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Trends in conditional discharges in NSW Local Courts: 2004-2015

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Aim: *To examine trends in the use of conditional discharges in New South Wales Local Courts between 2004 and 2015.*

Method: *Data for adults found guilty of at least one offence in the New South Wales Local Courts between January 2004 and September 2015 were examined. Multivariate logistic regression models were used to determine whether the likelihood of receiving a bond without conviction under section 10(1)(b) of the Crimes (Sentencing Procedure) Act 1999 (NSW) has changed over time after other relevant offence and offender characteristics have been taken into account. Interactions between year of index contact and other variables, such as offence type, were also explored in these models. Models were estimated for all offences and then separately for drug offences (which showed the largest increase in the use of s10(1)(b) bonds without conviction).*

Results: *The regression analyses showed that year of index contact had a significant positive effect on the odds of receiving a bond without conviction for all matters. Significant interaction effects between year of index contact and offence type suggested that the increase in bonds without conviction varied across crime type, with the largest increase observed amongst drug offences. When looking specifically at drug offences, significant differences in the rise of bonds without conviction were found across drug offence type.*

Conclusion: *Rates of conditional discharges have been rising in New South Wales Local Courts over the past twelve years, even after controlling for the profile of matters coming before the courts.*

Keywords: *Sentencing, bond without conviction, drug offences, conditional discharges, section 10*

INTRODUCTION

BACKGROUND AND PREVIOUS RESEARCH

In New South Wales (NSW) section 10 of the *Crimes (Sentencing Procedure) Act 1999* allows a court to find a person guilty of an offence, yet dismiss the charge without conviction (see section 10(1)(a)) or conditionally discharge the offender. If a court decides to conditionally discharge the offender under this section of the Act it can either direct that the offender be placed on a good behaviour bond (GBB) of no more than 2 years in length (section 10(1)(b)) or direct the offender to participate in an intervention program and comply with any intervention plan arising out of that program (section 10(1)(c)). Section 10 dismissals and conditional discharges are permitted in cases where the court considers it inexpedient to inflict any punishment on the offender or expedient to release the person on a GBB. As set out in section 10(3), in determining whether or not a charge should be dismissed under this section, the court must also have regard to the following:

a. The person's age, character, antecedents, health and mental condition
b. The nature of the offence
c. Any extenuating circumstances
d. Any other matter that the court thinks should be considered

Section 10 (s10) non-conviction orders comprise a relatively large proportion of penalties imposed by NSW magistrates. In 2014, nearly 20 per cent of all offenders found guilty in the Local Court had charges dismissed as part of a s10 order (either s10(1)(a) or s10(1)(b)). Furthermore, data from the NSW Bureau

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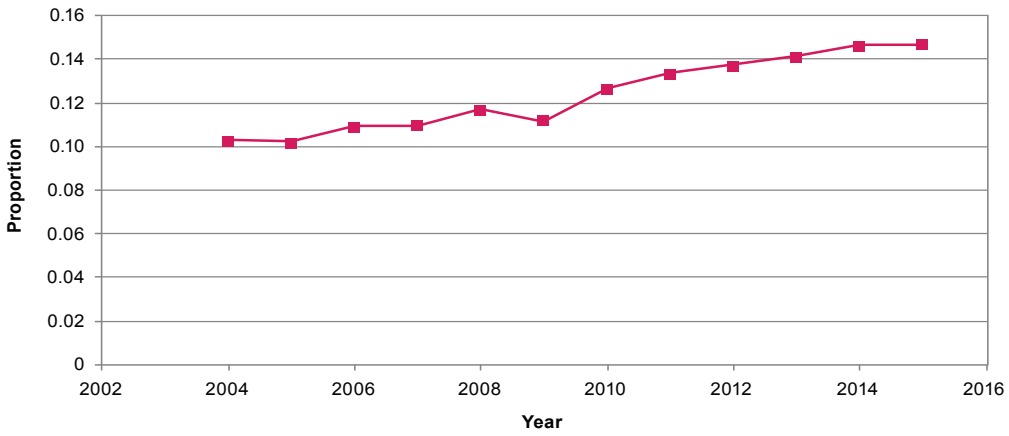
Figure 1. Proportion of NSW Local Court matters receiving bonds without conviction (s10b) by year of finalisation, Jan 2004 - Sept 2015



of Crime Statistics and Research (BOCSAR) suggests that the use of s10 conditional discharges appears to be on the rise (see Figure 1). In particular, the proportion of bonds without conviction (under s10(1)(b)) rose from 10.4 per cent in 2004 to 14.7 per cent in 2015.

The reasons for the observed increase in s10(1)(b) orders over the last 12 years are unknown. It is possible that the increase stems from the fact that the characteristics of matters being brought before the Local Courts have changed. A rise in recent years in the proportion of first-time offenders appearing before the courts, for example, or an increase in the prosecution of less serious offences (which are more likely to attract s10(1)(b) orders) could explain this trend. Alternatively, this significant upward trend may reflect an increased tendency for the courts to impose more lenient penalties. Whether the increasing trend applies to all offence types or only to certain crime categories is also unclear.

Previous work by BOCSAR considered these issues in relation to a rapid growth in s10 orders for Prescribed Concentration of Alcohol offences (PCA; commonly known as drink-driving offences) in NSW. Moffatt, Weatherburn and Fitzgerald (2004) found that there was a significant increase in the use of conditional discharge orders over the period 1993 to 2002 which could not be explained by the seriousness of the PCA offences coming before the courts or the offenders' age, gender or prior PCA record[1]. Moreover, they found large disparity in the use of these penalties across different courts even after accounting for certain characteristics of the matters being heard and court access to offender treatment programs. Soon after the publication of this work, a sentencing guideline was issued by the NSW Court of Criminal Appeal which was designed to improve consistency of the use of s10 orders amongst high-range PCA offences ((2004) 61 NSWLR 305). Initial impact of this guideline was assessed by Poletti (2005), who compared the equivalent 2003 period (September – December 2003), to both pre-guideline (May – September) and post-guideline (September – December 2004). It was found that the use of s10 orders dropped from 10.3 per cent in the 2003 period to 5.6 per cent in the 2004 pre-guideline period and to 2.2 per cent in the post-guideline period. d'Apice (2008) looked at a longer follow-up of the guideline and found that consistency in the application of s10 orders was improved for these types of offences and that, in response to these guidelines, s10 non-conviction orders were reduced for PCA offences over the period of 2004-2006. In addition, it was also found that the guidelines had a stronger effect in reducing s10 orders in regional areas than in Sydney courts.

A section 10(1)(b) bond without conviction is one of the least severe penalties available to the court and there is some concern that, if used excessively, this type of sanction could serve to undermine confidence in the criminal justice system (NSW Judicial Commission, 2014). The growth in the use of conditional discharges over the last 12 years therefore warrants further examination.

AIMS OF THE CURRENT STUDY

The primary aim of this study is to investigate reasons for the increased tendency for courts to award bonds without conviction (s10(1)(b) orders only) in recent years. Specifically, this study seeks to answer the following two research questions;

1. Does the observed rise in s10(1)(b) bonds without conviction remain significant after other relevant factors have been taken into account?
2. Is the rise in s10(1)(b) bonds without conviction specific to certain offences or offender subgroups?

METHOD

DATA SOURCE

Data was taken from the BOCSAR Reoffending Database (ROD) for adults found guilty of an offence in a NSW Local Court between January 2004 and September 2015 (N = 1,217,170). Upon further investigation, it was decided that the data would be restricted to adults with a proven principal offence classified as Acts Intended To Cause Injury, Illicit Drug Offences, Prohibited

and Regulated Weapons and Explosives Offences, Property Damage and Environmental Pollution, and Traffic and Vehicle Regulatory Offences under the Australian and New Zealand Standard Offence Classification (ANZSOC) codes, i.e. codes 02, 10,11,12 and 14 (ANZSOC, Australian Bureau of Statistics, 2011a). These five offence types (N = 820,994) accounted for more than 80 per cent of cases where a bond without conviction was given, but only 65 per cent of all (principal) offences finalised in the Local Courts over the observation period.

VARIABLES

The ROD dataset contains 128 different variables, and so full details of all available variables are not given here. The variables can be classified into 4 different categories, which are:

- Person/case identifiers
- Demographic variables
  - Age, gender, Indigenous status
  - Area of residence variables (Socio Economic Indexes for Area (SEIFA; Australian Bureau of Statistics, 2011b) and Accessibility/Remoteness Index (ARIA; Australian Bureau of Statistics, 2014))
- Index variables detailing the current contact. These were included to correct for the differences between offence types, and can be further broken down into:
  - Appearance/contact details (e.g. year of contact, bail status, etc.)
  - Principal offence characteristics
  - Other concurrent offence types
  - Other penalties for concurrent offences
- Prior offence variables. The prior offence variables are available for the previous year before the index contact, the previous five years or all years since 1994 (depending on the current variable), and can be further broken down into:
  - Appearances/contacts
  - Penalties
  - Offence types

Key independent variables considered for inclusion in the model were those considered most relevant to the sentencing decision (e.g. prior offences, prior penalties, concurrent offences, age, gender – see s10(3) as discussed above). Full details on all available variables can be found in Table A1 in the Appendix.

The dependent variable used in this study was a binary variable, which took the value “TRUE” when an offender received a s10(1)(b) bond without conviction for an offence, and the value “FALSE” otherwise.

STATISTICAL ANALYSIS

All data analysis was performed using the R statistical software package, version 3.1.2. Observations with missing variables (N = 16,201) were excluded from the model fitting. After initial exploration, certain variables were transformed in order to improve the model fitting process. Details on the transformations performed are included in the Appendix.

Following the necessary transformations and exclusions, a multivariate logistic regression model was fitted, to allow separation of the effects of the different variables. Demographic variables (age, gender, Indigenous status, etc.) were automatically included in the model, as were variables indicating the presence of any concurrent offences or prior offending (regardless of type). Additional prior offence variables detailing prior offence types and prior penalties received were added to the model in a stepwise procedure, described as follows. At each step, each variable being considered was added to the model, and the improvement to the Area Under the Curve statistic (AUC) of the model (Hanley & McNeil, 1983) was recorded. The variable which improved the AUC the most was then permanently added to the model and the process was repeated. The process terminated when no variables remained which improved the AUC by more than 0.01. The final selected model was checked for multi-colinearity according to variance inflation factors and assessed for goodness-of-fit using the model AUC and plots of fitted probabilities against observed proportions for cases. This process of model fitting was performed for all cases and for smaller subsets of the data where necessary (for example, for a specific type of offence).

In line with our aims, the possibility of an interaction effect between year and offence type was examined, and included in the model if found to be appropriate.

After fitting and validating the multivariate logistic regression model, the effect of each variable was assessed using the coefficients of the variables in the model. To determine statistical significance of variables, the Wald statistic for each coefficient was calculated to obtain *p*-values. Significance of the variables was assessed at the .05 level.

RESULTS

SAMPLE CHARACTERISTICS AND TRENDS

All offences

Figure 2 shows the overall trend of penalties imposed by the NSW Local Courts between January 2004 and September 2015 for assault, drug, weapons, property damage and traffic offences.

Looking at Figure 2, it can be seen that s10(1)(b) bonds without conviction rose between January 2004 and September 2015

Figure 2. Penalties imposed for selected offences finalised in NSW Local Courts by year, Jan 2004 - Sept 2015

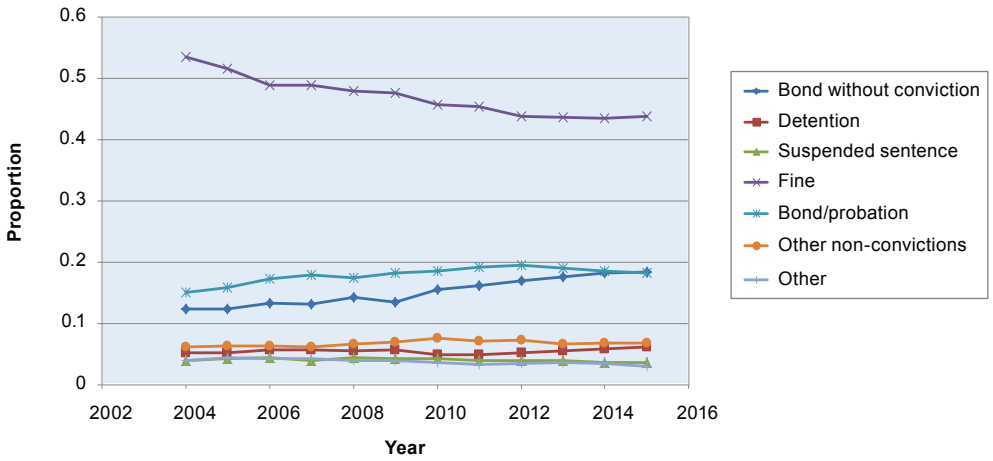


Figure 3. Proportion of selected offences finalised in NSW Local Court matters receiving bonds without conviction by principal offence, Jan 2004 - Sept 2015

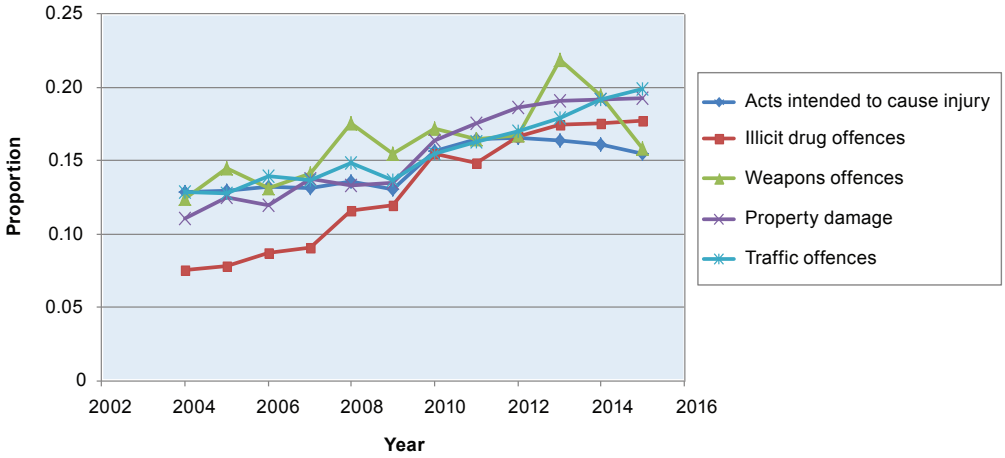
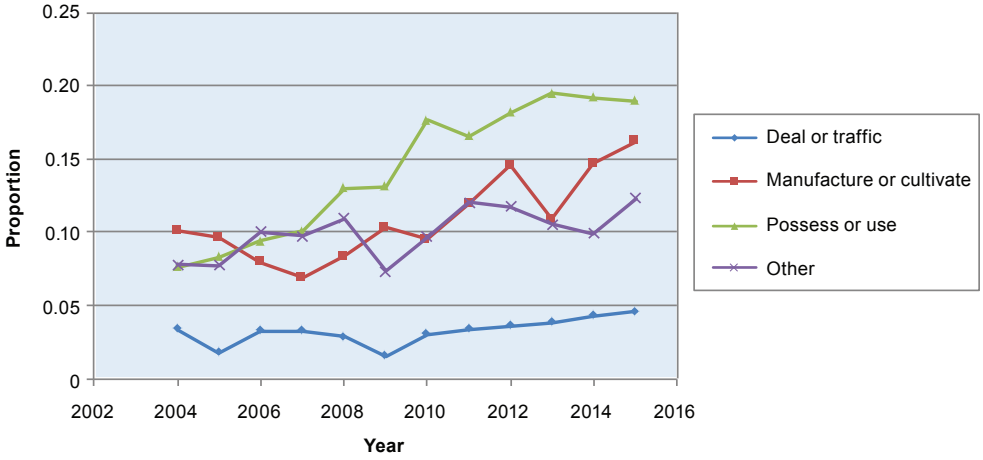


Figure 4. Proportion of drug offences finalised in NSW Local Court receiving bonds without conviction by type of drug offence, Jan 2004 - Sept 2015



(from 15.2% to 23.6%). The other noticeable trend is a substantial drop over the same period in the proportion of fines being imposed by the Local Court for this subset of offences (from 66% to 55.9%). What is interesting about these two trends is that the rise in conditional discharges seems to almost perfectly match the drop in fines. Indeed, the sum of the proportions of fines and bonds without conviction is roughly equal to 80 per cent, and is constant across all years.

Figure 3 shows the proportion of cases receiving bonds without conviction each year, split by offence type. This figure shows that conditional discharges have increased across all considered offence types between January 2004 and September 2015. The largest increase seems to be for drug offences, rising from 7.6 per cent of all drug offences in 2004 to 17.7 per cent in 2015. Traffic offences show the smallest increase (from 12.9% to 19.9%).

The large increase in drug offences is unusual and of concern – especially considering the lack of previous research around bonds without conviction for these offences. Because of this, it was decided that trends in conditional discharges for drug offences would also be examined, and that an interaction effect would be included in the logistic regression model.

A more detailed breakdown of drug offences is presented in Figure 4, which shows the proportion of each type of drug offence receiving conditional discharges over the 12-year

period examined. Drug importation and exportation offences were excluded from Figure 4 due to the small sample size (N = 36 out of 91,573 offenders over the 12 year period). Of the remaining offences, bonds without convictions rose most rapidly for possession/use drug offences (from 7.6% to 18.9%). While the trends were less clear with the other types of drug offences, both manufacturing/cultivating and 'other' drug offences showed small increases (from 10.1% to 16.2% and 7.8% to 12.3% respectively). The proportions of offenders receiving conditional discharges for dealing/trafficking offences remained relatively stable (with small drops in 2005 and 2009).

LOGISTIC REGRESSION AND STATISTICAL INFERENCE - ALL OFFENCES MODEL

The odds ratios and p-values for the variables included in the final regression model are shown in Table 1. The odds ratio (OR) indicates how (relatively) likely an offender with that particular characteristic is to receive a s10(1)(b) bond compared with an offender in the reference group. The reference group for each variable has an odds ratio of 1 by definition. An odds ratio more than 1 suggests that a s10(1)(b) penalty is more likely, whereas an odds ratio less than 1 indicates the penalty is less likely. It was found that none of the other prior offence variables substantially improved the AUC of the model and were therefore not included.

It can be seen that almost all variables included in the model had a statistically significant (at the 0.05 level) effect on the likelihood of receiving a s10(1)(b) bond. The demographic variables show that Indigenous offenders (OR=0.785; p <.001) and male offenders (OR=0.756; p <.001) were less likely to receive a bond without conviction than their respective counterparts. Age also has a significant effect, with offenders older than 50 (OR=1.164; p <.001 for 51-60 and OR=1.314; p <.001 for 60+ years) more likely and 21-30 year olds less likely (OR=0.902; p <.001) than 18-20 year olds (the reference group) to receive such an outcome. There were also significant variations in the likelihood of a conditional discharge across different areas. Offenders residing in metropolitan areas were significantly less likely to receive a s10(1)(b) bond than offenders in all other regions (OR>1.000; p <.001 for all remoteness groups). Offenders residing in less disadvantaged areas (SEIFA Q1) were also significantly less likely to receive a conditional discharge than offenders in more disadvantaged areas. An increase in either the number of concurrent or prior offences (OR<1.000; p <.001 for all levels for both variables) significantly decreased the odds of receiving a bond without conviction.

Holding all other factors constant, there was both a significant effect for year and a significant interaction between year and offence type. The relationship was such that for assault offences (our reference group) there was a significant increase in the likelihood of receiving a bond without conviction over the period considered (OR=1.064; p <.001). However, for drug (OR=1.047; p < .001), weapons (OR=1.028; p =.002) and property damage (OR=1.038; p <.001) offences, the increase in the likelihood of a conditional discharge across the 12-year period was significantly higher than was seen for assault offences. There was no significant difference between assault and traffic offences (p =.778) in the likelihood of a conditional discharge over the period examined here; this suggests that conditional discharges for these offences were increasing at the same rate.

Interactions between other variables and offence type were omitted from the model. While some exploratory analysis indicated that there were differences in the effects of some variables for difference offence types (particularly age, ARIA region and SEIFA quartile), it was found that including these interactions significantly reduced the model AUC, while at the same time added many additional parameters to the model (increasing the model complexity) as well as not changing the significance of the year effects. Therefore, it was decided that only interactions with year would be kept in the model.

The observed proportions of offenders receiving bonds without convictions were plotted against expected proportions in order to assess quality of model fit (see Figure A1). This plot shows that there is a strong relationship between the observed and expected proportions for this model, indicating that the model is a good fit to the data. The AUC for this model was 0.77, also indicating a reasonable fit to the data.

LOGISTIC REGRESSION AND STATISTICAL INFERENCE - DRUG OFFENCES MODEL

When fitting the logistic regression model for drug offences, import/export offences were excluded due to the small number of observations (N =36). Table 2 shows the variables, odds ratios and p-values for the logistic regression model. It was found that the presence of a prior proven drug offence in the previous five years improved the model AUC enough to justify its inclusion. Again, male offenders (OR=0.857; p <.001) were significantly less likely to receive bonds without convictions than female offenders. Indigenous status had no significant impact on likelihood of receiving a bond without conviction (p =.138) for a drug offence once other factors have been taken into account. There was also significant variation across regions in the probability of receiving a bond without conviction. Again, offenders in metropolitan areas were more likely to receive s10(1)(b) bonds than offenders in inner regional (OR=0.807; p <.001) outer regional (OR=0.723; p <.001) and remote (OR=0.634; p <.001) areas. Very remote (p =.102) areas were not significantly different to metropolitan areas. In addition, SEIFA quartiles 2,3 and 4 all showed a significantly higher likelihood of receiving a bond with conviction than the first quartile (OR=1.116; p =.002 for the second quartile, OR=1.321;

Table 1. Multivariate logistic regression model for all cases

Variable	Odds ratio (95% Confidence Interval)	*p*-value
Demographic Characteristics		
ATSI Status		
Non-Indigenous/unknown	1.000	
Indigenous	0.785 (0.754, 0.818)	<.001
Gender		
Female	1.000	
Male	0.756 (0.745, 0.768)	<.001
SEIFA quartile		
Q1	1.000	
Q2	1.080 (1.060, 1.101)	<.001
Q3	1.178 (1.156, 1.201)	<.001
Q4	1.289 (1.263, 1.315)	<.001
Age		
18-20 years	1.000	
21-30 years	0.902 (0.883, 0.922)	<.001
31-40 years	0.980 (0.958, 1.003)	.086
41-50 years	1.020 (0.996, 1.045)	.109
51-60 years	1.164 (1.131, 1.198)	<.001
61 years or older	1.314 (1.267, 1.363)	<.001
ARIA classification		
Metropolitan	1.000	
Inner regional	1.051 (1.032, 1.070)	<.001
Outer regional	1.086 (1.066, 1.107)	<.001
Remote	1.226 (1.164, 1.291)	<.001
Very remote	1.362 (1.271, 1.459)	<.001
Index Appearance		
Index offence type		
Assault	1.000	
Drug	0.613 (0.579, 0.649)	<.001
Weapons	1.051 (0.932, 1.186)	.415
Property damage	0.730 (0.685, 0.778)	<.001
Traffic	0.647 (0.626, 0.669)	<.001
Number of concurrent offences		
None	1.000	
One	0.352 (0.344, 0.361)	<.001
Two	0.216 (0.207, 0.226)	<.001
Three	0.134 (0.123, 0.146)	<.001
Four or more	0.076 (0.067, 0.087)	<.001
Number of prior proven offences		
None	1.000	
One	0.431 (0.423, 0.439)	<.001
Two	0.286 (0.279, 0.293)	<.001
Three	0.210 (0.203, 0.217)	<.001
Four	0.166 (0.159, 0.174)	<.001
Five	0.138 (0.131, 0.146)	<.001
Between six and ten	0.110 (0.106, 0.115)	<.001
Eleven or more	0.068 (0.064, 0.072)	<.001
Interaction effects		
Year	1.064 (1.059, 1.068)	<.001
Year by index offence type		
Assault	1.000	
Drug	1.047 (1.039, 1.055)	<.001
Weapons	1.028 (1.010, 1.047)	.002
Property damage	1.038 (1.028, 1.048)	<.001
Traffic	0.999 (0.994, 1.004)	.788

Table 2. Multivariate logistic regression model for drug offences

Variable	Odds ratio (95% Confidence Interval)	*p*-value
Demographic Characteristics		
ATSI Status		
Non-Indigenous/unknown	1.000	
Indigenous	0.897 (0.776, 1.036)	.138
Gender		
Female	1.000	
Male	0.857 (0.809, 0.909)	<.001
SEIFA quartile		
Q1	1.000	
Q2	1.116 (1.039, 1.198)	.002
Q3	1.321 (1.233, 1.416)	<.001
Q4	2.192 (2.049, 2.345)	<.001
Age		
18-20 years	1.000	
21-30 years	0.734 (0.691, 0.780)	<.001
31-40 years	0.495 (0.460, 0.533)	<.001
41-50 years	0.359 (0.328, 0.392)	<.001
51-60 years	0.350 (0.309, 0.396)	<.001
61 years or older	0.410 (0.326, 0.515)	<.001
ARIA classification		
Metropolitan	1.000	
Inner regional	0.807 (0.754, 0.862)	<.001
Outer regional	0.723 (0.669, 0.781)	<.001
Remote	0.634 (0.503, 0.801)	<.001
Very remote	0.753 (0.535, 1.058)	.102
Index Appearance		
Number of concurrent offences[a]		
None	1.000	
One	0.784 (0.734, 0.838)	<.001
Two	0.525 (0.457, 0.604)	<.001
Three or more	0.258 (0.204, 0.328)	<.001
Number of prior proven offences[b]		
None	1.000	
One vs. none	0.457 (0.431, 0.485)	<.001
Two vs. none	0.252 (0.232, 0.274)	<.001
Three vs. none	0.145 (0.129, 0.163)	<.001
Four vs. none	0.115 (0.099, 0.134)	<.001
Five vs. none	0.079 (0.065, 0.096)	<.001
Six or more vs. none	0.047 (0.041, 0.053)	<.001
Number of prior proven drug offences in the past five years		
None	1.000	
One	0.254 (0.224, 0.288)	<.001
Two or more	0.133 (0.096, 0.184)	<.001
Interaction effects		
Year	1.056 (1.014, 1.100)	.008
Index offence type		
Deal/traffic	1.000	
Manufacture/cultivate	2.731 (1.981, 3.766)	<.001
Possess/use	2.593 (1.933, 3.477)	<.001
Other	3.324 (2.236, 4.942)	<.001
Year by offence type		
Deal/traffic	1.000	
Manufacture/cultivate	1.055 (1.008, 1.105)	.022
Possess/use	1.060 (1.018, 1.105)	.005
Other	1.021 (0.964, 1.080)	.480

[a] Not necessarily drug offences
[b] See [a]

p <.001 for the third and OR=2.192; *p* <.001 for the fourth). Again, both prior (OR<1.000; *p* < .001 for all levels) and concurrent (OR<1.000; *p* < .001 for all levels) offences significantly reduced the odds of receiving a bond without conviction, as did prior drug offences (OR<1.000; *p* < .001 for both levels).

Again, a significant effect for year (OR=1.056; *p* =.008), and a significant interaction between year and offence type was found. The year effect showed that there was a significant increase in the likelihood of receiving a bond without conviction for the reference group (deal/traffic drug offences) over the 12-year study period. The interactions showed that both possess/use drug offences (OR=1.060; *p* =.005) and manufacture/cultivate drug offences (OR=1.055; *p* =.022) had significantly higher increasing rates in the likelihood of bonds without conviction than deal/traffic drug offences (with possess/use being the slightly higher of the two). 'Other' drug offences showed no significant difference to deal/traffic drug offences (*p* =.480) over time.

Again, interactions between offence type and other variables were omitted from the model, for similar reasons to those outlined above for the model for all offences. Again, the significance of the year effects was found to remain the same regardless of whether or not these interactions were present in the model.

Looking at the plot of observed proportions versus fitted probabilities (Figure A2 in the Appendix), it can be seen that the observed proportions are roughly equal to the expected proportions. The AUC for this model was 0.83, indicating a very good fit. Hence, the model was once again accepted.

DISCUSSION

The aim of this study was to investigate the increasing trend in conditional discharges in NSW Local Courts over the period January 2004 to September 2015 for a subset of offences, namely, assault, drugs, weapons, property damage and traffic. From 2004 to 2015, the proportion of s10(1)(b) penalties imposed for these offences rose from 15 per cent to 24 per cent, with a concomitant drop in the proportion of fines imposed by NSW magistrates from 66 per cent to 56 per cent. Multivariate logistic regression modelling showed that the likelihood of receiving a conditional discharge at finalisation varied by a number of different demographic, offence and prior offending characteristics, including age, gender, Indigenous status, concurrent offences and prior criminal history. Even after taking account of any changes in these confounding factors over time, there was still evidence for a significant rise in the odds of receiving a s10(1)(b) penalty over the 12-year period examined. This increase was apparent across all offence types but was found to be greater for drug, weapons and property damage offences compared with assault and traffic offences.

Further multivariate modelling, focusing specifically on drug offences, found significant interactions with year and offence type, suggesting that bonds without conviction were increasing faster for possession/use and manufacturing drug offences than dealing/trafficking offences.

While these results suggest that the rise in conditional discharges observed over the last 12 years is not due to changes in the profile of offenders and offences being dealt with in the Local Courts, there were a number of factors relevant to sentencing decisions which could not be observed in this study and therefore were not accounted for in the multivariate model. Arguably the most important of these would be the nature of the offence. In both the overall and the drug-specific models we included terms for the type of offence but there would still be significant variation within these offence types in terms of the seriousness of the charge. Drug use and possession, for example, would include offences involving different substances (e.g. cannabis, amphetamines, and heroin) and quantities, and the penalties imposed by the court for these different charges may vary in severity. Further research should examine the extent to which changes in these features of drug offending can account for the variation in conditional discharges over time. The alternative explanation is that courts are becoming more lenient (particularly in the case of drug offences). This is somewhat at odds with previous research conducted in NSW. Freeman (2015) examined trends in bail outcomes, prison penalties and average lengths of prison sentences in the Higher and Local Courts over the 20-year period from 1994 to 2013. On the basis of these three indicator measures she found no evidence that the NSW criminal courts had become more lenient overall and found that in many offence categories sentencing was actually more severe. Interestingly, however, illicit drug offences finalised in the Local Court were an exception, being one of only two offence categories where the proportion of convicted offenders given a prison sentence had dropped. This downward trend coincided with a jump in the total number of illicit drug offences finalised in the Local Court in 2008 and 2009, leading Freeman to propose that the drop in prison penalties might be due to the increased policing of less serious drug offences. While Freeman's results are consistent with the rising trend in conditional discharges for illicit drug offences found in the current study, they contradict the trends observed for assault, weapons, and property damage and traffic offences.

It is possible that these somewhat contradictory findings reflect an increasing tendency toward bifurcation or polarisation in sentencing – that is, sanctions imposed by magistrates are becoming harsher (or remaining as severe) for more severe offences but are becoming more lenient for less serious crime. However, we found that the rise in conditional discharges over the last 12 years closely mirrored a fall in the proportion of

monetary fines issued by the NSW Local Court, suggesting that it is more likely the case that courts are now tending to favour s10(1)(b) penalties in cases where a fine would have previously been imposed. The reasons for this shift in sentencing are not clear, but may be a response to recent concerns regarding the hardships caused by fines and the fine enforcement system, particularly for vulnerable groups, such as Indigenous people (for a review, see Williams & Gilbert, 2011). As well as the financial and emotional stresses that fines can create for those who have limited means to pay, the suspension or cancellation of driver licences for fine default can in some cases lead to much harsher penalties for secondary offending (such as gaol for unlicensed driving). The substitution of s10(1)(b) penalties for monetary fines as a result of this focused attention would be better explored using more qualitative research methods, such as surveys or interviews with legal practitioners and/or judicial officers. It is worth noting at this point that the NSW Law Reform commission made a recommendation in 2013 that orders under section 10(1)(b) and 10(1)(c) of the *Crimes (Sentencing Procedure) Act.* be replaced with a single new 'conditional release order' (CRO). This order would be available for offences punishable by imprisonment or fine-only offences, and the court would be able to impose this order both with and without recording a conviction.

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NOTES

1. Until 1999, conditional discharge orders were available under s556A of the *Crimes Act 1900*.

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APPENDIX

The following variables were available to use during the analysis.

Table A1. Complete list of variables available for the statistical analysis

Type of variable	Variable Name	Description
Person/case identifiers	mspdi	ROD person identifier
	indexcaseno	ROD case number for index contact
	indexdate	Date of finalisation for index court appearance
Demographic variables	gender	Gender (0 = female, 1 = male)
	age	Age at index contact
	dod	Date of death
	indig	ROD ATSI status – ever recorded (0 = non-ATSI, 1 = ATSI, 2 = Unknown)
	atsi	ATSI status as recorded for the index contact (0 = non-ATSI, 1 = ATSI, 2 = Unknown)
	postcode	Postcode as recorded for the index contact
	lga	Local government area at index contact derived from postcode
	seifa	SEIFA index of disadvantage for offender's postcode
	seifa_q	Quartile of SEIFA index of disadvantage for offender's postcode (1=least disadvantaged, 4=most disadvantaged)
	aria_mean	Mean ARIA remoteness index (thresholded) for offender's postcode
Index: appearance/contact	jd	Jurisdiction at index contact (C = Children's Court, L = Local Court, D = District Court, S = Supreme Court, R = Drug Court, Y = conference, P = police caution)
	provenoff	If a court appearance, conviction status at index contact: (1 = no proven offences, 2 = at least one proven offence, 3 = all offences proven)
	convict	If a court appearance, whether guilty on at least one offence and whether there is at least one conviction (0 = Not guilty on any offence, 1 = Guilty without conviction, 2 = Guilty with at least one conviction)
	legrep	If a court appearance, whether legally represented at index contact (0 = no, 1 = yes, 2 = inapplicable/unknown)
	bail	If a court appearance, bail status at final appearance (1 = bail dispensed with, 2 = on bail, 3 = in custody, 4 = in custody for prior offence)
	faprdate	Earliest first appearance date across the index appearance
Index: principal offence	index_poffno	ROD reference number for principal offence at index contact
	index_poffdate	Offence date for principal offence
	index_poanzsoc	ANZSOC group of principal offence at index contact
	index_pomsr	Seriousness index (Median Severity Ranking) of principal offence at index contact
	index_polawpart	Lawpart code of the principal offence at the index contact
	index_popcarange	If applicable (ANZSOC 0411, 0412, 1431), PCA range (1 = low, 2 = medium, 3 = high, 4 = special)
	index_pocounts	Number of counts of principal offence at index contact
	index_poplea	If a court appearance, plea to the principal offence at the index appearance (0 = not guilty, 1 = guilty, 2=other)
	index_ppencode	Principal penalty type at index contact (if court appearance)
	index_ppenval	Principal penalty value at index contact
	index_ptotval	The duration of total term for principal penalty if a prison sentence where a non-parole period has been set
	index_ppenunit	Unit of the principal penalty

Table A1. Complete list of variables available for the statistical analysis .... continued

Type of variable	Variable Name	Description
Index: all offences	index_concurr	Number of proven concurrent charges at index contact (including principal offence)
	index_hom	Number of homicide or related offences at index contact (defined as number of proven offences under ANZSOC 01)
	index_actsinj	Number of acts intended to cause injury at index contact (defined as number of proven offences under ANZSOC 02)
	index_assault	Number of assault offences at index contact (defined as number of proven offences under ANZSOC 021)
	index_serassault	Number of serious assault offences at index contact (defined as number of proven offences under ANZSOC 0211, 0212)
	index_sexassrel	Number of sexual assault and related offences at index contact (defined as number of proven offences under ANZSOC 03)
	index_sexassault	Number of sexual assault offences at index contact (defined as number of proven offences under ANZSOC 0311, 0312)
	index_dangneg	Number of dangerous or negligent acts endangering persons at index contact (defined as number of proven offences under ANZSOC 04)
	index_abdhar	Number of abduction, harassment and other offences against the person at index contact (defined as number of proven offences under ANZSOC 05)
	index_robrel	Number of robbery, extortion or related offences at index contact (defined as number of proven offences under ANZSOC 06)
	index_rob	Number of robbery offences at index contact (defined as number of proven offences under ANZSOC 0611, 0612)
	index_brent	Number of unlawful entry with intent/burglary, break and enter at index contact (defined as number of proven offences under ANZSOC 07)
	index_theft	Number of theft offences or related at index contact (defined as number of proven offences under ANZSOC 08)
	index_fraud	Number of fraud offences or related at index contact (defined as number of proven offences under ANZSOC 09)
	index_drug	Number of drug offences at index contact (defined as number of proven offences under ANZSOC 10)
	index_weap	Number of weapons or explosives offences at index contact (defined as number of proven offences under ANZSOC 11)
	index_propdam	Number of property damage or environmental pollution offences at index contact (defined as number of proven offences under ANZSOC 12)
	index_pubord	Number of public order offences at index contact (defined as number of proven offences under ANZSOC 13)
	index_traff	Number of traffic offences at index contact (defined as number of proven offences under ANZSOC 14)
	index_drive	Number of offences of driving while licence disqualified or suspended at index contact (defined as number of proven offences under ANZSOC 1411)
	index_pca	Number of PCA offences at index contact (defined as number of proven offences under ANZSOC 0411, 0412 or 1431)
	index_just	Number of offences against justice procedures at index contact (defined as number of proven offences under ANZSOC 15)
	index_brcust	Number of breach of custodial order offences (defined as any proven offence under ANZSOC 151)
	index_brcomm	Number of breach of community order at index contact (defined as any proven offence under ANZSOC 152)
	index_brviol	Number of breach of violence order (defined as any proven offence under ANZSOC 153)
	index_strindict	Number of strictly indictable offences (proven) at index contact
	index_indict	Number of indictable offences (proven) at index contact
	index_dvflag	Number of proven offences at index contact that are DV-flagged

Table A1. Complete list of variables available for the statistical analysis .... continued

Type of variable	Variable Name	Description
Index: all penalties	index_pris	Given a full-time prison sentence/custodial order at index contact? (0 = no, 1 = yes)
	index_hd	Given a home detention sentence at index contact? (0 = no, 1 = yes)
	index_pd	Given a periodic detention sentence at index contact? (0 = no, 1 = yes)
	index_ico	Given an intensive correction order at index contact? (0 = no, 1 = yes)
	index_ss	Given a suspended sentence at index contact? (0 = no, 1 = yes)
	index_sss	Given a supervised suspended sentence at index contact? (0 = no, 1 = yes)
	index_cso	Given a community service order at index contact? (0 = no, 1 = yes)
	index_bond	Given a bond at index contact? (0 = no, 1 = yes)
	index_sbond	Given a supervised bond at index contact? (0 = no, 1 = yes)
	index_fine	Given a fine at index contact? (0 = no, 1 = yes)
	index_bondnc	Given a bond without conviction at index contact (0=no, 1 =yes)
	index_licdis	Driver licence disqualification at index contact? (0 = no, 1 = yes)
Priors: appearances/ contacts	agefirst	Age (in years) at first *known* caution, conference or court appearance
	firstpriordate	Date of earliest *known* caution, conference or court appearance
	lastpriordate	Date of *last (*most recent) caution, conference or court appearance prior to index contact
	nprior_court	Number of finalised court appearances (with proven offence/s) as a juvenile or adult prior to the index appearance.
	nprior_jcourt	Number of finalised Children's Court appearances (with proven offence/s) prior to the index appearance.
	nprior_caut	Number of cautions prior to the index appearance
	nprior_conf	Number of previous youth justice conferences
	nprior1_court	Number of finalised court appearances (with proven offence/s) as a juvenile or adult in the 1 year prior to the index appearance
	nprior1_jcourt	Number of finalised Children's Court appearances (with proven offence/s) in the 1 year prior to the index appearance
	nprior1_caut	Number of cautions in the 1 year prior to the index appearance
	nprior1_conf	Number of youth justice conferences in the 1 year prior to the index appearance
	nprior5_court	Number of finalised court appearances (with proven offence/s) as a juvenile or adult in the 5 years prior to the index appearance
	nprior5_jcourt	Number of finalised Children's Court appearances (with proven offence/s) in the 5 years prior to the index appearance
	nprior5_caut	Number of cautions in the 5 years prior to the index appearance
	nprior5_conf	Number of youth justice conferences in the 5 years prior to the index appearance
Priors: penalties	nprior_pris	Number of previous *known* finalised court appearances at which given a full-time prison sentence/custodial order
	nprior5_pris	Number of finalised court appearances within 5 years of the index appearance at which given a full-time prison sentence/custodial order
	nprior5_hd	Number of finalised court appearances within 5 years of the index appearance at which given a sentence of home detention
	nprior5_pd	Number of finalised court appearances within 5 years of the index appearance at which given a periodic detention sentence
	nprior5_ico	Number of finalised court appearances within 5 years of the index appearance at which given an intensive correction order
	nprior5_ss	Number of finalised court appearances within 5 years of the index appearance at which given a suspended sentence
	nprior5_sss	Number of finalised court appearances within 5 years of the index appearance at which given a supervised suspended sentence
	nprior5_cso	Number of finalised court appearances within 5 years of the index appearance at which given a community service order

Table A1. Complete list of variables available for the statistical analysis .... continued

Type of variable	Variable Name	Description
	nprior5_bond	Number of finalised court appearances within 5 years of the index appearance at which given a bond
	nprior5_sbond	Number of finalised court appearances within 5 years of the index appearance at which given a supervised bond
	nprior5_fine	Number of finalised court appearances within 5 years of the index appearance at which given a fine
	nprior5_caution	Number of finalised court appearances within 5 years of the index appearance at which dismissed with caution (juvenile)
	nprior5_bondnc	Number of finalised court appearances within 5 years of the index appearance at which given a bond without conviction
	nprior5_noconvict	Number of finalised court appearances within 5 years of the index appearance at which no conviction was recorded
	nprior5_licdis	Number of finalised court appearances within 5 years of the index appearance at which given a driver licence disqualification
Priors: offence types	nprior5_hom	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven homicide or a related offence (ANZSOC 01)
	nprior5_actsinj	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven act intended to cause injury (ANZSOC 02)
	nprior5_assault	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven assault (ANZSOC 021)
	nprior5_serassault	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven assault (ANZSOC 0211, 0212)
	nprior5_sexassrel	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven sexual assault or related offence (ANZSOC 03)
	nprior5_sexassault	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven sexual assault (ANZSOC 031)
	nprior5_dangneg	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which convicted of dangerous or negligent act endangering persons (ANZSOC 04)
	nprior5_abdhar	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven abduction, harassment, or other offences against the person (ANZSOC 05)
	nprior5_robrel	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven robbery or related offences (ANZSOC 06)
	nprior5_rob	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven robbery offence (ANZSOC 061)
	nprior5_brent	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven break and enter offence (ANZSOC 07)
	nprior5_theft	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven theft offence (ANZSOC 08)
	nprior5_fraud	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven fraud offence (ANZSOC 09)
	nprior5_drug	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven drug offence (ANZSOC 10)
	nprior5_weap	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven weapons offence (ANZSOC 11)
	nprior5_propdam	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven property damage offence (ANZSOC 12)
	nprior5_pubord	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven public order offence (ANZSOC 13)
	nprior5_traff	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven traffic offence (ANZSOC 14)
	nprior5_drive	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which a proven offence of driving while licence disqualified or suspended (ANZSOC 1411)

Table A1. Complete list of variables available for the statistical analysis .... continued

Type of variable	Variable Name	Description
	nprior5_pca	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven PCA offence (ANZSOC 0411, 0412, 1431)
	nprior5_just	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven offence against justice procedures (ANZSOC 15)
	nprior5_custbr	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance with breach of a custodial order (ANZSOC 151)
	nprior5_combr	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance with breach of a community order (ANZSOC 152)
	nprior5_brviol	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance with breach of a violence order (ANZSOC 153)
	nprior5_viol	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven violent offence (ANZSOC 01, 02, 03 or 06)
	nprior5_prop	Number of YJCs/ finalised court appearances in the 5 years prior to the index appearance at which any proven property offence (ANZSOC 07, 08 or 09)
Created variables[a]	Sec10	Binary variable: takes the value TRUE if index_poanzsoc is equal to 23 for a given case (i.e. if the given penalty for a case is a bond without conviction), FALSE otherwise
	atsi2	Binary variable: takes the value TRUE if the atsi variable for a given case is equal to 1 (i.e. the offender identifies as aboriginal or from the Torres Straight Islands), FALSE otherwise
	OffenceType	Division of offence in accordance with the ANZSOC codes.
	YS2004	The number of years between the year of index contact and 2004 (the first year in the dataset)
	index_viol	Number of concurrent violent offences (ANZSOC codes 01, 02, 03, 04, 05, 06) at the index contact
	index_prop	Number of concurrent property offences (ANZSOC codes 07, 08, 09, 12) at the index contact
	nprior5_viol2	Number of proven violent offences (ANZSOC codes 01, 02, 03, 04, 05, 06) in the 5 years prior to the index contact
	nprior5_prop2	Number of proven property offences (ANZSOC codes 07, 08, 09, 12) in the 5 years prior to the index contact
	nprior5_deten	Number of proven offences in the 5 years prior to the index contact for which the offender received a period of detention, FALSE otherwise
	ageFac	Categorical determining if the offender was aged between 18-20 years, 21-30 years, 31-40 years, 41-50 years, 51-60 years or older than 60 years
	aria_region	Categorical variable if the offender lived in a metropolitan, inner regional, outer regional, remote or very remote area based on the ARIA classification standard

[a] Variables were constructed using available variables in the dataset for convenience in the statistical analysis. Continuous variables were reduced to binary/categorical variables to account for strong skewness and non-linear effects

TRANSFORMATION OF THE PRIOR/CONCURRENT OFFENCE VARIABLES

When fitting the models, it was found that the skewness of the number of prior penalties and number of concurrent offences affected the quality of the models. In order to correct for this, the variables were transformed into categorical variables, with different categories depicting different numbers of concurrent/ prior offences. Initially, each variable was split into 12 levels (0,1,2,…,9,10, and 11 or more offences). Multiple pairwise comparisons were then used to reduce/compress the levels such that each level was statistically significantly different to all others.

Table A2. Select sample characteristics of Local Courts matters included in the multivariate analysis

	Penalty		
Characteristics	**Section 10(1)(b) Bonds**	**Other Penalties**	**Total**
Total	**123,298**	**697,696**	**820,994**
Offence Type			
200	26,040	151,787	177,827
1000	12,620	78,959	91,579
1100	1,670	8,559	10,229
1200	6,755	37,346	44,101
1400	76,213	421,045	497,258
Gender			
Female	31,851	121,401	153,252
Male	91,442	576,007	667,449
Unknown	5	288	293
ATSI Status			
No/Unknown	119,969	649,150	769,119
Yes	3,329	48,546	51,875
Concurrent Offences			
1	110,458	456,715	567,173
2-5	12,726	226,729	239,455
6-10	105	12,305	12,410
>10	9	1,947	1,956
Prior proven offences			
0	88,498	235,474	323,972
1	18,250	126,748	144,998
2-5	13,295	204,799	218,094
6-10	2,389	81,149	83,538
>10	866	49,526	50,392
Age			
18-20	16,682	81,107	97,789
21-30	40,125	256,645	296,770
31-40	27,261	181,978	209,239
41-50	21,074	113,902	134,976
51-60	12,031	46,717	58,748
61-70	4,737	14,133	18,870
71-80	1,226	2,754	3,980
81-90	159	453	612
91-100	3	6	9
>100	0	1	1
SEIFA Quartile			
1	27,372	190,530	217,902
2	31,727	188,749	220,476
3	30,848	163,071	193,919
4	28,965	114,155	143,120
Postcode ARIA mean			
0	55,853	285,575	341,428
1	28,532	167,735	196,267
2-5	29,440	173,290	202,730
6-15	4,728	28,390	33,118

Goodness of fit plots

The solid lines indicate the line where observed proportions are equal to the expected proportions.

Figure A1. Observed vs expected proportion of offences finalised in NSW Local Court matters receiving bonds without conviction, Jan 2004 - Sept 2015

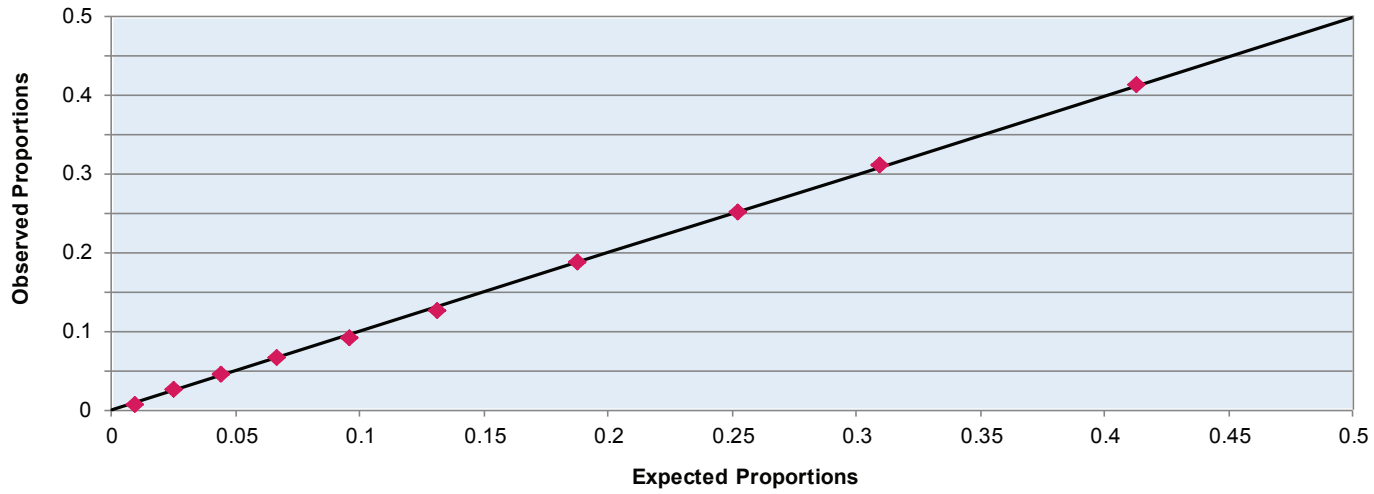
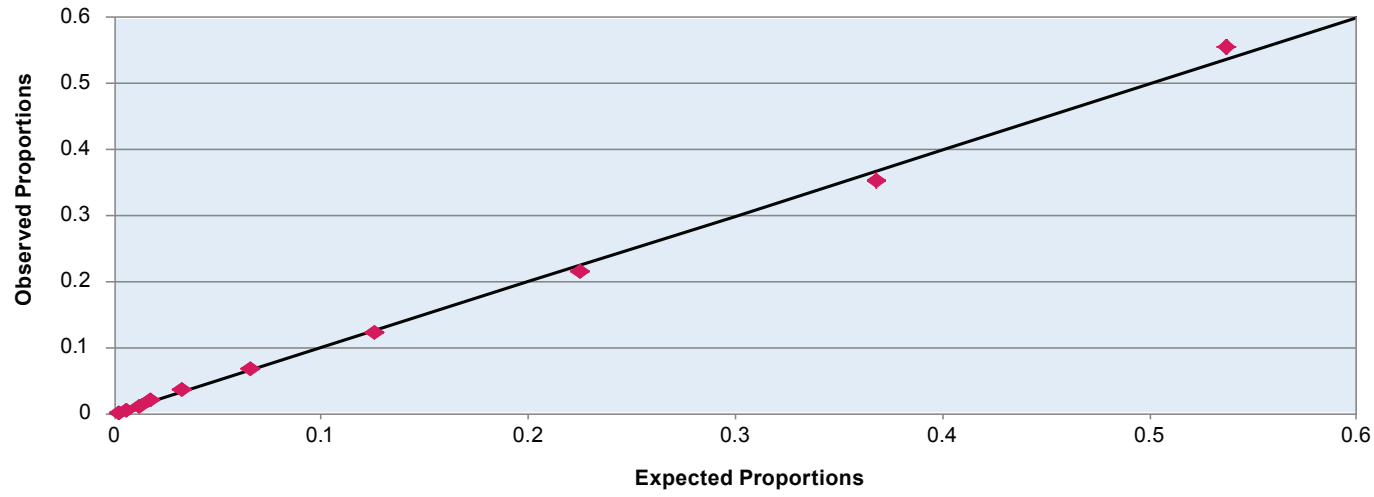


Figure A2. Observed vs expected proportion of drug offences finalised in NSW Local Court matters receiving bonds without conviction, Jan 2004 - Sept 2015



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