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**NSW Police Force**

# **EARLY DRUG DIVERSION INITIATIVE STANDARD OPERATING PROCEDURES**

## **STATE CRIME COMMAND**

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## Summary

- The Early Drug Diversion Initiative (EDDI) is a drug diversion program aimed at providing an alternative legal process for dealing with low-level drug offences, and forms part of a wider harm reduction approach.
- It gives the NSW Police Force the option for officers to issue up to two \$400 on the spot fines (Criminal Infringement Notices or CINs) as an alternative to Court Attendance Notices for low-level drug offending. Offenders can then have their fine treated as paid if they speak to a health professional about their drug use.
- Prior to EDDI, there have been no specific health supports provided to people who commit low-level drug offences. Instead, individuals have often either had to attend court or received low-level penalties, including fines.
- Upon commencement, this approach may divert up to 6,000 people from the criminal justice system and provide them the opportunity to access a NSW Health intervention to start addressing their drug use as the underlying cause of their offending behaviour.
- EDDI responds directly to recommendations from the Special Commission of Inquiry into the Drug 'Ice'. Passing of the *Justice Legislation Amendment (Penalty Notices) Regulation 2024* that enabled amendments to the *Criminal Procedure Regulation 2017*, the *Fines Act 1996*, and the *Fines Regulation 2020*, provide the legislative framework for this initiative to operate.
- EDDI **does not** decriminalise low-level drug offences. It is still an offence to possess and use illicit drugs in NSW. The approach brings NSW in line with other Australian states and territories, which all operate similar diversion schemes.
- **The reform builds on existing on-the-spot penalties issued by NSW Police for drug possession at music festivals across NSW. It will also work alongside the current Cannabis Cautioning Scheme which has been in operation for 20 years, with some enhancements to align the two.** The existing CIN framework already used by NSW Police will also be leveraged.
- EDDI also supports Target 10 of the National Agreement on Closing the Gap to ensure Aboriginal people are not overrepresented in the criminal justice system.

For information relating to the Cannabis Cautioning Scheme, which continues to operate for persons found in possession of cannabis, refer to the ***NSW Police Force 'Cannabis Cautioning Scheme Guidelines for Police'*** located on the intranet.

For information relating to CINs including how to issue, cancel and withdraw CINs, refer to the ***NSW Police Force 'Criminal Infringement Notices Policy and Standard Operating Procedures (SOPs)'***, located on the intranet.

# Document Control Sheet

## Document Properties

Title	Early Drug Diversion Initiative Standard Operating Procedures
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## Modification History

Version #	Version creation date	Author / Position	Summary of changes
1.0	February 2024	Crime Prevention Command	Original document - developed to implement Government response to Recommendation 12 of the Special Commission of Inquiry into the Drug 'Ice'. Expands/replaces the trial of Drug CINs at music festivals and associated SOPs
2.0	April 2024	Crime Prevention Command	Minor amendments to wording under 'Eligible Offences' on page 7 and under 'Exercising Discretion' on page 8.

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## PURPOSE

These Standard Operating Procedures (SOPs) provide guidance in responding to low-level drug offences and the issuing of CINs for such offences.

The primary objectives of the Scheme are to:

- improve outcomes for people with lower-level drug offending by diverting them away from the court system and providing opportunity to engage with NSW Health services about their alcohol and other drug use
- increase court efficiencies by diverting lower-level drug offending matters away from the Local Court.

For information relating to the Cannabis Cautioning Scheme, which continues to operate for persons found in possession of cannabis, refer to the **NSW Police Force 'Cannabis Cautioning Scheme Guidelines for Police'** located on the intranet.

## SCOPE

The Early Drug Diversion Initiative (EDDI) for low-level drug offences was implemented in February 2024. The Initiative enables Police Officers to issue Criminal Infringement Notices (CINs) to people for certain lower-level drug offences, where they meet the eligibility criteria listed below. A maximum of 2 Drug CINs can be issued to an individual before a Court Attendance Notice (CAN) must be issued for subsequent offences.

This Scheme arises from Recommendation 12 of the 2020 Report on the Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants ('Ice Inquiry'). The use of CINs provides an alternative legal process for dealing with low-level drug offences and is designed to deliver swift justice and forms part of a wider harm reduction approach.

The Scheme adopts the current NSW CIN framework under the *Criminal Procedure Act 1987* and the *Criminal Procedure Regulation 2017*. Under this legislation, CINs can already be issued in NSW in certain circumstances for a range of low-level offences including possession of small quantities of prohibited drugs. Up until February 28<sup>th</sup> 2024, the issuing of Drug CINs was limited to music festivals. Small legislative changes to the *Criminal Procedure Regulation 2017*, the *Fines Act 1996*, and the *Fines Regulation 2020* (amended under the *Justice Legislation Amendment (Penalty Notices) Regulation 2024*) support the Initiative to occur and expand beyond the music festival setting.

The Scheme incentivises CIN recipients to complete a tailored alcohol and other drug (AOD) NSW Health intervention with a service provider which would waive the financial penalty of the CIN (\$400) upon completion. When providing the individual with the CIN, police are strongly encouraged to verbally advise the individual about their options, including accessing the health intervention.

For the NSW Health component of this Initiative, the recipient of a CIN will be provided with contact information for the Early Drug Diversion Line and strongly encouraged to access a telehealth session delivered by qualified AOD professionals (e.g., psychologists, social workers, AOD counsellors, nurses). The telehealth session would include assessment of individual circumstances and provide tailored intervention and education about physical and social impacts of drug use, associated risks, harm minimisation strategies, relapse prevention and behaviour change strategies, options for ongoing treatment and support, and referral to a treatment service where necessary and appropriate.

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They would also receive electronic feedback on their individual level of risk in relation to their drug use and links to further online AOD information (e.g., NSW Health's 'YourRoom' site, which contains information about AOD facts, harms and supports). Recipients of a second Drug CIN can also elect to receive a follow up contact to assist with ongoing treatment and implementation of any relapse prevention planning.

**Following the initial phone call for both the first and second CIN, the health professional will report completion of the intervention to Revenue NSW through a secure and protected portal, to allow for the financial penalty to be waived. Confirmation of this will filter through to NSWPF in order for COPS to be updated.**

The Cannabis Cautioning Scheme – a non-legislated diversionary initiative currently in place for detections of cannabis – will continue to operate alongside the Scheme with enhancements to align the two Schemes and their respective health intervention requirements.

The Early Drug Diversion Initiative will be subject to data monitoring and evaluation to review implementation and uptake, and to work through any issues that arise.

## ROLES & RESPONSIBILITIES

Commissioner's Executive Team	Document approval
Assistant Commissioner – State Crime Command	Document Sponsor
Commander – Drug & Firearms Squad	Document Owner
Drugs, Alcohol & Mental Health Team – Crime Prevention Command	<ul style="list-style-type: none"><li>• Assist and appear on Early Drug Diversion Initiative Implementation Committee to maintain accuracy of these policies</li><li>• Review these procedures prior to the scheduled review date and ensure content remains up to date</li><li>• Support sworn staff by answering queries relating to these procedures as they arise</li></ul>
All Sworn Staff	<ul style="list-style-type: none"><li>• Must comply with this document when issuing drug related Criminal Infringement Notices</li></ul>

## PROCEDURE

### ELIGIBILITY CRITERIA FOR DRUG CINS

**While discretion does rest with the individual police officer about whether to issue a CIN or a CAN, police are encouraged to issue a CIN where a person is eligible, to give them access to the health intervention available.**

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If the person has already received 2 Drug CINs then there is no discretion available, and a CAN is the only option.

To issue a Drug CIN the following criteria must be met:

### Eligible offences (lower-level drug offences)

The following 3 offences are eligible offences for which a Drug CIN could be issued:

1. Possession of prohibited drugs excluding cannabis leaf (does not exceed a small quantity; or for MDMA in tablet form, less than a trafficable quantity<sup>1</sup>): Section 10(1) of the *Drug Misuse and Trafficking Act 1985*
2. Possession of equipment for administration of prohibited drugs (excluding cannabis leaf): Section 11(1) of the *Drug Misuse and Trafficking Act 1985*
3. Self-administration of prohibited drugs (excluding cannabis leaf): Section 12(1) of the *Drug Misuse and Trafficking Act 1985*

### Exercising Discretion

Unless a particular reason exists, police are encouraged to exercise discretion in relation to the detection of the 'possess equipment' and/or 'self-administer' offences if they are detected in conjunction with the 'possess prohibited drug' offence.

### Drug types and thresholds

#### Cannabis

Where a person is in possession of dried cannabis leaf and / or equipment and meets the criteria for a Cannabis Caution they should still be issued with one. **The Cannabis Cautioning Scheme will operate alongside the Early Drug Diversion Initiative rather than be replaced by it.**

Where a suspect is in possession of dried cannabis leaf and / or equipment and meets the criteria for a cannabis caution as well as one other illicit drug which meets the criteria for a CIN, **police may issue a cannabis caution for the cannabis offence and a CIN for the other eligible drug offence.**

#### All Schedule 1 Drugs except cannabis

All prohibited drugs excluding cannabis leaf and/or equipment under Schedule 1 of the *Drug Misuse and Trafficking Act 1985* are eligible types of drugs for this Scheme.

The applicable weights of all Schedule 1 Drugs are located in the *Drug Misuse and Trafficking Act 1985*, as well as the *Criminal Procedure Regulation 2017* for MDMA. Below is a guide of some of the more prominent ones you may find and the weights you should be aware of.

**Note, the following drugs are NOT Schedule 1 prohibited drugs and are therefore excluded from the Drug CINs program:** Amyl Nitrite, Viagra, Diazepam, Oxazepam, Nitrazepam, Temazepam.

**Pharmaceutical drugs listed in Schedule 4 of the Poisons Standard are also excluded.**

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Drug Type	Form	Weight to be eligible for Drug CIN
3,4-methylenedioxymethylamphetamine (MDMA)	Capsule form	Is less than 0.75 g
	Other form	Does not exceed 0.25 g
Cocaine	Any	Does not exceed 1.0 g
Amphetamine, including 'ice'	Any	Does not exceed 1.0 g
Heroin	Any	Does not exceed 1.0 g
Lysergic acid diethylamide (LSD)	Paper tab	Does not exceed 4 DDU
	Other form	Does not exceed 0.0008 g
Gamma-hydroxybutyrate (GHB)	Any	Does not exceed 10.0 g
Ketamine	Any	Does not exceed 2.5 g
Dexamphetamine	Any	Does not exceed 1.0 g
Methylphenidate (Ritalin)	Any	Does not exceed 1.0 g
Flunitrazepam (Rohypnol)	Any	Does not exceed 0.2 g
Oxycodone	Any	Does not exceed 2.5 g
Morphine	Any	Does not exceed 1.0 g
Fentanyl	Any	Does not exceed 0.0025 g

### **Exercising Discretion**

The CIN thresholds (above) are for the *net* weight of the drug (i.e., the weight of the substance without the packaging). However, when in the field, police officers must only weigh drugs when they are still in the packaging (i.e., the gross weight).

In situations like this, if you have reason to believe that the net weight of the drug would be under the threshold to issue a CIN, even though the gross weight is over, you may exercise discretion and issue a CIN. For example, if an offender has cocaine in one or more resealable plastic bags, or GHB in a vial, or 2-3 capsules, it may be reasonable to assume that the net weight of the drug will be under the CIN threshold<sup>1</sup>.

Similarly, if the person possesses crystal or powder in a relatively heavy container (and the gross weight is over) you may wish to exercise discretion and issue a CIN if it appears using your experience and judgement that the net weight of the powder or crystal would be no more than a small quantity.

**Please note:** this does not apply to MDMA in tablet form, as the *Criminal Procedure Regulation 2017* already accounts for the increased weight of the drug as a result of the tablet admixture<sup>1</sup>.

### **A singular prohibited drug is detected.**

Police can only issue one (1) Drug CIN on any one occasion. If a person is detected with more than 1 drug type (excluding cannabis), they will be *ineligible* for a Drug CIN.

This does not preclude police issuing other CINs or penalty notices however the combined maximum number of penalty notices (including CINs) cannot exceed four (4) per person at any one time. However, of these, only 1 can be a Drug CIN on any one occasion.



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### **The person must not have previously received two (2) Drug CINs.**

Police cannot issue a Drug CIN to a person if they have previously been the recipient of 2 previous Drug CINs for any of the 3 eligible offences (drug possession, possess equipment, or self-administer). A person may receive up to 2 Drug CINs, and upon subsequent detections police must issue a CAN.

**Please note: “2 CINs” refers to 2 separate occasions of a Drug CIN being issued.**

Please note: if an individual has already received 2 Drug CINs under the previous Music Festival Drug CINs Scheme, they are still eligible for up to 2 Drug CINs under this Early Drug Diversion Initiative, as the health intervention was not a previously available option.

### **The drug is for personal use only.**

There must be no indication of supply.

### **Police must be certain of the identity of a person prior to issuing a CIN.**

### **The person must be an adult.**

A CIN cannot be issued to a person who is under the age of 18 years (*Criminal Procedure Act s.335(1)*)

When dealing with people under 18 years of age, the *Young Offenders Act 1997* must be applied.

### **The person must not be a serving police officer.**

This is consistent with the NSWPF Drug and Alcohol Policy Statement.

### **The person cannot be seriously intoxicated, or drug affected (where they are not able to comprehend the procedure).**

The preferred option for service is that a CIN be issued on the spot. However, it is recognised that there will be cases where there are good reasons to issue a notice at a later time such as where the person is seriously intoxicated or drug affected. In this instance, when the welfare of the individual can be accounted for (i.e., when they are sober) and they can understand the process, the CIN should then be issued.

If it is determined that the CIN is to be issued at a later date, rather than at a later time, this can occur personally or by post as with general CINs. Postal service should only occur after reasonable attempts to serve the notice in person have been exhausted. If further inquiries are needed, maximum time period to serve the CIN is 14 days only.

### **The suspect must not have prior convictions for any serious drug offence, unless the prior conviction is spent.**

“**Serious drug offences**” include prior convictions (unless spent) for offences in relation to prohibited drugs or controlled substances, such as:

- Supply, manufacture, or production
- Cultivate or supply a prohibited plant
- Possession in whole or in part of manufacture apparatus including a tablet press or drug encapsulator
- Import and/or export or conspiracy to

It also includes the possession of prescribed amounts of a precursor chemical and permitting serious drug offending to occur on a premise.

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The offence/s may be based in relevant State or Commonwealth-based legislation.

**Note:** It is no longer a requirement for the person to make admissions to the offence.

Having a prior conviction for a violent or sexual offence will not make the individual ineligible from receiving a CIN. The only ineligibility criteria for a CIN in relation to previous convictions is if the individual has a serious drug offence conviction that is not spent. If unsure about whether an individual's conviction is considered 'spent', consult the Criminal Records Unit.

### Concurrent Offences:

If an event involves an individual being detected with a drug *along with* other (non-drug related offences), Police can *only* issue a CIN if any other (non-drug related) offence(s) are dealt with by penalty notice. If the other offences require a charge, then all offences will be dealt with by CAN.

It should be noted that this concurrent offence criterion will be subject to review after 12 months of operation of the Scheme, to ensure it does not produce unintended consequences. Accordingly, this criterion is subject to change pending the review.

## EXHIBIT MANAGEMENT

The CIN should be served on the offender at the time of the event. If further time is needed for inquiries, reasonable attempts should be made to serve the CIN personally, before postal service is considered.

This Scheme does not alter or amend normal field drug exhibit handling procedures. For further information on the handling and management of exhibits please refer to the NSW Police Force Exhibit Procedure Manual and the NSW Police Force Handbook.

NSWPF will receive a notification from Revenue NSW that an individual's fine is 'paid' (either because the matter has been finalised by the individual completing the NSW Health intervention and having their fine waived, or because the fee was paid if they elected to receive the fine). The data transfer for this process from Revenue NSW will continue along existing pathways to allow the event to be automatically updated in COPS when 'paid'.

## DATA ENTRY REQUIREMENTS

### Issuing CINs

Police are **strongly encouraged** to utilise MobiPOLs for the issuing of Drug CINs.

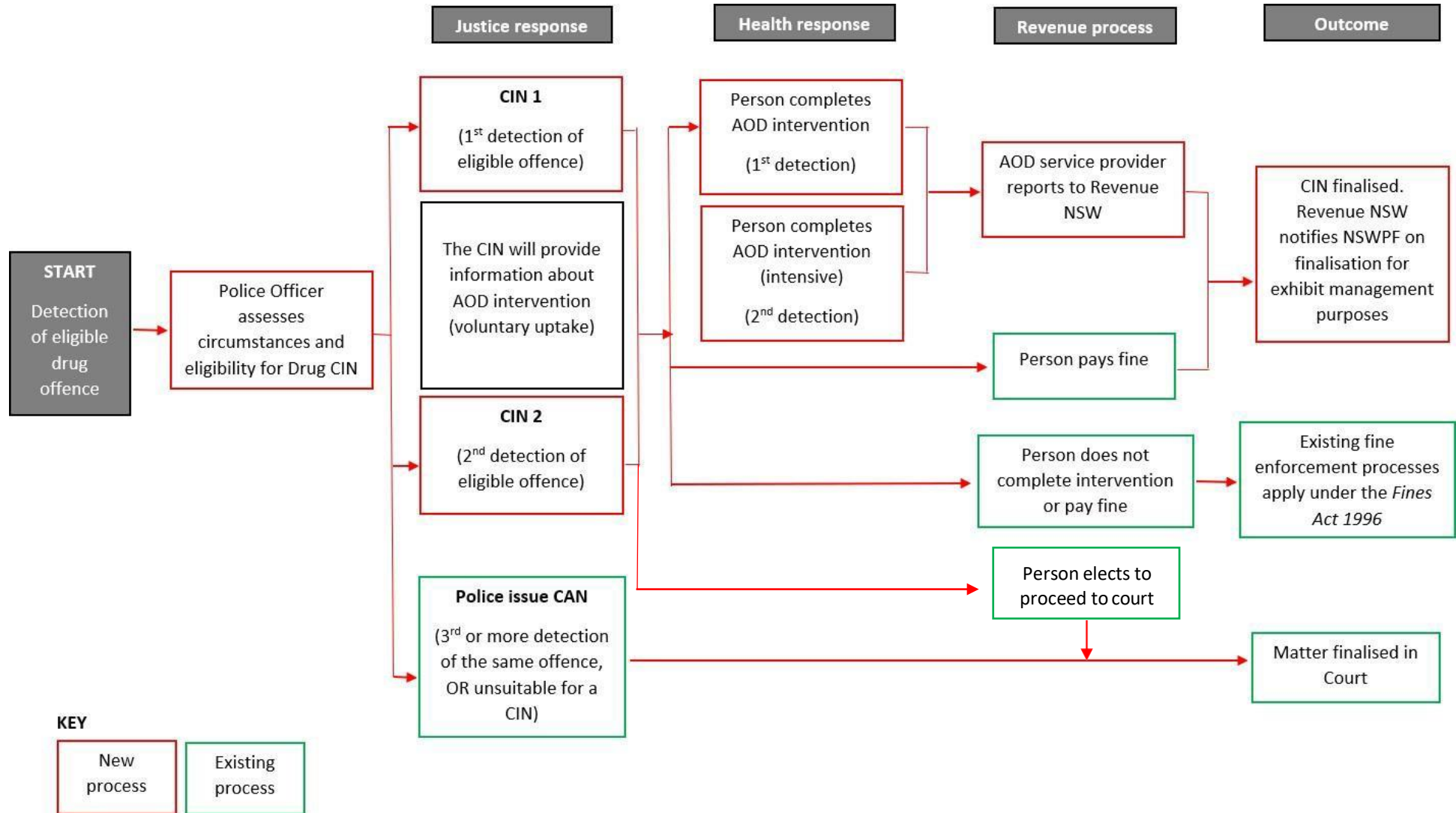
If a paper-based CIN is issued, Revenue NSW systems will detect this and generate a letter to be sent to the individual explaining the option for diversion and information on how to access to the NSW Health intervention. When providing the individual with the CIN (whether via MobiPOL in the first instance or in paper-based form), police are strongly encouraged to verbally advise the individual about their options, including accessing the health intervention.

### Festivals

When entering drug detection data into COPS, it is important that the **OPERATION NAME** is recorded **for every drug detection that you make at the festival**. This makes it simple for staff to extract festival drug detection data for future evaluations of drug policies and operations at festivals.

For information relating to issuing/entering a Drug CIN into the WebCOPS system, including specific steps and information required during the process, refer to the '**CINs for Drug Possession' WebCOPS E-guide** located on the intranet.

# FLOWCHART SUMMARY OF DRUG CIN PROCESS



## **ENDNOTE REFERENCES**

<sup>1</sup>Amendments to wording following review of Standard Operating Procedures by Operational Legal Advice Unit and the Office of the General Counsel.