



**Submission to the Australian  
Parliamentary Inquiry:  
*Australia's illicit drug problem:  
Challenges and opportunities for law  
enforcement*  
January 2023**

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Windana Drug and Alcohol Recovery (Windana) welcomes the opportunity to provide feedback to the Joint Committee on Law Enforcement's inquiry into *Australia's illicit drug problem: Challenges and opportunities for law enforcement*.

### **About Windana**

Since 1984, Windana has helped thousands of people reduce the harms and recover from the effects of drugs and alcohol.

Windana provides holistic, evidence-based services tailored to each person's unique situation, wherever they may be on their recovery journey. We offer residential and non-residential withdrawal services, residential rehabilitation and a suite of community-based services across Victoria. Windana is primarily funded by the Victorian Government.

Visit [www.windana.org.au](http://www.windana.org.au) for further information.

### **Introduction**

While the legislative response and government priorities in responding to illicit drugs are well intended, it's clear that stigma, viewing drug use as a criminal issue, and a lack of access to harm reduction and health services is preventing people with alcohol and other drug (AOD) concerns from getting the support they need for their substance use.

Embedding evidence-based harm reduction approaches into responses to substance use issues will see more people receive vital information, support, and treatment. This will lead to safer drug use behaviour, safer spaces, and ultimately, more lives saved.

Drawing on Windana's experience, and that of our clients, we are pleased to share the following observations and recommendations, in line with the Terms of Reference for the inquiry.

### **Section 1**

**The involvement of law enforcement in harm reduction strategies and in efforts to reduce supply and demand, including the effectiveness of its involvement | The strengths and weaknesses of decriminalisation, including its impact on illicit drug markets and the experiences of other jurisdictions**

#### *Summary*

- Embedding evidence-based harm reduction approaches into responses to substance use issues will see more people receive vital information, support and treatment. This will lead to safer drug use behaviour, safer spaces, and ultimately, more lives saved.
- Decriminalising substance use will help ensure that people can get the care and support they need, rather than the short and long-term harm caused by the punitive nature of the criminal justice system.
  - As an organisation that supports thousands of people every year to reduce the harms and recover from AOD problems through community support, withdrawal and rehabilitation, we see firsthand how viewing the possession of small amounts of an illicit substance as a criminal issue is failing our community.
- Windana supports training in the use of Naloxone for all law enforcement officers, and for all on-duty officers to carry Naloxone for administration in an emergency.
- The continued war on drugs perpetuates stigma around people with AOD concerns, preventing them from accessing the life-saving support they need.

#### *Diversion and other harm reduction approaches*

The Victorian Police Drug Strategy (2020-25)<sup>1</sup> demonstrates a reprioritisation of police practice to better support people who are at risk of alcohol and drug-related harm. The strategy supports disruption of the illicit drug market through seizures and arrests, prevention, referrals to treatment and other support services and harm reduction.

While stopping short of decriminalising the possession of small amounts of illicit drugs, the strategy notes the benefit of drug diversion schemes, citing a 10% reduction in offending.

While law enforcement bodies have been broadly supportive of diversion, this does not always translate to effective and equitable application of diversion on the ground. Observations were made in the Victorian Parliamentary Inquiry into Drug Law Reform that some local police are reluctant to apply diversion.<sup>2</sup>

To ensure equity in the application of diversion, there should be a need to show cause in cases where police or other authorities believe that diversion is unsuitable in drug possession and use related offences. This would be the first step in transitioning people away from the justice system for using or possessing illicit drugs.

Police support of life-saving, evidence-informed harm reduction is vital in progressing measures into public policy.

This goal should be prioritised as essential public policy as there is an overwhelming burden of criminalisation on the community and the budget, with little impact on supply or demand.

For instance, in 2015-16 cannabis cost the nation \$4.5B, of which \$2.4B was related to justice and law and order. Most of this portion related directly to policing and imprisonment.<sup>3</sup>

Other evidence-based harm reduction strategies that law enforcement at all levels should support include Medically Supervised Injecting Facilities, Needle and Syringe Programs, Pharmacotherapy for opioid dependence, training in the use of Naloxone for all police officers, and pill testing (see Section 2)

For more information and evidence, please read Windana's Harm Reduction Policy Position Statement available here – <https://windana.org.au/wp-content/uploads/2023/01/Windana-Position-Statement-Harm-Reduction-FINAL.pdf>

### *Decriminalisation*

Drug decriminalisation refers to the removal of criminal penalties for the personal possession and use of illicit drugs<sup>4</sup>.

Decriminalisation does not mean the same as the legalisation of drugs. The decriminalisation of illicit drug use would instead see the creation of infringements or administrative sanctions for the personal and use of drugs, moving these matters outside the remit of the criminal justice system and towards the public health system<sup>5</sup>.

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<sup>1</sup> <https://www.police.vic.gov.au/drug-strategy>

<sup>2</sup> Victorian Parliamentary Inquiry into Drug Law Reform. 2018. P 167

<sup>3</sup> NDRI 2020. Quantifying the Social Costs of Cannabis in Australia 2015/16. <https://ndri.curtin.edu.au/ndri/media/documents/publications/T287.pdf>

<sup>4</sup> Turning Point 2022a, Position Summary: Drug Decriminalisation, Turning Point, Richmond.

<sup>5</sup> Cabral, TS 2017, 'The 15th anniversary of the Portuguese drug policy: Its history, its success and its future', Drug Science, Policy and Law, vol. 3, pp.1-5.

There are an increasing number of countries and states enacting drug law reform leading to various forms of decriminalisation. Many of these jurisdictions are increasingly faced with little choice, as the financial and human toll of the enduring war on drugs continues to mount.

Furthermore, stigma and the threat of a law-and-order response often prevents help seeking behaviour. People are reluctant to engage in support if they feel that their family, friends and even the broader health and community sector may discriminate against them.

Stigma is driven by the criminalisation of drugs, which facilitates shame and emboldens adverse community views, which often translate into harmful public narratives and discriminatory legislation.

One of the most harmful aspects of criminalisation is that it has created a black market of unregulated substances that have been used by 43% of all Australians<sup>6</sup>. These substances contribute to fatal overdose, chronic and acute health issues and a range of social issues, amounting to a cost of \$12.9B per annum.<sup>7</sup>

As noted above, there are a number of jurisdictions which have recently introduced various forms of decriminalisation and we look forward to evaluations of these reforms in due course.

Portugal introduced a decriminalisation policy in 2001 and note the following:

- The consumption of drugs, especially among young adults, has decreased and Portugal now has one of the lowest incidents of young adults using drugs in Europe<sup>8</sup>;
- The number of cases of HIV occurring in people who inject drugs has also significantly declined in that period. In 2001, Portugal had over 50% of all new HIV cases attributed to IV drug use in the EU, with 1,287 cases.; By 2019, even considering that cases in the EU declined during this period, that figure was 1.68% of the EU total, reducing to just 16 new cases<sup>9</sup>;
- Drug-related deaths in Portugal have gone from being on the EU median in 2001, to being one of the lowest in Europe - 6 per-million aged 16-64, compared to the EU average of 23.7 per-million, and well below the Australian average of 72 per- million<sup>10</sup>

Therefore, by treating drug use as a health issue, drug decriminalisation, such as in Portugal, has been found to significantly reduce the harms associated with drug use and its criminalisation.

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<sup>6</sup> [https://www.aihw.gov.au/reports-data/behaviours-risk-factors/illicit-use-of-drugs/overview#:~:text=43%25%20\(9%20million\)%20of,in%20the%20last%2012%20months.](https://www.aihw.gov.au/reports-data/behaviours-risk-factors/illicit-use-of-drugs/overview#:~:text=43%25%20(9%20million)%20of,in%20the%20last%2012%20months.)

<sup>7</sup> <https://www.turningpoint.org.au/about-us/news/cost-addiction-australia-highlights-urgent-need-investment-drug-reform>

<sup>8</sup> Cabral, TS 2017, 'The 15th anniversary of the Portuguese drug policy: Its history, its success and its future', Drug Science, Policy and Law, vol. 3, pp.1-5.

<sup>9</sup> Transform Drug Policy Foundation 2021, Drug Decriminalisation in Portugal: Setting the Record Straight, Transform Drug Policy Foundation, Bristol.

<sup>10</sup> Ibid; Australian Institute of Health and Welfare 2022, 'Alcohol, Tobacco and Other Drugs in Australia: Health Impacts', viewed 4th May 2022, <<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/impacts/health-impacts>>.

## **Section 2**

### **Emerging trends and risks, such as new psychoactive substances, adulterated drugs and other new sources of threat**

#### *Summary*

- Windana supports the wider implementation of pill and drug testing facilities and a coordinated public alert system to protect people from harm.

#### *Further information*

Data compiled by the Victorian Coroners Court highlighted an increase in Novel Psychoactive Substances contributions to fatal overdose over the past few years.

Novel Psychoactive Substances are synthetic formulations which often seek to mimic established drugs such as marijuana or MDMA, and as information on them is very limited, the risk of harm is often heightened, especially when it is not the drug the user thought it was<sup>11</sup>.

Novel Psychoactive Substances have emerged in part due to the criminalisation of traditional illicit substances, with modifications being made in their make up to avoid criminalisation by replacing the illicit elements of the substance with similar but currently legal elements.

For example, in Melbourne, eight people died and over 20 were hospitalised after taking Novel Psychoactive Substances disguised as MDMA in 2016-17, leading Victorian Coroner Spanos to call for a state-wide drug checking service, which has been echoed by Coroner Gebert in April 2022 after another Novel Psychoactive Substance death<sup>12,13,14</sup>

While pill testing/drug checking is often associated with festivals and nightclubs, its application and potential is much broader and can include a suite of measures such as public drug testing sites and public alert system, to broadcast when harms such as adulterants have been found circulating.

National and international research has shown that when pill testing is implemented, a high percentage of drugs were not what they purported to be, representing a high risk for harm<sup>15</sup>.

The six-month review of the CanTest Health and Drug Checking in Canberra found that overall, about 21% of drugs were not what users thought they were, and the results were uncertain in another 10% of cases. The evaluation also showed that people were altering their behaviour based on the testing results, with most people indicating they would not use the tested substance when it wasn't what it appeared to be. The trial will now continue until at least August 2023.<sup>16</sup>

Programs like this save lives. Law enforcement agencies can play a big role in this, by rapidly testing seized substances and issuing a public alert, together with relevant health agencies, in cases where hazardous compounds are present. Coordination with relevant health agencies is important to ensure that multiple data sources can be sent from a single source.

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<sup>11</sup> United Nations Office on Drugs and Crime 2022, 'Early Warning Advisory on New Psychoactive Substances: What Are NPS?', viewed 22nd April 2022.

<sup>12</sup> Coroners Court of Victoria 2022, Finding into Death without Inquest: Mr S COR2020003434, CCOV, Southbank.

<sup>13</sup> Coroners Court of Victoria 2021b, 'Coroner Calls for Urgent Drug Testing Services in Victoria', viewed 22nd April 2022.

<sup>14</sup> The Age 2017, 'Police defend decision not to warn public of new drug after Melbourne club deaths', 07/02/2017.

<sup>15</sup> Thorne Harbour Health 2019, Position Statement: Pill Testing/Drug Safety Testing, Thorne Harbour Health, Abbotsford.

<sup>16</sup> <https://www.abc.net.au/news/2023-01-13/canberra-pill-testing-trial-extended/101851424>

### **Section 3**

#### **Trends and changes relating to illicit drug markets in Australia, including the supply, trafficking, production, distribution and use of illicit drugs**

During the COVID-19 pandemic, it was evident that there were some dramatic shifts in the availability of some substances which resulted in increased availability of others. In Victoria, substances such as GHB and Novel Psychoactive Substance Benzodiazepines were in greater ascendance while there was, periodically, a decline in other substances such as heroin.

These changes did not result in a reduction in overall harms relating to substance use; they only encouraged different patterns of use.

A key lesson from the pandemic is that the illicit drug market always adapts and thus are incredibly elastic in response to domestic and global market changes.

### **Section 4**

#### **Law enforcement's ability to detect and respond to the trafficking of precursor chemicals and illicit drugs, including the adequacy of screening techniques and the impact of seizures on illicit drug availability and use**

##### *Summary*

- Windana recommends combining information from major drug seizures with pill/drug testing programs, allowing people to have their substances tested to ascertain risk, without incurring any penalty.

While it is evident that there are substantial seizures of illicit drugs undertaken by law enforcement bodies across Australia, it is difficult to provide any substantial evidence that this has any significant impact on the availability of illicit substances or on the overall viability of the illicit drug market.

Almost half of all Australians aged 14 years and over have consumed illicit drugs with various surveys of populations which regularly use illicit substances consistently noting that it is generally fairly easy to obtain most illicit substances.

For instance, the Illicit Drug Reporting System authored by NDARC indicates that 87% of Victorians who use heroin view it as easy or very easy to obtain; similarly, 92% of Victorians who use crystal methamphetamine believe it is easy or very easy to obtain<sup>17</sup>. There is no evidence that law enforcement has any enduring impact on reducing the supply of illicit drugs.

As noted above, law enforcement authorities undertake many operations resulting in large seizures of illicit substances. These seizures would provide a wealth of information on the type and composition and subsequent risk associated with many of the illicit substances which are present in Australia.

This information could play a key role in reducing the harm and preventing uptake and use of these substances, if it were to be made readily available for assessment. Should substances seized by law

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<sup>17</sup> [https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/IDRS\\_Drug%20Trends\\_VIC%202022.pdf](https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/IDRS_Drug%20Trends_VIC%202022.pdf)

enforcement be highly hazardous, information about the risk and appearance of these substances could be released to the public in a timely manner which could reduce use and subsequent harms.

Such an endeavour should be combined with a drug checking system (discussed above) which would allow individuals to, without incurring any penalty, have their substances tested to ascertain risk.

Combining these means of detection and analysis will save lives. There are a number of Victorian examples over the past few years where law enforcement authorities have been aware of hazardous substances being available in the illicit drug market but have not shared this information with the public in a timely manner.

Law enforcement can play a more active role in saving lives and deterring people from consuming hazardous substances through the timely release of information to the public.

## **Section 5**

### **Other related matters**

The governance frameworks for AOD matters have reduced over the past decade. The national AOD peak was defunded and elements of the body reporting to the Federal Government were diminished with reporting lines originally directed to the Prime Minister now directed to the responsible Minister.

During this time, AOD harms have increased in line with demand for treatment. In Victoria, during the COVID-19 pandemic, the length of waitlists increased by 71%<sup>18</sup>. The number of people overdosing has increased from by roughly 50% over the past decade.

The AOD treatment workforce is not adequately supported to undertake funded capacity building activities with the sector increasingly less competitive with other sectors. Recruitment and retention remain priority issues for the ongoing viability of the AOD treatment sector with many workers looking to opportunities in Victoria's mental health and other sectors.

Australia was once a global leader in evidence informed AOD policy but, over a number of decades, has made little progress amidst soaring harms and expenses. There is a dire need for a re-balancing of priorities in AOD policy so they include evidence-based harm reduction approaches, which will result in more people receiving vital information, support and treatment. This will lead to safer drug use behaviour, safer spaces, and ultimately, more lives saved.

If you would like to discuss Windana's submission further, please reach out to Adam Miller, Communications and Partnerships Manager on [adam.miller@windana.org.au](mailto:adam.miller@windana.org.au)

We thank you again for the opportunity to submit to this important inquiry.

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<sup>18</sup> VAADA 2022. Victorian Election Statement. [https://www.vaada.org.au/wp-content/uploads/2022/05/SUB\\_VAADA-election-statement\\_12042022.pdf](https://www.vaada.org.au/wp-content/uploads/2022/05/SUB_VAADA-election-statement_12042022.pdf)