

Submission  
No 114

## INQUIRY INTO IMPACT OF THE REGULATORY FRAMEWORK FOR CANNABIS IN NEW SOUTH WALES

**Organisation:** Mid North Coast Legal Centre

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## **Submission to the Parliamentary Inquiry into the Impact of the Legislative Framework for Cannabis in NSW**

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### **Introduction**

Thank you for the opportunity to make a submission to this inquiry. While the scope of the inquiry is broad, our submission seeks to address a specific issue we see through our work at Mid North Coast Legal Centre (MNCLC) with the regulation of cannabis.

Our submission aims to offer some insight into the impact of drug related offences under the *Road Transport Act 2013* (NSW) for people within our catchment area, particularly in relation to people who have a medicinal cannabis prescription.

### **About Mid North Coast Legal Centre**

MNCLC is a not for profit, community legal centre based on the Mid North Coast of NSW. We have two offices - in Port Macquarie and Coffs Harbour - and employ 17 staff. MNCLC is a program of Advocacy Law Alliance (ALA). Our sister service, Disability Advocacy (DA) provides non legal support to people living with disabilities on issues of unfairness.

MNCLC provides free legal assistance to people in our catchment who are living with socioeconomic disadvantage, or other barriers to accessing justice.

In the most recent reporting period (July 2023-Dec 2023), a snapshot of our clients reveals that:

- 87% were living with financial disadvantage.
- 41% were living with a disability or mental illness.
- 16% identified as a First Nations person.
- 17% came from “outer regional or remote” areas.

- 9% were living with insecure housing or in homelessness.
- 30% of the services we provided were to people experiencing family violence.

A significant part of our practice is in traffic law. MNCLC runs duty lawyer traffic programs at Taree and Macksville Local Courts. Solicitors will attend these courts and advise and provide representation for clients. We also advise, assist and represent clients with traffic matters across our catchment through appointments in our offices, over the telephone, and at outreach clinics.

### **Impact on regional and remote communities**

Access to public transport is limited for our clients, particularly those who live outside major population centres; a driver's licence is a lifeline to the community.

The flow on effect for people who receive disqualifications is often a loss of work and an inability to provide adequate care to those who rely on them such as children and extended family members. For people with ongoing medical issues, it can mean they are unable to attend appointments or otherwise access medical treatment.

### **Legislative background**

The key offence creating provision in relation to drivers who have consumed cannabis in NSW is s111(1) of the *Road Transport Act 2013* (NSW) (The Act).<sup>1</sup> Under this provision it is an offence to drive a motor vehicle with an illicit drug in a person's oral fluid, blood or urine. It does not require that a person is under the influence of that illicit substance (this is a separate offence under s 112 of the Act).

A person convicted of a charge under s111(1) can be fined up to \$2,200 and is automatically disqualified from driving for a period of 6 months. This period can be reduced to 3 months if the court that convicts the person thinks fit.<sup>2</sup>

If a person has been convicted of another *major offence* within the 5 years prior to being sentenced, they can be fined up to \$3,300 and the automatic disqualification period is 12 months, with a minimum of 6 months.

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<sup>1</sup> *Road Transport Act 2013* (NSW) s 111(1).

<sup>2</sup> *Road Transport Act 2013* (NSW) s 205(2)(a)(i)-(ii).

### **Key issues**

1. Absolute liability offence
2. Limited discretion available on sentence
3. No exclusion for medicinal use

### **Absolute liability**

The offence created by s 111(1) of the *Road Transport Act 2013* (NSW) was recently held in *R v Narouz*<sup>3</sup> to be one of absolute liability. Prior to this decision, a widely held view was that this offence was one of strict liability.

Defences available to offences of strict liability are limited but include the defence of honest and reasonable mistake of fact. This defence has is not available for an absolute liability offence.

It is relatively rare that a defendant can rely on the defence of honest and reasonable mistake of fact, as both subjective honesty and objective reasonableness must be established. This defence is available for the majority of offences under the Act as well offences under the *Road Rules 2014*.

Following *R v Narouz* a driver may be found guilty of an offence under s111 despite a court finding that the driver had an honest and reasonable belief that they were not committing an offence.

***It is our submission that the legislation should be amended to specify that this offence is one of strict liability to allow for the defence of honest and reasonable mistake of fact to be raised.***

### **Limited discretion on sentence**

A court has discretion under s10 of the *Crimes (Sentencing Procedure) Act 1999* (NSW)<sup>4</sup> to dismiss a charge without proceeding to conviction. The availability of this provision is limited by s203 of the Act.<sup>5</sup> This limitation prohibits the option of not recording a conviction twice within a 5-year period for a range of offences including under s111(1).

It is rare that a Magistrate would consider it appropriate to not record a conviction if a person has had this result for a similar offence within 5 years. However, there may be

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<sup>3</sup> [2024] NSWCCA 14.

<sup>4</sup> *Crimes (Sentencing Procedure) Act 1999* (NSW).

<sup>5</sup> *Road Transport Act 2013* (NSW) s 203.

exceptional circumstances where a Magistrate may find it appropriate to make a second order under s10.

Practically, the effect of the above is that for a person who is addicted to or medically reliant on cannabis, there is currently limited leniency available from a court and they will be subjected to frequent periods of licence disqualification. Our experience is that courts may be reluctant to reduce the disqualification from the automatic period for people who have received prior disqualifications for similar offences.

***It is our submission that consideration should be given to expanding the discretion available to a court when sentencing people for this offence.***

### **Medical Exemption**

Our clients frequently report use of cannabis to assist with medical issues including chronic pain and sleep difficulty. As the use of medicinal cannabis becomes more widespread, it is likely to become more frequent that drivers in NSW are forced to choose between accessing their validly prescribed medication and driving. Recent research suggests that the use of medicinal cannabis promotes driving ability for people who are reliant.<sup>6</sup>

For clients charged with an offence under s111 after taking prescribed cannabis there is no suggestion by Police that the person's driving has been impaired.

The Act currently allows a medical exemption for people driving with morphine in their blood or urine if the presence was caused by consumption for medicinal purposes.<sup>7</sup> There is no such exemption for cannabis consumed for medicinal purposes. We are aware that an amendment to the Act has been put forward to provide a similar defence for those who have consumed cannabis for medicinal purposes.<sup>8</sup>

***It is our submission that an equivalent statutory defence should be included under s111 for people who consume cannabis medically.***

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<sup>6</sup> Brooke Manning et al, 'A semi-naturalistic open-label study examining the effect of prescribed medical cannabis use on simulated driving performance' (2024) 38(3) *Journal of Psychopharmacology (Oxford)* 247.

<sup>7</sup> *Road Transport Act 2013* (NSW) s 111(5).

<sup>8</sup> Road Transport Amendment (Medicinal Cannabis) Bill 2023 (NSW).

### **Case study**

Recently we had a client in court who was detected driving with THC in their system. They only consume cannabis through their prescription for cannabis flower and adhere to the TGA requirements regarding the appropriate method of administration. They were charged with an offence under s111(1) of the Act. As this is an offence of absolute liability, no defence was available to them.

They previously had a similar matter dismissed without conviction, as such s203 limited the discretion available to the court. The client plead guilty and had to be convicted. As this offence was a 2<sup>nd</sup> or subsequent offence, they received a fine and a 12-month disqualification.

### **Conclusion**

We hope that our submission gives the Committee some insight into effect that the current regulatory regime for cannabis has for people in our catchment area.