibility of 'net widening' which occurs when diversion increases the number of, or consequences for, offenders in the criminal justice system;
- the lack of 'due process' in formal diversion schemes can lead to offenders being cautioned when there is insufficient evidence to prosecute. Despite this lack of due process, sanctions can be recorded as an 'official' part of an individual's offending history and individuals can later be subject to formal sanctions;
- some innocent individuals might admit guilt in order to obtain formal diversion in preference to facing court;
- the requirements of diversion programmes can sometimes be more onerous than those that would otherwise have been imposed had the person progressed through the criminal justice system in the usual way; and
- formal diversion can lack community support if it is regarded as a form of de-facto decriminalisation of illicit drugs.

E. Pre-Trial Diversion

There are a number of systems for diverting offenders prior to prosecution, which generally require prior admission of guilt. An example is where treatment is part of bail conditions.

Current programmes in place in Australia include Court Referral Evaluation and Drug Intervention Treatment (CREDIT) in the State of Victoria and the Drug Assessment and Aid Panel (DAAP) in the Australian State of South Australia. Another example is Conferencing, which is more often used in association with youth programmes.

I will turn now to a brief description and overview of some of the pre-trial programmes currently in use in Australia.

1. Victoria's CREDIT Scheme: Court Referral and Evaluation for Drug Intervention and Treatment

The Court Referral and Evaluation for Drug Intervention and Treatment programme (CREDIT) was developed by a small group of magistrates at the Melbourne Magistrates' Court who wished to address the high rate of re-offending while on bail noted among illicit drug using offenders.

⁶ An overview of diversion strategies for Australian drug-related offenders. Spooner, Hall & Mattick 2001

CREDIT aims to:

- provide drug treatment immediately following arrest to alleged offenders with problematic drug use, that is, treatment before plea and while on bail;
- develop a commitment to treatment among such alleged offenders by capitalising on the fact they are confronted with entering the criminal justice system;
- divert alleged offenders who have a drug problem from further involvement in the criminal justice process through participation in drug treatment;
- reduce the risk of re-offending to support drug use, associated criminal activity and/or harm to themselves or others during the bail period; and
- develop a model drug treatment diversion programme.

The CREDIT referral process begins at the point of arrest. Police screen offenders to determine their eligibility for CREDIT then refer them for assessment in the Melbourne Magistrates' Court on the next court day. To be eligible a person has to be charged with a non-violent indictable offence, have a demonstrable drug problem, be eligible and suitable for release on bail and not already be on a court order or parole. Magistrates themselves are also able to refer to the programme.

There are four treatment modalities available under CREDIT:

- counselling;
- home-based withdrawal;
- residential withdrawal (short-term detoxification); and
- residential rehabilitation (longer-term rehabilitation following detoxification).

A report is prepared for the Magistrate by the assessing clinician and bail granted on condition the defendant participate in the nominated treatment programme. Legal advice is also available at this time if required through court-based Legal Aid solicitors. Treatment conditions could be varied while on bail and some defendants are also required to attend court for a review during the bail period. People who are ineligible or unwilling to participate simply proceed through the criminal justice system in the normal manner.

When the defendant returns to court at the end of the bail period, the drug clinician presents a further report to the Magistrate. Compliance with the treatment conditions and any other developments of note in the defendant's life are outlined in the report. At this time a guilty or not guilty plea can be entered. Defendants who meet the treatment conditions of their bail are congratulated in court and presented with a certificate of completion.

An evaluation of the first nine months of operation resulted in a continuation for the programme. The evaluation found that the main benefits of the programme for participants were early access to treatment and the opportunity to address both drug use issues and criminal offending. The evaluation found that there was a benefit to the criminal justice system by reducing the burden on courts and prisons. While benefits were evident, the evaluation identified that the main limitation to the current structure of the programme was the limited access to re-offending data.

2. New South Wales' MERIT Scheme: Magistrates Early Referral into Treatment Programme

The purpose of drug courts is to deal with individuals who would ordinarily face a prison sentence and present them with an option for long term treatment and rehabilitation programmes within the community, but under the close supervision of the Court.⁷

MERIT was the first Australian drug court set up in a rural area and is the only pre-plea programme in NSW.

⁷ *Drug Trends & Policies* in Chappell, D. and Wilson, P. (Eds): *Australian Justice System*, 5th Edition, Melbourne, Butterworths, pp 63-86, 2000, Makkai T.

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The MERIT programme aims to divert suitably motivated drug offenders who meet eligibility requirements from the Criminal Justice System into effective drug treatment programmes.

The primary eligibility criteria relate to the participant's suitability for bail and their motivation to engage in treatment and rehabilitation for their drug use problems over a time framed and structured period.

Whilst the clients originate through the legal system, it allows suitably motivated offenders to be removed from the legal system and placed into drug treatment which is operated and managed by the Health Service.

As MERIT is pre-plea, the accused is bailed to the programme with adjournments until the graduation, at which time the case is heard and matters are finalised. MERIT was originally based on the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) system developed at the Melbourne Magistrates' Court.

MERIT has an emphasis on early referral and provides for entry into the programme at the time of arrest or at any time up to the first court appearance. A feature of the MERIT programme which distinguishes it from many other drug courts is the fact that the defendant is not required to enter a plea in order to participate in the programme. Further, there is no requirement that a determination of guilt be made prior to entry to MERIT being extended.

It is worth noting, that of the 96 persons who completed the Programme between the 3rd July 2000 to the 12th April 2002, 40.6% have not come under the notice of Police in any way during or after the Programme. This is an indication of success, given that of the 221 clients accepted into MERIT in the first twenty months of operation, at least 90% had a previous criminal record and 60% had served time in jail.⁸

3. Conferencing

Conferencing describes schemes in which victims of crime and other members of the community, including experts and family members, become involved in dealing with offenders beyond the normal confines of the criminal justice system. It can occur in place of a trial as a diversion scheme. Its aims are to divert offenders from the criminal justice system and reintegrate them into the community, and to involve victims in the resolution of cases as a means of empowering them and acknowledging their need for recognition. The Australian State of South Australia currently uses Family Conferences for incidents involving young people.

F. Pre-Sentence Diversion

A magistrate or judge can use adjournments, assessments and other means to delay or stop proceedings prior to sentencing while the offender is assessed or treated. The process can be initiated by the defence lawyer. Some diversion systems allow for no conviction to be recorded if the person successfully completes the programme. Sanctions can also be built in for non-compliance. A current Australian example is a pilot programme being run through the New South Wales rural centre of Griffith.

G. Post-Sentence Diversion

1. Drug Courts

Drug courts specialise in the administration of cases referred for judicially supervised drug treatment and rehabilitation.⁹ They can be pre-trial/pre-plea, pre-trial/post-plea, post-conviction or a combination of these options. They are more expensive than traditional courts but when taking the whole package of 'court + imprisonment + cost of re-offending, they could be much more cost-effective. Finally, drug courts face implementation challenges with integrating criminal justice and treatment

⁸ *MERIT, a cooperative approach addressing drug addiction and recidivism* presented at the 2nd Australasian Conference on Drugs Strategy, May 2002.

⁹ P.287 *Diversion strategies for Australian drug-related offenders*

agencies, cooperative arrangements between judge, prosecutor and defence and achieving objectives broader than those of the criminal justice system.

Drug Courts vary considerably from one another and Australia is currently undertaking trials for both. The first Drug Court was established in Sydney, New South Wales.

The NSW Drug Court commenced in February 1999 as a pilot programme with a randomised control study design. The Drug Court operates in Western Sydney and is fed by referrals from Western Sydney's 11 Local and 4 District Courts. The NSW Drug Court Act 1998 and accompanying regulations govern conditions of entry, conduct and termination from the programme. Referrals to the Drug Court may be made from either Local or District Courts in the catchment area. Matters referred to the Drug Court are then dealt with by that court, provided that the individual meets the eligibility criteria and is accepted onto the programme. The NSW Drug Court utilises suspended sentences options as discussed below.

Despite the high drop-out rate (about 40%) the NSW Drug Court programme has proved more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending.¹⁰ The evaluation report, completed after a comprehensive three year evaluation, highlighted several ways in which the cost-effectiveness of the Drug Court could be improved. These include improving the Court's ability to identify offenders who will benefit from the programme, earlier termination of those unsuitable, improving the match between offenders and treatment regimes and improving the level of coordination between agencies involved in the programme.

2. Suspended Sentences

Suspended sentences involve the court imposing a sentence of imprisonment, and then suspending its operation for a period of time while the offender is released on specific conditions (bond). Bonds can contain conditions relating to matters such as probation supervision, associates, abstinence from drugs and participation in treatment. If the offender breaches any of the conditions, he/she might be liable to serve the sentence originally imposed or face other consequences. If no breach occurs during the bond period, the offender can be discharged.

The main benefit is that they coerce the offender to be treated, with the consequence of detention, if they fail to comply with the conditions of the suspended sentence.

Suspended sentences share many of the same concerns identified above with regard to drug courts, such as the possibility of net widening. That is, individuals who would not otherwise have received a custodial sentence could be sentenced to detention just so they can be diverted to treatment. If they fail the treatment, then they have to serve the custodial sentence that they would not have otherwise received.

IX. EDUCATION AND TREATMENT

Offenders diverted under the various diversionary schemes have access to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services such as counselling, withdrawal, residential rehabilitation and pharmacotherapies.

Wherever possible family involvement is encouraged, especially in situations involving youth. The aim of the drug education session is:

- To improve the offender's knowledge of the harmful effects of illicit drugs;
- To motivate them to change their behaviour; and
- To provide them with the information and skills to enable them to do so.

¹⁰ Media Release: NSW Drug Court Evaluation – Final Reports – 28 February 2002

X. MONITORING AND EVALUATION

Monitoring and evaluation of the outcomes of police diversionary action are essential to allow for effective management of the illicit drug diversion programmes.

A National Diversion Minimum Data Set has been developed to record the details of all offenders who accept the opportunity of diversion. The following data are collected by police, assessment, education and treatment workers to allow for analysis of the type of the participants and the flow of participants through the police and health systems:

- Name, address, sex, date of birth;
- Whether the offender is of indigenous descent;
- A police unique identifier;
- Date, location and type of offence;
- Drug type (identified through admissions or field testing);
- Quantity of drug;
- Concurrent offences (if appropriate);
- Type of diversion (i.e. education or assessment, formal caution, infringement notice);
- Compliance with diversion agreement; and
- Reference to court for non-compliance.

XI. SUMMARY OF STATE/TERRITORY INITIATIVES

As at July 2001, 9943 diversions occurred throughout Australia from the inception of the diversion initiative in March 2000.

New South Wales diverted 8021 offenders during the period April 2000 – December 2001 through the following programmes:

- Police Diversion through adult Cannabis Cautioning;
- Court Diversion – MERIT initiative; and
- Youth Drug Court and Juveniles under the Young Offenders Act.

Victoria diverted 2127 offenders during the period October 2000 – December 2001 through the following programmes:

- Police Diversion including:
- Cannabis Cautioning;
- Drugs other than Cannabis;
- Court Diversion – the CREDIT and Deferred Sentencing programmes; and
- Children's Court Clinic.

Tasmania diverted 1407 offenders during the period March 2000 – December 2001 through the following programmes:

- Cannabis Cautioning (1st offence); and
- Police Diversion for other drugs/subsequent cannabis offence.

Western Australia diverted 654 offenders during the period January – December 2001 through the following programmes:

- police diversion of drugs other than cannabis;
- cannabis cautioning;
- court diversion; and
- court supervised treatment.

Queensland diverted 2939 offenders during the period June – December 2001 through the following programmes:

- Cannabis Cautioning.

South Australia diverted 456 offenders during the period September – December 2001 through the following programmes:

- cannabis cautioning programme for juveniles; and
- two separate police diversion programmes for drugs other than cannabis for juveniles and adults.

The Australian Capital Territory diverted 68 offenders during the period July 2001 – March 2002 through the following programmes:

- Court diversion (all illicit);
- Police diversion (non-cannabis); and
- Cannabis cautioning.

XII. CONCLUSION

Diversionary practices are now in place or being trialed in all Australian States and Territories and range from cautioning offenders, expiation of cannabis offences, diversion for non-cannabis offences, to diversion to treatment programmes. These diversions take place at various stages of the criminal justice process and the different projects aim to divert drug-using offenders from the criminal justice system to enable access to appropriate treatment and reinforce a preventive message.

A range of diversion strategies that are appropriate to the history and risk of criminal and drug-abuse behaviours can be used for drug-related offenders. Offenders who are neither substantially involved in crime or drug abuse, nor at significant risk of being so involved in the future, can receive sanctions to deter continued offences, such as a warning or caution from police, without further consequences.

The aim of such early diversion is to avoid unnecessary costs and negative consequences of involvement with the legal system. The rationale for diversion in these cases is that involvement with the criminal justice system for those who are unlikely to reoffend is not cost-effective and likely to have unreasonably negative consequences for the offender. As the criminal career and drug problems escalate, a series of diversion strategies that are appropriate to the history and potential of the offender can be employed.

These strategies can include pre-trial strategies; pre-sentence strategies; post-sentence strategies; and, for those with the most severe history of repeated failure with drug treatment and judicial interventions: drug courts.

The aim of these diversion strategies is to use the offence as an opportunity to divert the offender to activities and interventions that will have more positive outcomes in terms of health, welfare and criminal activity than would detention. The rationale for diversion in these cases is that treatment in the community is likely to be more cost-effective than detention.¹¹

As the evaluation of the COAG Illicit Drugs Diversion Initiative provides new insights into the effectiveness of these alternative approaches, new Initiatives will be developed to further the National Drug Strategy towards the coordinated action against licit and illicit drugs and their harm to society. The next step in the current Strategy is the development of a Prevention Agenda.

¹¹ Diversion strategies for Australian drug-related offenders, Spooner et al

XIII. WHERE TO GO FROM HERE?

In February 2000 the Intergovernmental Committee on Drugs (IGCD) agreed that the Commonwealth should further advance the development of a Prevention Agenda for the National Drug Strategy, in close consultation with the IGCD and the Chairs of the National Expert Advisory Committees. In respect to this, 'Prevention' relates to measures that prevent and delay onset of drug use as well as those that protect against risk and reduce harm associated with drug supply and use.

It is important to remember that crime prevention cannot be divorced from broader social policy and social justice issues –one of the keys to minimising violence and other harmful behaviours among future generations is to ensure that all children have access to adequate family support, schooling and other cultural and social amenities. It is the combination of these efforts, focusing on preventions and social influences in childhood, as well as those affecting adults, that will enable Australia to continue its efforts to deal with the difficult problems associated with licit and illicit drug use.