



17 September 2021

Parliament of Victoria  
Legislative Council, Legal and Social Issues Committee  
Parliament House, Spring Street  
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## Submission to the *Inquiry into Victoria's Criminal Justice System*

### About Windana

Since 1984, Windana has helped thousands of people recover from the harmful effects of drugs and alcohol and make meaningful change to lead healthy and fulfilling lives.

Windana provides holistic, evidence-based services tailored to each person's unique situation, wherever they may be on their recovery journey. These include residential withdrawal services, residential rehabilitation and a suite of community-based services.

We work in and across sectors to improve and refine treatment services and increase community understanding to eliminate the stigma around drug and alcohol dependence, treatment and recovery.

### Introduction

This inquiry provides the opportunity to shine a light on the limitations of the justice system and creates a necessary forum to progress evidence-informed changes.

Urgent reform of the justice system is necessary to halt the unsustainable growth in imprisonment and accompanying harms.

For example, there has been a 60% increase in the prison population over the past decade<sup>1 2</sup> with the number of women imprisoned more than doubling from 248 in 2008 to 581 in 2018<sup>3</sup>. The number of Aboriginal women incarcerated has trebled from 42 in 2012 to 147 in 2018<sup>4</sup>.

Windana's response to this inquiry will reflect on our experience as an alcohol and other drug (AOD) treatment provider and focus on the needs of the people who use our services – people who are experiencing alcohol and other drug dependencies.

### Summary of recommendations:

- Staged process for the decriminalisation of Cannabis, and further investigation into decriminalising other illicit substances
  - Recommendations 7 and 8 from the *Inquiry into Cannabis Use in Victoria* should be applied to all cases of drug possession
- Incorporating Therapeutic Communities in prisons

<sup>1</sup> Corrections Victoria, Corrections statistics: quick reference, accessed August 2021

<sup>2</sup> Corrections Victoria, Monthly time series prisoner and offender data, accessed August 2021

<sup>3</sup> Crime Statistics Agency, Characteristics and offending of women in prison in Victoria, 2012-2018, November 2019.

<sup>4</sup> Crime Statistics Agency, Characteristics and offending of women in prison in Victoria, 2012-2018, November 2019

- Specific allocation of housing for people exiting AOD treatment programs as well as those exiting prison
- Funded wrap-around and coordinated support for people post-release from prison
- Address the stigma around AOD use and treatment by increasing the Courts understanding of AOD issues.

### Factors influencing Victoria's growing remand and prison populations

The criminalisation of illicit drugs, combined with limitations in AOD service access, stigma, a fragmented array of supports, particularly post-release, the absence of a voluntary fast-track entry process into AOD support as well as the absence of suitable housing remain prime drivers of prison population growth.

#### **Recommendation – Staged process for the decriminalisation of Cannabis, and further investigation into decriminalising other illicit substances.**

The criminalisation of illicit substances continues to drive thousands of Victorians into the justice system, with evidence indicating that nationally in 2018/19, 94% of all cannabis related arrests were related to possession with 6% related to trafficking<sup>5</sup>.

Similarly, in 2017/18, 90% of all methamphetamine arrests were related to possession (40,398) across Australia. Despite the rhetoric, policing focus remains primarily on those consuming drugs rather than supply, which appears to have little impact on use.

Many of these arrests trickle into the prison system, with two-in-three prison entrants having used an illicit drug in the past 12 months. Among women, the rate increases to three in four<sup>6</sup>.

Victoria's *Inquiry into Cannabis Use in Victoria* called for a reduction in police involvement in the application of diversion for young people charged with cannabis-related offending and the expansion of the diversion program for adults charged with cannabis-related offences<sup>7</sup>. The inquiry also found that over 35% of male and 15% of female offenders received a term of imprisonment for cannabis possession.<sup>8</sup>

This is too high, and effectively eliminates the opportunity for early therapeutic and community-based interventions, often locking people into the downward spiral of repetitive incarceration. Specifically, Windana suggests that recommendations 7 and 8 from the *Inquiry into Cannabis Use in Victoria* should be applied to all cases of drug possession. The recommendations are detailed below.

**Recommendation 7:** *That the Victorian Government provides further funding to expand drug diversion programs, particularly in rural and regional Victoria.*

**Recommendation 8:** *That the Victorian Government establishes a legislated Youth Caution program to deal with low-level cannabis offences committed by young people under the age of 18. This program should incorporate specific provisions, including:*

- *shifting towards drug diversion programs as the default law enforcement response for minor cannabis offences committed by young people*

<sup>5</sup> Legal and Social Affairs Committee 2021. Inquiry into the use of Cannabis in Victoria. Parliament of Victoria. [LCSIC 59-07 Use of cannabis in Vic.pdf \(parliament.vic.gov.au\)](#)

<sup>6</sup> AIHW 2019. The Health of Australia's Prisoners 2018. PHE 246. [The health of Australia's prisoners 2018 Summary - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)

<sup>7</sup> Ibid 5

<sup>8</sup> Ibid

- *removing requirements for a young person to plead guilty before they are eligible for a caution notice*
- *not imposing fixed caps on the number of times a young person can participate in the program, where minor cannabis offences are the only or primary offence*
- *support and training for police officers aimed at reducing additional workload when issuing a youth caution*

Consideration of the resource implications of these recommendations on treatment agencies would need to be taken into account.

## Strategies to reduce rates of criminal recidivism

### **Recommendation: Incorporating Therapeutic Communities in prisons**

The Victorian Alcohol and Drug Association (VAADA) 2021/22 budget submission notes that AOD treatment provides an eight-fold return on investment. VAADA also cites a significant return for residential rehabilitation services when compared to prisons of over \$200,000<sup>9</sup>. There is clear value in further exploring options for in-prison Therapeutic Communities.

A Therapeutic Community is a treatment intervention in which the community itself, through self-help and mutual support, is the principal means for promoting personal change. There is a focus on social, psychological and behavioural dimensions of substance use through education, work and therapy.

There is a rich evidence base for the effectiveness of incorporating Therapeutic Communities in prisons. Integrating Substance Use Dependence treatment with criminal justice has been found to reduce recidivism and to be a cost-effective way to decrease substance use and improve related outcomes and public safety<sup>10</sup>.

### **Recommendation: specific allocation of housing for people exiting AOD treatment programs as well as those exiting prison**

Over 50% of those who are perpetrators of crime are also victims of crime (and vice versa)<sup>11</sup> and over 70% of women who are in prison are victim survivors of family violence, child abuse and/or sexual abuse<sup>12</sup>. Addressing the causes of disadvantage are central to reducing recidivism. Greater access to support services which can be geared to respond to trauma and related issues will reduce the drivers of recidivism.

The impact of imprisonment spreads beyond the prison gate with national estimates that one in seven of the 65,000 people released annually is in need of housing services<sup>13</sup> and the children of people imprisoned being six times more likely to be imprisoned at a future date<sup>14</sup>.

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<sup>9</sup> VAADA 2021. State budget submission 2021/22. [SUB\\_VAADA-budget-submission-2020-21\\_12032020.pdf](#)

<sup>10</sup> Wexler HK, Prendergast ML. Therapeutic communities in United States' prisons: effectiveness and challenges. *Ther Communities*. 2010;32:157-175

<sup>11</sup> G Jennings et al, On the overlap between victimisation and offending: A review of the literature, *Aggression and Violent Behaviour* (2012) 17

<sup>12</sup> H Johnson, Drugs and crime: A study of incarcerated female offenders, Research and public policy series, 2004; Justice Health & Forensic Mental Health Network, 2015 Network Patient Health Survey report, 2017; M Wilson et al, Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia, SAGE Open, January 2017

<sup>13</sup> Martin et al 2021. Exiting prison with complex support needs: the role of housing assistance. AHURI. [Exiting prison with complex support needs: the role of housing assistance—Executive Summary \(ahuri.edu.au\)](#)

<sup>14</sup> FLC and VCOSS 2021. Victoria's Criminal Justice System. Background Briefing 20 August.

Furthermore, there is a high rate of fatality post release, with the Victorian Coroners Court finding in 2017 that 40% of Victorians overdosing with heroin had a prior history of incarceration<sup>15</sup>.

Windana recommends that people released from prison, together with those exiting AOD treatment, should be given priority access to public and social housing. Capacity should be built into Victoria's \$5.3B big build to accommodate this need. The cumulative cost of homelessness exacerbates the other areas of disadvantage and trauma noted above.

It has been found that provision of suitable housing for people released from prison reduces police incidents (by 8.9% p/a) and time in custody (by 11.2% p/a) and produces a net benefit of between \$5,200 to \$35,000 over a five-year period.<sup>16</sup> The additional social benefits would be vast. Ensuring that people receiving short sentences can maintain existing housing may be one option.

### **Recommendation: funded wrap-around and coordinated support for people post-release from prison**

The lack of adequate housing is part of a larger gap in post-release support. There is significant need for funded wrap-around support for those exiting prison. The planning needs to commence at the start of a person's prison term, with external social and health service providers involved in the process at that stage. The post-release referral process needs to be more comprehensive than an incidental cold referral, which is often the case.

For many prisoners, the disconnect between pre-existing community service support and in prison support impairs positive outcomes. For those remanded, many may exit prison with limited time and support to prepare. Sentenced prisoners may experience a disconnect in health and social supports. Access to health services is deficient as those released grapple with the challenges of release while being relegated into lengthy queues in various support systems.

The failings of corrections to manage the health of prisoner's post-release has recently been acknowledged by the Victorian Coroners Court, with Coroner Hawkins inquest into an overdose post-release recommending:

*That the Victorian Department of Health adopt formal responsibility for improving health outcomes and reducing drug-related mortality among people who are released from prison.<sup>17</sup>*

Similarly, therapeutic programs such as the Drug Court should be able to provide linkages for aftercare support for those participants who may still benefit from support at the expiration of the order. Furthermore, the Drug Court should have a set number of residential withdrawal and rehabilitation beds allocated across the state which are adequately funded to meet the needs of this cohort.

The absence of coordinated social support, excessive wait times for AOD treatment pre- and post-release, and the rapidly expanding portion of unsentenced prisoners has perpetuated the churn of prisoners in and out of the system.

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<sup>15</sup> VAADA 2019. Prison should not be a death sentence. Press Release. 11 September. [MS\\_Prison-should-not-be-a-death-sentence\\_10092019.pdf \(vaada.org.au\)](#)

<sup>16</sup> Ibid 12

<sup>17</sup> Coroner Hawkins. J. 2021. Finding into the death without inquest of Shae Harry Paskiewicz. COR 2017 6235. [Finding\\_Paskiewicz\\_COR20176235.pdf \(coronerscourt.vic.gov.au\)](#)

**Recommendation: Address the stigma around AOD use and treatment by increasing the Courts understanding of AOD issues.**

Stigma remains a key deterrent to engaging in AOD treatment, with people reluctant to access health services for fear of discrimination. The perception of discrimination, which is reinforced on a daily basis across political and media narratives, drives use underground, deters help-seeking behaviour and diminishes the space to discuss evidence-informed policies to reduce AOD related harm. People in need of treatment who disengage for fear of discrimination and public condemnation are at greater risk of being involved with the justice system.

Due to stigma, many people do not feel safe asking for help. As a community, we can combat stigma by raising awareness and sharing information.

One element to reduce stigma is to enhance the Courts understanding of AOD issues. This would ensure that the Courts are aware of treatment options, the interplay between treatment and sentencing and the impact of remand on people experiencing AOD dependence.

AOD treatment agencies and addiction medicine specialists should be resourced to provide this training.

Additionally, Windana acknowledges that the following reforms will both reduce recidivism and improve the human rights protections of people in prison:

- repeal the bail Act with a presumption in favour of bail unless there is an immediate and dire risk
- ensure that parole is not refused in cases of homelessness (parole should not be denied due to disadvantage)
- Raise the age of criminal responsibility to 14
- Enhance independent protections to facilitate greater police accountability
- Legal support should be universal

Prison remains one of the most harmful institutions in modern society and is in need of reform to reduce recidivism and give people the best chance to make positive life change.

We thank you for the opportunity to submit as part of this process and are happy provide more detail on anything mentioned in our submission.

Your sincerely

**Clare Davies**  
Acting CEO