

Submission
No 28

**INQUIRY INTO ROAD TRANSPORT AMENDMENT
(MEDICINAL CANNABIS-EXEMPTIONS FROM
OFFENCES) BILL 2021**

Name: Name suppressed

Date Received: 10 April 2022

Partially
Confidential

Re: An Act to amend the Road Transport Act 2013 to exclude users of medicinal cannabis from the application of the offence relating to driving with the presence of certain drugs in a person's oral fluid, blood or urine; and for related purposes.

I've recently received a response from the Tasmanian government about how their legislation allows lawfully-prescribed drivers to drive without fear of penalty.

This is from a letter submitted to David Shoebridge a while back, so here are the guts of it:

"I suspect in this time of change that if a Petition were put out that captured the legislative essence of what Tassie did and stuck in into the appropriate NSW legislation, or maybe just a committee to draft up some lines in the "**ROAD TRANSPORT ACT 2013 - SECT 111**" that incorporates the gist of the Tasmanian reform:

Whilst regulation 15 of the *Road Safety (Alcohol and Drugs) Regulations 2018* lists THC as a prescribed illicit drug, section 6A (2) of the *Road Safety (Alcohol and Drugs) Act 1970* provides that a person does not commit an offence if the prescribed illicit drug was obtained and administered in accordance with the *Poisons Act 1971*. Therefore, if a person is lawfully using medicinal cannabis, that person does not commit an offence of driving with a prescribed illicit drug present in their oral fluid/blood under section 6A(2) of the *Road Safety (Alcohol and Drugs) Act 1970*. This is also the case for licit use of opioids.

IMHO, this is the essence of what I reckon it should look like:

Driving with prescribed illicit drug in blood

(1) Subject to [subsection \(2\)](#), a person who drives a motor vehicle while a prescribed illicit drug is present in his or her blood or oral fluid is guilty of an offence.

(2) A person does not commit an offence against [subsection \(1\)](#) if the prescribed illicit drug was obtained and administered in accordance with the [Poisons and Therapeutic Goods Amendment\(Cannabis and Unregistered Drugs of Addiction\) Regulation 2018](#)

I reckon some legislator, ideally David Shoebridge, would make an amendment in this section, the Change will have been Driven:

[ROAD TRANSPORT ACT 2013 - SECT 111 Presence of certain drugs \(other than alcohol\) in oral fluid, blood or urine](#)

ROAD TRANSPORT ACT 2013 - SECT 111 Presence of certain drugs (other than...

As the final part of my argument, from the Australian Constitution, there is the following section, as a "Federation" it should have laws consistent in all of its States, and the Constitution agrees:

"109. Inconsistency of laws

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

My interpretation of this is because Tasmania allows driving with legally-prescribed cannabis - with THC - in its drivers, ALL drivers in the Commonwealth should enjoy this right. Otherwise, Tasmanian drivers would be subject to discrimination once they leave the State.

I'm sure some legal types, especially "prohibitionists" and those with a vested interest in the current system - pharmaceutical companies and those benefitting from roadside testing and the penalties imposed on violating drivers would disagree with this position, but as I've suggested, these stakeholders could present their potential losses to an intermediary, likely a court, and their losses could be addressed through favourable Federal and State taxation remedies (or similar avenues) and thereby reform could take hold.

Happy to address any of these points for clarity.

Hempfully yours,

A concerned medicinal cannabis consumer seeking compassionate law reform