



**THE POLICE  
ASSOCIATION  
VICTORIA**

# The Police Association Victoria submission to the Inquiry into workplace drug testing in Victoria

**SUBMISSION – December 2023**



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8 December 2023

c/o Trung Luu MLC  
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## The Police Association Victoria submission to the Inquiry into workplace drug testing in Victoria

The Police Association of Victoria (the Association) thanks the Integrity and Oversight Committee (the Committee) for the opportunity to provide input into the *Inquiry into workplace drug testing in Victoria* (the Inquiry).

### The Police Association of Victoria

The Association is an organisation that exists to advance and represent the industrial, legal, professional and welfare interests of its members. The Association's membership of over 18,000 is drawn exclusively from sworn Police Officers at any rank, Protective Services Officers, Police Reservists and Police Recruits who serve in Victoria Police. Membership of the Association is voluntary. By virtue of its constitution, the Association is not affiliated with any political party.

### Response to selected Terms of Reference

The following outlines the Association's position on selected Terms of Reference. Summarily, we call for a nuanced approach to medicinal cannabis and a workplace drug testing framework that provides clear protections for employees' privacy and health information.

*(2) the treatment of prescription medicinal cannabis as compared to other prescription medications, under that workplace drug testing framework;*

The Association maintains that the safety of the community and our members is of paramount importance. Drug testing in the workplace is a necessary element of ensuring this safety. The Association is alive to the issues associated with prescribed medicinal cannabis and have previously acknowledged the difficulty in drafting a policy in this space. There exists a complexity with respect to medicinal cannabis that is yet to be properly tended to by modern testing capabilities. Specifically, current testing does not measure impairment in any scientific manner. Instead, traces of cannabis elements are registered. There is a demonstrable need for further testing and research into levels of impairment, including an agreed upon definition of what constitutes "impairment."

Moreover, it is apparent that there is some demarcation between medicinal cannabis containing delta 9 tetrahydrocannabinol (THC) and cannabidiol (CBD), with the former associated with a deeply relaxing and euphoric sensation and the latter having a lack of psychoactive properties. Further, people utilise THC and CBD in different ways, depending on specific health needs and association prescriptions. The Association understands that CBD has no psychoactive properties and as such is not relevant to issues of impairment any more than it might be an issue with other prescribed medications. CBD does not form THC in the body, eliminating the detection (and reputational) concern associated

with a THC dominant product. As such, our view is that at the very least CBD based medicinal cannabis should be treated in the same manner as any other prescribed medication that sits within Schedule 11 of the *Drugs Poisons & Controlled Substances Act 1981 (Vic)*.

*(4) whether current workplace drug testing laws and procedures are discriminatory in nature and could be addressed by the addition of a further protected attribute such as 'medication or medical treatment', in Victoria's anti-discrimination laws;*

There exists a very real risk that blanket, broad, and heavy-handed approaches to workplace drug testing have the potential to be discriminatory, particularly with respect to placing employment in jeopardy. Taking the above elements together, the Association advocates for a more nuanced approach to medicinal cannabis. An employee could, as a result of a positive test, be subject to detriment in their employment. The same can surely be said for any prescription drugs that affect the brain. By way of example, Panadeine (codeine), diazepam (Valium), and phentermine (Duromine), are all prescription drugs that affect the brain and have the potential to cause impairment. Notwithstanding such medications might be used to manage the very same conditions for which medicinal cannabis is prescribed.

Whilst we acknowledge that extant road laws, as well as the potential impairment associated with THC based medicinal cannabis, agitates for a conservative approach to policy formulation, we are of the view that no such concerns ought to be harboured regarding CBD based products. As such, the Association is of the view that the policy around medicinal cannabis is too nuanced to apply a one size fits all approach, particularly given that it is invariably prescribed for long term illnesses such as chronic pain.

*(5) any other relevant matters;*

The current workplace drug testing framework for Victorian Police demands the disclosure of certain sensitive health information. The Association supports the rights of employees to maintain dignity and privacy with respect to their medical and health status unless these have a direct bearing on their ability to perform their duties as defined by *Occupational Health and Safety Act 2004 (Vic)*. It is important to note that s.107 of the *Equal Opportunity Act 2010 (Vic)* prohibits the requesting of potentially discriminatory information. With respect to workplace drug testing procedures, we oppose any framework that has a requirement for disclosure with respect to OTC medication and CBD medicinal cannabis. We see this is an exceedingly burdensome and unrealistic policy position given the prevalence of such drugs to be accompanied by an almost standard form of pamphlet, replete with small print warnings about drowsiness, machinery operation and driving, drafted in the broadest of terms in order for the manufacturer to purportedly absolve themselves of any liability should consumption produce an adverse reaction.

Arguably, any mandate for an employee to declare to their workplace at the commencement of duty the fact that they have taken something as innocuous as an OTC cough syrup or a prescribed antibiotic, does not automatically rise to this threshold and impinges on inalienable rights to privacy. Putting to one side issues of health records privacy and how a failure to declare might be revealed, such an approach would make a member who does not advise their workplace of the fact they have taken an OTC or prescribed medication is vulnerable to adverse action.

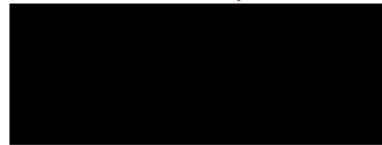
Further, many employees remain fearful of facing health-related discrimination or differential treatment on the basis of treatments prescribed to them. More viscerally, there is in our view little doubt that there exists a palpable reluctance for members on a prescribed course of medication to reveal to their supervisor what medication they are consuming for fear of the stigma that might attach



to it. Whilst there would arguably be no empirical studies (for good reason) in respect of the percentage of police who are taking anti-anxiety or anti-depression prescription medication, intuitively it is likely to run into the hundreds if not thousands. The potential for members' to be dissuaded from seeking out assistance for a mental health condition lest it be revealed to the employer is real and apparent. Moreover, to subject a member to discipline action for failing to disclose is certain to have a deleterious effect on the very condition they are seeking to manage. This cannot be reconciled with the current government narrative around mental health and wellbeing.

Finally, building on issues of privacy, the Association also suggests that the framework establish strong protections for employees' health information when substances are detected by workplace drug testing. Given the clunky testing tools and nuances nature of prescriptions, maintaining the right to privacy takes on paramount importance. Strick guidelines as necessary disclosures, as well as clear penalties for any breaches, will provide some reassurance to members receiving prescriptions.

For consideration,



Mr. Wayne Gatt

Secretary

The Police Association of Victoria





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