



NSW Government

Responses to post-hearing questions

Standing Committee on Law and Justice

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

Hearing Date – Thursday, 16 June 2022

QUESTIONS ON NOTICE

QUESTION 1 (Page 39)

Ms CATE FAEHRMANN: Thank you for making a submission and for your opening statement. I want to go to some of the data that you have raised in both of those. You've raised the success of the random breath testing scheme in your submission and you said that it had seen alcohol-related fatalities drop from 389 people in 1980 to 51 in 2020. Is there similar data to suggest the same success in the mobile drug testing scheme?

PETER DUNPHY: Across the board in terms of reductions and through the road safety programs we've seen significant reductions in road fatalities over a period of time from the early twenties down to last year when we had the lowest level of road fatalities in almost 100 years. The general trend in all of the areas have certainly shown those decreases. But I might just refer to—

Ms CATE FAEHRMANN: But with the random breath testing scheme, that was specifically in relation to alcohol-related fatalities. The success has been that there was a drop from 389 to 51. Specifically in THC-related fatalities, have you got the same data?

PETER DUNPHY: We do have data in terms of the reduction in fatalities for drug offences. I might just refer to my colleague Mr Carlon to provide a little bit of further information about that. BERNARD CARLON: In relation to that, the overall data indicates that there has been a decline but it's not significant. We can provide the data to the Committee.

ANSWER:

The Random Breath Testing (RBT) program has been operating in NSW for approximately forty years. The Mobile Drug Testing (MDT) program began in 2007 in NSW, operating for a much shorter time and at smaller scale compared to RBT. In 2015, the NSW Government announced the first significant expansion of MDT since it was introduced, increasing testing from around 30,000 tests per year to almost 100,000 tests per year. In 2018, this was further increased with a commitment to conduct 200,000 tests per year as part of the Road Safety Plan 2021.

It is difficult to directly compare the currently available data on alcohol related fatalities to fatalities with the presence of THC, due to significant differences in program size and length of operating time, as well as changes to the policy framework for drink and drug driving over time. As part of the 2026 Road Safety Action Plan, the NSW Government has committed to evaluate drink and drug driving enforcement initiatives.

The National Household Drug Survey has shown an increase in illicit drug use over time. It found that in 2019, 43 per cent of people aged 14 years and over in Australia had illicitly used a drug at some point in their lifetime (including pharmaceuticals used for non-medical purposes), up from 38 per cent in 2007. The survey found that in 2019, 16.4 per cent had illicitly used a drug in the last 12 months, up from 13.4 per cent in 2007.

Table 1, below, shows fatalities where the motor vehicle controller (driver or motorcycle rider) was detected with the presence of illicit drugs since 2010 when drug result data is available. It shows an average of 19 per cent of total fatalities for illicit drug presence over the 12 year period, and 13 per cent for THC.

Table 2, below, shows the proportion of fatalities where illegal levels of alcohol were involved over the first decade of RBT, allowing for comparison with the first decade of data since MDT began. This shows a gradual decrease in the number of fatalities, averaging 24 per cent of total fatalities over the decade (1982-1991). In 2020, after approximately 40 years of RBT, 19 per cent of fatalities involved illegal levels of alcohol.

RESPONSES TO POST-HEARING QUESTIONS

Table 1: Fatalities where the crash involves motor vehicle controller with presence of illicit drug

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Illicit drug – number *	53	42	48	52	50	75	83	81	69	84	84	70
Illicit drug – % of all fatalities *	13%	12%	13%	16%	16%	21%	22%	21%	20%	24%	30%	26%
THC**	39	31	30	32	23	50	54	51	47	51	63	52
Methylam-phetamine	18	15	19	25	30	33	41	39	31	39	27	35
MDMA	1	1	1	1	4	6	5	4	3	9	10	1
Cocaine				3	3	3	4	4	5	7	9	6
Total fatalities	405	364	369	333	307	350	380	389	347	353	284	268

*Illicit drug includes THC, methylamphetamine (ice), MDMA (ecstasy) or cocaine (from July 2018); Individual rows cannot be summed, as drivers may have more than one drug present

** An improvement to the technology used for testing **blood** samples has increased the sensitivity of cannabis detection which is expected to have contributed to some proportion of the increase since 2014. MDT oral fluid sample testing was not affected.

Table 2: Fatalities with illegal levels of alcohol

Year	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Illegal alcohol – number	389	359	340	222	238	260	280	229	227	214	201	173
Illegal alcohol - % of all fatalities	30%	28%	27%	23%	23%	24%	27%	24%	22%	22%	25%	26%

QUESTION 2 (Page 40)

Ms CATE FAEHRMANN: Professor Martin, do you have the rough statistics in your head of how many people in New South Wales on any given day are taking cannabis, using it either medicinally or for recreational purposes?

JENNIFER MARTIN: I will give you those numbers in just a minute, but it reminded me to also add to that point of when you're talking about the reduction in deaths from THC, that we all have to remember that these drugs are a lot more available in 2022 and going forth than they were in 2020. We can see that from the TGA data, which shows just the number of prescriptions, so those that have gone through the SAS B. I think if we're looking at a reduction in numbers with THC, we also have to be aware that there's so much more availability and use in the community. In terms of the numbers, I have it in my notes. I will get back to you in one minute. I might hand over to my colleague Professor Bridin Murnion, who may have the numbers at her fingertips. Do you have the numbers for New South Wales, Bridin? It's the TGA data.

BRIDIN MURNION: The national statistics on recreational cannabis use varies, obviously, in different age groups. The 2019 National Drug Strategy Household Survey indicated that 25 per cent of people between the ages of 20 and 29 have used recreational cannabis in the previous year. I also have statistics on the use of medicinal cannabis. I don't think, Jenny, that you've had time to add those totals in your papers yet.

JENNIFER MARTIN: No. I will take that on notice, but we have those numbers.

ANSWER:

According to the Australian Institute of Health and Welfare's analysis of the 2019 National Drug Strategy Household Survey, 11 per cent of the NSW population aged 14 years and over reported illicit use of cannabis in the past 12 months. The survey also found that only 3.9 per cent of those who reported using cannabis for medical purposes obtained it by prescription.

NSW Health does not have direct oversight of the number of people who are prescribed cannabis medicines in NSW.

The number of patients in NSW who are prescribed Schedule 8 cannabis medicines remains relatively small. However, data collection has changed over time and is only collected by NSW Health where authorisation is required in limited circumstances, which now is limited to use by children or a drug dependent person. Data from the NSW Health Chief Pharmacist Unit show in the period August 2016 to February 2022:

- The Ministry received 6,566 applications for authority to prescribe a Schedule 8 cannabis medicine. In the 12-month period up to February 2022, the Ministry received an average of 41 applications a month.
- A total of 6,067 applications resulted in an authority and/or exemption being granted. These applications involved 4,502 individual patients.

NSW Health does not have oversight of Schedule 4 cannabis medicines.

The Australian Government Therapeutic Goods Administration (TGA) is the primary authority for approving applications to supply both Schedule 4 and Schedule 8 cannabis medicines that are unregistered (i.e. not on the Australian Register of Therapeutic Goods). Authorised prescriber data is not published by the TGA, however Special Access Scheme Category B data is available at: <https://www.tga.gov.au/medicinal-cannabis-special-access-scheme-category-b-data>.

According to the TGA, NSW represents 49,676 of the 258,874 total national Special Access Scheme Category B prescribing applications.

QUESTION 3 (Page 45)

The Hon. LOU AMATO: Welcome everyone. Assistant Commissioner, I asked this question earlier to the Bar Association and they said it was a police discretion matter. Why would one person who has tested positive for THC be given a penalty notice and somebody else be given a notice to attend court?

BRETT McFADDEN: It's probably just helpful to understand the process generally. I think it's from about 2018 that there were some new measures where penalty notices were introduced to assist in streamlining the process—least invasive and detaining people. So there's an option for a penalty notice to be issued for a first offence for a positive indication of THC. The penalty is about \$587, I think it is, which is consistent with a low range PCA infringement.

The Hon. LOU AMATO: That is a first offence and a six months loss of licence as well, isn't it?

BRETT McFADDEN: I'll take that on notice.

ANSWER:

As per the evidence previously provided by Mr McFadden on page 47 of the Hearing transcript, the licence disqualification period for a first offence incurs a three-month driver licence suspension (not six months). The penalty is \$603 as at 1 July 2022.

A disqualification period can only be imposed by a Court. If a person elects to take the matter to Court, and if it is a first offence, the Magistrate may impose a minimum three-month disqualification on conviction. When Police issue a penalty notice for drug driving, that is a first offence, the NSW Police Force (NSWPF) and TfNSW may suspend the licence for a period of three months.

QUESTION 4 (Page 46)

The Hon. ROSE JACKSON: Can I just ask a quick follow-up question? You may need to take this on notice. It's just in relation to a first offence only whether a penalty notice is issued or a court attendance notice is issued, how that is different for THC, methamphetamine, ecstasy and cocaine. Do you have that information?

BRETT McFADDEN: I can make some inquiries and get back to you before we close today. I will seek my assistance from the back.

The Hon. ROSE JACKSON: Potentially, you can take it on notice.

BRETT McFADDEN: I'm happy to take that on notice.

The Hon. ROSE JACKSON: I'm just interested in the percentages in relation to each of those different categories where a penalty notice is issued for a first offence or where a court attendance notice is issued.

BRETT McFADDEN: Okay. I'll take the question on notice

ANSWER:

For first offences, the decision to issue a penalty notice as opposed to a court attendance notice is a discretionary matter for the officer. Given the myriad of different situations and circumstances involved when charging someone with an offence, officers are required to determine the appropriate course to follow, based on the situation presenting. This includes consideration of factors such as:

- the circumstances surrounding the offending behaviour at the time;
- whether the person is known to police; and
- the perceived risk to the driver, other road users and the community.

As per the evidence previously provided by Mr McFadden at the Hearing on 16 June (see page 47 of the transcript), for the period of 2020-21, there were 5,388 penalty notices issued and 4,561 court attendance notices for the offence of "drive motor vehicle with prescribed

illicit substance present in oral fluid” regardless of whether a first, second or subsequent offence.

The NSWPF does not collect specific data for penalty notices or court attendance notices issued for first offences across the four illicit substance categories (THC, methamphetamine, ecstasy, and cocaine).

When a person is charged with an offence under the *Road Transport Act 2013* (NSW), this is recorded into NSWPF COPS database as “drive motor vehicle with prescribed illicit substance present in oral fluid.” The COPS database is not currently designed to further categorise data based on type of illicit substance involved or, the number of offences the individual has previously had.

SUPPLEMENTARY QUESTIONS**QUESTION 1**

On page 8 of your submission, it states that “of the 264 fatal crashes in NSW in 2020, THC was a factor in nearly 60 deaths.” but the associated reference Road Traffic Casualty Crashes in New South Wales, Statistical Statement for the year ended 31 December 2020 contains no reference to THC as a factor in fatal crashes

- a. Where is the document with the associated statistic of THC being a factor in nearly 60 deaths?
- b. Why was a document that did not contain information relevant to the 60 THC-related deaths referred to in relation to this statistic?
- c. How do you determine that THC is a factor in the crash and not merely present?
- d. How is the presence of THC determined in a fatal crash? I.e. oral test, blood test, hair follicle test?
- e. Is the test used to determine the presence of THC consistent across all fatal crashes?
- f. What is the threshold of blood THC required to determine that THC has been a factor in a fatal crash?
- g. Over what range of time could an individual have consumed THC to test positive for its presence? I.e., 24 hours prior, 7 days prior, 30 days prior?

ANSWER:

- a. Footnote 16 refers to the statistic of 264 fatal crashes. The previous footnote refers to data from our internal Centre for Road Safety crash reporting database.
- b. To reference the 264 fatal crashes in 2020.
- c. The NSWPF is required to test for the presence of an illicit drug in a driver’s system in the event of a fatal crash. An arrest may be made for the purpose of obtaining blood and urine samples to detect the presence of illicit drugs. Deceased persons are subject to post-mortem blood testing. Where THC is detected, this is recorded as a factor in the crash. THC was found to be present in the system of the motor vehicle controller (driver or motorcycle rider) in 57 fatal crashes in 2020. Based on the established evidence that THC can affect the skills required for safe driving, it was described as being a factor. As described in the evidence provided at the hearing, it can be difficult to determine causality, especially as there can be many possible factors involved, including illegal levels of alcohol and speeding.
- d. Driver’s involved in fatal crashes, who are not deceased, will be tested for the presence of THC via either oral fluid, blood or urine testing (or a combination of both). Deceased drivers are subject to a post-mortem analysis using blood testing.
- e. NSWPF processes for testing of THC are consistently applied across fatal crashes. Standard procedure for fatal crashes involves post-mortem blood testing of deceased persons; and breath analysis of crash participants in addition to sobriety assessment, oral fluid test, or a combination of oral fluid and blood and urine testing.
- f. There is no scientific consensus regarding what a THC impairment threshold level in blood should be. When a laboratory sample returns a positive result, THC is recorded as a factor in a fatal crash.
- g. The range of time an individual could test positive for THC varies depending on the type of test administered and a range of factors specific to the individual including; consumption method, concentration of THC in cannabis product, extent of use, experience with cannabis and frequency of use, and other variables such as salivary composition and time since eating.

QUESTION 2

How does NSW Police determine where mobile drug testing is deployed?

ANSWER:

The NSWPF is committed to ensuring road safety for the community. The Mobile Drug Testing program is part of a suite of enforcement initiatives that support the NSW Government's Road Safety Action Plan 2026 and commitment to saving lives and minimising road trauma. Similarly to the Random Breath Testing program, testing is undertaken randomly.

The NSWPF utilises a strong evidence base when making deployment decisions. For example, evidence such as crash data (location, crash type), consideration of risk factors and trend analysis are used to support identification of potential 'at risk' areas to deploy testing capabilities.

Deployment can either be random (for example, police may test 1 in every 20 drivers) or targeted (for example, police may target a particular event, based on perceived risk) and is aimed at deterring as many potential offenders as possible. This capability is readily available to all general duty police officers and police officers undertaking road safety enforcement operations, and is deployed regularly across regional and urban locations in NSW.

QUESTION 3

How many lives does NSW Police estimate the mobile drug testing program has saved since 2016?

ANSWER:

The Mobile Drug Testing program forms part of a range of countermeasures under the NSW Road Safety Action Plan 2026.

NSWPF is of the view that the presence of an illicit drug is an associated factor in crashes involving illicit drugs, that result in serious injury or death. By intervening and detecting illicit substances amongst road users, we are reducing the risk that this road user may seriously injure or kill themselves or another individual, thereby resulting in a positive road safety outcome.

QUESTION 4

Has NSW Health or NSW Police conducted any research to determine if current mobile drug testing is adequate to distinguish between drivers impaired with THC and drivers who merely have THC present in their system?

ANSWER:

The NSWPF or NSW Health has not conducted any research to determine if current mobile drug testing is adequate to distinguish between impairment or presence.

Consistent with other Australian jurisdictions, NSW drug driving laws criminalise the presence of prescribed illicit drugs, including THC, in a driver's bodily fluids, without the need to provide specific evidence of impairment. The current roadside mobile drug testing program involves the detection of the presence of certain illicit drugs.

QUESTION 5

What is the cost per mobile drug test?

- a. What is the average amount of policing hours required per mobile drug test conducted?

ANSWER:

Under the Mobile Drug Testing scheme, the cost of a drug swipe test is \$27.10 (plus GST). For every positive test, a secondary analysis (STK cassette) is required at a cost \$150. The additional time required for a police officer to conduct their duties in the process and laboratory time are not factored into costs.

- a. It takes five to seven minutes for a police officer to conduct an initial swipe test to detect the presence of an illicit drug. If this test returns a positive result, a subsequent test is then required, which can take approximately 30 minutes. This excludes the time required to convey the person to a police station, if applicable.

QUESTION 6

What was the total number of policing hours, broken down by Police Area Command, committed to the mobile drug testing regime in;

- a. 2021?
b. 2020?
c. 2019?
d. 2018?
e. 2017?
f. 2016?

ANSWER:

NSWPF does not routinely capture data that quantifies the number of policing hours for the Mobile Drug Testing program in isolation to other road safety measures. Operational policing responses to road safety issues are made as needed across NSW based on a range of factors, including crash incidence and intelligence.

QUESTION 7

What portion of policing hours, broken down by Police Area Command, did mobile drug testing operations represent in:

- a. 2021?
b. 2020?
c. 2019?
d. 2018?
e. 2017?
f. 2016?

ANSWER:

NSWPF does not routinely capture data that quantifies the number of policing hours for the Mobile Drug Testing program in isolation to other road safety responses. Operational policing responses to road safety issues are made as needed across NSW based on a range of factors, including crash incidence and intelligence.

QUESTION 8

What was the total cost of policing hours dedicated to mobile drug testing in;

- a. 2021?
- b. 2020?
- c. 2019?
- d. 2018?
- e. 2017?
- f. 2016?

ANSWER:

NSWPF does not routinely capture data that quantifies the number of policing hours for the Mobile Drug Testing program in isolation to other road safety responses. Therefore costs associated to hours cannot be calculated. As testing is random, operational policing responses to road safety issues are made as needed across NSW based on a range of factors, including crash incidence and intelligence.

QUESTION 9

What was the total cost of conducting mobile drug testing operations, broken down by Police Area Command, in;

- a. 2021?
- b. 2020?
- c. 2019?
- d. 2018?
- e. 2017?
- f. 2016?

ANSWER:

NSWPF is unable to separate the funding attributed to conducting mobile drug testing operations by Police Area Command for the periods requested (2016-2021). This is because mobile drug testing is often used in combination with other road safety enforcement strategies such as Random Breath Testing operations.

QUESTION 10

What portion of total expenditure did conducting mobile drug testing operations represent, broken down by Police Area Command, in:

- a. 2021?
- b. 2020?
- c. 2019?
- d. 2018?
- e. 2017?
- f. 2016?

ANSWER:

Funding of the Mobile Drug Testing program is not itemised separately to other road safety programs and therefore the proportion of total expenditure, broken down by Police Area Command for the periods requested (2016-2021) cannot be provided.

QUESTION 11

What number of mobile drug tests were conducted in:

- a. 2021?
- b. 2020?
- c. 2019?

ANSWER:

- a. 2021/22 - 118,480 tests
- b. 2020/21 - 96,230 tests
- c. 2019/20 - 173,319 tests

The total tests for both periods (2020/21 and 20221/22 were affected by COVID restrictions and lockdowns.

QUESTION 12

What number of mobile drug tests returned a positive result for THC in:

- a. 2021?
- b. 2020?
- c. 2019?
- d. 2018?
- e. 2017?
- f. 2016?

ANSWER:

For the below years, the following number of mobile drug tests returned a positive result (figures include positive results where cannabis was 'among' the drug type detected):

- a. 2021 - 9492
- b. 2020 - 6812
- c. 2019 - 4425
- d. 2018 - 4820
- e. 2017 - 5078
- f. 2016 - 6182

QUESTION 13

What happens if NSW Police does not meet its quota of performing 200,000 tests?

ANSWER:

The NSWPF is committed to delivering effective road policing and ensuring public safety while balancing the need to respond when required to emergency situations. In recent years due the impact of the COVID 19 pandemic and major flooding events across NSW, policing efforts have been diverted to support areas with the greatest need of assistance to ensure public safety. As roads were accessed less often due to pandemic lockdowns and flooding events, this impacted the number of mobile drug tests required to be performed.

QUESTION 14

What advice does NSW Health give to medicinal cannabis patients on their capacity to drive after ingesting medical cannabis?

a. How does NSW Health ensure medicinal cannabis patients receive this advice?

ANSWER:

Any doctor prescribing cannabis medicines in NSW has a professional responsibility to warn patients not to drive or perform hazardous tasks while using cannabis medicines. Doctors are advised through the NSW Health website and the Centre for Medicinal Cannabis Research and Innovation website, which states:

Whether it is illegal or appropriate for a person to drive after taking cannabis medicines will depend on the type of medication prescribed.

It is illegal for patients taking cannabis medicines which contain delta-9-tetrahydrocannabinol (THC) to drive. This is because THC can affect the cognitive and motor skills necessary for safe driving, such as attention, judgement, memory, vision and coordination.

Patients taking cannabidiol (CBD) only medicines can lawfully drive if they are not impaired. As CBD can cause drowsiness, fatigue and low blood pressure, doctors should discuss usage and risk of impairment with their patients.

NSW Health has developed a fact sheet on Prescribed Cannabis medicines and fitness to drive, which is available via the NSW Health website and the Centre for Medicinal Cannabis Research and Innovation website:

https://www.medicinalcannabis.nsw.gov.au/_data/assets/pdf_file/0025/2869/Cannabis-and-Driving-Fact-Sheet-Health-Professionals-FINAL.pdf

Further prescribing guidance for community and rural clinicians is made available via the John Hunter Hospital Pharmacy Department, which provides an information service on cannabis medicines and can advise on THC and driving impairment.

Additionally, consumer medicine information leaflets supplied with the cannabis medicine drug Sativex® advises persons not to drive whilst taking the medicines.

QUESTION 15

What advice does NSW Police give to medicinal cannabis patients on their capacity to drive after ingesting medical cannabis?

a. How does NSW Police ensure medicinal cannabis patients receive this advice?

ANSWER:

NSWPF does not provide specific health advice to medicinal cannabis patients on their capacity to drive after ingesting medical cannabis.

It is the responsibility of the NSWPF to enforce the *Road Transport Act 2013* (NSW). Under this legislation, it is an offence to drive with the presence of a prescribed illicit substance in a person's oral fluid or blood or to drive a motor vehicle whilst impaired (Division 2 Offences involving alcohol or drugs).

Current advice provided by the Australian Government Therapeutic Goods Administration is that patients should not drive while being treated with medicinal cannabis if they wish to avoid the risk of being charged with a presence offence.¹

- a. The role of the NSWPF is to enforce the law. It is not standard procedure to provide advice to medicinal cannabis patients in relation to the impacts of driving while being treated with medicinal cannabis.

¹ See TGA Guide for the use of medicinal cannabis in Australia. Patient Information, p. 10.