



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021



Report 81

August 2022

www.parliament.nsw.gov.au

Standing Committee on Law and Justice

**Road Transport Amendment
(Medicinal Cannabis-
Exemptions from Offences)
Bill 2021**

Ordered to be printed 11 August 2022

**New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.
Report no. 81.**

Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021

“August 2022”.

Chair: Hon. Chris Rath, MLC.



A catalogue record for this
book is available from the
National Library of Australia

ISBN 978-1-922543-76-9

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Terms of reference

That:

- (a) the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 be referred to the Standing Committee on Law and Justice for inquiry and report,
- (b) the committee report by 23 June 2022.¹

The terms of reference were referred to the committee by the Legislative Council on 23 November 2021.²

¹ The original reporting date was 23 June 2022 (*Minutes*, NSW Legislative Council, 23 November 2021, pp 2809-2810). The reporting date was later extended to 11 August 2022 (*Minutes*, NSW Legislative Council, 29 March 2022, p 3120).

² *Minutes*, NSW Legislative Council, 23 November 2021, pp 2809-2810.

Committee details

Committee members

The Hon Chris Rath MLC*	Liberal Party	<i>Chair</i>
The Hon Greg Donnelly MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Lou Amato MLC**	Liberal Party	
Ms Cate Faehrmann MLC***	The Greens	
The Hon Wes Fang MLC	The Nationals	
The Hon Rose Jackson MLC****	Australian Labor Party	
The Hon Taylor Martin MLC	Liberal Party	
The Hon Rod Roberts MLC	Pauline Hanson's One Nation Party	

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- * The Hon Chris Rath MLC replaced the Hon Scott Farlow MLC as a substantive member of the committee from 29 March 2022 and was appointed Chair from that date.
- ** The Hon Lou Amato MLC replaced the Hon Trevor Khan MLC as a substantive member of the committee from 25 January 2022.
- *** Ms Cate Faehrmann MLC substituted for Mr David Shoebridge MLC from 18 March 2022 to 11 April 2022, then for Ms Abigail Boyd MLC from 10 May 2022 for the duration of the inquiry. Ms Abigail Boyd MLC replaced Mr David Shoebridge MLC as a substantive member of the committee from 22 April 2022. Mr David Shoebridge MLC was a substantive member of the committee to 11 April 2022.
- **** The Hon Rose Jackson MLC substituted for the Hon Anthony D'Adam MLC from 14 April 2022 for the duration of the inquiry.

Secretariat

Erin Pynor, Principal Council Officer

Madolyn Hollins, Administration Officer

Merrin Thompson, Director

Chair's foreword

The Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 is a private member's bill that was referred to the Standing Committee on Law and Justice for inquiry and report on 23 November 2021.

The bill was introduced in the Legislative Council in November 2021. The bill seeks to amend the *Road Transport Act 2013* to provide that the offences relating to driving while a prescribed illicit drug is present in a person's oral fluid, blood or urine do not apply if the only drug present is delta-9-tetrahydrocannabinol (also known as THC) that the person had obtained and administered for medicinal purposes.

This inquiry generated public interest and engagement, with the committee receiving 106 submissions, many providing personal accounts of the therapeutic benefit of medicinal cannabis use and the associated challenge of driving restrictions. The committee held a public hearing, receiving oral evidence from 22 witnesses.

This inquiry has demonstrated the committee system's ability to receive and reflect the voices of vulnerable groups: on this occasion, those who might suffer chronic illness or pain that is relieved by medicinal cannabis but live in regional areas and depend on driving to access employment and care. It appears to me that the ongoing task of law reform is to robustly examine how science and the humanities converge with our legal system. I am confident that the evidence put forward in this inquiry has made a valuable contribution to public debate on this issue and that parliamentary consideration of the bill will be richer for it.

It was noteworthy that diverse stakeholders highlighted the need for more research into the interaction between the use of medicinal cannabis products and driving impairment. The committee has encouraged attention to and investment in the task of carefully considering the specific effects of medicinal cannabis products on essential driving skills so that the paramount importance of road safety is maintained.

The committee elected not to take a position on the bill, rather we elected to present the relevant evidence and testimony tendered during the inquiry, so the Legislative Council may consider it in any debate of the bill. As such, the committee simply recommended that the Legislative Council proceed with consideration of the bill.

On behalf of the committee, I would like to thank all participants for their respectful and considered contributions to this inquiry. I extend my gratitude to my fellow committee members for their thoughtful engagement with the issues raised by this bill.



The Hon Chris Rath MLC
Committee Chair

Recommendation

Recommendation 1

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That the Legislative Council proceed to debate the Road Transport Amendment (Medicinal Cannabis-Exemption from Offences) Bill 2021, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 23 November 2021.

The committee received 106 submissions and two supplementary submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, pro-forma documents, hearing transcripts, tabled documents and answers to questions on notice and supplementary questions.

Chapter 1 Overview

This chapter outlines the background and purpose of the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 and provides an overview of the bill's provisions.

Referral of the bill

- 1.1 The Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 is a private member's bill introduced in the Legislative Council on 21 November 2021 by Ms Cate Fahrman MLC.
- 1.2 On 23 November 2021, the bill was reviewed by the Legislation Review Committee and by the Selection of Bills Committee. On tabling of the Selection of Bills Committee report, the Legislative Council recommended that the bill be referred to the Standing Committee on Law and Justice for inquiry and report, with the reporting date set for 23 June 2022.
- 1.3 On 29 March 2022, the House extended the reporting date for the inquiry to 11 August 2022.³

Background and purpose of the bill

- 1.4 Since the amendment of federal laws in 2016, medicinal cannabis products have been available in Australia for therapeutic use when prescribed by a medical practitioner.⁴ The New South Wales Parliament contributed a considerable body of evidence to national debate on the issue of legalising medicinal cannabis products by inquiring into the use of cannabis for medicinal purposes in 2013. A report unanimously adopted by the then General Purpose Standing Committee No. 4 recognised the potential of medicinal cannabis to effectively treat a range of medical conditions, provided appropriate safeguards are in place.⁵
- 1.5 The bill seeks to amend the *Road Transport Act 2013* to provide that drug driving offences do not apply if the only drug detected in a person's system is delta-9-tetrahydrocannabinol (also known as THC) obtained and administered for medicinal purposes.

Cannabis as a prescribed illicit drug

- 1.6 Cannabis is a generic term for drugs that are made from the plant *cannabis sativa*.⁶ Of the numerous chemical components that make up cannabis, two well-known 'cannabinoids' discussed during this inquiry are:

³ Minutes, NSW Legislative Council, 29 March 2022, p 3120.

⁴ Submission 105, NSW Government, p 4.

⁵ Portfolio Committee No. 4 - Customer Service and Natural Resources, *Use of cannabis for medicinal purposes*, Report no 27, 15 May 2013.

⁶ World Health Organisation, *Cannabis*, <<https://www.who.int/teams/mental-health-and-substance-use/alcohol-drugs-and-addictive-behaviours/drugs-psychoactive/cannabis#>>, accessed 15 July 2022; Submission 64, Australian Medicinal Cannabis Association, p 3.

- delta-9-tetrahydrocannabinol (THC), an intoxicating component of cannabis 'flower' products and manufactured medicinal cannabis drugs that is responsible for producing both psychoactive and therapeutic effects that help reduce pain, nausea, vomiting, anxiety, insomnia and other symptoms in a range of conditions
- cannabidiol (CBD), a 'non-intoxicating' component of cannabis which may reduce the unwanted psychoactive effects of THC and has a demonstrated role in the treatment of paediatric epilepsy, chronic pain, anxiety, inflammation and addiction.⁷

1.7 Around 75 per cent of medicinal cannabis prescriptions are for products that contain THC, and the remaining 25 per cent are for products where CBD is more than 98 per cent of the total cannabinoid content.⁸

1.8 In practice, a prescription is required to access therapeutic-grade medicinal cannabis products in Australia, and their classification for pharmaceutical use is strictly regulated. Cannabinoid preparations for pharmaceutical use must comprise at least 98 per cent CBD and no more than one per cent THC, and the vast majority of these products – even non-narcotic formulations with no psychotropic effects whatsoever – are designated Schedule 8 medicines under the Standard for the Uniform Scheduling of Medicines and Poisons (USMP),⁹ a national standard which New South Wales incorporates via the *Poisons and Therapeutic Goods Regulation 2008*. This mandates medicinal cannabis products as high-risk drugs that must be strictly controlled.¹⁰

Driving with THC in your system is an offence, and there is currently no defence

1.9 The *Road Safety Act 2013* categorises THC as an illicit substance in the same class as recreational drugs methamphetamine, cocaine and MDMA for the purposes of roadside drug testing.¹¹ Driving with THC in your system is prohibited by subsection 111(1) which provides that:

A person must not, while there is present in the person's oral fluid, blood or urine any prescribed illicit drug—

- (a) drive a motor vehicle, or
- (b) occupy the driving seat of a motor vehicle and attempt to put the motor vehicle in motion, or
- (c) if the person is the holder of an applicable driver licence (other than an applicable provisional licence or applicable learner licence)—occupy the seat in a motor vehicle next to a learner driver who is driving the vehicle.¹²

⁷ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 3.

⁸ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p. 3.

⁹ Standard for the Uniform Scheduling of Medicines and Poisons No. 36, legal title *Poisons Standard June 2022*. Submission 64, Australian Medicinal Cannabis Association, p 5.

¹⁰ Submission 4, Society of Cannabis Clinicians Australian Chapter, p 4. Therapeutic Goods Administration, *TGA warns consumers about potential harm from unlawfully supplied medicinal cannabis*, <<https://www.tga.gov.au/behind-news/tga-warns-consumers-about-potential-harm-unlawfully-supplied-medicinal-cannabis>>, accessed 18 July 2022.

¹¹ *Road Safety Act 2013*, subsection 4(1).

¹² *Road Safety Act 2013*, s 111(1).

- 1.10** An equivalent offence for driving with morphine present in blood or urine is set out in subsection 111(3). However, under subsection 111(5), a defence exists for the consumption of morphine for medicinal purposes, a term that is then defined in subsection 111(6) as 'a drug prescribed by a medical practitioner and taken in accordance with a medical practitioner's prescription'.¹³
- 1.11** There is currently no defence available for the offences set out in subsection 111(1) relating to driving with THC in your system. The NSW Government explained that currently New South Wales has 'a zero-tolerance approach to the presence of those drugs in an oral fluid screening program, which then gets validated by a secondary oral fluid sample being tested at a laboratory'.¹⁴

History of legal medicinal cannabis in New South Wales, including access schemes

- 1.12** Relevant to the background of the bill is the national legalisation of medicinal cannabis use which occurred in 2016.
- 1.13** The Commonwealth Therapeutic Goods Administration (TGA) has allowed doctors to prescribe medicinal cannabis products to patients under the *Special Access Scheme Category* (SAS-B) and Authorised Prescriber schemes since 2016, when the Australian Parliament passed the *Narcotic Drugs Amendment Act 2016*.¹⁵ Under this legislation, the NSW Government submission to this inquiry explains, 'certain medicinal cannabis products were made] available for specific patient groups under strict medical supervision'.¹⁶
- 1.14** The government describes the number of New South Wales patients prescribed medicinal cannabis products as 'relatively small', estimating that 4,502 individual patients have had a Schedule 8 cannabis medicine prescribed in the 12 month period leading up to February 2022.¹⁷ Ms Faehrmann's second reading speech cited data that there were 70,000 'active medical patients' using medicinal cannabis in Australia in September 2021.¹⁸ The Lambert Initiative for Cannabinoid Therapeutics at the University of Sydney provided analysis of TGA SAS-B prescriptions up to April 2022 which suggests the number of patients could be as high as 90,000.¹⁹ Mills Oakley consider SAS category A and B notifications, prescribers and prescriber consulting locations in New South Wales and draw the conclusion that 'the number of notifications and approvals alone indicate the significant uptake of medicinal cannabis in the community'.²⁰ Lambert Initiative analysis suggests that by 2025, there will be in the order of 300,000 medicinal cannabis patients in Australia.²¹

¹³ *Road Safety Act 2013*, s 111(6).

¹⁴ Evidence, Mr Bernard Carlon, Chief, Centre for Road Safety and Maritime Safety, Transport for NSW, 16 June 2022, p 43.

¹⁵ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 3.

¹⁶ Submission 105, NSW Government, p 4.

¹⁷ Submission 105, NSW Government, p 4.

¹⁸ Hansard, NSW Legislative Council, 17 November 2021, p 6396 (Ms Cate Faehrmann MLC).

¹⁹ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 3.

²⁰ Submission 68, Mills Oakley, p 4.

²¹ Evidence, Professor Iain McGregor, Academic Director, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, 16 June 2022, p 2.

- 1.15** Currently, there are just two medicinal cannabis preparations listed on the Australian Register of Therapeutic Goods (ARTG): nabiximol (Sativex) and cannabidiol (Epidyolex).²² Significantly, these are both CBD-only medications and driving under their influence will not trigger a positive result in a drug test.²³ According to the Lambert Initiative, CBD-only products have shown 'efficacy in the treatment of paediatric epilepsy', as well as emerging evidence of efficacy in treating 'anxiety, inflammation, chronic pain, and addictions'.²⁴
- 1.16** Stakeholders have commented that the 'higher bar'²⁵ required for the ARTG registration process is onerous and has historically limited access to medicinal cannabis, including for use in clinical trials.²⁶ There are additional access pathways that allow patients to be treated with medicinal cannabis products that are not listed on the ARTG, specifically:
- Special Access Scheme or SAS, where a medical practitioner, having considered all available products on the ARTG, submits an application to facilitate patient access to an unapproved medicinal cannabis product for single patients on a case-by-case basis
 - Authorised Prescribed Scheme or APS, where a medical practitioner who is properly trained and authorised prescribes unapproved medicinal cannabis products for a particular condition or class of patients in their immediate care.²⁷
- 1.17** Following the report into the use of cannabis for medicinal purposes by General Purpose Standing Committee No 4, the Baird Government introduced regulatory changes in 2016 to allow doctors to prescribe a wider range of medicinal cannabis products,²⁸ funding a clinical trials program²⁹ and establishing the Medicinal Cannabis Compassionate Use Scheme for their palliative use.³⁰ As a result, there are a range of safe pathways for access to medicinal cannabis in New South Wales.

Medicinal properties of cannabis – THC and CBD biochemical information

- 1.18** The NSW inquiry into the use of cannabis for medicinal purposes reported that the cannabis plant contains over 400 chemical compounds, of which more than 60 are cannabinoids. When ingested, these substances activate the body's cannabinoid receptors, producing a range of

²² Submission 64, Australian Medicinal Cannabis Association, pp 5–6.

²³ Submission 64, Australian Medicinal Cannabis Association, p 6.

²⁴ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 3.

²⁵ Evidence, Professor Jennifer Martin, Senior Staff Specialist - Internal Medicine and Clinical Pharmacology, John Hunter Hospital, Hunter New England Local Health District, 16 June 2022, p 46.

²⁶ Submission 65, Society of Cannabis Clinicians Australian Chapter, p 5; Submission 64, Australian Medicinal Cannabis Association, p 5.

²⁷ Submission 65, Society of Cannabis Clinicians Australian Chapter, pp 5–6.

²⁸ Media release, Premier the Hon Mike Baird MLA, *Increasing access to cannabis-based medicine*, 4 October 2016 <<https://www.nsw.gov.au/media-releases/increasing-access-to-cannabis-based-medicine>> accessed 21 July 2022.

²⁹ Evidence, Professor McGregor, 16 June 2022, p 11.

³⁰ Centre for Medicinal Cannabis Research and Innovation, *Medicinal Cannabis Compassionate Use Scheme*, <<https://www.medicinalcannabis.nsw.gov.au/patients/medicinal-cannabis-compassionate-use-scheme#>> accessed 21 July 2022.

effects including on movement, nausea and appetite, pain, emotion, memory and cognitive function. In addition, cannabinoids are naturally produced within the human body (so-called endocannabinoids), where they serve a variety of physiological and homeostatic roles. They can also be synthesised for pharmaceutical use.³¹

- 1.19** Cannabis can be administered by, variously, smoking, vaporising, ingesting via food, or as an extract.³² As a lipid-soluble substance, cannabinoids are stored in body fat, such that they can be detectable in body tissues long after impairing effects have subsided.³³

Use of presence testing to detect schedule 1 drugs in New South Wales

- 1.20** This inquiry considers presence offences, which do not require demonstration of impairment. Consistent with paragraphs 1.09-1.10 above, presence offences criminalise the detection of four key illicit drugs implicated in the NSW road toll – MDMA, cocaine, methamphetamine and THC – as well as the prescription opioid morphine, for which a medical defence exists as previously detailed, under subsection 111(5).
- 1.21** Detection of presence offences occurs typically via roadside mobile drug testing, using oral fluid, though it can also occur via mandatory blood sample taken after a fatal crash, or in the setting of a blood or urine test ordered after a driver fails a sobriety assessment and is reasonably suspected of being under the influence of one or more drugs.³⁴
- 1.22** Mobile drug testing became law following the introduction of *Road Transport Legislation Amendment (Drug Testing) Bill 2006* to the Legislative Assembly by the Hon Matt Brown MLA, Parliamentary Secretary for Transport, who asserted that 'people who have active drugs present in their system should not be driving on our roads'.³⁵

Penalties for driving with detectable THC in saliva or blood

- 1.23** If THC is detected in the oral fluid, blood or urine of a driver, they face fines of up to \$2,200 for a first offence, \$3,300 for a second or subsequent offence, as well as licence disqualification for up to six months. If the matter is dealt with via court attendance rather than penalty notice, and the defendant is convicted, they may also attain a criminal record.³⁶
- 1.24** The NSW Government provided evidence that 'in the period of 2020-21, there were 5,388 penalty notices issued and 4,561 court attendance notices' issued to drivers for the offence of driving with the presence of THC in their system.³⁷

³¹ General Purpose Standing Committee No 4, The use of cannabis for medicinal purposes, 15 May 2013 p 4.

³² General Purpose Standing Committee No 4, The use of cannabis for medicinal purposes, 15 May 2013, p 4.

³³ Submission 65, Society of Cannabis Clinicians–Australian Chapter, p 8.

³⁴ Submission 105, NSW Government, p 6.

³⁵ Hansard, NSW Legislative Assembly, 19 September 2006 p 1854 (The Hon Matt Brown MP).

³⁶ Submission 10, NSW Bar Association, p 3.

³⁷ Evidence, Mr Brett McFadden, Assistant Commissioner, Traffic and Highway Patrol Command, New South Wales Police, 16 June 2022, p 47.

Overview of the bill's provisions

1.25 As noted above, section 111 of the *Road Transport Act 2013* prohibits driving (including attempting to start a vehicle or accompanying a learner driver) with the presence of a prescribed illicit drug in a person's oral fluid, blood or urine.

1.26 The bill would insert a new subsection 111(1A) after existing subsection 111(1) providing that:

(1A) Subsection (1) does not apply if, at the time the person engaged in the conduct that is alleged to have contravened the subsection—

(a) the only prescribed illicit drug present in the person's oral fluid, blood or urine is delta-9-tetrahydrocannabinol (also known as THC), and

(b) the delta-9-tetrahydrocannabinol was obtained and administered in accordance with the *Poisons and Therapeutic Goods Act 1966* or a corresponding Act of another State or Territory³⁸

How the exemption from driving offences would work

1.27 The committee notes that the exemption would not function as a 'catch-all defence' for driving under the influence of medicinal cannabis products. Ms Faehrmann explained to the House in her second reading speech that the bill furnishes a defence for those who are apprehended for driving with detectable THC levels and who have been legally prescribed medicinal cannabis products.³⁹ Safeguards are built into the operation of the bill, specifically:

- the patient's responsibility to consume medicinal cannabis products in accordance with the advice of their doctor
- the absence of driving impairment at the time that THC is detected in a person's oral fluid.⁴⁰

1.28 Citing former magistrate David Heilpern, who is director of the Drive Change campaign, Ms Faehrmann explained how she envisaged the exemption would work in practice:

If people are apprehended, and if people have a detectable level of THC in their system, then they should be able to show their medical certificate and have a defence. That defence is that they have a prescription and are using it in accordance with that prescription, therefore they weren't driving under the influence in the sense of being adversely affected. That should be the defence. That way the police can exercise their discretion because they wouldn't have reasonable prospects of success in court. If someone shows them the prescription on the side of the road, they can refer it up for there to be a decision not to prosecute on the normal prosecutorial principles, as there is a valid and available defence. So, ideally, those people would never get to court. And if they did, they would have a defence to the charge. That would update us with the rest of the world and would be a start with reform in this very important area.⁴¹

³⁸ Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021.

³⁹ Hansard, NSW Legislative Council, 17 November 2021, p 6396 (Ms Cate Faehrmann MLC).

⁴⁰ Minutes, Legislative Council, 17 November 2021, p 6396.

⁴¹ Hansard, NSW Legislative Council, 17 November 2021, p 6396 (Ms Cate Faehrmann MLC).

Comparison with other prescription drugs including morphine

- 1.29** As noted in paragraph 1.10 above, subsection 111(6) of the *Road Transport Act 2013* provides for a defence to driving with detectable levels of morphine if being used under the guidance of and in accordance with the instructions of a medical practitioner.
- 1.30** The bill's second reading speech suggests that the exemption that is the subject of this inquiry is intended to operate analogously to the exemption for medicinal users of morphine.⁴²
- 1.31** Stakeholder views on the morphine exemption are discussed further in chapter 2.

Exemptions in other jurisdictions

- 1.32** All Australian jurisdictions except one do not provide an exemption from drug driving laws for medicinal cannabis users, despite private members' bills in the South Australian and Victorian Parliaments generating debate on the issue in recent years.⁴³ Currently, Tasmania is the only state or territory to have implemented a driving exemption for medicinal cannabis users.⁴⁴ The Tasmanian exemption as well as international examples are discussed further in Chapter 2.
- 1.33** The next chapter discusses key issues raised by the inquiry's stakeholders including public support for law reform, road safety and the difficulty of measuring impairment caused by medicinal cannabis products.

⁴² Hansard, NSW Legislative Council, 17 November 2021, p 6396 (Ms Cate Faehrmann MLC).

⁴³ Road Traffic (Medicinal Cannabis) Amendment Bill 2021 (South Australia), introduced 3 February 2021 by Ms Tammy Franks MLC; Road Safety Amendment (Medicinal Cannabis) Bill 2019 (Victoria), introduced 10 September 2019 by Ms Fiona Patten MLC.

⁴⁴ *Road Safety (Alcohol and Drugs) Act 1970* (Tasmania), section 6A.

Chapter 2 Key issues

This chapter examines the key issues raised by stakeholders in the course of the inquiry. It commences by exploring various aspects of community support expressed in favour of the bill's provisions, then examines participant views in respect of road safety and impairment. It then documents specific legal issues that were raised about aspects of the bill.

Medicinal cannabis and driving

2.1 This section outlines participant views on driving exemptions for people who use medicinal cannabis. It explores community support, the potential for abuse by recreational cannabis users, the vulnerability of medicinal cannabis users, the choice between symptom relief and employment, the impact of the current law, inconsistent legal requirements to other medications and the availability of exemptions in other jurisdictions.

Community support

2.2 Citing statistics from the Australian Institute of Health and Welfare (AIHW), the Lambert Initiative for Cannabinoid Therapeutics at the University of Sydney submitted that there is 'overwhelming' public support for medicinal cannabis use in Australia.⁴⁵ According to the AIHW, 85 per cent of Australians canvassed in the 2016 National Drug Strategy Household Survey were in favour of a permanent legislative provision to legalise the use of marijuana for medical purposes.⁴⁶

2.3 The balance of submissions from community, industry, medical and advocacy groups as well as individuals who had directly benefited from prescribed cannabis products welcomed the proposed amendment to the *Road Transport Act 2013* as a complementary reform that recognises the drug's therapeutic role.

2.4 Representing the views of the legal community, the Australian Lawyers' Alliance described the bill as a 'welcome development that reduces differential treatment of certain drugs' and 'seeks to update the law and to rectify an injustice for those who take medicinally-prescribed doses' of cannabis.⁴⁷ The NSW Young Lawyers Criminal Law Sub-Committee submitted that the bill represents a 'sensible extension of the existing exemption for morphine' in light of federal medicinal cannabis reforms.⁴⁸

2.5 Ms Deb Lynch, President of the Medicinal Cannabis Users Association of Australia, told the committee that the bill was a 'much-needed initiative' that would bring New South Wales into line with other jurisdictions where legislation provided for patients using prescription-only medicinal cannabis products to drive when not impaired. She argued that the current law is out of step with both the research and community attitudes:

⁴⁵ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 3.

⁴⁶ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2016: detailed findings. Drug Statistics*, series no 31, 2017, p 3.

⁴⁷ Submission 60, Australian Lawyers Alliance, p 5.

⁴⁸ Submission 63, NSW Young Lawyers and NSW Young Lawyers Criminal Law Sub-Committee, p 2.

When science-based evidence and professional opinion is so conclusive, the public begins to question why the lawmakers are not listening. Statistics show that the current laws have had little to no impact on decreasing the road toll... One has to question the validity and benefit of the regime and its impact on society. Cannabis is a legitimate medical treatment and must be treated like any other prescribed medicine, where the patient is the judge of whether or not they are impacted and are safe to drive.⁴⁹

- 2.6 The committee was grateful to receive evidence from a number of individuals on their experiences using medicinal cannabis under medical supervision to manage debilitating conditions that had failed to respond to first-line treatments. Mr Scott Ford, for example, gave evidence that medicinal cannabis products 'have been extremely effective for me and I have not had any adverse side effects. The safety profile for the cannabis medications is far better than my previously trialled Schedule 8 medications.'⁵⁰ The challenges faced by Mr Ford and many others as a driver and a medicinal cannabis user in regional New South Wales as well as the difficulty in measuring driving impairment are discussed further below.

Potential for abuse by recreational cannabis users

- 2.7 On the other hand, some inquiry participants questioned the authenticity of medicinal cannabis users. Mr Gary Christian, Research Director for Drug Free Australia, suggested that 'The sheer bulk of submissions to this inquiry, as I read them, rely on "Medical cannabis works for me".' He went on to emphasise that the potential for damage to others is the key factor in road safety policy, rather than perceived personal effectiveness, and further argued that 'Observational studies are the arbiter and nothing else.'⁵¹
- 2.8 Further, Drug Free Australia expressed views that prescribing doctors cannot objectively establish that medical conditions such as PTSD exist and that the bulk of medicinal cannabis patients 'are pretending to suffer chronic pain and are using it as a ruse to illegally use cannabis recreationally'.⁵² Similarly, Mr Shane Varcoe, Executive Director of the Dalgarno Institute, emphasised that 'the only cannabis-based medicines that are properly pharmaceutically vetted are Epidyolex and Sativex' and argued that 'Any product touting therapeutic capacity must be fully vetted and fully regulated' to attain any medical or legal legitimacy.⁵³
- 2.9 These views were contrasted by evidence provided by the Society of Cannabis Clinicians that controls are in place around the prescription and dispensation of medicinal cannabis products and that 'pharmacovigilance is greatly improving'. Specifically, Dr Joel Wren, a general practitioner and President of the Society of Cannabis Clinicians Australian Chapter, told the committee that:

Between My Health Record and SafeScript NSW... we can in real time monitor other prescription medication and see is this patient displaying drug-seeking behaviour. We can regulate their usage through minimum dispensing intervals from pharmacies and

⁴⁹ Evidence, Ms Deb Lynch, Medicinal Cannabis Users' Association of Australia, 16 June 2022, p 13.

⁵⁰ Submission 10, Mr Scott Ford, p 1.

⁵¹ Evidence, Mr Gary Christian, Research Director, Drug Free Australia, 16 June 2022 p 24.

⁵² Evidence, Mr Gary Christian, 16 June 2022, p 26.

⁵³ Evidence, Mr Shane Varcoe, Executive Director, Dalgarno Institute, 16 June 2022, p 24.

with a reduced, if any, use of repeats as well, just to actually ascertain what the clinical effects will be before advising them to continue the medication.⁵⁴

- 2.10** The Society of Cannabis Clinicians Australian Chapter further advised that it is a requirement for healthcare providers to ensure that patients have 'tried all other approved drugs for their condition before medicinal cannabis can be prescribed'.⁵⁵ Like the morphine exemption in subsection 111(5), the proposed defence would rely on the production of evidence of legal prescription and administration of a medicinal product.⁵⁶
- 2.11** The committee notes the large number of submissions from patients who attested to using medicinal cannabis responsibly, acting on the advice of medical professionals to seek relief from a range of conditions. On the other hand, some participants queried whether the availability of an exemption for patients who use medicinal cannabis would lead to recreational cannabis users seeking to rely on the exemption to justify their driving under the influence, especially given that testing does not provide any information about whether the THC consumed was medicinal or otherwise.⁵⁷

Vulnerability of medicinal cannabis users

- 2.12** The committee heard evidence that people who use cannabis for medicinal purposes are a particularly vulnerable and marginalised group.⁵⁸ This is supported by demographic data from the AIHW demonstrating that medicinal cannabis users are more likely than recreational cannabis users to live in the lowest socioeconomic areas, to be older and of poor or fair health, to suffer high blood pressure, chronic pain and mental illness and to report very high levels of psychological distress.⁵⁹
- 2.13** Submission authors detailed the therapeutic benefits of medicinal cannabis for a range of difficult to treat conditions including chronic and cancer pain, multiple sclerosis, epilepsy, mental health conditions like post-traumatic stress disorder, and for reducing the side effects of chemotherapy.⁶⁰ Ms Lucy Haslam provided personal testimony that her 24-year-old son Dan, 'four years into a five year battle with terminal cancer', experienced 'unrelentless nausea and vomiting, anorexia, pain, insomnia, and depression' from the disease and its treatments. Medicinal use of cannabis provided immediate benefits for Dan and by extension the Haslam family in their final year together, reducing his suffering and improving his quality of life.⁶¹

⁵⁴ Evidence, Dr Joel Wren, President, Society of Cannabis Clinicians – Australian Chapter, 16 June 2022, p 10.

⁵⁵ Submission 65, Society of Cannabis Clinicians – Australian Chapter, p 3.

⁵⁶ Hansard, NSW Legislative Council, 17 November 2021, p 6396 (Ms Cate Faehrmann MLC).

⁵⁷ Submission 2, Dalgarno Institute, p 1; Evidence, Mr Gary Christian, 16 June 2022, p 24.

⁵⁸ Submission 101, NSW Bar Association, p 2.

⁵⁹ Australian Institute of Health and Welfare, *National Drug Strategy Household Survey 2019*, pp 50–51, <<https://www.aihw.gov.au/getmedia/77d6ea6e-f071-495c-b71e-3a632237269d/aihw-phe-270.pdf.aspx?inline=true>> accessed 20 July 2022.

⁶⁰ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 2.

⁶¹ Submission 1, United in Compassion Ltd, p 1.

- 2.14** Ms Lynch of the Medicinal Cannabis Users Association highlighted the 'exorbitant costs' of obtaining medicinal cannabis products by prescription,⁶² particularly the CBD-only preparations approved by the Therapeutic Goods Administration, Sativex and Epidyolex.⁶³ Because these products contain only minimal levels of THC, regular consumption would not prevent their users from driving. Ms Lynch stated that the cost barrier of obtaining and maintaining a CBD-only prescription causes many low-income earners to 'self supply' with available substances containing much higher levels THC that leave them unable to drive.⁶⁴ The Medicinal Cannabis Users Association's view is that the changes proposed in the bill 'although necessary and overdue, still discriminate against those patients who are unable to afford the legal pathway and would be unable to prove their consumption is for medicinal purposes'.⁶⁵
- 2.15** Anecdotal evidence was offered by both patients and medical practitioners supporting the use of medicinal cannabis as a so-called 'exit drug' from highly addictive and often heavily sedating combinations of prescription medications including benzodiazepines and opioids such as morphine to manage chronic pain and other life-limiting conditions.⁶⁶ In addition, international research supporting this potential 'substitution effect' was cited by submission authors and witnesses including the NSW Council for Civil Liberties and the NSW Government.⁶⁷ The broader public benefit of this was outlined by advocacy group Drive Change who stated that 'There is evidence to suggest those using other prescription drugs as an alternative to medicinal cannabis are at a greater risk to road safety'.⁶⁸ Ms Lucy Haslam of United in Compassion Ltd presented the argument that improved driving could be achieved by replacing the sedating effects of other prescription medications and debilitating levels of pain with by responsible treatment with medicinal cannabis.⁶⁹
- 2.16** On the other hand, representatives of the NSW Government refuted any putative role for medicinal cannabis in reducing dependence on other drugs. Appearing on behalf of the NSW Department of Health, Associate Professor Bridin Murnion told Committee members there is 'no robust data in humans that cannabinoids are opioid sparing in the sense that they help people reduce their opioid dose', with the body of evidence 'very much in early scientific development'. She further advised that such a role is not 'recognised or evidence based or recommended within any New South Wales or Australian guideline... There is some animal data, but it's very specific

⁶² Evidence, Ms Lynch, 16 June 2022, p 13.

⁶³ Submission 69, Medicinal Cannabis Users Association, p 6.

⁶⁴ Evidence, Ms Lynch, Founding Member, 16 June 2022, p 13.

⁶⁵ Submission 69, Medicinal Cannabis Users Association, p 2.

⁶⁶ Evidence, Dr Wren, 16 June 2022, p 2; See also Submission 58, NSW Council for Civil Liberties, p 4; Evidence, Ms Lucy Haslam, Co-Founder, United in Compassion Ltd, 16 June 2022, p 14; Evidence, Professor Iain McGregor, Academic Director, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, 16 June 2022, p 2.

⁶⁷ 45 per cent of patients taking benzodiazepines at baseline had stopped after six months of commencing medicinal cannabis, Boehke et al, 'Medical Cannabis Use Is Associated With Decreased Opiate Medication Use in a Retrospective Cross-Sectional Survey of Patients With Chronic Pain', *Journal of Pain*, 17(6) 2016, pp 739–744 in Perkins, Brophy, McGregor et al, 'Medicinal cannabis and driving: the intersection of health and road safety policy', *International Journal of Drug Policy* 97 (2021) p 5. Submission 105, NSW Government, p 13, Submission 58, NSW Council for Civil Liberties, p 3.

⁶⁸ Submission 47, Drive Change, p 1.

⁶⁹ Evidence, Ms Haslam, 16 June 2022, p 16.

animal data for very specific substances. So in terms of cannabinoids being used as management for opioid dependence, or as opioid sparing, we don't have data to support that.¹⁷⁰

Choice between symptom relief and employment, particularly in regional Australia

- 2.17** For those who experienced symptomatic relief from supervised medicinal cannabis use, the Committee heard that presence offences present a significant barrier to living a full and productive life. Patients described being able to return to gainful employment, only to find themselves unable to get to work without potentially violating drug driving laws. As a result, participants told the committee that patients face the choice of either discontinuing or severely curtailing their treatment or running the risk of driving and being caught with residual THC in their system.⁷¹
- 2.18** Mr David Heilpern gave evidence that, as a former magistrate, he had sentenced 'hundreds of defendants' to penalties including loss of licence for presence offences secondary to prescription use of products containing THC. He said, 'most professed a need to drive, and resolved to go back to their previous use of [non-cannabinoid] prescription drugs so as not to be caught again'.⁷² Consistent with this, Mr Scott Ford told the committee, 'People don't want that problem. They want to be able to maintain their driving ability without worrying about being criminalised.'⁷³
- 2.19** Barriers to driving were highlighted by submission authors as particularly onerous for those using medicinal cannabis to treat complex, long-term health conditions, impeding access to medical or clinical trial appointments and exacerbating isolation.⁷⁴ The Society of Cannabis Clinicians Australian Chapter reported that for many, the possibility of being prosecuted, fined or losing one's licence serves as a disincentive to use legally prescribed and likely therapeutic cannabis treatments. It also noted that recruitment for clinical trials of medicinal cannabis products is challenging due to potential participants not wanting to lose their ability to drive during the active phase of the trial.⁷⁵
- 2.20** The Lambert Initiative advised the committee that inability to drive was identified as a 'major concern' in surveys of and discussions with users of medicinal cannabis.⁷⁶ In this vein, Positive Life NSW drew the committee's attention to the lived experience of HIV-positive medicinal

⁷⁰ Evidence, Professor Jennifer Martin, Senior Staff Specialist - Internal Medicine and Clinical Pharmacology, John Hunter Hospital, Hunter New England Local Health District, 16 June 2022, p 42; Evidence, Associate Professor Bridin Murnion, Senior Staff Specialist, Drug & Alcohol Services, Western Sydney Local Health District; Senior Staff Specialist, Clinical Pharmacology and Toxicology, St Vincent's Hospital Sydney, 16 June 2022, p 42.

⁷¹ Submission 58, NSW Council for Civil Liberties, p 4. See also Submission, Mr Scott Ford, p 1; Submission 5, Mr Nicholas Campbell, p 1; Submission 18, Mr David Zaloudek, p 1.

⁷² 4 July 2022 – Letter from Mr David Heilpern, Drive Change Co-Founder, to Chair, responding to the committee's request for information, attaching NSW Local Court judgments.

⁷³ Evidence, Mr Scott Ford, 16 June 2022, p 15.

⁷⁴ Submission 64, Australian Medicinal Cannabis Association, p 9. See also Submission 1, United in Compassion Ltd, p 2; Submission 6, Mr Stephen Porter, p 1 and Submission 42, Mr Justin Ruse, p 1.

⁷⁵ Submission 65, Society of Medical Cannabis Clinicians Australian Chapter, p 7.

⁷⁶ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 4.

cannabis users balancing the demands of work and personal commitments with medical appointments and the impacts of their 'chronic manageable health condition'.⁷⁷

- 2.21** The committee heard that in rural and regional areas the choice between freedom of movement and symptom relief is particularly stark. Ms Lucy Haslam highlighted that when there are fewer alternatives to driving in order to access essential services, 'a licence is a lifeblood':

Having a driver licence is just essential to everything in the country. It is essential to how you get your groceries or how you get supplies for your property. You just can't do without it ... a lot of people have to make that real decision: Do I risk it or do I forgo the treatment that is best suited to me? That's a terrible choice that I don't think any Australian should have to make. If they're not impaired and they feel fit to drive, they should be able to drive in the same way that a patient being prescribed morphine is able to make that decision and drive.⁷⁸

The impact of the current law

- 2.22** A further concern highlighted in evidence was the real impact of legal action arising from the present law on a patient group that is, as established above, inherently vulnerable.

- 2.23** Mr Nicholas Cowdery, a member of the NSW Bar Association's Criminal Law Committee, presented a personal view that the present law imposes 'harsh conditions' on drivers with THC in their system.⁷⁹ Fellow member Ms Khalalilizadeh noted the 'significant fines' that a driver faces if they are detected to have THC in their system: \$2,200 for a first offence, \$3,300 for a subsequent offence, as well as potential licence disqualification.⁸⁰

- 2.24** Attesting to the financial cost as well as the stress of engaging in the court system upon being charged, Ms Lynch of the Medicinal Cannabis Users Association told the committee of her own recent experience:

When I was lab tested in New South Wales last year, I was extremely fortunate in that I was represented by a solicitor pro bono and already had TGA approval documents and doctors' reports to submit to the court. I had obtained these expensive documents with the help of donations from our community to assist with an ongoing court case in Queensland. The high cost to obtain evidence for defence and to seek legal assistance is another issue of grave concern to us. TGA approval via the doctor cost me another \$450. My case in the New South Wales courts resulted in no conviction, no penalty and no loss of licence.⁸¹

- 2.25** Ms Amy Farrugia of the NSW Young Lawyers Criminal Law Sub-Committee identified that the impact of the law is particularly 'onerous' for medicinal cannabis patients with health conditions who live outside of major cities, arguing:

⁷⁷ Submission 105, Positive Life NSW, p 2.

⁷⁸ Evidence, Ms Haslam, 16 June 2022, p 16.

⁷⁹ Evidence, Mr Nicholas Cowdery, Member, Criminal Law Committee, NSW Bar Association, 16 June 2022, p 35.

⁸⁰ Evidence, Ms Rose Khalalilizadeh, Member, Criminal Law Committee, NSW Bar Association, 16 June 2022, p 31; See also Submission 10, NSW Bar Association, p 3.

⁸¹ Evidence, Ms Lynch, 16 June 2022, p 13.

The burden of that conviction will be heavier on them. If they're to lose their licence or their ability to drive, they're going to be far more isolated than if the same thing happened to someone living in an urban or a city area.⁸²

Inconsistent legal requirement to other prescription medications

- 2.26** The committee heard support for the bill as a way of remedying the inconsistency at law between medicinal cannabis and other prescription medication including morphine. Participants raised the point that since medicinal cannabis was legalised for therapeutic use in 2019, the law should treat it equally.⁸³ Instead, medicines containing THC continue to be grouped alongside recreational drugs methamphetamine, ecstasy, cocaine and MDMA.⁸⁴
- 2.27** Focusing on the key issue of impairment – discussed in detail in a later section – the committee heard that other prescription medications cause greater driving impairment than medicinal cannabis, yet it remains legal to drive with them in your system.⁸⁵ The Lambert Initiative thus pointed to a disparity in the law's treatment of patients who use 'benzodiazepines, opioids [including morphine], Z drugs and sedating antidepressants' who are permitted to drive and are counselled to self-assess their level of impairment, whereas patient who use medications that contain THC are subject to random testing that can detect its presence arguably well beyond the impairment window.⁸⁶
- 2.28** Dr Joel Wren, for example, acknowledged impairment as an important consideration when using certain medications, telling the committee that he counsels patients about the psychotropic effects of opioid analgesics, antidepressants, hypnotics and anxiolytics, advising them to avoid using machinery, including motor vehicles, if they feel impaired. He argued, 'As a legitimate emerging therapy, medicinal cannabis and the driving laws that surround its use need to be consistent with other prescription therapies currently available.'⁸⁷
- 2.29** On this reasoning, the Australian Lawyers Alliance argued that patients using medicinal cannabis should be able to self-assess their impairment and drive in the same way that patients using morphine can under the defence provided for in section 111(5) of the *Road Safety Act 2013*.⁸⁸

⁸² Evidence, Ms Amy Farrugia, Vice Chair, NSW Young Lawyers Criminal Law Sub-Committee, 16 June 2022, p 31.

⁸³ Evidence, Ms Haslam, 16 June 2022, p 12. Submission 60, Australian Lawyers Alliance, p 5; Evidence, Dr Joel Wren, 16 June 2022, p 2.

⁸⁴ *Road Safety Act 2013*, section 4.

⁸⁵ Submission 64, Australian Medicinal Cannabis Users' Association, p 9; Department of Health and Human Services, Office of Medicinal Cannabis, *Medicinal Cannabis and Driving: Issues paper*, p 3 and Victorian Institute of Forensic Medicine Report, *Medicinal Cannabis and Drug Driving*, February 2021 in *Assisting medicinal cannabis patients to drive safely*, Report of the Medicinal Cannabis and Safe Driving Working Group, February 2021.

⁸⁶ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 4.

⁸⁷ Evidence, Dr Wren, 16 June 2022, p 2.

⁸⁸ Submission 60, Australian Lawyers Alliance, p 5. See also Submission 52, Anspec Pty Ltd, p 1.

Exemptions are available in other jurisdictions

2.30 A number of submission authors encouraged the committee to take note of the driving exemption available for patients using medicinal cannabis in Tasmania.⁸⁹ Under the *Road Safety (Alcohol and Drugs) Act 1970* (Tasmania):

- subsection 6A(1) establishes the offence of driving with an illicit drug present in blood or oral fluid, and
- subsection 6A(2) qualifies that a person does not commit the offence if the prescribed drug was obtained and administered in accordance with the *Poisons Act 1971* (Tasmania).

2.31 Spokesperson for the Australian Lawyers Alliance, Mr Greg Barns SC, shared his understanding of how the exemption in Tasmania is applied on a case-by-case basis, explaining that:

The way it works in practice, as I understand it, is that people who are prescribed medicinal cannabis by their doctor will, generally speaking, have that prescription with them, for example, in their vehicle or on their person.

There have certainly been cases in Tasmania that I'm aware of where police have simply accepted that on the spot. Generally speaking, what police will do, because you don't automatically lose your licence because you've got THC in your system—it would only be if the driving was the issue, rather than the presence of the drug or the alcohol.⁹⁰

2.32 The committee heard that internationally, the United Kingdom, Norway, Germany, Ireland and New Zealand make a medical defence available to patients with THC in their system provided they are not impaired and are using the drug as directed.⁹¹ The Lambert Initiative provided the following table outlining the drug driving enforcement approaches taken in those countries, many of which, like New South Wales, have a 'zero tolerance' approach to illicit substances, but which nevertheless provide for a medical defence or exemption for medicinal cannabis patients:⁹²

⁸⁹ Submission 47, Drive Change, p 2; Submission 58, NSW Council for Civil Liberties, p 5; Submission 60, Australian Lawyers Alliance, p 4; Submission 69, Medicinal Cannabis Users Association of Australia, p 3.

⁹⁰ Evidence, Mr Greg Barns SC, Spokesperson, Criminal Law, Australian Lawyers Alliance, 16 June 2022, p 32.

⁹¹ Submission 101, New South Wales Bar Association, pp 3–4; Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 8.

⁹² Perkins, Brophy, McGregor et al, 'Medicinal cannabis and driving: the intersection of health and road safety policy', *International Journal of Drug Policy* 97 (2021), p 103307.

Table 3
International drug-driving (THC) enforcement approaches.

Country	THC presence offence?	THC detection method	Situation for medicinal cannabis patients	Additional information
United Kingdom	Yes	Oral fluid taken at roadside. Blood at police station or hospital and sent to laboratory.	Medical defence - if not impaired, and using a prescribed product as directed	Prescription medicines also tested for, but 'Zero tolerance' towards the presence of illicit substances. (Norwegian Ministry of Transport and Communications, 2020)
Norway	Yes	Oral fluid taken at roadside. Blood at police station or hospital and sent to laboratory.	Medical defence - if not impaired and using a prescribed, registered product as directed	20 drugs both licit and illicit are tested for against per se limits correlating with impairment. (Gjerde et al., 2015)
Germany	Yes	Oral fluid taken at roadside. Blood at police station or hospital and sent to laboratory.	Medical defence - if not impaired, and using a prescribed product as directed	'Zero tolerance' towards the presence of illicit substances, some licit substances also tested for (Bundesregierung, 2020).
Ireland	Yes	Oral fluid taken at roadside. Blood at police station or hospital and sent to laboratory.	Statutory medical exemption certificate – does not apply if the person is found to be impaired (Road Safety Authority, 2020).	'Zero tolerance' towards the presence of illicit substances. (Irish Government, 2017)
New Zealand**	No	Field impairment assessment at roadside. Blood at police station or hospital and sent to laboratory.	Medical defence - if using a prescribed product as directed.	Presence of a licit or illicit drug (in blood) alone is not an offence, there must be additional evidence of impairment. (Ministry of Transport, 2019)

*A bill was introduced into the NZ Parliament in July 2020 which, if passed, will introduce a presence offence for THC detected in oral fluid. A medical defence will be available to patients prescribed medicinal cannabis (Ministry of Transport, 2020). Note, a recent report of the New Zealand Attorney General has concluded that provisions of the proposed Bill are inconsistent with the New Zealand Bill of Rights and recommends changing the focus from general deterrence to impaired driving (Attorney General, 2020).

Source: Perkins, Brophy, McGregor et al, 'Medicinal cannabis and driving: the intersection of health and road safety policy', *International Journal of Drug Policy* 97 (2021) p 103307.

Road safety and impairment

2.33 Broadly, the committee heard that NSW road safety legislation aims to reduce the morbidity and mortality burden attributable to road accidents using a two-tiered approach:

- providing for presence offences, where an illicit substance is detected in a driver's system following testing undertaken at random
- driving under the influence or DUI offences, where testing is triggered by behavioural impairment.⁹³

2.34 Consistent with these two tiers, presence testing and measuring impairment are discussed in relation to medicinal cannabis in the sections below.

Presence-testing for THC is a necessarily cautious approach

2.35 As outlined in chapter 1, the bill would provide a new exemption from the drug driving offences in section 111 of the *Road Safety Act*. The NSW Government explained that 'drug driving laws criminalise the presence of [prescribed illicit] drugs, including THC, in a driver's bodily fluids, without needing to provide specific evidence of impairment.'⁹⁴ Presence testing for drug driving

⁹³ Submission 105, NSW Government, p 5.

⁹⁴ Submission 105, NSW Government, p 5.

characterises what is described internationally in road safety policy as a 'zero tolerance approach', and has the advantages of having a strong deterrent effect and consistent judicial processes.⁹⁵

2.36 According to the NSW Government the 'zero tolerance approach to driving with an illicit drug present' is consistent with the approach taken by other Australian jurisdictions.⁹⁶ Indeed, the National Drug Driving Working Group describes the national approach to drug driving as a 'model of deterrence' characterised by a 'high-visibility and high-volume mass roadside-screening program'.⁹⁷

2.37 Mr Peter Dunphy, Head of Transport Safety, Security and Emergency Management at Transport for NSW gave evidence that presence testing is necessary to prevent the harms occasioned by road trauma, and that, 'Until there is clear evidence on the effects of medicinal cannabis on driving, the New South Wales Government will continue to take a cautious approach to changing policies and consider the safety of all road users'.⁹⁸

2.38 The application of the 'zero tolerance approach' to drug driving offences when forms of cannabis are no longer 'illicit substances' was called into question by contributors to the inquiry, including Mr Michael Timms, Deputy Chair of the Australasian Centre for Road Safety, NSW Chapter. Mr Timms shared research with the committee that described the difficulty of determining a correlation between impairment and the presence of a substance and described this as 'a controversial and unresolved issue'.⁹⁹ Along the same lines, Ms Haslam argued, 'We are constantly told there's not enough evidence for cannabis, yet there seems to be not enough evidence that drivers are impaired just by the mere presence of THC'.¹⁰⁰

2.39 The committee sought information from former magistrate Mr David Heilpern and Director of Drive Change, experienced in adjudicating drug driving offences in the NSW Local Court. In *Police v Carrall*, Mr Heilpern explained how prosecution of a presence offence is different from that of driving under the influence (section 112 of the Road Safety Act):

It is important to note that there need not be any affect proven – the mere presence of a minute or residual presence of THC is sufficient. There is a separate offence of driving under the influence of a drug for which affect must be proven.¹⁰¹

⁹⁵ Blandino et al, 'Driving under the influence of drugs: Correlation between blood psychoactive drug concentrations and cognitive impairment. A narrative review taking into account forensic issues', *Forensic Science International: Synergy* 4 (2022), pp 8-9.

⁹⁶ Submission 105, NSW Government, p 13.

⁹⁷ National Drug Driving Working Group, *Australia's second generational approach to roadside drug testing*, October 2018 <https://www.infrastructure.gov.au/sites/default/files/migrated/roads/safety/publications/2018/pdf/second_gen_approach_roadside_drug_testing.pdf>, accessed 19 July 2022, p 1.

⁹⁸ Evidence, Mr Peter Dunphy, Head, Transport Safety, Security and Emergency Management, Transport for NSW, 16 June 2022, p 38.

⁹⁹ Blandino et al, 'Driving under the influence of drugs: Correlation between blood psychoactive drug concentrations and cognitive impairment. A narrative review taking into account forensic issues', *Forensic Science International: Synergy* 4 (2022), pp 8-9.

¹⁰⁰ Evidence, Ms Haslam, 16 June 2022, p 12.

¹⁰¹ Magistrate David Heilpern, Local Court NSW, Lismore, *Police v Carrall*, 1 February 2016, p 2.

2.40 The committee heard that residual presence of THC in saliva and blood tests long after consumption of medicinal cannabis products is the key concern of patients, some of whom test positive days after treatment.¹⁰² Information about the duration of the presence of THC vary from source to source, making it difficult for users to make an assessment of whether it is safe to drive. As one example, the Alcohol and Drug Foundation, who made a submission to the inquiry, state on their website that:

... random roadside saliva tests can detect THC (the active ingredient in cannabis) for around 12 hours after use in people who use cannabis infrequently or 'recreationally'.⁴ For people who frequently use cannabis, THC can usually be detected for around 30 hours.¹⁰³

2.41 Differently, the NSW Government's Centre for Medicinal Cannabis Research and Innovation advises health professionals in unambiguous terms that 'It is illegal for patients taking cannabis medicines which contain delta-9-tetrahydrocannabinol (THC) to drive' at all, outlining the 'cognitive and motor skills necessary for safe driving' that can be affected.¹⁰⁴

2.42 The NSW Government further highlighted a practical difficulty in respect of the bill, contending that 'the inability to distinguish between illicit use and medicinal use at the point of testing would make the operation of any exemption extremely challenging and resource intensive' when it came to THC detection.¹⁰⁵ It noted that an attempt to determine whether any driver's use of medicinal cannabis was in accordance with how it was prescribed would involve the much more invasive and resource intensive procedure of a blood sample and pharmacological review, without necessarily delivering a certain result.¹⁰⁶ Mr Dunphy further stated, 'Alternatively, if we were to rely simply on a medical exemption certificate without actual verification, there is no way of knowing if the patient had taken the product as prescribed and without any other additional substances. This is just not workable. It is contrary to the wording of the bill and is too much of a risk for other road users.'¹⁰⁷

THC impairs driving, to an unknown degree

2.43 The committee heard that drug driving laws have the ultimate goal of minimising fatal crashes caused by drug driving.¹⁰⁸ Consistent with this, the NSW Government's opposition to the bill is

¹⁰² See, for example, Submission 18, Mr David Zaloudek, p 1; Submission 61, Nimbin HEMP Embassy, p 1.

¹⁰³ Alcohol and Drug Foundation, *Roadside drug testing*, 24 November 2021, <<https://adf.org.au/insights/roadside-drug-testing/#:~:text=Cannabis%3A%20random%20roadside%20saliva%20tests,cannabis%20infrequently%20or%20recreationally'.&text=For%20people%20who%20frequently%20use,detected%20for%20around%2030%20hours>>, accessed 26 July 2022.

¹⁰⁴ NSW Government, Centre for Medicinal Cannabis Research and Innovation, *Driving* in Responses to post-hearing questions, NSW Government, p 12.

¹⁰⁵ Submission 105, NSW Government, p 16.

¹⁰⁶ Evidence, Mr Dunphy, 16 June 2022, pp 38-39.

¹⁰⁷ Evidence, Mr Dunphy, 16 June 2022, p 39.

¹⁰⁸ Submission 105, NSW Government, p 3.

framed in the following terms: 'THC impairs the skills required for driving and the Medicinal Cannabis Bill is likely to increase the road safety risk to all road users in this State.'¹⁰⁹

- 2.44** The Lambert Initiative described the intoxicating effects of THC at significant doses: 'sedation, euphoria, sensory changes and relaxation', commonly known as a 'high'.¹¹⁰ Driving impairment has been associated with these effects, typically when more than 10 mg of THC is consumed orally or by inhalation and especially in those who do not consume those amounts regularly.¹¹¹ Mr Shane Varcoe of the Dalgarno Institute, gave evidence that 'cannabis consumption has a negative effect on both visual function and driving performance', referring to a research study about smoking cannabis that demonstrated 'significant correlations between certain visual and driving performance parameters, particularly regarding driving stability'.¹¹²
- 2.45** With reference to the evidence base informing the *Report of the Medicinal Cannabis and Safe Driving Working Group in Victoria* released in February 2021, the NSW Government argued that 'THC causes risky driving behaviours such as lane weaving, inappropriate speed changes, following distance, reduction of reaction times, reduced capacity to divide attention and reduced vigilance'.¹¹³ Equally, the Lambert Initiative cited research that 'THC-induced driving impairment also extends to not being able 'to drive safely while performing a competing task' or 'accurately follow another vehicle'.¹¹⁴
- 2.46** An interesting counterpoint to the NSW Government's position, Lambert Initiative research identified that THC-affected drivers had an accurate sense of when they were impaired, displayed reduced willingness to drive and took fewer risks if compelled to drive under the influence.¹¹⁵ On the other hand, Professor Jennifer Martin of the John Hunter Hospital, representing NSW Health, advised the committee that, 'when you're impaired it's very difficult to know you're impaired'.¹¹⁶
- 2.47** The committee heard that numerous studies have examined the accuracy and reliability of point-of-collection testing using oral fluid to detect THC. These have demonstrated best performance at time intervals closest to use (within ten minutes). Accuracy has been shown to decline rapidly thereafter. Peak THC concentration within oral fluid varies significantly between individuals and can even change within a single individual from use to use.¹¹⁷ Overall, the significant proportion of false negatives and false positives recorded during a study led the Lambert Initiative to conclude that sensitivity, specificity and accuracy of the two commonly used mobile breath testing devices are poor. Former magistrate Mr David Heilpern notified the committee that during his time on the NSW Local Court, a government scientist expressed a view that

¹⁰⁹ Submission 105, NSW Government, p 3.

¹¹⁰ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 5.

¹¹¹ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 5.

¹¹² Evidence, Mr Varcoe, 16 June 2022, pp 24-25.

¹¹³ Evidence, Mr Bernard Carlon, Chief, Centre for Road Safety and Maritime Safety, Transport for NSW, 16 June 2022, p 45.

¹¹⁴ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 6

¹¹⁵ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 6.

¹¹⁶ Evidence, Professor Martin, 16 June 2022, p 44.

¹¹⁷ Arkell et al, 'Detection of Δ^9 THC in oral fluid following vaporized cannabis with varied cannabidiol (CBD) content: An evaluation of two point-of-collection testing devices', *Drug Testing and Analysis*, 23 August 2019 <<https://onlinelibrary.wiley.com/doi/10.1002/dta.2687>, accessed 20 July 2022.

some methods of intake could result in no THC being detectable in oral fluid at all.¹¹⁸ Additionally, research has demonstrated that it is possible to record a positive test after passive exposure to cannabis smoke, or consumption of high CBD cannabis products with negligible THC content.¹¹⁹

- 2.48** Unlike blood alcohol concentration, which has a more linear relationship with driving impairment, THC's unique properties mean that no such correlation can be made between oral fluid or blood concentration of THC and driving or cognitive impairment. As submitted by the Lambert Initiative, some drivers can demonstrate no impairment with moderately elevated blood or oral fluid THC, while others are clearly affected despite low or normal THC concentration. Most driving-related cognitive skills recover within 3-7 hours of inhaling low-dose (10-20mg) THC.¹²⁰
- 2.49** The committee also heard that the quantum of research to date examining THC-induced driving impairment has involved young, healthy, occasional recreational users of cannabis, rather than regular users or those who are prescribed it for medicinal purposes. According to the Lambert Initiative, the latter groups are much more likely to have developed tolerance to THC's impairing effects due to repeated daily use.¹²¹
- 2.50** Further, the research methodology and assumptions used by previous studies that demonstrate THC-induced driving impairment were called into question, including by academic researcher and member of the Australasian College of Road Safety, Dr Michael White, who challenged the 'assumption that prevalence equals causation'.¹²² Dr White argued that most road trauma recorded as being 'cannabis-positive' can be attributed to other factors – for example by the coincident consumption of alcohol. Factoring in study biases, it was Dr White's argument that prior use of cannabis caused 'no overall effect' on the risk of crashing. Correspondingly, he described impairments as 'trivial in the context of road safety'.¹²³

Measuring impairment

- 2.51** The committee heard that impairment varies from person to person depending on a range of physical factors, including body size and the condition being treated.¹²⁴ Professor Jennifer Martin spoke about findings arising from current clinical trials of medicinal cannabis which are showing that:

¹¹⁸ Conclusions made by the Clinical Forensic Pharmacologist from the NSW Policy Impaired Driving Research Unit that 'if you take THC orally by capsule or suppository then it is not possible to have a level of THC detectable in oral fluid' Local Court NSW, Lismore, *Police v Spackman*, 9 April 2019, pp 6-7.

¹¹⁹ Arkell et al, 'Detection of Δ^9 THC in oral fluid following vaporized cannabis with varied cannabidiol (CBD) content: An evaluation of two point-of-collection testing devices', *Drug Testing and Analysis*, 23 August 2019 <<https://onlinelibrary.wiley.com/doi/10.1002/dta.2687>, accessed 20 July 2022.

¹²⁰ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 7.

¹²¹ Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 7.

¹²² Evidence, Dr Michael White, Adjunct Senior Fellow, School of Psychology, University of Adelaide, and Member, Australasian College of Road Safety, 16 June 2022, pp 19-20.

¹²³ Evidence, Dr White, 16 June 2022, p 19.

¹²⁴ Evidence, Professor Martin, 16 June 2022, p 44.

the relationship between the levels in the blood and impairment—in terms of how patients describe their sedation or their brain fogginess or their cognitive dysfunction—can vary significantly as well. It is so variable it has actually become quite difficult for us as clinicians to predict how someone is going to respond.¹²⁵

2.52 The issue of correlation and causation was discussed at length in oral evidence before the committee, informed by statistics quoted in the NSW Government's submission that cannabis consumption is a factor in 16 per cent of crashes.¹²⁶ Dr Michael White's submission made the point that 'prevalence is not equivalent to causation'.¹²⁷ Professor Martin accepted the impossibility of directly demonstrating causation between the presence of THC in the blood and impairment causing death, explaining that it is common in medicine for patients to take multiple medicines. Professor Martin observed that 'There is a difference between being 100 per cent sure on causality as opposed to it being a factor that is known to contribute to people's impairment, which is known to contribute to death.'¹²⁸

2.53 Mr Peter Dunphy of Transport for NSW, advised that in the absence of certainty about the correlation between cannabis and driving impairment, the Government works from 'a precautionary principle based on what we know around the evidence in terms of what behavioural factors are important in road crashes', emphasising that 'we do want to make sure that the work that we are doing is continuing to drive down the road fatality rate'.¹²⁹ Mr Bernard Carlon, Chief of the Centre for Road Safety and Maritime Safety at Transport for NSW argued that:

There is agreement universally in the evidence that THC has an impairing effect on the ability to safely drive a vehicle. When combined with alcohol at any level, it actually is 40 times more likely to cause a crash involving serious injury or a fatality. That is the rationale for having a general deterrent program, an oral fluid and large-scale implementation of the detection of the presence of those drugs from recent use through an oral fluid system.¹³⁰

2.54 In clinical trials presently in train, Professor Martin said there was marked variation in both detectable levels of THC between individuals administered the same dose of medicinal cannabis, as well as in the degree of impairment reported. She also highlighted that assessing impairment was a 'complicated' process. 'Impairment is not usually how good you feel',¹³¹ she said, adding that the effect largely depended on 'which cannabinoid you take, what other drugs you're taking, what your disease and what your body shape is ... That's why it's such a complicated area and people feel that it's so complicated that you can't be sure that a number or a cut-off figure in the blood would ensure comfort that you know that that person is or isn't impaired'.¹³²

¹²⁵ Evidence, Professor Martin, 16 June 2022, p 44.

¹²⁶ Submission 105, NSW Government, p 8; Evidence, Mr Dunphy, 16 June 2022, p 44.

¹²⁷ Submission 49, Dr White, p 4.

¹²⁸ Evidence, Professor Martin, 16 June 2022, p 40.

¹²⁹ Evidence, Mr Dunphy, 16 June 2022, p 44.

¹³⁰ Evidence, Mr Carlon, 16 June 2022, p 43.

¹³¹ Evidence, Professor Martin, 16 June 2022, p 44.

¹³² Evidence, Professor Martin, 16 June 2022, p 44.

Patients could self-assess with assistance from their doctors

- 2.55** Some participants argued that people using medicinal cannabis can be trusted, with the support of their medical practitioner, to evaluate their level of driving impairment, and in doing so, to make sound choices in respect of their risk to themselves and others while on the road.
- 2.56** As noted in paragraph 2.28 above, general practitioner Dr Joel Wren told the committee that he counsels his patients on the psychotropic effects of the prescription drugs which are exempted from driving offences, and to avoid using machinery including motor vehicles when impaired. For him it was inconsistent that the same trust is not placed in users of medicinal cannabis and their treating doctors.¹³³ Ms Deb Lynch, President of the Medicinal Cannabis Users Association, argued along the same lines that since it is a prescription medication, medicinal cannabis patients should be 'the judge of whether or not they are impacted and are safe to drive'.¹³⁴ Mr Scott Ford told the committee that after the trial period of starting medicinal cannabis, he developed a sense of when impairment was approaching, commenting 'things sort of start to slow down'.¹³⁵ Mr Mick Timms, Deputy Chair of the Australasian College of Road Safety's NSW Chapter, emphasised that the 'relationship between patient and doctor is critical in this whole process, and ensuring that doctors have full visibility of the range of medications that patients are on'.¹³⁶
- 2.57** In contrast to alcohol, however, the committee heard evidence that things were 'a little bit more grey' when it came to the question of predicting the likely impairment caused by medicinal cannabis. Indeed, Mr Timms told committee members, the question of whether and how commonly a user of medicinal cannabis would register a positive roadside test for THC was a live one: 'We really are in search of knowledge in this whole space'.¹³⁷
- 2.58** In a fact sheet on prescribed cannabis medicines and fitness to drive, NSW Health cautions that medical practitioners may not have the information to reliably advise on impairment:

Because many of the cannabis medicines available in Australia do not have information regarding their absorption and bioavailability it can be difficult for practitioners to give reliable advice regarding an expected period of impairment.¹³⁸

More research needed on impairment by medicinal cannabis products with THC

- 2.59** The committee heard a range of evidence about progress to measure the effects of THC on driving impairment, particularly from the Lambert Initiative for Cannabinoid Therapeutics at the University of Sydney who said they are eager to partner with government to launch a world first clinical trial if the funding were made available, 'investigating the effects of treatment with

¹³³ Evidence, Dr Wren, 16 June 2022, p 2.

¹³⁴ Evidence, Ms Lynch, President, 16 June 2022, p 13.

¹³⁵ Evidence, Mr Ford, 16 June 2022, p 14.

¹³⁶ Evidence, Mr Michael Timms, Deputy Chair, Australasian College of Road Safety, NSW Chapter, 16 June 2022, p 21.

¹³⁷ Evidence, Mr Timms, 16 June 2022, p 20.

¹³⁸ NSW Health, *Prescribed cannabis medicines and fitness to drive*, <https://www.medicinalcannabis.nsw.gov.au/__data/assets/pdf_file/0025/2869/Cannabis-and-Driving-Fact-Sheet-Health-Professionals-FINAL.pdf> accessed 25 July 2022, p 1.

a prescribed THC-containing product on driving performance in chronic-pain patients'.¹³⁹ Lambert Initiative Academic Director Professor Iain McGregor, told the committee how the AMBER trial would work, explaining:

... what we really need to do is gather data, and that is to take a whole bunch of patients, say about 150, who are initiating medicinal cannabis for the treatment of ... chronic pain. We will give half of them the actual cannabis that they want and the other half a placebo, and this will probably be an oral oil, and then we'll track their driving performance over the first 12 weeks that they take their medication.

... We can do that in a driving simulator. They come into our labs and we look at their driving, say, every week or every couple of weeks and see how they're going, and the simulators are very good quality and correlate very well with on-road driving. Or we may use a gadget ... where we can put this in their actual cars and measure their driving ability over time.¹⁴⁰

2.60 Professor McGregor outlined the Lambert Initiative's prediction that any driving impairment displayed would be in the first week of treatment and would taper off, resulting in a return to driving form by week 12 of the medication.¹⁴¹

2.61 When asked about whether government is open to partnering with the Lambert Initiative on this study, Mr Peter Dunphy of Transport for NSW responded:

Yes absolutely. In the 2026 Road Safety Action Plan, certainly one of the priorities and one of the areas that we focused on is really looking at further research. We recognise that we want to be best practice. We want to make sure that whatever our control frameworks have, whatever advice we're giving in terms of road safety is world's best practice. We can only do that, really, through supporting good evidence base. We're very strongly supportive of the research. As everyone has discussed today, there are still gaps in the research. We would certainly appreciate and welcome further research in this area, to better understand the impacts and also to better target our approaches in terms of prevention and also the enforcement approaches.¹⁴²

2.62 One matter that the committee investigated during the public hearing was the inability to replace mobile breath testing technology with another test for impairment, to enable police officers to adequately assess whether a driver would be eligible to rely on the medicinal cannabis driving exemption. Dr Danielle McCartney of the Lambert Initiative discussed 'field sobriety tests' used in the USA and Canada including 'walk-and-turn' or 'walk this straight line', comparing these with a 'stand on one leg and close your eyes' test.¹⁴³ Challenges in these models pointed out by Dr Thomas Arkell included that older people and those with mobility problems would struggle with these tests at baseline.¹⁴⁴ However, the need to continue to invest in developing a roadside

¹³⁹ Evidence, Professor McGregor, 16 June 2022, pp 5–6; Submission 70, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, p 7.

¹⁴⁰ Evidence, Professor McGregor, 16 June 2022, p 5.

¹⁴¹ Evidence, Professor McGregor, 16 June 2022, pp 5–6.

¹⁴² Evidence, Mr Bernard Carlon, 16 June 2022, p 41.

¹⁴³ Evidence, Dr Danielle McCartney, Research Fellow, Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, 16 June 2022, p 6.

¹⁴⁴ Evidence, Dr Thomas Arkell, Research Fellow, Swinburne University of Technology 16 June 2022, p 7.

test was highlighted by Dr Iain McGregor's point that 'cannabis impairment is very subtle' and difficult to detect.¹⁴⁵

2.63 Across the inquiry, matters that the committee heard could be investigated further in research include:

- differences between medical and recreational cannabis users in relation to the duration or degree of impairment¹⁴⁶
- the rate and absorption method of THC¹⁴⁷
- effects of medicinal cannabis on short and long-term vision and safe driving¹⁴⁸
- road safety and tests for impairment in jurisdictions where cannabis has been legalised¹⁴⁹.

2.64 The committee notes that the Victorian Government released the final report of its Medicinal Cannabis and Safe Driving Working Group in February, presenting irreconcilable views about the road safety risk associated with medicinal cannabis use.¹⁵⁰

Inconsistency between alcohol and other drugs in road safety due to measurement

2.65 A number of witnesses discussed the differential treatment at law between alcohol and medicinal cannabis products, arguing that the community accepts a level of risk in allowing drivers to be influenced by alcohol that it unfairly does not accept for cannabis users.¹⁵¹

2.66 As noted above, oral fluid testing to detect cannabis use does not quantify the levels of THC present in the driver. Blood tests later conducted do produce a numeric value of THC content present, but quantity is not relevant to prosecution or sentencing: if cannabis is identified, no matter in how small a quantity, a driver can be fined or charged under section 111(1).¹⁵²

2.67 Differently, rather than being tested for the presence of alcohol, randomly tested drivers only commit an offence under section 112 if they are found to be in excess of the blood alcohol concentration (BAC) limit.¹⁵³ Mr Michael Timms of the Australasian College of Road Safety summarised the rationale behind the current BAC of 0.05, explaining that:

A driver in excess of .05, we are not necessarily saying that driver is impaired, but you are saying that on the bulk of the evidence to hand researchers, academics and

¹⁴⁵ Evidence, Professor McGregor, 16 June 2022, p 7.

¹⁴⁶ Submission 41, Drug Free Australia, p 9.

¹⁴⁷ Correspondence from Mr David Heilpern, 4 July 2022, attaching judgment from Local Court NSW, Lismore, *Police v Spackman*, 9 April 2019, p. 9.

¹⁴⁸ Evidence, Mr Varcoe, 16 June 2022, p 25.

¹⁴⁹ Submission 61, Nimbin HEMP Embassy, p 2.

¹⁵⁰ *Assisting medicinal cannabis patients to drive safely*, Report of the Medicinal Cannabis and Safe Driving Working Group, Victoria, February 2021.

¹⁵¹ Evidence, Professor McGregor, 16 June 2022, p 9.

¹⁵² Submission 105, NSW Government, p 11.

¹⁵³ *Road Transport Act 2013*, section 112.

governments have concluded that .05 is about the maximum trade-off between safety and mobility that they are prepared to allow.¹⁵⁴

2.68 The committee heard that setting an acceptable blood alcohol concentration (BAC) limit is more possible than setting a level of impairment for cannabis due to the different ways the body processes the two drugs.¹⁵⁵ Mr Gary Christian argued 'There is a relationship between dose and alcohol impairment, and that is not true of cannabis. They work differently'.¹⁵⁶ Specifically, Dr Thomas Arkell detailed that despite alcohol affecting individuals differently, a reliable measure can be produced using breath testing for alcohol:

...because it's eliminated from the body at a constant rate, there's a pretty good relationship between the amount of alcohol you consumed and how much you have in your system. First of all, that's why BAC limits work very well; and, secondly, why we can use breathalysers widely. It is because we know that relationship between how much you've had and how much is in your system is very reliable.¹⁵⁷

2.69 Participants highlighted the potential unfairness in requiring no detectable THC when it may not be more impairing than legal limits of alcohol. The Lambert Initiative highlighted emerging evidence that driving with a 'legal' BAC of 0.49 may make drivers 'more impaired than if [they] have had cannabis'.¹⁵⁸ The increased crash risk associated with prior use cannabis was estimated at only 40 per cent by Dr Michael White, which accords with an estimate provided in a NSW Health fact sheet for medical practitioners.¹⁵⁹ Dr White explained that driving with a blood alcohol concentration of 0.05 (the legal level), increases crash risk by 100 per cent: it 'doubles your risk of crashing'.¹⁶⁰ Recognising the 'liabilities to the driving capacity' presented by alcohol, Mr Shane Varcoe of the Dalgarno Institute stated 'we certainly advocate for zero alcohol use in driving'.¹⁶¹

Legal drafting concerns

2.70 Stakeholders with legal expertise commented on the need for clarification about the proposed implementation of the bill.¹⁶² The Australian Lawyers Alliance explained that generally in criminal proceedings the prosecution bears responsibility for establishing that the elements of an offence are made out. This recognises that defendants are often less well-resourced and

¹⁵⁴ Evidence, Mr Timms, 16 June 22, p 19.

¹⁵⁵ NSW Health, *Prescribed cannabis medicines and fitness to drive*, <https://www.medicinalcannabis.nsw.gov.au/__data/assets/pdf_file/0025/2869/Cannabis-and-Driving-Fact-Sheet-Health-Professionals-FINAL.pdf> accessed 25 July 2022, p 1.

¹⁵⁶ Evidence, Mr Christian, 16 June 2022, p 26.

¹⁵⁷ Evidence, Dr Arkell, 16 June 2022, p 4.

¹⁵⁸ Evidence, Professor McGregor, 16 June 2022, p 9.

¹⁵⁹ Evidence, Dr White, 16 June 2022, p 22; NSW Health, *Prescribed cannabis medicines and fitness to drive*, <https://www.medicinalcannabis.nsw.gov.au/data/assets/pdf_file/0025/2869/Cannabis-and-Driving-Fact-Sheet-Health-Professionals-FINAL.pdf> accessed 25 July 2022, p 1.

¹⁶⁰ Evidence, Dr White, 16 June 2022, p 22.

¹⁶¹ Evidence, Mr Varcoe, 16 June 2022, p 26.

¹⁶² Submission 101, NSW Bar Association, p 4; Submission 60, Australian Lawyers Alliance, p 7; Submission 63, NSW Young Lawyers and NSW Young Lawyers Criminal Law Sub-Committee, pp 3-4.

litigation-savvy than the state.¹⁶³ The high standard of proof ('beyond reasonable doubt') is grounded in the presumption of innocence and the defendant's right to silence.¹⁶⁴

- 2.71** The NSW Bar Association contemplated two available readings of the bill as drafted, either that:
- the onus is on the defendant to prove that they obtained and administered THC in accordance with the *Poisons and Therapeutic Goods Act 1966* or equivalent, or
 - the onus is on the prosecution to disprove that an individual obtained and administered THC in accordance with the *Poisons and Therapeutic Goods Act 1966* or equivalent.¹⁶⁵
- 2.72** Calling for greater clarity about which is the case, the NSW Parliament's Legislation Review Committee warned that 'a reverse onus may undermine the presumption of innocence'.¹⁶⁶ The NSW Bar Association commented that if the onus of proof is reversed, it needs to be made clear that the defendant is only required to meet the civil standard of proof which is 'on the balance of probabilities'. The Association also called for sufficient flexibility in the application of the legislation to avoid defendants bearing 'the onerous and inaccessible cost associated with calling expert evidence from a medical professional'.¹⁶⁷

Committee comment

- 2.73** The committee has in this report set out the background and key provisions of the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021, and has explored key issues that were raised by inquiry participants in thoughtful consideration of its provisions. The contribution of representatives of the medical and legal professions, advocacy groups, researchers and members of the community will no doubt enrich debate of the bill in the House.
- 2.74** The therapeutic benefits of medicinal cannabis products administered under medical supervision are established in evidence both before this committee during this inquiry and by the 2013 inquiry undertaken in this place by General Purpose Standing Committee No 4. The committee is grateful to the many individual contributors who shared stories of the efficacy of medicinal cannabis products as part of their treatment plan. We acknowledge the key concerns of medicinal cannabis users and their advocates that the present law operates unfairly in numerous ways: it presumes impairment in the presence of THC, it conflates medicinal and recreational cannabis use, and it imposes harsh penalties on those who benefit from or are only able to access treatment with medicinal cannabis products that contain THC. The committee accepts that the current laws are having a negative impact on some medicinal cannabis users and for this reason, encourages the NSW Government to partner with experts and academics in the field to develop the evidence base necessary to resolve the current uncertainty and minimise the negative impact.

¹⁶³ Submission 60, Australian Lawyers Alliance, p 7.

¹⁶⁴ Submission 101, NSW Bar Association, p 4; Legislation Review Committee, Legislation Review Digest No. 38 – 23 November 2021, p xi.

¹⁶⁵ Submission 101, NSW Bar Association, p 4.

¹⁶⁶ Legislation Review Committee, Legislation Review Digest No. 38 – 23 November 2021, p xii.

¹⁶⁷ Submission 101, NSW Bar Association, p 4.

- 2.75** Balancing the significant public interest inherent in road safety, it appears to the committee that a better understanding of the impairing effects of medicinal cannabis products that contain THC is a fundamental and necessary precursor to law reform in this area. Without this information, it appears to the committee that any risks to road safety cannot be properly evaluated or mitigated. The committee notes that researchers based in New South Wales expressed preparedness and willingness to commence world-leading studies to better investigate the real impact of medicinal cannabis on driving.
- 2.76** The committee encourages further debate on this issue to include detailed consideration of approaches taken worldwide, noting that the Tasmanian experience may be instructive. In that light, the committee recommends that this bill proceed to debate in the Legislative Council, and that the concerns identified by stakeholders documented in this report inform the debate.

Recommendation 1

That the Legislative Council proceed to debate the Road Transport Amendment (Medicinal Cannabis-Exemption from Offences) Bill 2021, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

Appendix 1 Submissions

No.	Author
1	United in Compassion Ltd
2	Dalgarno Institute
3	Ms Carol Smith
4	Dr James Connell
5	Mr Nicholas Campbell
6	Mr Stephen Porter
7	Mr Nick Adams
8	Mr Lachlan Verrall
9	Mr Dean Harris
10	Mr Scott Ford
11	Mr Kevin Bohacz
12	Mr Kyle Barrington
13	Mr Besim Sinanovski
14	Mr Murray Harris
15	Name suppressed
16	Ms Pat Schultz
17	Mr David Munday
18	Mr David Zaloudek
19	Miss Karen McMahon
20	Name suppressed
21	Name suppressed
22	Name suppressed
23	Name suppressed
24	Name suppressed
25	Name suppressed
26	Name suppressed
27	Name suppressed
28	Name suppressed
29	Name suppressed
30	Name suppressed
31	Name suppressed
32	Name suppressed

No.	Author
33	Name suppressed
34	Name suppressed
35	Name suppressed
36	Name suppressed
37	Name suppressed
38	Name suppressed
39	Name suppressed
40	Name suppressed
41	Drug Free Australia
42	Mr Justin Ruse
43	Mr Ricky Wood
44	Ms Cheryl Egan
45	Mr Arron Walsh-lavelle
46	Ms Nicole Egan
47	Drive Change
48	Medicinal Cannabis Industry Australia
49	Dr Michael White
49a	Dr Michael White
49b	Dr Michael White
50	Australasian College of Road Safety
51	Mr Craig Hartland
52	Anspec Pty Ltd
53	Mr Thomas Ziska
54	Name suppressed
55	Mr Isaac Jordan
56	Mrs Chloe Jean Teh
57	Dr John Teh
58	NSW Council for Civil Liberties
59	Mr Andre Habibi
60	Australian Lawyers Alliance
61	Nimbin HEMP Embassy
62	Alcohol and Drug Foundation
63	NSW Young Lawyers and NSW Young Lawyers Criminal Law Sub-Committee
64	Australian Medicinal Cannabis Association
65	Society of Cannabis Clinicians Australian Chapter

No.	Author
66	Harm Reduction Australia
67	TCann Pty Ltd
68	Mills Oakley
69	Medical Cannabis Users Association of Australia (MCUA)
70	Lambert Initiative for Cannabinoid Therapeutics, University of Sydney
71	Legalise Cannabis NSW
72	Mr Owen Harris
73	Mr Nicholas Robinson
74	Mr Jason Foster
75	Mr Macciza Macpherson
76	Mr Steve Bolt
77	Mr Paul Ceccato
78	Name suppressed
79	Ms Debbie Ranson
80	Ashley Gunns
81	Name suppressed
82	Name suppressed
83	Name suppressed
84	Name suppressed
85	Name suppressed
86	Name suppressed
87	Name suppressed
88	Name suppressed
89	Name suppressed
90	Name suppressed
91	Name suppressed
92	Name suppressed
93	Name suppressed
94	Name suppressed
95	Name suppressed
96	Confidential
97	Confidential
98	Confidential
99	Confidential
100	Confidential

No.	Author
101	New South Wales Bar Association
102	Levin Health Ltd.
103	The Law Society of New South Wales
104	Positive Life NSW
105	NSW Government
106	Little Green Pharma

Appendix 2 Witnesses at hearing

Date	Name	Position and Organisation
Thursday 16 June 2022 Jubilee Room Parliament House, Sydney	Professor Iain McGregor	Academic Director, Lambert Initiative for Cannabinoid Therapeutics, The University of Sydney
	Dr Danielle McCartney	Research Fellow, Lambert Initiative for Cannabinoid Therapeutics, The University of Sydney
	Dr Thomas Arkell	Research Fellow, Swinburne University of Technology
	Dr Joel Wren <i>(via videoconference)</i>	President, Society of Cannabis Clinicians Australian Chapter
	Ms Lucy Haslam <i>(via videoconference)</i>	Co-Founder, United in Compassion Ltd
	Mr Scott Ford <i>(via videoconference)</i>	Private individual
	Ms Deb Lynch <i>(via videoconference)</i>	President, Medicinal Cannabis Users Association of Australia
	Ms Gail Hester <i>(via videoconference)</i>	Founding Member and Executive, Medicinal Cannabis Users Association of Australia
	Dr Michael White <i>(via teleconference)</i>	Adjunct Senior Fellow, School of Psychology, University of Adelaide Member, Australasian College of Road Safety
	Mr Michael Timms <i>(via videoconference)</i>	Deputy Chair, Australasian College of Road Safety, NSW Chapter
Mr Gary Christian <i>(via videoconference)</i>	Research Director, Drug Free Australia	
Mr Shane Varcoe <i>(via videoconference)</i>	Executive Director, Dalgarno Institute	

Date	Name	Position and Organisation
	Mr Greg Barns SC <i>(via videoconference)</i>	Spokesperson, Criminal law, Australian Lawyers Alliance
	Mr Nicholas Cowdery AO QC <i>(via videoconference)</i>	Member, Criminal Law Committee, New South Wales Bar Association
	Ms Rose Khalilizadeh	Member, Criminal Law Committee, New South Wales Bar Association
	Ms Olivia Irvine <i>(via videoconference)</i>	Vice President, NSW Young Lawyers
	Ms Amy Farrugia <i>(via videoconference)</i>	Vice Chair, NSW Young Lawyers Criminal Law Sub-Committee
	Mr Bernard Carlon	Chief, Centre for Road Safety and Maritime Safety, Transport for NSW
	Mr Peter Dunphy	Head of Transport Safety, Security and Emergency Management, Transport for NSW
	Mr Brett McFadden	Assistant Commissioner, Traffic and Highway Patrol Command, NSW Police
	Professor Jennifer Martin	Senior Staff Specialist - Internal Medicine and Clinical Pharmacology, John Hunter Hospital, Hunter New England Local Health District
	Associate Professor Bridin Murnion <i>(via videoconference)</i>	Senior Staff Specialist, Drug and Alcohol Services, Western Sydney Local Health District and Senior Staff Specialist, Clinical Pharmacology and Toxicology, St Vincent's Hospital Sydney

Appendix 3 Minutes

Minutes no. 40

Thursday 25 November 2021

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney at 2.01 pm

1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Ms Faehrmann

Mr Farlow

Mr Khan

Mr Martin

Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Martin: That draft minutes no. 39 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 26 October 2021 – Email from Mr Ian Wood, National Co-Ordinator, Co-founder and Spokesperson, Christians Supporting Choice for Voluntary Assisted Dying, requesting that members of Christians Supporting Choice for Voluntary Assisted Dying be able to make written submissions, and seeking more information on the submission process
- 27 October 2021 – Letter from the Hon John Watkins AM, Board Chair, Catholic Health Australia to the Chair, requesting that members of Catholic Health Australia be able to make a submission and to give evidence at a public hearing for the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021
- 28 October 2021 – Email from Ms Julia Thoener, Policy and Advocacy Advisor, The Royal Australian and New Zealand College of Psychiatrists, seeking to make a submission to the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021
- 10 November 2021 – Email from Mr Gerard Hayes, Secretary, NSW, ACT, QLD, Health Services Union, declining to make a submission to the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021
- 22 November 2021 – Letter from Professor Euan M Wallace AM, Secretary, Victorian Department of Health to Chair, providing a submission to the inquiry into provisions of the Voluntary Assisted Dying Bill 2021.

Sent:

- 26 October 2021 – Email from the secretariat to from Mr Ian Wood, National Co-Ordinator, Co-founder and Spokesperson, Christians Supporting Choice for Voluntary Assisted Dying, in response to questions regarding the submission making process for the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021
- 28 October 2021 – Email from the secretariat to the Hon John Watkins AM, Board Chair, Catholic Health Australia in response to questions regarding the submission making process for the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021
- 28 October 2021 – Email from the secretariat to Ms Julia Thoener, Policy and Advocacy Advisor, The Royal Australian and New Zealand College of Psychiatrists, in response to questions regarding the submission making process for the inquiry into the provisions of the Voluntary Assisted Dying Bill 2021.

4. Inquiry into provisions of the Voluntary Assisted Dying Bill 2021

4.1 Chair's draft hearing schedules

The committee discussed the Chair's draft hearing schedules.

Resolved, on the motion of Mr Khan: That the committee invite the witnesses identified in the Chair's draft hearing schedule to appear at the hearing on 8 December 2021, with the addition of private individuals to be nominated by Mr Khan via email.

Resolved, on the motion of Mr Donnelly: That the committee invite the witnesses identified in the Chair's draft hearing schedule to appear at the hearing 10 December 2021, subject to any amendments or additions of organisations and individuals as identified by Mr Donnelly.

Resolved, on the motion of Mr Farlow:

- That the committee invite the witnesses identified in the Chair's draft hearing schedule to appear at the hearing on 13 December 2021
- That the afternoon sessions be reserved for any additional witnesses to be nominated by the committee, or for any invited witnesses who are unable to appear at the time they have been allocated on 8 and 10 December 2021.

4.2 Provision of any amendments to the Voluntary Assisted Dying Bill 2021 to witnesses

Resolved, on the motion of Mr Donnelly: That if the Voluntary Assisted Dying Bill 2021 is amended in the Legislative Assembly, the following documents be provided to witnesses prior to their appearance at a public hearing:

- the second print of the Voluntary Assisted Dying Bill 2021
- the Hansard extract of the consideration in detail stage of the debate
- the sheet of amendments agreed to by the Legislative Assembly.

5. Inquiry into the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021

5.1 Terms of reference

The committee noted the following terms of reference referred by the House on 23 November 2021:

That:

- (a) the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 be referred to the Standing Committee on Law and Justice for inquiry and report,
- (b) the committee report by 23 June 2022.

5.2 Proposed timeline

Resolved, on the motion of Ms Faehrmann: That the committee:

- not commence the inquiry until after the tabling of the report into provisions of the Voluntary Assisted Dying Bill 2021
- authorise the secretariat to note this on the inquiry webpage.

6. Adjournment

The committee adjourned at 2.26 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 47

Friday 18 March 2022

Standing Committee on Law and Justice

Jubilee Room, NSW Parliament House, at 10.00 am

1. Members presentMr Fang, *Chair*Mr Donnelly, *Deputy Chair*

Mr Amato

Mr Buttigieg (*participating*)

Mr D'Adam

Mr Martin

Mr Roberts

2. Apologies

Mr Farlow

Ms Faerhmann (substituting for Mr Shoebridge for the duration of the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021* inquiry)**3. Previous minutes**

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 46 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 15 February 2022 – Email from Ms Cara Punch, Office of the Opposition Whip, to the secretariat, advising that the Hon Mark Buttigieg will be a participating member for the 2021 Review of Dust Diseases hearings
- 21 February 2022 – Email from Ms Natalie Ryan, WorkSafe Victoria, to the secretariat, requesting an extension of time to respond to the committee's request for information
- 23 February 2022 – Email from Mr Tim Noonan, Manager Governance, SIRA, to the secretariat, providing Professor Driscoll's evidence review report as requested by the committee
- 1 March 2022 – Email from Mr James Mathison, SIRA, to the secretariat, confirming the name of the SIRA representative to the 18 March dust diseases hearing
- 2 March 2022 – Email from Ms Tamara Dryton, Department of Customer Service, to the secretariat, requesting an extension of time to respond to the committee's request for information, and providing names of SafeWork NSW witnesses to the dust diseases hearing
- 3 March 2022 – Email from Ms Kary Petersen, icare, to the secretariat, providing names of icare representatives to the dust diseases hearing
- 7 March 2022 – Email from Dr Narelle Beer, Executive Director, WorkSafe Victoria, to the secretariat, declining an invitation to appear at the dust diseases hearing on 18 March
- 14 March 2022 – Letter from Ms Clemency Morony, icare, to the Chair, providing a copy of reports prepared by PwC and Deloitte regarding underpayments to workers under the Dust Diseases Scheme, as requested by the committee
- 18 March 2022 – Email from Mr David Shoebridge MLC, to secretariat, advising that Ms Cate Faerhmann MLC will substitute for him for the duration of the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021* inquiry

Sent

- 22 February 2022 – Letter from the Chair to Mr Adam Dent, Chief Executive, SIRA, requesting provision of the evidence review by Professor Tim Driscoll

- 22 February 2022 – Letter from the Chair to Ms Natasha Mann, Deputy Secretary, Department of Customer Service, requesting provision of updated information about SafeWork NSW interventions at manufactured stone worksites
- 22 February 2022 – Letter from the Chair to Mr Richard Harding, CEO, icare, requesting provision of the PwC report into worker underpayments under the dust diseases scheme.

5. **Inquiry into the Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021**

5.1 **Terms of reference**

The committee previously noted the following terms of reference referred by the House on 23 November 2021:

That:

- (a) the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021 be referred to the Standing Committee on Law and Justice for inquiry and report,
- (b) the committee report by 23 June 2022.

5.2 **Proposed timeline**

Resolved, on the motion of Mr Donnelly: That the committee adopt the following timeline for the administration of the inquiry:

- Call for submissions – Monday 4 April 2022
- Submissions close – Sunday 1 May 2022
- Hearing – Second half of May or June 2022
- Report deliberative – For discussion

Resolved, on the motion of Mr Donnelly: That the Chair, on behalf of the committee, seek a resolution of the House to extend the reporting date for the inquiry until the first sitting week in August 2022.

5.3 **Stakeholder list**

Resolved, on the motion of Mr Donnelly: That the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

5.4 **Advertising**

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales. It is no longer standard practice to advertise in the print media.

6. **2021 Review of the Dust Diseases Scheme**

6.1 **Live streaming and recording of public hearing**

The Committee noted that it resolved on 16 February that all hearings for the 2021 Review of the Dust Diseases Scheme will be live steamed via the Parliament's website and recorded. All recordings will be made publicly available online.

6.2 **Witnesses to be accompanied by a support person**

The Committee noted that former stonemasons and silicosis sufferers Mr Kenneth Palmer and Mr Andrew Klohk will be accompanied by their nominated support people, Mr Dylan John Parker and Mr Barry Robson, when they give evidence.

6.3 **Reporting date**

The committee to consider a reporting date for this Review.

Resolved, on the motion of Mr Shoebridge: That the report be tabled by 10 June.

6.4 Public hearing

Witnesses and the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Kenneth Parker, Former stonemason and silicosis sufferer
- Mr Andrew Klohk, Former stonemason and silicosis sufferer

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Peter Tighe Independent, Chair, Asbestos Diseases Research Foundation
- Mr Barry Robson President, Asbestos Diseases Foundation of Australia

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Anthony Williams, Executive Director, Compliance and Dispute Resolution, Better Regulation Division, NSW Department of Customer
- Ms Meagan McCool Director, Construction Services Group Metropolitan, SafeWork NSW, Department of Customer Service

Mr Williams tendered the following document:

- Opening statement by SafeWork NSW

Hon Greg Donnelly MLC tendered the following document:

- Letter from 8 prominent health organisations to Hon Kevin Anderson MP regarding regulation around respirable crystalline silica across all industries, dated 1 October 2021.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Adam Dent, Chief Executive, State Insurance Regulatory Authority
- Mr Richard Harding, CEO and Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare

The evidence concluded and the witnesses withdrew.

6.5 Tendered documents

Resolved, on the motion of Mr Donnelly: That the committee accept and publish the following documents tendered during the public hearing:

- Opening statement by SafeWork NSW, tendered by Mr Williams
- Letter from 8 prominent health organisations to the Hon Kevin Anderson MP regarding regulation around respirable crystalline silica across all industries, dated 1 October 2021, tendered by Mr Donnelly.

7. Adjournment

The committee adjourned at 4.03pm, *sine die*.

Peta Leemen
Committee Clerk

Minutes no. 49

Thursday 16 June 2022

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney, 9.36 am.

1. MembersMr Rath, *Chair*Mr Donnelly, *Deputy Chair*

Mr Amato

Ms Faerhmann (substituting for Ms Boyd for the duration of the inquiry into the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021*)Ms Jackson (substituting for Mr D'Adam for the duration of the inquiry into the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021*)

Mr Roberts

2. Apologies

Mr Fang

Mr Martin

3. Draft minutes

Resolved on the motion of Mr Donnelly: That draft minutes no. 48 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received

- 14 April 2022 – Email from Ms Cara Punch, Office of the Opposition Whip, advising that Ms Jackson will substitute for Mr D'Adam for the duration of the inquiry into the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021
- 10 May 2022 – Email from Ms Faerhmann advising that she will substitute for Ms Boyd for the duration of the inquiry into the Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021
- 1 June 2022 – Email from Mr David Heilpern, former magistrate, Drive Change, declining the committee's invitation to appear on 16 June due to his appearing as a person of interest in a coronial inquest, making an offer to appear outside of court hours or on a different date
- 15 June 2022 – Email from Ms Lucy Haslam attaching journal article by Ellis et al , 'Medical cannabis and automobile accidents: Evidence from auto insurance', Health Economics, June 2022.

Resolved, on the motion of Ms Faerhmann: That article provided by Ms Haslam be uploaded to the inquiry website.

5. Inquiry into the Road Transport Amendment (*Medicinal Cannabis - Exemptions from Offences*) Bill 2021**5.1 Revised timeline**

The committee noted the revised timeline for the administration of the inquiry:

- Call for submissions – Tuesday 5 April 2022
- Submissions closed – Sunday 1 May 2022
- Hearing – Thursday 16 June 2022
- Report deliberative – Monday 8 August 2022
- Reporting date – Thursday 11 August 2022 (resolved by the House on 29 March 2022)

5.2 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-14, 16-19, 41-53, 55-77, 79-80, 101-105.

Resolved, on the motion of Ms Faehrmann: That the committee authorise the publication of submission nos. 106 and 49b.

5.3 Partially confidential submissions

Resolved, on the motion of Mr Amato: That the committee keep certain information confidential: submission nos. 15, 20-40, 54, 78, 81-95.

5.4 Confidential submissions

Resolved, on the motion of Ms Jackson: That the committee keep the following submissions confidential: submission nos. 96-100.

5.5 Public hearing

Resolved, on the motion of Ms Faehrmann: That the allocation of questions for the hearing be left in the hands of the Chair.

Witnesses and the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Professor Iain McGregor, Academic Director, Lambert Initiative for Cannabinoid Therapeutics, The University of Sydney
- Dr Danielle McCartney, Research Fellow, Lambert Initiative for Cannabinoid Therapeutics, The University of Sydney
- Dr Thomas Arkell, Research Fellow, Swinburne University of Technology
- Dr Joel Wren, President, Society of Cannabis Clinicians Australian Chapter (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Lucy Haslam, Co-Founder, United in Compassion Ltd (via videoconference)
- Mr Scott Ford, Private individual (via videoconference)
- Ms Deb Lynch, President, Medicinal Cannabis Users Association of Australia (via videoconference)
- Ms Gail Hester, Founding Member and Executive, Medicinal Cannabis Users Association of Australia (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Michael White, Adjunct Senior Fellow, School of Psychology, University of Adelaide, Member, Australasian College of Road Safety (via teleconference)
- Mr Michael Timms, Deputy Chair, Australasian College of Road Safety NSW Chapter.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Gary Christian, Research Director, Drug Free Australia (via videoconference)
- Mr Shane Varcoe, Executive Director, Dalgarno Institute (via videoconference).

Mr Varcoe tendered the following document:

- Research article by Ortiz-Peregrina *et al*, 'Effects of Smoking Cannabis on Visual Function and Driving Performance. A Driving-Simulator Based Study', *International Journal of Environmental Research and Public Health*, 3 December 2020.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Greg Barns SC, Spokesperson, Criminal law, Australian Lawyers Alliance (via videoconference)
- Mr Nicholas Cowdery AO QC, Member, Criminal Law Committee, New South Wales Bar Association (via videoconference)
- Ms Rose Khalilzadeh, Member, Criminal Law Committee, New South Wales Bar Association
- Ms Olivia Irvine, Vice President, NSW Young Lawyers (via videoconference)
- Ms Amy Farrugia, Vice Chair, NSW Young Lawyers Criminal Law Sub-Committee (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Bernard Carlon, Chief, Centre for Road Safety and Maritime Safety, Transport for NSW
- Mr Peter Dunphy, Head of Transport Safety, Security and Emergency Management, Transport for NSW
- Mr Brett McFadden, Assistant Commissioner, Traffic and Highway Patrol Command, NSW Police
- Professor Jennifer Martin, Senior Staff Specialist - Internal Medicine and Clinical Pharmacology, John Hunter Hospital, Hunter New England Local Health District
- Associate Professor, Bridin Murnion, Senior Staff Specialist, Drug and Alcohol Services, Western Sydney Local Health District and Senior Staff Specialist, Clinical Pharmacology and Toxicology, St Vincent's Hospital Sydney (via videoconference).

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 4.00 pm.

5.6 Tendered document

Resolved, on the motion of Mr Donnelly: That the committee accept the following document tendered during the public hearing and upload it to the inquiry website:

- Research article by Ortiz-Peregrina *et al*, 'Effects of Smoking Cannabis on Visual Function and Driving Performance. A Driving-Simulator Based Study', *International Journal of Environmental Research and Public Health*, 3 December 2020, tendered by Mr Shane Varcoe.

5.7 Letter to Mr David Heilpern

Resolved, on the motion of Ms Faehrmann: That the Chair write to Mr David Heilpern of Drive Change seeking examples of his judgments in cases of drug driving he dealt with as a magistrate, and any further information he would like to provide to assist the committee in its inquiry.

6. Adjournment

The committee adjourned at 4.03 pm, *sine die*.

Erin Pynor

Committee Clerk

Draft Minutes no. 50

Monday 8 August 2022

Standing Committee on Law and Justice

Room 1043, Parliament House, Sydney at 9.04 am

1. Members present

Mr Rath, *Chair*

Mr Donnelly, *Deputy Chair*

Mr Amato (via videoconference)

Ms Faehrmann

Ms Jackson (via teleconference)

Mr Martin (via teleconference)
Mr Fang (via teleconference)
Mr Roberts

2. Previous minutes

Resolved, on the motion of Mr Roberts: That draft minutes no. 49 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 4 July 2022 – Letter from Mr David Heilpern, Drive Change Co-Founder, to Chair, responding to the committee's request for information, attaching NSW Local Court judgments (*previously circulated*)
- 2 August 2022 – Email from Ms Olivia Irvine, NSW Young Lawyers and Criminal Law Sub-Committee, notifying the committee that input was sought from their members but they were unable to provide a significant response to the question taken on notice on 16 June 2022

Sent:

- 24 June 2022 – Letter from Chair to Mr David Heilpern, Drive Change Co-Founder, seeking examples of his judgments in cases of drug driving he dealt with as a magistrate, and any further information he would like to provide to assist the committee in its inquiry

4. Inquiry into the *Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021*

4.1 Proforma submissions

Resolved, on the motion of Mr Donnelly: That proforma submissions A and B be published.

4.2 Answers to questions on notice and supplementary questions

Resolved, on the motion of Ms Faehrmann, that the following answers to questions on notice and supplementary questions and their attachments be published:

- Lambert Initiative for Cannabinoid Therapeutics, University of Sydney, received 19 July 2022
- NSW Government, received 22 July 2022
- Society of Cannabis Clinicians Australian Chapter, received 22 July 2022
- Australasian College of Road Safety, attaching a research article by Blandino et al, received 22 July 2022
- NSW Bar Association, received 22 July 2022.

4.3 Consideration of Chair's draft report

The Chair submitted his draft report, entitled *Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021*, which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Donnelly: That paragraph 1.32 be amended by omitting 'The majority of Australian jurisdictions' before 'do not provide an exemption' and inserting instead 'All Australian jurisdictions except one'.

Chapter 2

Resolved, on the motion of Ms Faehrmann: That paragraph 2.26 be amended by omitting at the end 'none of which have therapeutic properties'.

Resolved, on the motion of Ms Jackson: That paragraph 2.74 be amended by inserting at the end:

'The committee accepts that the current laws are having a negative impact on some medicinal cannabis users and for this reason, encourages the NSW Government to partner with experts and academics in the field to develop the evidence base necessary to resolve the current uncertainty and minimise the negative impact.'

Mr Donnelly moved: That paragraph 2.75 be amended by omitting 'an important precursor to law reform in this area' and inserting instead 'a fundamental and necessary precursor to law reform in this area'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Fang, Ms Jackson, Mr Martin, Mr Rath, Mr Roberts.

Noes: Ms Faehrmann.

Question resolved in the affirmative.

Resolved, on the motion of Ms Faehrmann, that:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, pro-forma documents, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, pro-forma documents, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report to be tabled in House on Thursday 11 August 2022;
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

5. Adjournment

The committee adjourned at 9.19 am, *sine die*.

Erin Pynor

Committee Clerk

