



New South Wales

Road Transport Amendment (Medicinal Cannabis) Bill 2025

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is co-sponsored by the Hon Jeremy Buckingham, MLC, Mr R F Butler, MP, Mr A H Greenwich, MP, Mrs J A Hannan, MP, Dr J G McGirr, MP, the Hon G M Piper, MP and the Hon John Ruddick, MLC.

Overview of Bill

The objects of this Bill are—

- (a) to limit when certain offences under the *Road Transport Act 2013* and the *Marine Safety Act 1998*, relating to driving a vehicle or operating a vessel with the presence of THC in a person's oral fluid, blood or urine, apply to users of medicinal cannabis, and
- (b) to limit when certain enforcement powers under the *Road Transport Act 2013* and the *Marine Safety Act 1998* may be used in relation to users of medicinal cannabis.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendments commencing on assent

1.1 Road Transport Act 2013 No 18

Schedule 1.1[1] defines *lawfully used* and *THC*. Schedule 1.1[2] makes a consequential amendment.

Schedule 1.1[3] and [4] provide that it is a defence to a prosecution for certain offences, relating to driving a vehicle with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine, if—

- (a) THC was the only prescribed illicit drug present in a person's oral fluid, blood or urine, and
- (b) the THC was lawfully used.

Schedule 1.1[5] extends the defence to apply to the presence of THC in a person's oral fluid, blood or urine before the commencement of the defence.

1.2 Marine Safety Act 1998 No 121

Schedule 1.2 makes amendments, corresponding to the amendments in Schedule 1.1, in relation to the offence of operating a vessel with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine.

1.3 Medicines, Poisons and Therapeutic Goods Act 2022 No 73

Schedule 1.1 and 1.2 include references to the *Poisons and Therapeutic Goods Act 1966* (the **1966 Act**). **Schedule 1.3** ensures that, when the *Medicines, Poisons and Therapeutic Goods Act 2022* (the **2022 Act**) repeals the 1966 Act, the references will be updated to reference the 2022 Act.

Schedule 2 Amendments commencing 6 months after assent

2.1 Road Transport Act 2013 No 18

Schedule 2.1[1] defines *oral fluid test* for the *Road Transport Act 2013*, Part 5.1. **Schedule 2.1[3]** makes a consequential amendment.

Schedule 2.1[2], [4] and [6] prohibit the use of the following powers in relation to a person because an oral fluid test indicates THC may be present in the person's oral fluid if THC is the only prescribed illicit drug present and the person gives a police officer evidence the THC was lawfully used—

- (a) issuing a penalty notice or court attendance notice to the person for certain offences relating to driving a vehicle with the presence of a prescribed illicit drug in the person's oral fluid, blood or urine,
- (b) prohibiting the person from driving or confiscating the person's keys or vehicle,
- (c) prohibiting the person from supervising a learner licence holder's driving,
- (d) arresting the person or taking the person for further tests of the person's oral fluid or blood.

However, the prohibitions on the use of powers do not apply if the police officer has a reasonable belief—

- (a) the THC was not lawfully used, or
- (b) the person was under the influence of THC.

Schedule 2.1[5] applies if a police officer prohibited a person from driving or supervising a learner licence holder's driving, or confiscated the person's vehicle or keys, because an oral fluid test indicated THC, but no other prescribed illicit drug, may be present in the person's oral fluid. The amendment provides that if, within 24 hours after the oral fluid test, the person gives a police officer at a police station evidence the THC was lawfully used—

- (a) the prohibition ends, and
- (b) the person is entitled to possession of the person's confiscated vehicle or keys.

However, the prohibition does not end, and the person is not entitled to possession of the person's vehicle or keys, if the police officer at the police station has a reasonable belief—

- (a) the THC was not lawfully used, or
- (b) the person is under the influence of THC at the time the person gives the evidence.

2.2 Marine Safety Act 1998 No 121

Schedule 2.2 makes amendments, corresponding to the amendments in Schedule 2.1, in relation to the offence of operating a vessel with the presence of prescribed illicit drugs in a person's oral fluid, blood or urine.



New South Wales

Road Transport Amendment (Medicinal Cannabis) Bill 2025

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This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly



New South Wales

Road Transport Amendment (Medicinal Cannabis) Bill 2025

No. , 2025

A Bill for

An Act to amend the *Road Transport Act 2013* and the *Marine Safety Act 1998* to limit when certain offences, relating to driving a vehicle or operating a vessel with the presence of certain drugs in a person's oral fluid, blood or urine, apply to users of medicinal cannabis and when certain enforcement powers under the Acts may be used in relation to users of medicinal cannabis; and for related purposes.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with/without amendment.

Legislative Council

Clerk of the Parliaments

Tabling copy

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Road Transport Amendment (Medicinal Cannabis) Act 2025*.

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2 Commencement

4

This Act commences as follows—

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- (a) for Schedule 2—on the day that is 6 months after the date of assent to this Act,
- (b) otherwise—on the date of assent to this Act.

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Schedule 1	Amendments commencing on assent	1
1.1	Road Transport Act 2013 No 18	2
[1]	Section 4 Definitions	3
	Insert in alphabetical order in section 4(1)—	4
	<i>lawfully used</i> , in relation to THC, means obtained and administered in accordance with the <i>Poisons and Therapeutic Goods Act 1966</i> or a corresponding Act of another State or Territory.	5
	<i>THC</i> means delta-9-tetrahydrocannabinol.	6
[2]	Section 4(1), definition of “prescribed illicit drug”, paragraph (a)	7
	Omit “delta-9-tetrahydrocannabinol (also known as THC)”. Insert instead “THC”.	8
[3]	Section 111 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine	9
	Insert after section 111(2)—	10
	(2A) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, when the defendant engaged in the conduct alleged to have contravened the subsection—	11
	(a) THC was the only prescribed illicit drug present in the defendant’s oral fluid, blood or urine, and	12
	(b) the THC was lawfully used.	13
[4]	Section 111A Presence of both prescribed illicit drug in person’s oral fluid, blood or urine and prescribed concentration of alcohol in person’s breath or blood	14
	Insert after section 111A(6)—	15
	(6A) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if the defendant proves that, when the defendant engaged in the conduct alleged to have contravened the subsection—	16
	(a) THC was the only prescribed illicit drug present in the defendant’s oral fluid, blood or urine, and	17
	(b) the THC was lawfully used.	18
[5]	Schedule 4 Savings, transitional and other provisions	19
	Insert at the end of the schedule, with appropriate part and clause numbering—	20
Part	Provision consequent on enactment of Road Transport Amendment (Medicinal Cannabis) Act 2025	21
	Application of amendments relating to presence of THC in person’s oral fluid, blood or urine	22
	Sections 111(2A) and 111A(6A), as inserted by the <i>Road Transport Amendment (Medicinal Cannabis) Act 2025</i> , apply to the presence of THC in a person’s oral fluid, blood or urine before the commencement of the subsections.	23

1.2 Marine Safety Act 1998 No 121	1
[1] Section 25 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine	2
Insert after section 25(2)—	3
(2A) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that, when the defendant engaged in the conduct alleged to have contravened the subsection—	4
(a) THC was the only prescribed illicit drug present in the defendant’s oral fluid, blood or urine, and	5
(b) the THC was lawfully used.	6
[2] Schedule 4 Savings, transitional and other provisions	7
Insert at the end of the schedule, with appropriate part and clause numbering—	8
Part Provision consequent on enactment of Road Transport Amendment (Medicinal Cannabis) Act 2025	9
Application of amendment relating to presence of THC in person’s oral fluid, blood or urine	10
Section 25(2A), as inserted by the <i>Road Transport Amendment (Medicinal Cannabis) Act 2025</i> , applies to the presence of THC in a person’s oral fluid, blood or urine before the commencement of the subsection.	11
[3] Schedule 5 Dictionary	12
Insert in alphabetical order—	13
<i>lawfully used</i> , in relation to THC, means obtained and administered in accordance with the <i>Poisons and Therapeutic Goods Act 1966</i> or a corresponding Act of another State or Territory.	14
<i>THC</i> means delta-9-tetrahydrocannabinol.	15
1.3 Medicines, Poisons and Therapeutic Goods Act 2022 No 73	16
[1] Schedule 5 Amendment of other legislation	17
Insert after Schedule 5.20—	18
5.20A Marine Safety Act 1998 No 121	19
Schedule 5 Dictionary	20
Omit “ <i>Poisons and Therapeutic Goods Act 1966</i> ” from the definition of <i>lawfully used</i> .	21
Insert instead “ <i>Medicines, Poisons and Therapeutic Goods Act 2022</i> ”.	22
[2] Schedule 5.28 Road Transport Act 2013 No 18	23
Insert at the beginning of the subschedule—	24
[1] Section 4 Definitions	25
Omit “ <i>Poisons and Therapeutic Goods Act 1966</i> ” from section 4(1), definition of <i>lawfully used</i> .	26

Insert instead “*Medicines, Poisons and Therapeutic Goods Act 2022*”.

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Schedule 2	Amendments commencing 6 months after assent	1
2.1	Road Transport Act 2013 No 18	2
[1]	Section 107 Definitions	3
	Insert in alphabetical order in section 107(1)—	4
	<i>oral fluid test</i> has the same meaning as in Schedule 3.	5
[2]	Section 111B	6
	Insert after section 111A—	7
111B	Limited enforcement of offences against ss 111 and 111A—medicinal cannabis	8 9
(1)	A penalty notice or court attendance notice for an alleged offence against section 111(1) or 111A(1), (2) or (3) must not be issued to a person if—	10 11
(a)	an oral fluid test indicated THC may have been present in the person’s oral fluid at the time of the alleged offence, and	12 13
(b)	the test did not indicate other prescribed illicit drugs may have been present in the person’s oral fluid, and	14 15
(c)	the person gave the relevant police officer evidence the THC was lawfully used.	16 17
(2)	Subsection (1) does not apply if the relevant police officer has a reasonable belief—	18 19
(a)	the THC was not lawfully used, or	20
(b)	the person was under the influence of THC at the time of the alleged offence, because of—	21 22
(i)	the way in which the person is or was—	23
(A)	driving a motor vehicle, or	24
(B)	occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion, or	25 26
(C)	occupying the seat in a motor vehicle next to a learner driver driving the vehicle, or	27 28
(ii)	the behaviour, condition or appearance of the person at the time of, or after, the alleged offence.	29 30
(3)	In this section—	31
	<i>relevant police officer</i> , in relation to a person, means the police officer who required the person to submit to an oral fluid test.	32 33
[3]	Sections 148G(3) and 148H(3)	34
	Omit the subsections.	35
[4]	Section 148HA	36
	Insert after section 148H—	37
148HA	Limit on exercise of powers under ss 148G and 148H—medicinal cannabis	38
(1)	This section applies to a person if—	39
(a)	an oral fluid test indicates THC may be present in the person’s oral fluid, and	40 41

(b)	the test does not indicate other prescribed illicit drugs may be present in the person's oral fluid.	1 2
(2)	If the person gives a police officer evidence the THC was lawfully used, the police officer must not exercise a power referred to in section 148G(2) or 148H(2) in relation to the person unless the police officer has a reasonable belief—	3 4 5 6
(a)	the THC was not lawfully used, or	7
(b)	the person is under the influence of THC because of—	8
(i)	the way in which the person is or was—	9
(A)	driving a motor vehicle on a road, or	10
(B)	occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion, or	11 12
(C)	occupying the seat in a motor vehicle next to a learner driver driving the vehicle, or	13 14
(ii)	the behaviour, condition or appearance of the person at the time of, or after, the conduct that caused a police officer to require the person to submit to the oral fluid test.	15 16 17
[5] Section 148IA		18
	Insert after section 148I—	19
148IA Response to exercise of powers under ss 148G and 148H—medicinal cannabis		20
(1)	This section applies to a person if—	21
(a)	a police officer exercised a power referred to in section 148G(2) or 148H(2) in relation to the person because an oral fluid test indicated THC may be present in the person's oral fluid, and	22 23 24
(b)	the test did not indicate other prescribed illicit drugs may be present in the person's oral fluid.	25 26
(2)	If, within 24 hours after the person underwent the oral fluid test, the person gives a police officer at a police station evidence the THC was lawfully used—	27 28
(a)	any prohibition under section 148G(2)(a) or 148H(2) in relation to the person ends, and	29 30
(b)	if the person's keys were confiscated under section 148G(2)(b)—	31
(i)	possession of the keys by a police officer ceases to be lawful, and	32
(ii)	the person is entitled to possession of the keys, and	33
(c)	if the person's motor vehicle was immobilised or detained under section 148G(2)(c)—	34 35
(i)	possession of the vehicle by a police officer ceases to be lawful, and	36 37
(ii)	the person is entitled to possession of the vehicle, and	38
(d)	the police officer must explain the effects of paragraphs (a)–(c) to the person as soon as practicable.	39 40
(3)	Subsection (2) does not apply if the police officer at the police station has a reasonable belief—	41 42
(a)	the THC was not lawfully used, or	43
(b)	the person is under the influence of THC because of the behaviour, condition or appearance of the person at the time the person gives the evidence.	44 45 46

(4)	If the keys or motor vehicle are not returned to the person within 24 hours after the police officer explains the effects of subsection (2)(a)–(c) to the person, the person may apply to the Local Court for an order for the keys or motor vehicle to be returned to the person.	1 2 3 4
[6]	Schedule 3 Testing for alcohol and drug use	5
	Insert after clause 7—	6
7A	Limit on exercise of powers under clause 7—medicinal cannabis	7
(1)	This clause applies to a person if—	8
(a)	an oral fluid test indicates THC may be present in the person’s oral fluid, and	9 10
(b)	the test does not indicate other prescribed illicit drugs may be present in the person’s oral fluid.	11 12
(2)	If the person gives a police officer evidence the THC was lawfully used, the police officer must not exercise a power referred to in clause 7 in relation to the person unless the police officer has a reasonable belief—	13 14 15
(a)	the THC was not lawfully used, or	16
(b)	the person is under the influence of THC because of—	17
(i)	the way in which the person is or was—	18
(A)	driving a motor vehicle on a road, or	19
(B)	occupying the driving seat of a motor vehicle on a road and attempting to put the vehicle in motion, or	20 21
(C)	occupying the seat in a motor vehicle next to a learner driver driving the vehicle, or	22 23
(ii)	the behaviour, condition or appearance of the person at the time of, or after, the conduct that caused a police officer to require the person to submit to the oral fluid test.	24 25 26
2.2	Marine Safety Act 1998 No 121	27
[1]	Section 25 Presence of certain drugs (other than alcohol) in oral fluid, blood or urine	28
	Insert after section 25(1)—	29
(1A)	A penalty notice or court attendance notice for an alleged offence against subsection (1) must not be issued to a person if—	30 31
(a)	an oral fluid test indicated THC may have been present in the person’s oral fluid when the person was operating the vessel, and	32 33
(b)	the test did not indicate other prescribed illicit drugs may have been present in the person’s oral fluid, and	34 35
(c)	the person gave the relevant police officer evidence the THC was lawfully used.	36 37
(1B)	Subsection (1A) does not apply if the relevant police officer has a reasonable belief—	38 39
(a)	the THC was not lawfully used, or	40
(b)	the person was under the influence of THC at the time of the alleged offence because of—	41 42
(i)	the way in which the person is or was operating a vessel, or	43

(ii)	the behaviour, condition or appearance of the person at the time of, or after, the alleged offence.	1 2
[2]	Section 25(7)	3
	Insert after section 25(6)—	4
(7)	In this section—	5
	<i>relevant police officer</i> , in relation to a person, means the police officer who required the person to submit to the oral fluid test.	6 7
[3]	Schedule 1 Testing for alcohol and drug use	8
	Insert after clause 8—	9
8A	Limit on exercise of powers under clause 8—medicinal cannabis	10
(1)	This clause applies to a person if—	11
(a)	an oral fluid test indicates THC may be present in the person’s oral fluid, and	12 13
(b)	the test does not indicate other prescribed illicit drugs may be present in the person’s oral fluid.	14 15
(2)	If the person gives a police officer evidence the THC was lawfully used, the police officer must not exercise a power referred to in clause 8 in relation to the person unless the police officer has a reasonable belief—	16 17 18
(a)	the THC was not lawfully used, or	19
(b)	the person is under the influence of THC because of—	20
(i)	the way in which the person is or was operating a vessel, or	21
(ii)	the behaviour, condition or appearance of the person at the time of, or after, the conduct that caused a police officer to require the person to submit to the oral fluid test.	22 23 24