

Submission to National Transport Commission Assessing Fitness to Drive

Submission by:

Drive Change

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This submission is being entered by Drive Change on behalf of the Drive Change organisation and individuals and companies that support the Drive Change initiative. Below are the individuals and companies who have requested to be part of this submission:

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Overview

Medicinal cannabis products have been legal since 2016. Still, drug driving laws throughout all Australian states and territories are constructed so that medical cannabis patients consuming a dose of medication that is too low to cause impairment remain vulnerable to unjust and outdated laws with life-changing penalties.

To date, there have been over 65,000 patients prescribed legal medicinal cannabis across Australia. According to FreshLeaf Analytics, the average patient age is 49 years old, and approximately 70% of patients take cannabis medicine containing THC. With the down scheduling of CBD from s4 to s3, products containing traces of THC are able to be available via a pharmacist. The expectation is that over 2 million Australians will be using s3 CBD products at market maturity¹. The inadvertent detection of small volumes of THC could become a real issue. The number of patients on prescribed medicinal cannabis is also expected to grow to over 125,000 patients by the end of 2022.

About Drive Change

Under the auspices of Harm Reduction Australia, Drive Change is a national law reform campaign to amend the driving laws giving patients on prescribed medicinal cannabis the same rights as all other patients.

The Drive Change team welcomes the opportunity to make this submission to the National Transport Commission. We hope to ensure that this review provides the opportunity to consider evidence to amend discriminatory laws that patients on medicinal cannabis continue to face across Australia.

Assessing Fitness to Drive Interim Report

Q1. Are the proposed changes to Assessing Fitness to Drive appropriate?

- While medicinal cannabis has been legalised in Australia since 2016, the long-standing discriminatory drug driving laws for patients consuming medicinal cannabis continues to remain a huge barrier for this class of existing patients, as well as potential patients who could benefit from this treatment.
- As reflected in the report released by the Senate Community Affairs References Committee (March 2020), Inquiry: Current barriers to patient access to medicinal cannabis in Australia, Recommendation #20 states, "The committee recommends that the Australian Government, through COAG, encourage a review of state and territory criminal legislation concerning current drug driving laws and their implications for patients with legal medicinal cannabis prescriptions.
- We believe that medicinal cannabis should be treated like all other potentially impairing prescribed medications.
- We agree with the proposed recommendation for healthcare practitioners to determine a medicinal cannabis patient's 'fitness to drive' which is in line with the current guidelines for all other prescribed potentially impairing medications such as opioid analgesics and benzodiazepines. Like all other medications, the doctor makes the initial assessment but it is the responsibility of the patient to not drive whilst impaired.
- The importance for medicinal cannabis to be treated like all other potentially impairing drugs is further evident in the fact that a recent article² shows that crash risk estimates for cannabis are lower than crash risk estimates for a number of commonly prescribed drugs, including benzodiazepines and opioids. This is also reiterated in another article published in the International Journal of Drug Policy³ which concludes that in medical-only access models there is little evidence to justify the differential treatment of medicinal cannabis patients, compared with those taking other prescription medications with potentially impairing effects. NTC recommendations are in line with this research.

¹FreshLeaf Analytics, <https://freshleafanalytics.com.au/>. Australian Medicinal Cannabis Market, Patient, Product and Pricing Analysis H1 2021, p4.

²<https://www1.racgp.org.au/ajgp/2021/june/medical-cannabis-and-driving>

³ Medicinal cannabis and driving: the intersection of health and road safety policy, International Journal of Drug Policy, Volume 97, 2021, 103307, ISSN 0955-3959, <https://doi.org/10.1016/j.drugpo.2021.103307>.

Q2. How could the document and support materials be improved?

Australian drug driving law exemptions for prescribed medicinal cannabis

Page 23 of the Assessing fitness to drive 2021 (draft) states

“Drug driving and enforcement laws for cannabis are established through state and territory legislation and can vary. In general, it is against the law for a person to drive with any amount of THC present in bodily fluids (blood, saliva or urine). Currently, there are no exceptions for any jurisdiction across Australia, including therapeutic use, to these laws.”

Tasmania is the only jurisdiction in Australia with a medical defence for driving with the presence of THC in your system when not impaired and where the patient has a prescription. In Tasmania, the medical defence covers any drug referenced in the legislation if it was obtained and administered in accordance with the Poisons Act 1971 (Tas), including medicinal cannabis (Road Safety (Alcohol and Drugs) Act 1970 s 6A(2); Road Safety (Alcohol and Drugs) Regulations 2018 s 15).

To be clear, these medical defences provide an exemption to presence offences, but not the DUI or DWI offences that exist in Australian states and territories.

Educational support for prescribers of medicinal cannabis

Medicinal cannabis is a ‘new’ and fairly complex drug for doctors to prescribe due to the lack of published clinical evidence for the treatment of chronic conditions. However, what research does exist continues to highlight that cannabis has a high safety profile compared to other prescribed medication. This makes cannabis an increasingly important option for healthcare practitioners worldwide.

Healthcare providers must be educated on the complexity of cannabinoid therapy and the variances between patients. They must become comfortable with guidelines rather than expecting black and white answers. With that in mind, we recommend:

- Providing healthcare practitioners with a synopsis of the most up to date research regarding the presence of THC in your system, based on pharmacokinetics.
- Healthcare practitioners making an individualised assessment on the impairing effects of medicinal cannabis products with THC for each individual; and/or
- DRUID app⁴, a 2-minute test via an app that measures cognitive and motor impairment, may help healthcare practitioners assess a patient's fitness to drive.

Conclusion

We agree that the pharmacokinetics of cannabinoids are complex, making it difficult to predict the severity of impairment (pg 22 of the Draft Guidelines). However, current research has indicated that opioids and benzodiazepines pose a greater risk for crashing than medicinal cannabis. When paired with the current drug driving regime, the evidence highlights the fact that our government continues to discriminate against a specific class of patient.

We support the position of this NTC Report. Healthcare practitioners should be assessing ‘fitness to drive’ in medical patients, including medicinal cannabis patients.

Once deemed fit to drive, a patient may only be subject to potential punitive measures if they choose to drive while taking licit medicinal cannabis and return a positive impairment test from the consumption of that medication. Our laws must be non-discriminatory and reflect that they are designed to improve road safety, not punish patients for taking a specific medication.

We must make sure that our laws align with our health and medical policies so that healthcare practitioners make medical assessments based on health, not on drug driving laws. And, we are pleased that this policy and framework for assessing fitness to drive is founded on that fact alone.

⁴ <https://impairmentscience.com/>

Drive Change

drivechangemc.org.au

Fair.
Just.
Effective.

Drug driving laws for
medicinal cannabis patients.