



## Standing Committee on Justice and Community Safety

### **Inquiry into Annual and Financial Reports 2022-2023** **ANSWER TO QUESTION TAKEN ON NOTICE**

Asked by Mr Jeremy Hanson MLA on 23 November 2023: Mr Neil Gaughan took on notice the following question(s):

Reference: Hansard [uncorrected] proof transcript 23 November 2023 [PAGE 19-20]

In relation to:

**MR HANSON:** You talked about, you know, you will take action if you see someone with a needle in their arm, so you have obviously considered, I imagine, what your procedure is going to be now if you observe drug taking.

**Mr Gaughan:** Yes.

**MR HANSON:** I also saw some sort of comment that you had made—and I do not have the direct quote in front of me—where you said people might use coke in front of officers and there is not much we can do about it, or something. So what are you going to do if you observe someone taking drugs? What action do you actually then take?

**Mr Gaughan:** In a practical sense?

**MR HANSON:** In a practical sense, so, you know, you see some in Civic taking a pill, or you see someone with a needle in their arm. That might be the most extreme example, but Garema Place or something, you see people using drugs. What do police officers then do in that—

**Mr Gaughan:** In a practical sense?

**MR HANSON:** In a practical sense.

**Mr Gaughan:** The way the guidelines have been written—and I think we would be happy to share the guideline. I am just looking at Mr Whowell.

**Mr Whowell:** I think we can—

**Mr Gaughan:** We are happy to share the guideline with the committee in relation to the way we are actually managing this, is that the drugs will be seized. We still have the power to

demand a name and an address of an individual, but the drugs will be treated the same way that we have historically treated drugs. They would be seized, exhibited, tested et cetera. The name and address of the individual would be obtained. They would be then asked two things: do you want to go to a diversion program, or do you want an offence notice? At this stage, the vast majority of people are going down the diversion path, and then that person is basically on their way. That is a very simplistic overview, Mr Hanson.

Minister for Police and Emergency Services: The answer to the Member's question is as follows:

ACT Policing's focus remains those who sell and profit from illicit and illegal substances and will relentlessly target those who participate in this trade. ACT Policing actively works to detect, disrupt and prosecute those involved in the supply, sale and trafficking of controlled drugs.

Police do not target the personal possession of small quantities of illicit drugs.

If police encounter a person using drugs, there are a range of options available for police including cautioning and diversions into treatment programs.

Please find a copy of ACT Policing's guidelines in **Attachment A** on personal drug possession offences in the ACT. This copy has been redacted to ensure it complies with the *Privacy Act 1988 (Cth)* and does not reveal police methodology.

Approved for circulation to the Standing Committee on Justice and Community Safety

Signature:



Date: 6/12/2023

By the Minister for Police and Emergency Services, Mr Mick Gentleman MLA



AFP

# Standard Operating Procedure for personal drug possession offences

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This document is a functional governance instrument as defined in the AFP Commissioner's Order on governance (CO1).

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## Introduction

In October 2022 the ACT Government enacted amendments to the [Drugs of Dependence Act 1989](#), the intent of which is to encourage people who use drugs to access harm reduction methods, social and health services. The legislation now includes a reduced penalty for the possession of a small quantity of eligible drugs to relieve stigmas and fear of criminalisation. The penalty provides for a police officer to issue a Simple Drug Offence Notice (SDON) allowing for the discharge of the offence through payment of a fine or satisfying a drug diversion.

ACT Policing has operationalised the legislation by preferencing all identified eligible persons be diverted to Canberra Health Services, for the purpose of resolving the offence via a drug diversion program. ACT Policing continues to advocate a harm reduction approach to personal drug use and is supportive of reducing the number of people who use drugs entering the criminal justice system.

## Governance

The Australian Federal Police (ACT Policing), ACT Health and Canberra Health Services have signed an Memorandum of Understanding (MOU) for the collaborative working relationship regarding drug and alcohol diversion programs.

Underpinning this MOU is the participants' commitment to the [National Drug Strategy 2017-2026](#), specifically:

- To prevent the harmful effects of alcohol, tobacco and other drugs;
- To divert alcohol and other drug persons away from the criminal justice system; and or
- Divert alcohol and other drug persons into education or assessment and treatment.

The MOU details the best practice expected of participants in the collaborative approach to deliver on these principles, the output being the planning, delivery and ongoing evaluation of diversion programs in the ACT.

## Instruction

The officer is required to establish the fact of the offence, including noting the offence circumstances and witness details where appropriate. You **MUST** have *prima facie* evidence that the person has committed the offence (relevant offences listed in '[Relevant Legislation](#)' below). Ensure you comply with [Part 1C Crimes Act 1914](#) when questioning the person.

A drug diversion is only to be actioned in the circumstances of a single offence of personal possession of a small quantity of an eligible substance.

In a matter with multiple offences, the personal possession charge should be included with all other charges to ensure the court has the full context of the incident. For example, in a family violence matter, assault, traffic offences or property damage, should the person also possess a small quantity of an eligible substance that offence should be included in the full suite of charges listed for prosecution.

A drug diversion is not to be used as a means for otherwise resolving or clearing a criminal matter where insufficient evidence exists to formally lay criminal charges, or to overcome other difficulties that may be expected were the matter to be put before the ACT Law Courts.

On the identification of illicit drugs, the officer should seize the item and comply with the AFP [National Guideline on Property and Exhibits](#).

## Relevant legislation

### *Drugs of Dependence Act 1989*

- Section 162 Cultivate 1 or 2 cannabis plants
- Section 169 Possessing drugs of dependence
- Section 171 Possessing prohibited substance
- Section 171AA Possessing cannabis
- Section 171AAD Possessing multiple small quantities of different kinds of relevant substances
- Section 171A Offence notices

## Cannabis

The 2022 Amendments made to the [Drugs of Dependence Act 1989](#) do not affect the cannabis changes, which came into effect in 2020:

- Adults in the ACT are permitted to possess no more than 50g of dried cannabis or 150g of harvested cannabis, and grow no more than 2 plants for personal use. (Therefore, if in possession of cannabis in these quantities or less, this is not an offence and an adult is not eligible for a SDON).
- It remains an offence for people aged under 18 to possess or grow small amounts of cannabis for personal use. ACT Policing's preference is to refer these individuals through SupportLink for a drug diversion, and should the attendance requirements not be satisfied, then issued with a SDON.

Penalties for sale and supply of cannabis and driving under the influence of cannabis remain unchanged.

## SupportLink drug diversion

Before the officer refers the person through SupportLink to Canberra Health Services (CHS) for the purpose of a drug diversion, the officer should **suspect** the person is eligible for a SDON. The qualifying criteria being that the officer:

- suspects the drug/s is a prescribed eligible drug and
- suspects the quantity of drug/s does not exceed the small quantity prescribed. \*

\***Attachment A** is a table of prescribed quantities and instruction on working out small quantity fraction of multiple drugs of dependence/prohibited substances.

Once suspicion is established that the person is eligible for a SDON the person is required to consent to attend/accept the SupportLink drug diversion.

**Note:** A SupportLink drug diversion is excluded in certain circumstances, and if consent for a SupportLink drug diversion is not provided (see '[Instruction](#)' below).

### Inform the person

*(or their parent/guardian in the case of a young person):*

- That while the incident has been officially recorded by ACT Policing, should the person satisfactorily attend a health session, the matter will not appear on a National Police Check.
  - The diversion involves assessment by a Canberra Health Services clinician and that attendance is mandatory to satisfy the conditions of the diversion. The person will be contacted directly by Canberra Health Services to schedule an appointment.
  - If the person does not satisfactorily attend the health session:
    - if eligible\*\*, a SDON may be issued, and must be discharged within 60 days through payment of a \$100 fine or by contacting Canberra Health Services to complete a drug diversion.
- \*\*Eligible for an SDON:**
- Drug/s is a prescribed eligible drug and
  - Quantity of drug/s does not exceed the small quantity prescribed.
  - if not eligible for the SDON, the offence will be cleared by other means, which may include proceeding to court where a criminal conviction may be recorded.
- For an offence involving cannabis: inform the person that the government analyst may destroy seized cannabis without a court order; and the person may apply to the Magistrates Court for an order for the preservation of cannabis to which the alleged simple drug offence relates.

If consent is not provided for a SupportLink drug diversion see '[Instruction](#)' below.

## Issue a SupportLink referral

- Enter incident details in the PROMIS/IMS job within 48 hours of the incident and record the drugs in the property seizure module.
- Ensure that sufficient information is recorded in the case summary to initiate a successful prosecution, if it becomes necessary. This includes:
  - The alleged drug/s type (if provided by person) and,
  - The weight of the drug/s established on weighing seizure on lodgment into the property office/drug safe.
- Note – an apprehension is not required at this time.
- Add a 'Possess Illicit Drugs' offence from the offence screen of PROMIS/IMS
  - Subcategory Drug Incident/Illicit Drug Offences
    - Other (or relevant legislation from the lookup tables).
- Clear the offence in PROMIS/IMS by 'drug diversion'.
- Submit a drug diversion referral via [SupportLink](#) platform.
  - Select either Adult: offence committed or Youth (under 18): offence committed.
  - An automated notice to the Education and Diversion team (EDT) will be generated from the SupportLink referral.
- Note EDT will attach SupportLink PDF to the PROMIS/IMS job.
- Lodge the seized drugs ([Drug lodgment form](#)) in accordance with [AFP National Guideline on Property and Exhibits](#).

## SupportLink Drug diversion outcome:

### ***Drug diversion satisfied:***

- Case officer and EDT will be notified via email by CHS.
- Case officer should task the ACT Drug Registrar to destroy the seized drugs using the [Drug disposal request form](#) (selecting cleared by 'drug diversion' check box), then the matter can be finalised.

### ***Drug diversion NOT satisfied:***

- Case officer and EDT will be notified via email by CHS.
- EDT will conduct a presumptive test of the drugs.
  - If test is inconclusive the seizure will be sent to ACTGAL for testing.
- If type and or quantity of drugs are not eligible for SDON, EDT will notify the case officer that the matter should be pursued through other means, at the officer's discretion (caution, charge – noting an ACTGAL certificate is required for court). Ensure the original offence 'cleared by' type is updated as appropriate.

**Note:** The possession of certain other drugs may qualify for a formal police issued drug diversion. EDT will advise the case officer of this and further action is at the case officer's discretion.

- If criteria for SDON is met, EDT will issue the SDON and attach a copy to the PROMIS/IMS job. EDT will notify the case officer of this action.

## Education & Diversion Team action the SDON

A SDON is issued if CHS notify ACT Policing EDT that a drug diversion has not been satisfactorily attended.

Before the issue of a SDON the EDT officer must **believe:**

- the seizure is a prescribed eligible drug/s and
- the amount of drug/s does not exceed the small quantity prescribed.

Belief should be established through presumptive testing conducted on a TruNarc Handheld Narcotics Analyser (EDT conduct the test).

The result of the presumptive test will be recorded on the PROMIS/IMS job and uploaded to the drug seizure.

Should the presumptive test prove inconclusive, the drugs will be sent for testing by ACT Government Analytical Laboratory (ACTGAL).

- ACTGAL test result will be reviewed by EDT to establish if a SDON is appropriate.
- If not eligible for a SDON, the case officer will be notified to proceed as per their discretion.

At the time the EDT member establishes the drugs do not qualify for the offence to be discharged via a SDON, the EDT member will notify the case officer and instruct that the matter cannot be cleared through a SDON.

## Issuing an SDON

EDT will:

- Complete the [SDON Digiflow form](#), accessing the unique number for payment through Access Canberra dataset from ACT Policing Infringements Team.
- Upload the SDON including SDON number and date issued to the case summary of the relevant PROMIS/IMS job.
- The SDON may be issued via email or post.
  - If the person is a young person, the parent/guardian must receive a copy of the SDON.
- Provide CHS drug diversion team the SDON number.
- Notify the case officer of the above actions via an information task in PROMIS/IMS.

## SDON outcomes

- EDT will notify the case officer of the SDON outcome:
  - COMPLIED (CHS drug diversion satisfied or fine paid): Case officer to task the ACT Drug Registrar to destroy the seized drug using the [Drug disposal request form](#) (selecting cleared by drug diversion or SDON check box), then the matter can be finalised.
  - NOT COMPLIED (CHS drug diversion not satisfied or fine not paid within 60 days), case officer may enact discretion as to how to proceed with the matter:
    - Decision not to charge: In discussion with your supervisor, consider the circumstances of the offending, the minor nature of the offence and the ACT Policing Executive's support of the ACT Government's position to remove minor drug possession related offences from the criminal justice system.
      - In PROMIS, include the relevant rationale (as per above decision) for finalising the job.
      - Task the ACT Drug Registrar to destroy the seized drug using the [Drug disposal request form](#) (selecting cleared by SDON check box), then the matter can be finalised.
    - Alternatively, you may pursue by other means:
      - By criminal proceeding, noting drugs will need to be sent to ACTGAL for certificate for court matters (if SDON based on presumptive test only).

## Matter disputed

Should the SDON be disputed, the case officer may enact discretion as to how to proceed with the matter:

- Decision not to charge: In discussion with your supervisor, consider the circumstances of the offending, the minor nature of the offence and the ACT Policing Executive's support of the ACT Government's position to remove minor drug possession related offences from the criminal justice system.
  - In PROMIS/IMS include the relevant rationale (as per above decision) for finalising the job.
  - Task the ACT Drug Registrar to destroy the seized drug using the [Drug disposal request form](#) (selecting cleared by SDON check box), then the matter can be finalised.
  - Should a dispute be raised post job finalisation, the case officer will be supported to withdraw the SDON if appropriate.
- Alternatively you may pursue by other means:
  - Withdrawing the SDON
  - By criminal proceeding, noting drugs will need to be sent to ACTGAL for certificate for court matters (if SDON based on presumptive test only).

## Not eligible for SupportLink drug diversion

### Exclusion Areas

There are certain locations where, if a person is apprehended and in possession of drugs or prohibited substances, they are not eligible for drug diversion through SupportLink and the matter may proceed directly via SDON. The following circumstances and locations apply:

- Visitors to Alexander Maconochie Centre, the car park and immediate surroundings of the centre.
- Visitors to Bimberi Youth Justice Centre, the car park and immediate surrounds of the centre.

In these circumstances, the case officer should determine if other offences including in relation to drug supply can be established (if so, a SDON should not be issued and the full suite of charges are to be listed for prosecution).

### Person does not consent to a SupportLink drug diversion

If:

- a single personal drug possession offence is suspected, and
- the person does not consent to a SupportLink drug diversion,

the following applies:

### Instruction

- Seize the drugs.
- Notify person that the type and quantity of drugs will be established and:
  - If eligible, a SDON may be issued:
    - Drug/s is a prescribed eligible drug and,
    - Quantity of drug/s does not exceed the small quantity prescribed.
  - If not eligible for a SDON, the matter may be pursued by other means, which may include proceeding to court.
- Enter incident details in the PROMIS/IMS job within 48 hours of the incident and record the drugs in the property seizure module.
- Ensure that sufficient information is recorded in the case summary to initiate a successful prosecution, if it becomes necessary. This includes:
  - The alleged drug/s type (if provided by person) and,
  - The weight of the drug/s established on weighing seizure on lodgment into the property office/drug safe.
- Note: an apprehension is not required at this time.
- In PROMIS/IMS, task EDT to action the matter and to test the drug seizure.
- Clear the offence in PROMIS/IMS job by 'Simple Drug Offence Notice'.
- EDT will conduct a presumptive test of the drugs.

- If test inconclusive, the seizure will be sent to ACTGAL for testing.
  - If type and or quantity of drugs are not eligible for SDON, EDT will notify the case officer that the matter should be pursued through other means, at the officer's discretion.
  - If criteria for SDON is met, EDT will issue the SDON. (see '[Issuing an SDON](#)' above)

## Further advice

Queries about the content of this document should be referred to:

**Family Violence and Vulnerable Persons – Education and Diversion Team**



## Resources

### Legislation

[Intoxicated People \(Care and Protection\) Act 1994](#) (ACT)

[Children and Young People Act 2008](#) (ACT)

[Crimes Act 1900](#) (ACT)

[Drugs of Dependence Act 1989](#) (ACT)

[Criminal Code 2002](#) (ACT)

[Medicines, Poisons and Therapeutic Goods Act 2008](#) (ACT)

[Criminal Code Act 1995](#) (Cth)

### Governance

[AFP National Guideline on Property and Exhibits](#).

MOU for the collaborative working relationship between Australian Federal Police, ACT Health Directorate and Canberra Health Services regarding Drug and Alcohol Diversion Programs

Better Practice Guide on Drug Checking Services

### Forms

[Simple Drug Offence Notice](#)

[Drug disposal form](#)

### Website

<https://www.supportlink.com.au/>

## Definitions

### Avenues through which to access a drug diversion

Term	Definition
SupportLink drug diversion	Suspect eligible for SDON or police issued drug diversion – referred by police through SupportLink.
SDON drug diversion	Diversion achieved through police issued SDON – person contacts CHS.
Police issued drug diversion	Diversion to resolve criminal offence for personal possession of a prescribed quantity of certain eligible drugs (not eligible for SDON).
Voluntary drug diversion	Nil offence identified, client agrees to/requests SupportLink referral made by police.

## Shortened Forms

Shortened form	Full form
ACT	Australian Capital Territory
ACTGAL	ACT Government Analytical Laboratory
ACTP	ACT Policing
AFP	Australian Federal Police
BPG	Better Practice Guide
EDT	Education and Diversion team
MOU	Memorandum of Understanding
SDON	Simple Drug Offence Notice
SOP	Standard Operating Procedure

## Attachment A – Prescribed drug/s and quantities

**Eligible drugs and quantities** – eligible for a Simple Drug Offence Notice

Eligible Drugs	Small Quantity
Amphetamine	1.5g
Cocaine	1.5g
Methyl amphetamine	1.5g
MDMA	1.5g or 5DDU
Cannabis (dried)	50g
Cannabis (harvested)	150g
Heroin	1g
Lysergic acid	0.001g or 5 DDU
Lysergide (LSD, LSD-25)	0.001g or 5DDU
Psilocybine	1.5g

DDU is a discreet dosage unit

### Small fraction for multiple offences

If a person possesses more than two different kinds of specified substance, the sum of the small quantity fractions of the substances must not exceed two for the reduced penalties to apply.

<p><b>Small quantity fraction for a specified substance:</b></p> $\frac{\text{Actual quantity of the substance}}{\text{Small quantity threshold for the substance}}$	<p><b>Example:</b></p> <p>If a person possesses</p> <ul style="list-style-type: none"> <li>• 1 gram of cocaine,</li> <li>• 2 MDMA pills and</li> <li>• 1 gram of methylamphetamine,</li> </ul> <p>the total of the small quantity fraction is:</p> $\frac{1}{1.5} + \frac{2}{5} + \frac{1}{1.5} = 1.73$
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**Eligible non-small quantity drugs** – eligible for a Police Issued Drug Diversion, criminal caution, or prosecution.

Eligible Drugs	Small Quantity
GBH	0.5g
Ketamine	6g
Methadone	400g