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Report on Victoria Police Operation at Melbourne '420 rally' 2023

"Victoria Police recognises that drug problems are first and foremost health issues. By taking a health-focused approach, police are empowered to respond to an individual's circumstances, environment and life stage. This enables policing approaches that reduce harm and keep the community safe." – Victoria Police Drug Strategy 2020-2025, p 18

"Under the [drug] strategy, Victoria Police will focus on the drugs causing the most harm within the community, arrest and prosecute drug dealers, disrupt drug networks, and work with the community and our partners to ensure those suffering from addiction are connected to appropriate treatment and support services." – Victoria Police website, <https://www.police.vic.gov.au/drug-strategy>

"Every person has the right not to have that person's privacy ... unlawfully or arbitrarily interfered with ... Every person has the right to freedom of expression... Every person has the right of peaceful assembly." – Charter of Human Rights and Responsibilities Act 2006, ss 13 15 and 16

"I saw lots of people getting searched, pretty much every second person. Saw half the people who got searched being taken away in cuffs to the portable station." – 420 rally attendee

"They're just a bunch of druggies" - a Victoria Police officer overheard at the 420-rally

Background: 420-rally and expert and community views on drug use

On Thursday 20 April 2023 hundreds of people gathered for a protest rally and community picnic held at Flagstaff Gardens Melbourne (**the 420-rally**). The 420-rally was advocating for the legalisation of cannabis in Victoria.

Speakers at the rally included Australian Senator David Shoebridge, Victorian Legislative Council members David Limbrick, Rachel Payne, David Ettershank, and Aiv Puglielli, harm reduction advocate Greg Chipp, and international harm reduction activist and ex-Texas police officer Barry Cooper. The event was attended by people who support the legalisation of cannabis, including people who work in the alcohol and other drug (**'AOD'**) sector and international delegates visiting Melbourne for the International Harm Reduction Conference.

The event occurred one day after the closing of the biennial International Harm Reduction Conference hosted this year in Melbourne. The conference brought together AOD workers,

medical specialists, academics and human rights advocates from over 60 countries to discuss harm reduction and public health-based responses to drugs and drug use.

On the same day, and not far from the 420-rally, the federal Joint Committee on Law Enforcement held a public hearing into 'Australia's illicit drug problem: Challenges and opportunities for law enforcement'. The Committee heard from leading health and AOD experts on the need to move away from the criminalisation of drugs towards responses based on harm reduction and public health.

In 2019, the Australian Institute of Health and Welfare reported that 36 per cent of people aged 14 and over in Australia had used cannabis in their lifetime and 11.6 per cent had used it in the previous 12 months.¹ The latter percentage does not include people who used prescription medicinal cannabis. The University of Sydney estimates that in 2019, 600,000 Australians were being treated with medicinal cannabis, and that another 295,515 prescriptions were issued between 2020 and 2022.² The true number of people in Australia using cannabis for medicinal purposes is likely to be a lot higher if those obtaining illegal cannabis for medicinal use are included.

Public views about cannabis use have changed over the past decade. In the most recent National Drug Strategy Household Survey, 41 per cent of people said they supported the legalisation of cannabis, 20 per cent approved of regular use of cannabis by adults, and only 22 per cent of people stated that possession of cannabis should be a criminal offence.³

Fitzroy Legal Service ('FLS') has spoken with 420-rally attendees, organisers, and key stakeholders in the harm reduction sector. Multiple videos have been posted online ([video 1](#); [video 2](#); [video 3](#); [video 4](#)) depicting Victoria Police's operational approach to the rally. The actions of Victoria Police recorded in these videos, at what was an otherwise completely peaceful political demonstration, raise a number of serious concerns, as detailed below.

Victoria Police's operational presence was excessive

At the parliamentary committee not far from the 420-rally, Wayne Gatt, secretary of the Police Association Victoria, gave the following evidence:

*"Overwhelmingly, police in Victoria will focus on commercial trafficking, for example, and trafficking activities in general. As I said to you, from time to time low-level use and trafficking is identified by police and dealt with because it's illegal in this state, but at the end of the day any drug investigation is very hungry. It's very resource intensive...Of course, as a default, my members will focus on the criminality that causes the greatest amount of harm to the greatest amount of people. That is not drug users who are walking the streets."*⁴

¹ Australian Institute of Health and Welfare, *Alcohol, tobacco & other drugs in Australia*, (Web report, 26 April 2023).

² Phillip Ritchie, 'Medical cannabis treating at least 2.7 percent of population', *University of Sydney* (Blog Post, 16 December 2022).

³ Australian Institute of Health and Welfare, *Australia's attitudes and perceptions towards drugs by region, 2019* (Web report, 15 July 2022).

⁴ Evidence to Parliamentary Joint Committee on Law Enforcement - Australia's illicit drug problems: Challenges and opportunities for law, Melbourne, 20 April 2023, 57 (Wayne Gatt).

This statement is starkly inconsistent with resource-intensive operation deployed by Victoria Police in relation to the 420-rally, as evidenced by video and witness accounts.

From speaking with attendees and reviewing footage it appears that the policing operation of the 420-rally consisted of:

- approximately 100 police officers including members of the Public Order Response Team ('PORT'; colloquially known as the 'riot squad') and the evidence gathering (surveillance) team,
- drug detection dogs,
- multiple public order response vehicles,
- a large police truck ostensibly to accommodate arrests,
- multiple divisional vans,
- a police bus,
- a mobile van office with computers,
- multiple marked and unmarked vehicles parked inside the gardens, and
- two police tents that were erected on site and used for processing arrested persons.

At times Victoria Police members, including the PORT and detection dogs, were stationed around entrance points to Flagstaff gardens while also patrolling 420-rally attendees inside the gardens. The Victoria Police evidence gathering team filmed rally attendees as well as people being searched (including people who were not found to be carrying suspected illicit substances) and people being arrested.

It was reported to FLS, and would be expected, that this operational approach to the political demonstration had a significant impact on those people who wished to express their political views by attending the 420-rally, including deterrence in presence or involvement.

Victoria Police inappropriately policed and searched attendees, including medicinal cannabis prescription holders

Several rally attendees reported to FLS that they witnessed police initiating searches on people for smoking cigarettes as well as continuing with searches after a person had produced their prescription for medicinal cannabis. One rally attendee witnessed police searching a couple having a picnic on the outskirts of the rally on the basis that the lid to their thermos looked like a grinder

One of the organisers of the rally told FLS that he had been assured by a Victoria Police representative in the lead up to the event that once a prescription holder produced their prescription, police officers would leave them alone. This assurance unfortunately was not upheld.

Victoria Police's approach to medical cannabis prescription holders was inconsistent. One medicinal cannabis prescription holder reported to FLS that they were not searched after producing their prescription. However, another said they were searched after producing their prescription. This person also told FLS that during the search police disputed the prescription instructions and questioned them on whether the prescription was fake.

Several people reported witnessing multiple occasions of police continuing to detain and search prescription holders after being shown a medicinal cannabis prescription and identification. Such searches included searching the lining of bags, emptying the contents of peoples' bags onto the ground and, in at least one instance, handcuffing and arresting a person.

Where suspicion of possession of illegal cannabis forms the foundation for a lawful search, the production of a prescription and identification nullifies that ground of suspicion. Furthermore, the production of a medicinal cannabis prescription cannot logically form the basis of a reasonable suspicion of possession of illicit substances, and therefore cannot authorise conducting, or continuing to conduct, a search.

The organiser we spoke to witnessed multiple prescription holders being detained and searched, and said:

"It's putting people through a humiliating experience. It's not about a lawful outcome or because there is justice involved...Now with [medicinal cannabis] prescriptions it's getting harder to accept this intolerable approach, it's discrimination...The onus is on the police and government to justify why they are spending this money, why they are using this brutal approach, and why patients don't have any rights."

One cannabis prescription holder said:

"[Medical] cannabis has definitely helped me. In 2019 [I was injured] and I was not a fan of oxycodone and other pain meds. I have bad anxiety in general. I got prescribed medical cannabis instead of the pain and anxiety and depression meds which made me feel shit. Medical cannabis helped me ten-fold what they did. I can function, and go throughout the day and do things, work my job. I was on oxy every day and I couldn't even get out of bed. Now I can actually do stuff."

"[After being searched and stopped again soon after] I freaked out. I left [the rally] because of the police. I was trying to find somewhere to smoke my joint where I wasn't going to get searched. But I had mad anxiety from the whole thing. I was still shaking for an hour afterwards. I couldn't deal with it. My anxiety was through the roof."

Victoria Police used excessive force by unreasonable use of handcuffs

Handcuffing a person is a use of force and may only be done where necessary and proportionate.⁵

Where a person is agreeable, compliant, and not posing a risk to the physical safety of police members, the use of handcuffs is not reasonably necessary.⁶ Any use of handcuffs must be justified to ensure there is not a disproportionate restriction on a person's rights protected under the *Charter of Human Rights and Responsibilities Act* ('the Charter').⁷

⁵ Coroner's Court Victoria, *Inquest into the passing of Veronica Nelson* (Finding into Death with Inquest, 30 January 2023) 75 [225] ('*Inquest Finding*').

⁶ *Inquest Finding*, 76 [226]-[227].

⁷ *Ibid.*

The videos viewed by FLS show multiple people being handcuffed by police. In each of these circumstances the person handcuffed appears to be compliant, cooperative, agreeable, and not to be exhibiting any behaviours that would suggest they pose a risk to the police officer's safety. This assessment was corroborated by those who spoke with FLS, who said that people at the rally, including those who were detained, searched, arrested and/or handcuffed, were peaceful and co-operated, and were not aggressive, threatening rude towards police.

In each of the circumstances viewed by FLS the use of handcuffs appears to have been unjustified and disproportionate, and as such to have constituted excessive use of force.

Victoria Police's operation was incompatible with the right to political demonstration

One rally attendee told FLS:

"The rally was peaceful, chill. Trying to raise awareness. It was really laidback... I saw lots of people getting searched, pretty much every second person. Saw half the people who got searched being taken away in cuffs to the portable station. Everyone looked really sad. It was pretty depressing...The police were intimidating, trying to be a mob mentality walking around in packs trying to scare people...I left because of the police."

The right to protest is a human right, protected in Victoria by sections 15 and 16 of the *Charter*. The right to protest is also protected through the implied right to political communication in the *Australian Constitution*.⁸ The freedom to express political views, popular or unpopular, including through peaceful assembly in public spaces, is legally protected as a fundamental democratic right.⁹

As a public authority, Victoria Police is bound by the *Charter* and is required to act compatibly with, and properly consider, human rights – including the right to protest. Any action or decision that limits human rights must be justified and proportionate,¹⁰ meaning the limitation must not go beyond what is reasonably necessary to achieve the purpose of limiting the right.

Decisions, tactics, and actions of Victoria Police can significantly limit the right to protest, whether Victoria Police expressly intends to limit the right or the limitation is a consequential impact of operational and tactical decisions.

The 420-rally was a political demonstration advocating for legislative change to legalise cannabis use. Those in support of this issue should have been able to peacefully assemble at the rally and freely express this view. They should have been able to do this free from fear, intimidation or the threat of being searched by police.

After comparing the VPDS with witness accounts and the footage posted online, it is not clear to FLS what purpose the policing operation could have had that would have justified such extraordinary interferences with the right to protest.

The extraordinary police presence – one rally attendee said that at times police outnumbered rally attendees – accompanied by arrest tents, members of the PORT, numerous police vehicles,

⁸ *Brown v Tasmania* (2017) 261 CLR 328.

⁹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *Coleman v Power* [2004] HCA 39.

¹⁰ *Charter of Human Rights and Responsibilities 2006* (Vic), 38(1); *Thompson v Minogue* [2021] VSCA 358.

unreasonable searches (as outlined above) and the unjustified and disproportionate use of handcuffs was intimidating and acted as a deterrent to people wishing to exercise their right to protest.

One rally attendee said they felt intimidated by the strong police presence and that the police were harassing people at the rally and being rude to them:

“I cried. I was deeply unhappy, uncomfortable, bothered by the oppressive policing. [It was] shocking.”

A rally organiser said they were informed by several people that:

“People aren’t coming because of police aggression. Others are being turned away by police standing at the corner at the entrance to the park with a sniffer dog, telling people to go away and don’t enter the park. Telling people if they went in they would get searched and arrested. They are stopping people’s right to protest. We smoke cannabis at a point in the day to highlight that this is the worst we do, to highlight how harmless it is.”

Another attendee said they did not feel comfortable or safe being a part of the political protest and that they therefore felt they needed to be an active bystander to the policing, rather than demonstrating their views on the political issue discussed at the rally.

In light of the fact that cannabis use and possession are low-level offences, the purported commitment to harm reduction objectives in the VPDS, and the peaceful nature of the event, the tactical and operational decisions by Victoria Police to respond to the 420-rally in an intimidating and punitive manner gave rise to an unreasonable and unjustified interference with the right to protest.

In the situation presented at the 420-rally, a harm minimising approach – whereby police would have exercised their discretion not to investigate drug offences – would have been consistent with community expectations, Victoria Police policy and Victoria Police’s obligations to promote and protect human rights under the *Charter*.

Victoria Police engaged in instances of professional misconduct

FLS has spoken with a rally attendee who overheard a Victoria Police officer using derogatory, stigmatising, and unprofessional language when one officer said to another officer of the protest attendees: “they’re just a bunch of druggies.”

Another attendee reported that a police officer was mocking attendees dancing to music, saying words to the effect of “look at these junkies dancing.”

Two rally attendees have also reported to FLS that they observed Victoria Police members overwhelmingly focusing their searches on people of colour and people with prescription cannabis. One of these attendees said:

“[Cannabis] is over-policed in a kind of stigmatic approach towards certain people. For example, I am a white man that presents in a certain way and I’ve never been searched by

police in my life. But other friends that dress a certain way or have a different cultural background get targeted by police more for cannabis. The [VPDS] is very discretionary and the police have a lot of power to pick and choose who they want to target.”

One attendee observed around ten police officers surrounding two compliant young people, possibly in their late teens, for a search while those two young people were visibly shaking and scared.

FLS considers this to be highly improper behaviour for members of Victoria Police. These behaviours amount to breaches of the Victoria Police Manual policy on interactions with the public and give rise to possible breaches of the *Equal Opportunity Act* and the *Charter of Human Rights and Responsibilities Act*.

This behaviour, particularly considered in the context of the broader policing operation at the 420-rally, which was described by attendees as “aggressive” and “intimidating”, falls well below the standard of policing expected by the Victorian community.

Operation was incompatible with the Victoria Police Drug Strategy 2020-2025

The VPDS identifies four focus areas: preventing drugs from entering the community and preventing increases in demand; disrupting the supply of drugs; diverting people into support services; and supporting harm reduction strategies that keep Victorians safe.¹¹

The VPDS also identifies five innovative approaches that Victoria Police is to engage in when responding to drugs: supporting health-led, prevention-first approaches and treatment-based responses to use and possession; disrupting drug markets and looking beyond arrest-and-seizure measures; supporting education, community resilience and early intervention; focusing police efforts on the drugs that cause the most harm; and confiscating assets of people with unexplained wealth.

Throughout the VPDS the tactic of arrest is only referred to in relation to drug dealers, violent offenders, and organised crime networks.¹²

In other words, the VPDS directs Victoria Police to focus policing and resources on organised crime syndicates and the large-scale trafficking of drugs as well as supporting and educating the community through harm reduction principles.

Attendees at the rally reported that the policing did not reflect the VPDS. The footage viewed by FLS corroborates this.

In contradiction to the focus areas and innovative approaches identified in the VPDS, the footage appears to show Victoria Police concentrating policing and resources on cannabis consumers on suspicion of use and possession.

One attendee who is also a medicinal cannabis prescription holder and an AOD worker said:

¹¹ Victoria Police Drug Strategy, 11.

¹² Victoria Police Drug Strategy, 3, 13, 14.

“It wasn’t harm reduction, it was a lot more of a punitive approach than harm reduction...It made me feel threatened for something that I shouldn’t be threatened for, that no one should be threatened for. It’s a waste of resources. It contradicts the [VPDS].”

Operation was incompatible with harm reduction principles

Several rally attendees who are also AOD workers had attended the Harm Reduction International Conference in the days prior to the rally. One said witnessing the policing of the 420-rally was:

“the exact opposite of harm reduction...gut wrenching, a complete contradiction of what we’d been discussing [at the conference] and the evidence from across the world on approaching drugs and harm reduction.”

Another attendee, also an AOD worker who had attended the conference said:

“[the conference] was empowering, uplifting, motivating in my work as an AOD peer support worker. Then the 420-rally. People aren’t learning anything. It’s depressing, sad, really tense.

My clients have to deal with police all the time [and I’m] trying to get clients to treatment instead of lock-up. Standing in a sea of police arresting people, it was demotivating for my work. Australia is going backwards regarding harm reduction, and going further backwards.”

One person who attended the rally with international delegates visiting Melbourne for the conference said:

“the Harm Reduction International attendees were shocked. Victoria Police made Australia look like dickheads.”

Another also attending with an international delegate said:

“it was tough for [the delegate]. They had some big tears and said it was worse than what they see in their country on the policing of cannabis.”

As noted above, the VPDS states Victoria Police’s commitment to support harm reduction principles.

The footage of the 420-rally depicts Victoria Police members patrolling the event with drug detection dogs, stopping and searching rally attendees, arresting and handcuffing those found with suspected illicit substances, and taking people to the Victoria Police tent for apparent issuing of warnings, fines, or charges.

The rally organiser we spoke to said:

“[Harm reduction] is 180 degrees from what they do. What they say [in the VPDS] is the opposite of what they do...It’s policing through intimidation, it’s never been anything but. This is not the policing that is going to change behaviour patterns. They know prohibition doesn’t work, there are no outcomes of benefit. But they keep throwing money at it and doing the same thing through intimidation and violence.”

There is no credible longitudinal evidence in Australia or internationally that law enforcement tactics like those deployed at the 420-rally lead to lower levels of drug use or harmful drug use.

It is well researched and documented that punitive policing of events where drugs are commonly used increases the risks of harm to attendees and does not support harm reduction principles.¹³

This form of policing increases the risk that event attendees will attempt to conceal drugs internally or will engage in panic consumption – increasing the risk of drug-related health harms.¹⁴

Additionally, if someone does suffer a drug-related harm or health concern, fear of getting in trouble with police can deter them from seeking help.¹⁵

FLS has heard from one 420-rally attendee who had their prescribed medication with them but not in its original packaging. After observing the high police presence at the event the attendee considered swallowing all their medication at once to avoid any negative interactions with the police.

The policing tactics that appear to have been deployed at the 420-rally are not compatible with harm reduction principles. The punitive policing tactics as shown in the footage frustrate harm reduction principles, do not support a public health-based response to drug use, and increase the risks of drug-related health harms. In FLS's view they have caused reputational embarrassment to the State as a leader on harm reduction.

Over-policing cannabis use negatively impacts court resources and incarceration rates

Cannabis is noted in the VPDS to be the most commonly used illegal drug in Victoria.¹⁶ Cannabis use however does not account for the majority of drug-related social and legal harms,¹⁷ excluding drug-related transport accident deaths.

Despite the comparatively low rate of harms associated with cannabis use, around \$4.5 billion in social costs is expended annually across Australia. Over half of this cost is spent on criminalisation processes – police, courts, lawyers, corrections, imprisonment, and victims of crime.

One rally attendee said:

¹³ Jodie Grigg, Monica Narratt, Simon Lenton, 'Drug policing down under: An investigation of panic consumption, internal concealment and the use of drug amnesty bins among a sample of Australian festivalgoers' *International Journal of Drug Policy* 106 (August 2022); Australian Drug Foundation 'What is harm reduction and why is it important at music venues and events?' (January 2019); Robert Page et al, 'Barriers to help-seeking among music festival attendees in New South Wales, Australia' *Drug and Alcohol Review* 41(6) (23 May 2022).

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ VPDS, 5.

¹⁷ Cannabis contributes to just 0.3% of the total burden of disease and 10.2% if the total burden due to illegal drug use <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis#Deaths>; 8% of drug-related ambulance attendances <https://aodstats.org.au/explore-data/ambulance-attendances/>; 9% of drug-related hospital admissions <https://aodstats.org.au/explore-data/hospital-admissions/>; 4.5% of drug-induced deaths <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/drug-types/cannabis#Deaths>;

“Everyone was criminalised. We all felt like criminals. They were treating us like they would a group of genuine criminals who had just come back from a robbery...[There is] far too much effort and time and resources on the war against cannabis specifically. A lot of time and resources that could be put into helping the people that actually need it.”

In further contradiction of the approach propounded in the VPDS, national statistics show that consumers account for 91 per cent of cannabis arrests and providers account for 8 per cent. This is largely in-line with other illegal drugs where the proportion of policing attention and arrests on consumers far outweighs that on providers.¹⁸

Police are the entry point to the criminal legal and prison systems. The decision by Victoria Police to deploy anti-harm reduction tactics through the targeting of peaceful protestors for cannabis use and possession is a decision that compounds existing burdens and strains faced by courts, community corrections, and prisons. It is a decision made without any evidentiary basis, as there is no evidence that punitive approaches lead to long-term changes in drug taking behaviours or reduce drug-related harms.

The rally organiser FLS spoke with said:

“A lot of good people are being unhealthily targeted. Being targeted in this war that is only being fought by Victoria Police...There is a growing chasm between police and society, [they’re] treating the community as criminals, there has been a growing mistrust. [This policing] is a misuse of funds disproportionately aimed at the wrong people.

“I’m tired of people being hurt pointlessly. I can’t understand the logic of it.”

Fitzroy Legal Service
June 2023

¹⁸ Australian Criminal Intelligence Commission, *Illicit Drug Data Report 2019-20*, (Report, 20 October 2021).