

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

Organisation: Medical Cannabis Users Association of Australia (MCUA)
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mcua

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To Standing Committee on Law and Justice

Public Submission to the Inquiry into the **Road Transport Amendment (Medicinal Cannabis-Exemptions from Offences) Bill 2021** which aims to exclude medicinal cannabis users from offences related to drug driving laws.

Thank you for the opportunity to make a submission to this very important Inquiry.

The MCUA is a patient centred advocacy group established in 2014 as a voice for legalising cannabis for medicinal purposes. At that time patients were already using cannabis illegally and covertly to treat symptoms of illness – some for many years.

It has been estimated that around a million Australians are self medicating with cannabis for many conditions ⁽⁵⁾. In 2021, 6 yrs after “legalisation of medical cannabis”, around 122,000 approvals have been given by the TGA, to an estimated 65,000 patients. If the Bill was to be passed it would be of great benefit to those 65,000 patients who can afford the legal pathway, but where does it leave the other 800,000?

Under current drug driving laws (zero tolerance for THC and no defence available for medical use) patients are having to choose between taking their medicine and keeping their legal rights to drive. For many, fear of losing their license has prevented or discouraged them from trying or continuing to use cannabis medicines which could be giving them a better quality of life.

Patients are at risk around the clock. Every year the chance of patients being caught in the quota net, increases for medical users.

“MDT can be conducted at roadside operations along with random breath testing (RBT), or by NSW Police in vehicles patrolling our roads. MDT has been increasing and by the end of 2020 police will have doubled the number of roadside drug tests to 200,000 per year...” <https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/drugdriving/index.html>

Currently, there are approximately 600k road tests nationally for cannabis each year.

Aside from roadside testing, one of the “core” duties of Highway patrol is random drug and alcohol testing. They can pull you over any time of the day or night - even though there may be no issue with your driving, speeding or breaking the rules. They do “random” testing every day.

If a patient tests positive, they are forced to abandon their vehicle where it stands and go to the station for more tests. Their license is suspended immediately for 24 hrs. They then need to find their own way back to their car or home. Shame if its late at night or the person is elderly or has hidden disabilities and no one to assist them. This is especially problematic for those who live in a regional area.

The “zero tolerance of THC” policy for patients, at **random** stationary and **routine** mobile drug testing is unreasonable and is only used because there is no accurate way to measure impairment. The policy fails to take into account the most recent scientific research and it serves no purpose other than to bring misery and fear to those already suffering.

MCUA members see it as **BOTH necessary and beneficial to exempt patients from prosecution and we support the proposed changes to the Act** with the reservation that it discriminates against those who use cannabis medically but are unable to afford the current legal pathway.

It is really quite an absurd situation when you have patients who need to keep their THC levels constant to keep their symptoms under control enough to drive. A prime example is one of our members with Tourette Syndrome - a type of neurological disorder.

This woman has been smoking cannabis for 30 yrs to keep her symptoms under control. Without cannabis, her body experiences uncontrollable involuntary muscle spasms / tics, like external hiccups, making driving impossible. She now has a legal prescription. With cannabis in her system she is able to control these involuntary spasms and **is** able to drive a car safely. It is ridiculous that she should be penalised for driving with presence of THC in her saliva. There are an estimated 200,000 sufferers in Australia.

We hear similar stories from adults who self supply for conditions such as epilepsy and Parkinson's disease. As long as they keep THC levels constant by using cannabis there are no seizures or shakes. Drivers taking pharmaceutical drugs that calm these conditions are not expected to stop before driving - so again we see discrimination against patients who prefer the safety of cannabis to pharmaceutical medications to control their condition.

The proposed changes to the drug driving law, 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.

MCUA have been working on a possible solution. We have been in discussions with an organisation in the UK who have created an amnesty type card for medical consumers who cannot afford legal products, to verify their medical use if they come into contact with police for personal self supply cannabis crimes. This system could be used at random testing as proof of medical use.

UK Police are briefed on this card system which enables them to use their discretion when making a decision to arrest or charge. It was introduced as an operational directive rather than a legislative change. MCUA would like to initiate a similar card system here in Australia.

This type of card system would save a lot of distress for the drivers unable to access cannabis legally and reduce wastage of police and court time and resources. Prosecuting disabled people for wanting a better quality of life is not in the public interest.

Under the UK system, there is a list of qualifying conditions. Patients have their condition (s) verified by their doctor to establish eligibility. The UK Model would need to be adapted to fit with our privacy laws regarding the disclosure of medical conditions to a third party, but this could be changed to a letter of recommendation / verification that a patient is eligible for a prescription from their treating doctor. Patients then go thru an identity check process and for payment of a small annual administrative fee they are issued with a photo ID card which they can show to police if needed to prove medical use.

If the card were to be introduced, **and** this Bill passes, this type of card system **could level the playing field for those patients who have no other proof of medical use**. MCUA President, Deb Lynch started the conversation in Qld about introducing the card there. She has had meetings with a solicitor from Attorney General's office, Inspector In Charge Of Policy & Performance Section Of The Drug And Alcohol Unit of QPS and an MP who is the Chair, Legal Affairs and Safety Committee and although they all seemed relatively enthusiastic, nothing concrete has come of the discussions to date. (MCUA brochure attached to submission) <https://cancard.co.uk>

Existing Exemptions

NSW ROAD TRANSPORT ACT 2013 - Section 111 (5) provides a medical defence for those found driving with morphine present in their system if it was consumed for medicinal purposes.

Medically prescribed Cannabis should be treated in the same way as morphine.

TASMANIA: Whilst regulation 15 of the Road Safety (Alcohol and Drugs) Regulations 2018 (*Tasmania*) 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*.

Tasmanian legislation allows patients to drive with presence of THC: **Why not patients in NSW and other states?**

ASSESSING FITNESS TO DRIVE guidelines provide a defence for a positive test for amphetamines: “.. if a person is prescribed stimulants (e.g. dexamphetamine) for treating ADHD, **this should be stated in the advice provided to the driver licensing authority, in case the person is subject to drug testing when driving in the future...**”
<https://austroads.com.au/publications/assessing-fitness-to-drive/ap-g56>

If prescribed amphetamines are excused: **Why not medically prescribed cannabis ?**

Barriers Into Medical Cannabis Inquiry (Federal) March 2020

Recommendation 20: The committee recommends that the Australian Government, through COAG, **encourage a review of state and territory criminal legislation** in relation to:

- amnesties for the possession and/or cultivation of cannabis for genuine self-medication purposes; and
- **current drug driving laws and their implications for patients with legal medicinal cannabis prescriptions**

Govt Response: Drug driving laws are legislated by the states and territories, although during 2020 the Advisory Council for the Medical Use of Cannabis (Office of Drug Control) is reviewing the implications for driving for patients prescribed medicinal cannabis.

There has been no public word on this “review” 2 years down the track.

COAG was dissolved due to COVID and replaced with the National Cabinet and nothing has been done as a result of this reshuffle and the pandemic.

It seems that when anyone who goes into bat for patients to change the drug driving laws, they get bowled out first ball. Until the current situation changes, otherwise law-abiding Cannabis-consuming patients will become criminals if they drive. This drug driving dilemma needs to be solved, and our laws changed - based on equality, common sense and evidenced based research. Patients using cannabis medically who need to drive, live in hope that this time there may be a positive result for **all** those who use cannabis medicinally and not just those who can afford to pay for legal access.

Many thanks for the opportunity to make this submission.

Yours Sincerely

Gail Hester

Founding Member MCUA of Australia

Senate Candidate for NSW, Legalise Cannabis Australia Party.

References

1. **Reason Party Bill** <https://www.mondaq.com/australia/crime/1003658/bill-to-make-medicinal-cannabis-a-legal-defence-for-drug-driving-rejected-in-nsw>
2. **Shoebridge Bill** <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3803>
3. **Legislation review** <https://www.parliament.nsw.gov.au/ladocs/digests/657/Legislation%20Review%20Digest%20No.%2022%20-%2020%20October%202020.pdf3>.
4. <https://roadsafety.transport.nsw.gov.au/stayingsafe/alcoholdrugs/drugdriving/index.html>
5. https://www.news.com.au/lifestyle/health/longtime-medicinal-cannabis-advocate-warns-pete-evans-involvement-invites-controversy/news-story/1d1af45b5dbdc795ea454fdc10d3d33f?fbclid=IwAR3ZNpUlg1_57eWLbDeE7I3rJuDOA98FKnxWSHkHT4vWNPz_XW9CKKVtCrI
6. **Australian Journal of General Practice.** Volume 50, Issue 6, June 2021 **Medical cannabis and driving**
Thomas R Arkell Danielle McCartney Iain S McGregor

“... *Legal medical cannabis is not a valid defence against prosecution under MDT laws, .. This is a major barrier for patients contemplating or receiving medical cannabis treatment, particularly patients who live in regional and remote areas who depend on being able to drive for their employment and quality of life. The Victorian government is currently considering legislation that would allow patients using medical cannabis to legally drive with THC in their systems as long as they are not impaired. This would bring cannabis and driving laws insofar as they apply to patients into line with current laws for other drugs known to impair driving, such as opioids and benzodiazepines. These changes would not extend to the large number of patients self-medicating with illicit cannabis products. The effects of THC on driving are generally modest and appear similar to the effects of low-dose alcohol. However, impairment may be more pronounced and potentially severe in patients who are cannabis-naïve or where cannabis is combined with alcohol or other impairing drugs. Patients using THC-containing products should be advised to avoid driving and other safety-sensitive tasks (eg operating machinery) **during the initiation of treatment with THC-containing medicinal cannabis products** and in the hours immediately following each dose....*” <https://www1.racgp.org.au/ajgp/2021/june/medical-cannabis-and-driving>



The MCUA is a patient centred, not-for-profit, incorporated association that has been lobbying for patient access to affordable medical cannabis since 2014.

THE SITUATION

Our research and experience indicates that the number of people in Australia currently using Cannabis therapeutically could be close to one million.

Since changes to the Narcotics Act in 2016, the Policy governing the delivery of cannabis medicine **favours those who can afford to pay, over those who cannot.**

Despite personal pleas of “those who cannot”; submissions to Inquiries; and petitions alerting MPs to the inequality of the situation, there has been a refusal at both levels and both sides of Government to recognise the plight of these people. Many are disabled and thus dependent on Centrelink payments, leaving them with tight budgets that won't stretch to the cost of unsubsidised products.

‘..indirect discrimination’ happens when there is a rule or policy that is the same for everyone but has an unfair effect on people with a particular disability.”

These patients are disadvantaged, indirectly discriminated against and often criminalised by the high cost of products and the delivery policy. It is not fair, reasonable or equitable for all.

There is no PBS subsidy nor is there likely to be for a very long time under current guidelines. Discount offers from the sponsors are rare.

We keep being assured that the price will come down as more people are prescribed. Too many can't wait that long. There have been minor reductions in price, but for too many, products remain beyond reach.

The Federal Govt rejected many recommendations that came out of the ***Barriers into Medical Cannabis Inquiry (2020)*** which would have had huge impact on accessibility. ***The Govt response left many disappointed, with little hope and no option but to continue to run the gauntlet and source cannabis illegally.***

At state level there is no legal defence for patients who are charged with possess or cultivate / produce cannabis for personal medical use and we often see patients fined, convicted and /or put on a bond or suspended sentence with random drug test requirements forcing them back onto strong pharmaceutical drugs.

NSW is the only state with a “compassionate scheme” but this is only available to the **terminally** ill. From what we have seen and heard, Police rarely use discretion when told the cannabis is medicine and more often than not, the patient is charged anyway.



THE PROPOSAL

CanCard® was the initiative of UK medical cannabis patient, Carly Barton, who saw the disparities in their system, which is similar to ours, and came up with a plan to assist those in need. In brief:

In the UK CanCard is backed by Police, designed with doctors and made for patients. It is an ID document that is proof that a patient

has a condition for which they should be accessing legal cannabis prescription. In light of the cost implications of obtaining a private prescription CanCard is a flag for both law enforcement and the general public that a person is utilising self sourced cannabis medicinally. They are only in contravention of the Drugs Act because they are unable to afford to sustain the cost of buying a private prescription and the immunity from prosecution that comes with it. All forces are briefed on the card to give them confidence in using their given discretion in simple cases of possession.

In the UK after an extensive consultative process, **CanCard** was introduced to Police as an “operational directive” rather than a legislative or policy change.

It allows them to use complete discretion without the need for making or explaining a moral judgement. In 98% of cases where the card has been produced police have walked away.

The card gives legitimacy to patients and has improved community relations with police who no longer have to make criminals of disabled people. It has reduced waste of police time and resources.

Any patient who has successfully obtained a CanCard has access to legal advice via call centre 24/7.

THE SOLUTION

MCUA is endeavouring to implement a similar card system throughout Australia. We have been in negotiations with CanCard UK and we have their full backing and support.

We are seeking feedback and assistance from those who see this project as we do: a valuable initiative

for vulnerable people who are financially disadvantaged; and a way to bring equality into the access and affordability issues.

Cancard is a really positive step for patients who are forced to self supply. It enables them to stop living in fear of prosecution for simply using a substance that helps them deal with their condition and have a better quality of life.

What patients are saying ...

"The application process was so smooth and easy! I applied on Thursday and sent all the required proof and payment and I received a text reminder each time I completed a stage and a confirmation email with a link to take me onto the next stage. I received an email Tuesday morning saying that I had been accepted for Cancard and my card would be with me within two weeks."

"I was involved in a scary stop, the main officer saw my card and then spoke to the helpline to confirm I was registered. That's when their attitude changed and they were really good with me and my friend. I was carrying a lot of flower ready for the month and kept all of it without problem...."

"Having cPTSD, anxiety, and depression, cannabis helped me cope .. I got my canc card a few months ago and it's been the best thing I've done. I'm not afraid of medicating anymore, it's such a relief ..."

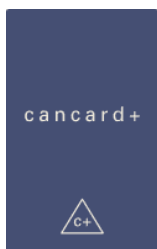
"The fear of arrest is horrible but my worst fear is having any of my cannabis destroyed, its the only medicine that has ever helped and I will be devastated and may just throw in the towel, the worry is also exhausting. To be able to legally use it at home would have a massive and fantastic impact on my life, I long for that day."

"It would be great not having to look over my shoulder, worry about the smell & the very real threat of losing my home because I'm a housing association tenant. It would mean I could medicate whenever and wherever I needed to..."

What the Police are saying ...

Simon Kempton, of the Police Federation, told The Times: *'Our members didn't join the police to lock up these people. This is an initiative that I support, for a number of reasons. Primarily it gives officers information on which to base their decision-making around whether or not to use discretion or to arrest a member of public.'*

Jason Harwin, Deputy Chief Constable at Lincolnshire Police and National Police Chiefs Council Lead for Drugs: *"This is a really live issue, where the Police service finds itself stuck in the middle of a situation where individuals should legitimately be accessing their prescribed medication, but, because of availability and cost they can't and therefore to address their illness rely on having to use illicit cannabis. This can't be acceptable and places the service in a position where we could be criminalising someone because of their illness."*



UK Website
<https://www.cancard.co.uk/about>

Introducing cancard + The simple solution to a complex problem



For further inquiries information or feedback please contact MCUA.
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