

**Submission  
No 242**

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

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## Submission to the Inquiry Investigating the Impact of the Regulatory Framework for Cannabis in New South Wales

I hope that this inquiry will contribute to much needed drug reform more broadly, but more urgently I hope to see changes to drug driving laws, specifically the establishment of a medical defence for the presence of THC while driving unimpaired.

Personally, I have used medicinal cannabis to great effect. In 2020 I suffered from what would colloquially be referred to as a nervous breakdown (clinically, a Major Depressive Episode, Panic Disorder and Generalised Anxiety). As a result, I was forced to quit my job as a political staffer, a role I had coveted since the age of fourteen. I spent the next three years in recovery, which involved countless hours of psychotherapy and a cocktail of tri-cyclic anti-depressants, SSRI's and Benzodiazepines. In 2023 I was prescribed THC containing cannabis. No singular pharmacological intervention has been more effective. Cannabis was so effective that I was able to wean myself off of my other (more damaging and impairing to my driving performance) medications. Cannabis was so effective that I was able to regain agency of my life and am now a Full-Time student of Psychology and Social Work. I intend to gain accreditation as a Mental Health Social Worker, in order to provide affordable psychotherapy to my Blue Mountains community. Since moving from Sydney to the Blue Mountains recently, I have been forced by government policy to stop taking the only medication that has ever worked. I am unable to cease driving and I cannot risk a criminal conviction or police record as this would jeopardise my future career. As a result, I am once again reliant on Valium in the event of a panic attack. ***The current policy position of this government forces me to take a medication that is dangerous to my health, highly addictive and highly impairing.***

Throughout this inquiry you will hear countless stories of how cannabis has changed peoples lives for the better. You will also hear countless tales of how your current policy destroys lives unnecessarily and does not contribute to road safety in any measurable way. To my knowledge, there is not one submission that supports the current position. I implore you to listen to the constituents you serve and change this arbitrary, unjust and ineffective law. Below is a brief summary of the arguments you will hear.

### Presence does not equal Impairment

- It is well established that metabolic trace amounts of THC remain in one's oral fluid for up to 9 days (as established in NSW case law) at a time, with anecdotal evidence of longer timeframes. This period is longer again in blood and urine.
- Substantial peer-reviewed research suggests as 'impairment window' of 3-4 hours after consuming THC
  - There is NO evidence to suggest that users of cannabis are impaired days after last consuming their medication.
- Thus, testing for presence does not equate with impairment in any way. In effect, patients are being punished for the equivalent of driving on Monday after having had a beer on Saturday night.

- I do not suggest that medicinal cannabis users should be given the option to drive while impaired only that we be afforded the same rights as those who take other performance impairing medications.
- It is obscene that I could be charged criminally (effectively ruining any chance I have of being an allied health professional) for driving a car the day *after* consuming cannabis.
  - NSW Police themselves accept that they cannot determine impairment from a saliva test alone – only that THC is present in ones system.

## Opioids and Benzodiazepines

- Cannabis is frequently prescribed as an alternative to opioid and benzodiazepines
- RDT does not test for these drugs, nor a myriad of other medications (including anti-depressants) even though it is accepted that they are *more* impairing than THC and have longer half-lives.
- Opioids and Benzodiazepines are drugs of addiction. Withdrawal or detox from these drugs result in serious physical and psychological symptoms of varying severity. In some cases, medically unsupervised detox can be fatal.
- The current legislative framework surrounding cannabis use and driving, forces patients back onto these drugs. Drugs that are *more* impairing, *more* addictive and *more* dangerous to one's health.
- Nevertheless, patients prescribed both of these drugs are provided with a medical defence for presence if they were not impaired at the time of driving
- Patients are choosing cannabis over these medications more and more and for good reason, although our driving laws prevent some patients from making this choice.
  - As such, our current laws are *causing* harm directly by forcing patients onto drugs that are known to be damaging to their health as cannabis is not an option.
- Surely, while NSW is in the grips of an opioid crisis that is destroying lives, tearing apart families and burdening our already understaffed and under-resourced health system any avenue that has the potential to get people off of opioids should be considered as a priority.

## Australian jurisdictions are outliers

- Australian states are the only comparable jurisdictions that make the presence of THC a criminal offence in and of itself.
  - Excluding Tasmania that has created a medicinal defence for driving with detectable levels of THC in ones oral fluid. There has been *no* reported increase in crash risk or incidents.
- Canada, The United States (In states where legal avenues of acquiring cannabis exist), New Zealand and most of Europe all require a driver to be impaired in order to be found guilty of an offence. These jurisdictions accept that if it is not possible to effectively test for *per se* impairment, it is unethical, inappropriate and ineffective to punish their citizens for using a legally acquired medication.

## Testing for impairment

- Arguments are made by proponents of the status quo that as there is no way to test for impairment, thus we must continue to take a zero-tolerance approach in order to ensure road safety. This argument is a strawman at best, and an outright fallacy at worst.
  - In fact, recent changes to the roadside saliva test used by NSW police have *reduced* the tolerance levels even further, making them *more* sensitive to miniscule amounts of THC. This indicates that NSW Police are entirely aware that they are punishing people for having trace amounts of drugs in their system; not for driving while impaired.
  - Tests with higher thresholds exist and are used in the private sector in environments when measuring impairment in paramount.
- There are numerous drugs of impairment that do not show up on RDT saliva tests. Police are already required to make judgement calls regarding a person's impairment using basic metrics of driving proficiency.
  - It seems that NSW Police are suggesting that they *are* capable of spotting impaired driving for all manner of other drugs, but not for THC. Impaired reckless/dangerous driving is reckless and dangerous driving regardless of the cause.
  - Either police are capable of identifying impaired driving or they are not. The drug causing the impairment should be irrelevant.
- NSW Police have said on numerous occasions that 'it is difficult to tell if someone is impaired by THC' as a justification for the current RDT framework.
  - This argument misses the most likely scenario. It is likely that Police cannot detect impairment in a person who tests positive for THC at the roadside, because they *are not impaired*. You cannot detect what does not exist.
- RDT should continue, but if someone is able to present a valid prescription police should then either let the person continue on OR initiate subsequent investigations to determine impairment. Impairment could be determined by a combination of:
  - Field sobriety tests
  - Interviewing
  - Reviewing of evidence
    - For example, medicinal patients could be required to install dash cams – police could then review this footage at the roadside to determine impairment.

## These laws don't work, they just make it worse

- A recent survey by Cannabis prescriber and provider Montu of their patients found that 90% of us worry about losing our licenses, while half of us have stopped taking our medication as a result. This suggests immutable problems for this policy. Cannabis medication is so effective, and the need to drive is so essential that many of us are willing to run the gauntlet.
  - The current RDT policy is *not* preventing medicinal patients from getting behind the wheel. Deterrence is not working.

- As it stands, a patient taking their medication in accordance with their doctors' instructions will face punishment for driving a car at any time.
  - Thus, these laws provide a perverse incentive. Assuming that the patient does not *feel* impaired, why would they wait the requisite amount of time before driving when the test will show the same result regardless? Why wait until tomorrow morning when the punishment is the same.
    - If you provide us with an evidence-based framework for ensuring that we are not driving impaired, and a medical defence at the roadside; you are now providing users with an incentive to manage their usage in a way that ensures that they are not driving impaired.
    - Providing drivers in NSW with a BAC limit of 0.005 has undoubtedly worked. While the provision of a *per se* limit for THC is problematic in and of itself, Perhaps a recommended time frame from last dosage could be provided based on the evidence.
      - Evidence suggests impairment is lower than the equivalent of 0.05 after four hours.
      - Being found to have Breached these guidelines could be evidence for a charge of DUI
- When citizens are provided with a framework of *how* to be responsible behind the wheel. The majority will follow this framework. Deterrence only works when the punishment fits the crime. Arbitrary legislation with no logical basis is easy to ignore. Especially when the state does not provide patients with a way to legally take their medication and continue to drive.

## Insurance

- The current legislative framework presents more dangers to patients than just fines and licence disqualification
- Most insurance policies will be void in the event of an accident if the driver is found to have more than the legal limit of a listed drug in their system (this includes THC), under the current framework the legal amount is zero
  - Some may still pay but only if the policy holder can prove that they *weren't* influenced by the drug and that it wasn't a contributing factor.
    - The current regime thus creates a reversal of the burden of proof expected by citizens in an advanced western democracy
- If a medical cannabis patient receives a penalty notice and suspension for a first offence they will be met with increased premiums in perpetuity.
- If a medical cannabis patient is disqualified from driving, they are in effect uninsurable and designated as a high risk driver.
  - Lives are destroyed and businesses are ruined because a patient is charged with having trace amounts of a *legal medicine*. The fact that they are not charged with being *impaired* seems to be irrelevant.

## Conclusion

- The current offence of driving with the presence of a prescribed drug in bodily fluid is discriminatory, ineffective and does not even pretend to punish road users for driving while under the influence.
  - Citizens in regional and remote areas are particularly affected
  - Patients are made to make a choice between potentially life changing medication and their mobility
  - Punishments for this offence have the potential to destroy lives
  - Patients who are not prepared to run the gauntlet are being directly funnelled back onto opioids and benzodiazepines by the government.
- Driving Under the Influence should remain a crime. There is no logical reason for cannabis to be treated any differently than opioids or benzodiazepines; it seems the only difference is stigma and the criminalisation of recreational use
- Testing and investigating impairment *is* possible. All that is missing is political will.
- Cannabis medicine can and has changed lives. Submissions to this inquiry that speak of positive changes in patients' lives are numerous.
- The majority of citizens in NSW support the decriminalisation of cannabis. Decriminalisation is inevitable. The government can take this opportunity to develop frameworks for testing impairment amongst a smaller sample of medicinal patients now, in preparation for this inevitability.

I hope you will consider reform for the sake of your constituent's health and wellbeing. Failure to act is tantamount to negligence. The evidence is clear and the consequences of political ineptitude dire. This debate is about much more than licences and road statistics.

Regards,  
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