



Submission to the  
Victorian Law Reform Commission  
Consultation Paper on  
**Surveillance in Public Places**

July 2009

**Contact**

**Sam Biondo - Executive Officer**  
Phone: (03) 9416 0899  
Email: [sbiondo@vaada.org.au](mailto:sbiondo@vaada.org.au)

## Contents

1. Introduction .....	3
2. Discussion.....	4
3. Public place surveillance: who will be most affected? .....	4
4. Surveillance as a deterrent to drug use in public places .....	5
5. Loss of anonymity in public places.....	5
6. Possibility of error and miscarriage of justice.....	6
7. Surveillance and harm reduction .....	6
8. Independent research and public education .....	9
9. Final comments.....	9
References .....	11

## 1. Introduction

VAADA is pleased to offer this Submission to the Victorian Law Reform Commission. Although not comprehensive, we hope it will provide a unique and critical perspective on how surveillance in public places effects, or may effect, people who use drugs and alcohol in public places, and that it will be used to inform decisions about the kind of reform required in Victoria.

As the peak organisation representing Victorian alcohol and other drug (AOD) service providers and their clients, VAADA iterates its support for the draft guiding principles and the suite of options for reform developed by the Commission and set out in the Consultation Paper.

VAADA's submission relates to several of the themes identified by the Commission that we believe bear particular relevance to people with AOD related issues, and in some cases, AOD workers and service providers, namely

- loss of anonymity in public places
- possibility of error and miscarriage of justice
- discriminatory profiling of groups
- exclusion of groups from public places

VAADA's response problematises the popular notion that surveillance acts to deter or control drug use in public places, and includes anecdotes and snapshots drawn from the alcohol and drug sector to highlight ways surveillance impacts on some of the most vulnerable members of our society.

In preparing this submission, VAADA sent out an electronic request for comments, concerns, perspectives and anecdotes to its members on how surveillance might relate to their clients, and to drug and alcohol users in the community generally. The response was very limited, and VAADA understands from follow up conversations that the issues are complex, somewhat abstract and removed from service providers' usual sphere of concern. In these conversations however, all workers reiterated the vulnerability and marginalisation of drug and alcohol users, particularly users injecting illicit drugs in public places. They expressed concern that surveillance is largely unregulated and some highlighted the displacement effect of surveillance as being contrary to harm reduction principles. Others drew attention to the potential infringement of surveillance practices and technologies on the rights to anonymity and confidentiality that are critical tenets of many models of service provision. Several agencies expressed particular concern at the (mis)use of police sniffer dogs in detecting drugs.

## 2. Discussion

VAADA believes there is a role for surveillance in society, but has serious concerns over how, and to what extent, surveillance can be effectively regulated to protect values of privacy and dignity. VAADA recognises that the horse has already bolted in terms of the proliferation and technologies of surveillance, and that wholly dismantling or halting the use of surveillance devices is unrealistic. VAADA therefore believes developing a comprehensive statutory framework to regulate both surveillance itself, and the materials, data and information captured through surveillance, is of primary importance.

VAADA understands the Australian Law Reform Commission has recently reviewed information privacy laws and hopes recommendations arising from that review will serve to strengthen and protect the privacy of all Victorians. However, regardless of how well-regulated the use of surveillance data may become, the use and proliferation of surveillance devices and methods themselves must continue to be scrutinised and be subject to consistent and effective oversight and regulation.

Public spaces and places are critical venues for realising citizenship and fostering a just and inclusive society. The spectre of omnipresent surveillance invokes questions around civil liberties, democratic participation and privacy, and poses a real threat of normalising behaviour to result in a less diverse and more inhibited society.

Increased surveillance of public places has been concurrent with the increased commercialisation, privatisation and regulation of public space. Each of these trends impacts disproportionately on those who must, or who choose to, use public places the most: young people, homeless people, Indigenous people and people with limited economic resources. Cutting across and among these groups are people using drugs and or alcohol. VAADA believes people experiencing drug and alcohol related issues, often with significant social disadvantage and a dual diagnosis of problematic drug use and mental illness, are particularly marginalised and vulnerable.

## 3. Public place surveillance: who will be most affected?

*Public space, through history, has been conceptualised as a place of encounter... [But] who is the public of public space? Those who do not fit constructed ideals of citizenship are more subject to marginalisation, often more subject to surveillance (England 2008, p.210).*

The Commission makes reference to the disproportionate impact of surveillance in public places on three broad social groupings: namely, people with limited economic means generally, and homeless and young people. These groups are also associated with higher rates of drug and alcohol use.

Specifically, research shows there is a close association between injecting drug use, public environments and homelessness (Briggs *et al* 2009). For example, in the United States, an estimated 26-67% of homeless people are chronic users of drugs and/or alcohol (Briggs *et al* 2009). Further, the research found that 'although injecting in public or semi-public settings was often the norm among

homeless injectors, it was common among all injectors... interviewed'. Closer to home, a 2001 survey of a sample of injecting drug users in inner city Melbourne found that over a third of participants injected most frequently in a public place (Turning Point 2001, p.27).

The impact of surveillance on young people generally, and those young people using illicit drugs in particular, could be even more acute. One AOD worker pointed out that young people can be naive and oblivious to surveillance:

*'Young people don't think through what the camera might mean, they often think they're anonymous. The developmental stage they're at is that they're supposed to be egocentric. Young people are quite public about offending behaviour and drug use behaviour, older people are much better at camouflaging it'.*

This highlights the risk that young people may be 'caught out' at a disproportionate and unrepresentative rate. VAADA is also concerned that the risk of exclusion from public places identified by the Commission is of particular relevance to street-based and young drug users.

#### **4. Surveillance as a deterrent to drug use in public places**

Arguments in favour of surveillance often centre on the notion that surveillance acts to deter crime in particular places. Support for surveillance as a drug use deterrent can be seen as a facet of the 'law and order' approach to drug use. Such a focus on reactive law enforcement may eclipse more effective, evidence-based approaches that seek to address the underlying causes of problematic and illicit drug use. It can serve to merely displace or redistribute illicit drug use and associated behaviours, as discussed below.

A 2005 meta-analysis of international law enforcement approaches to public drug use indicated that 'street level drug law enforcement should focus on forging productive partnerships with third parties and community residents and making attempts to alter the underlying conditions that exist in places with street level drug market problems' (Mazerolle *et al* 2005, p.1). Proliferation and use of CCTV and electronic surveillance devices might also be seen as a technocratic response to a social issue. VAADA strongly believes surveillance should not be promoted as a panacea in countering or controlling drug use in public places, and rather that the emphasis must be on addressing the underlying causes of drug use in public places.

#### **5. Loss of anonymity in public places**

##### **Accessing drug treatment services**

Anonymity and confidentiality are critical conditions for the effective operation of many drug and alcohol services. One worker from an inner city needle and syringe exchange program (NSP) said that 'our client group are already so marginalised. Surveillance around the front of our property is a no go, not near the entrance or approaches – clients injecting illicit drugs aren't willingly going to compromise their confidentiality and anonymity'. The worker emphasised that 'confidentiality and anonymity are one of the cornerstones of our service model, they're absolutely critical'.

The worker believed that (video) surveillance around NSPs would deter people from using the service, and that fewer people accessing the service could have significant public health impacts, including an increase in transmission rates of HIV and Hepatitis C. This point is also discussed below in relation to the negative implications of surveillance for some of the strategies and principles of effective harm reduction.

## 6. Possibility of error and miscarriage of justice

VAADA is concerned about the possibility of surveillance footage prompting false admissions of guilt from drug users and/or dealers. An AOD worker from a drug and health service in the inner west of Melbourne said:

*'What they [police] tend to do is take the cameras down and put them back up, or not. They watch the footage and then they decide if the interaction between the two people is maybe a bit suss. If they think the suspicious part of that is that someone is selling a single cap of heroin out of hours, they send a single operative down and then they've got video evidence as well as the actual buy'.*

Although video evidence of a drug deal is commonly supported by way of an undercover police operation in which an officer solicits a 'buy' from a dealer, as above, this worker related knowledge of circumstances in which hazy video footage had been used without corroborating evidence. He claimed that drug users and/or dealers were sometimes taken into custody on the basis of surveillance footage alone, even if the footage was grainy and unclear. He described clients with high drug dependence and complex issues who, prompted by ambiguous footage, had confessed to a deal in which they may or may not have participated, purely to avoid detention and the resultant period without using.

There is also concern about selective use of surveillance footage. VAADA, with HRV and several AOD workers, strongly assert that measures must be put in place to ensure the integrity of surveillance materials, such that footage and materials are unaltered, unabridged and complete when used as evidence in any legal proceeding.

## 7. Surveillance and harm reduction

Many of the concerns about public place surveillance presented to VAADA related to ways specific surveillance practices may undermine harm reduction principles and strategies and in turn impact negatively on the health of drug users, AOD clients, and the wider community. The phenomenon of displacement that can follow installation of surveillance devices or continuous police presence, and the role of sniffer dogs drew particular comment.

VAADA recognises that appropriate real time surveillance by police, security and authorised users, and by way of live, monitored CCTV devices can be effective in preventing, interrupting and prosecuting serious crime and may have a deterrent effect. In terms of public drug use, where cameras are monitored live, they hold the possibility of rapid, real time response to overdose and violent assault. However, many devices are only 'passive'. One of the ways to ensure the benefits of

this kind of surveillance would be to monitor CCTV in public places in real time and link this system to rapid response capabilities.

## **Redistribution, displacement and substitution**

Significant research and evidence suggests surveillance displaces, rather than solves, the problem. The Commission's Consultation Paper referred to examples of drug deals simply moving elsewhere following the installation of CCTV in certain areas of Melbourne (Consultation Paper, p.82). Dovey *et al* (2001) contend that 'many of the urban design practices which occur under the slogan of "designing out crime" could be better termed "redistributing danger"' (p.330).

The Burnet Institute examined a set of local solutions to public drug use and reviewed literature relating to the efficacy of common interventions aimed at reducing or eliminating drug use in public places. The idea of 'designing out crime', including drug use, covers measures such as increased lighting, installation of surveillance devices and precluding access to certain areas. Increased policing of specific areas and groups were also discussed. The report finds that

*'while heightened levels of policing can imbue communities with an increased feeling of safety, the markets are known to be extremely resilient and will either change in their nature (e.g. adopting mobile communications and home delivery mechanisms) or relocate to neighbouring areas. Increased numbers of users in new location raises public concern, and associated crime becomes more evident in areas less policed (Aitken et al 2002; Wood, Spittal et al 2004b; Kerr et al 2005). Relocation brings with it changes in drug use behaviour that exacerbate the risk of adverse health outcomes, including the formation of new sharing networks and increased violence and volatility among drug users and dealers (Curtis et al 1995) (Winter et al 2007, p.23).*

Further, the report draws attention to

*'the difficulty in reaching and maintaining contact with injecting drug users when they have been displaced, or when constant surveillance does not afford them space to engage with health and other services. Losing contact with drug users can precipitate the breakdown of preventative structures and undo the efforts of service providers' (p.23).*

Anecdotes from several AOD workers illustrate this finding and reflect concern about systematic monitoring of individuals and groups by police. One youth AOD worker cited young people in the vicinity of the Crown entertainment complex were 'put across the road' to a park, where they could no longer be monitored, and where the risks of assault and overdose increased.

Another service provider located in Melbourne's inner west commented that 'about three weeks ago, we found out there were a couple of police officers stationed outside our service. We didn't know they were there but all of a sudden, no one was coming in'. A worker from a nearby service told a similar story, explaining that since a sustained police operation on and around the service premises, there had been a 25 per cent drop in clients attending the service.

The service provides pharmacological treatment, but also mental health, counselling, general health and financial advice services. The worker pointed out that the drop off in clients meant that around 125 people were accessing neither their drug replacement treatment, nor the other support services. He figured that

*'during that 6 week period, out of the 125 who haven't been in, only 5 have been formally transferred. \$150 x 120 people x 7 days a week x 6 weeks = a lot of [stolen] TVs. What does that mean for their family dynamic, what does that mean for the community in general? Let's say it's \$15,000 they have to raise to use. This all came about because police were hanging out near the front door of the office'.*

Importantly, redistribution and displacement can occur not only in a geographical sense, but in terms of substitution – where one substance is displaced by another, and/or by a more dangerous practice. The anecdotal evidence in relation to PAD dogs below provides examples of people swapping pills they are familiar with for more dangerous substances; and people taking all their pills at once if they become aware a PAD dog is in the vicinity.

## **Passive Alert Detection (PAD) Dogs**

VAADA was alerted to significant concern from several AOD agencies about the common use of PAD dogs (sniffer dogs) to detect people in possession of illicit drugs, or people who have been in contact with illicit drugs, in public areas around entertainment venues, on public transport and on the streets. Concerns were raised about this practice in terms of harm reduction, public health and civil liberties.

VAADA believes the routine use of PAD dogs at dance venues, events and music festivals undermines harm reduction strategies that are effective in mitigating the risks associated with illicit drug use. One key harm reduction message exhorts those intent on using illicit drugs to buy their drugs from a trusted, reliable source and to be aware of drug dosage and content. However, anecdotal evidence and evidence from one advocacy organisation suggests that people holding drugs they intend to share with friends at an event, or that they plan to consume over a period of a long period of time at that event, sometimes take all their drugs at once when confronted with the possibility of detection by PAD dog operations. This significantly increases the risk of overdose and/or mental health crises.

Further, fear that PAD dogs patrol the entrance to events may encourage drug users to buy their drugs from a stranger once inside the venue, rather than bringing drugs more likely to have been bought from a known, reliable source. Some evidence also suggests users may be substituting the substances currently readily detected by PAD dogs – for example cannabis and amphetamine-type drugs – for potentially more harmful and dangerous, though less detectable, substances like GHB.

One AOD worker commented that the use of PAD dogs at and around entertainment venues and on public transport results in 'criminalisation of people that wouldn't normally come into contact with the criminal justice system'. She believed the use of sniffer dogs was based on 'profiling' and that it 'discriminates against people that can't afford to drive and are out on public transport'.

In its response to VAADA, Hard Reduction Victoria (HRV) similarly argued the practice of deploying PAD dogs was misplaced and ineffective, raising serious concerns in terms of civil liberties. The stated aim of PAD dog operations on public transport is to prevent violence and theft; however HRV claims it is alcohol, not the small quantities of illicit drugs detected by PAD dogs, that is overwhelmingly involved in violent incidents on public transport.

VAADA believes any use of public surveillance should be justified to an independent body by the organisation deploying the measure, that surveillance must be shown to be proportionate and

effective in its stated aim, and that use of surveillance should confer meaningful public benefits and protection. The examples above highlight instances where this is not the case.

## 8. Independent research and public education

VAADA notes that much of the research and reporting on the effectiveness of surveillance (particularly of CCTV cameras) in controlling, preventing and/or deterring different types of behaviour and crime is inconclusive and contradictory. The lack of comprehensive, independent, equivocal evidence of the effects of surveillance inhibits the development of informed, evidence-based policy responses. VAADA believes independent research into this area would be particularly useful in informing surveillance law reform and practice. Research and specific evidence of if, how and in what circumstances surveillance is appropriate and effective should also form the basis of public and private sector education campaigns.

Education campaigns clarifying rights and responsibilities *vis a vis* surveillance should be developed, targeting both the public, especially marginalised and disadvantaged groups who use public spaces, private businesses and government and non-government operators. VAADA strongly believes knowledge of, and transparency in the use of, surveillance practices will be critical in ensuring the social risks of surveillance are contained.

## 9. Final comments

VAADA was pleased to note that throughout its Consultation Paper the Commission identified public place surveillance as having a disproportionate impact on some of the most marginalised and disadvantaged groups in our communities. We have appreciated the opportunity to provide some illustration and comment in this regard.

In summary,

VAADA believes the negative implications of surveillance for illicit drug users, particularly those injecting in public places, can include

- displacement and interruption of social networks;
- exclusion from specific areas;
- inhibited access to health services;
- further criminalisation; and
- increased risk of adverse health outcomes, through exposure to more hostile environments, sharing injecting equipment and dangerous drug taking practices.

Therefore, VAADA strongly believes surveillance technologies and practices must

- not be promoted as a panacea in countering or controlling drug use in public places, and rather that the emphasis must be on addressing the underlying causes of drug use in public places;
- be justified to an independent body by the organisation deploying the measure;
- be as transparent as possible;

- be shown to be proportionate and effective in their stated aim; and
- confer meaningful public benefits and protection.

VAADA believes the draft guiding principles outlined in the Consultation Paper are sound. We particularly support options for reform that put the onus on those groups and organisations that employ surveillance to justify its use. VAADA also notes that independence and transparency are key conditions for the success of most regulatory systems; and that public education on rights and responsibilities in relation to surveillance will be critical.

VAADA wishes to thank those individuals and groups who shared their insight and experiences in preparing this submission, with special thanks to Damon Brogan of Harm Reduction Victoria (formerly VivAIDs).

## References

Briggs, D., Rhodes, T., Marks, D., Kimber, J., Holloway, G. & Jones, S. (2009) 'Injecting drug use and unstable housing: Scope for structural interventions in harm reduction', *Drugs: education, prevention and policy*, 1, 1-15

Dunstan, G. (1998) 'Care maximisation and celebrating public places and safe places', Paper presented at the conference *Safer Communities: Strategic Directions in Urban Planning*, Melbourne 10-11 September 1998

England, M. (2008) 'Stay Out of Drug Areas: Drugs, Othering and Regulation of Public Space in Seattle, Washington', *Space and Polity*, 12: 2, 197-213

Mazerolle, L., Soole, D. & Rombouts, S. (2005) 'Monograph No. 05. Drug law enforcement: The evidence', *DPMP Monograph Series*, Fitzroy: Turning Point Alcohol and Drug Centre

Winter, R., Liddell, S., Wain, D., Aitken, C., Power, R. (2007) 'Local Solutions for Public Drug Use', *Report to the Department of Human Services Victoria*, Melbourne: The Centre for Harm Reduction, Macfarlane Burnet Institute for Medical Research and Public Health, September 2007