

Parliament of Victoria

Transport Legislation Amendment Bill 2023

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Bill Brief

Parliamentary Library & Information Service

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Bill information

Introduced: 17 October 2023

House: Legislative Assembly

Second Reading: 19 October 2023

Commencement:

(1) This Act, except Parts 5 and 11, Division 1 of Part 2, Division 1 of Part 3 and Divisions 1 and 3 of Part 8 and sections 27, 28, 29, 30, 37, 42, 43, 44(2), 45(3), 47, 48, 49, 50, 53, 54, 55 and 57, comes into operation on the day after the day on which it receives the Royal Assent.

(2) Subject to subsection (3), Parts 5 and 11, Division 1 of Part 2, Division 1 of Part 3 and Divisions 1 and 3 of Part 8 and sections 27, 28, 29, 30, 37, 42, 43, 44(2), 45(3), 47, 48, 49, 50, 53, 54, 55 and 57 come into operation on a day or days to be proclaimed.

(3) If a provision of this Act does not come into operation before 17 October 2024, it comes into operation on that day.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second reading Speech can be found at the [Library's Infolink page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary documents website](#).

Introduction

The Transport Legislation Amendment Bill 2023 introduces a number of amendments across Victoria's transport framework. These include a new bus driver accreditation scheme and various amendments in relation to regulation of e-scooter and bicycle sharing schemes, alcohol interlock timelines and a range of small and consequential amendments. The most heavily publicised provision, however, has been the introduction of a closed-track trial to investigate how medicinal cannabis users can drive safely. This aspect of the legislation will be the focus of this Bill Brief (clause 56).

The intersection of medicinal cannabis and road safety has been a topical issue in the Victorian Parliament for a number of years. The Federal Government first established a medicinal cannabis scheme in 2016, and Victoria in the same year became the first state to be approved to cultivate medicinal cannabis for certain patient groups. Since that time, the presence of the main psychoactive component of cannabis, tetrahydrocannabinol (THC), in roadside testing of drivers has remained an offence, regardless of assessments for impairment.

Victoria's current legislative approach of 'zero tolerance' towards THC in drivers is consistent with almost every Australian state and territory. However, medicinal cannabis users and advocates—including doctors, legal experts and politicians—have been critical of this zero-tolerance approach that treats recreational and medicinal users equally. Only one jurisdiction, Tasmania, provides an exemption for medicinal cannabis users from THC presence offences.

In the Victorian Parliament there have been two Private Member's Bills (PMBs) introduced from the Legislative Council crossbench since 2019, proposing to exempt medicinal cannabis patients from THC presence offences. The most recent was Legalise Cannabis Victoria's (LCV) Road Safety Amendment (Medicinal Cannabis) Bill 2023, introduced in February. Similar Bills have also been proposed in other states. There has also been a working group established by the Victorian Government to investigate the issue and a parliamentary committee inquiry into the use of cannabis. Moreover, there has been considerable activity internationally, with various countries and subnational jurisdictions pursuing differing approaches to policing the presence of THC in drivers.

Legalise Cannabis Victoria's Bill was adjourned in March with the understanding that the Victorian Government would soon introduce its own legislation on this issue. In the second reading debate, there was broad support for further investigation and reform, if not for the Bill itself. The Transport Legislation Amendment Bill 2023 contains the resulting legislative proposal from the Government. This Bill Brief examines the amendments relating specifically to the road safety trial.

First, the Brief examines the second reading speech and the Bill's provisions, before outlining some of the stakeholder discussion around the issue as well as responses to the Bill. The paper then provides a non-exhaustive summary of some of the key issues relating to medicinal cannabis and road safety. The Brief concludes with a jurisdictional comparison and examines the approaches of several Australian states and international jurisdictions to policing medicinal cannabis—specifically the presence of THC—in road safety legislation. This paper is not intended as a complete guide to the topic.

1 | Second reading speech

The Transport Legislation Amendment Bill 2023 ('The Bill') was second read on 18 November 2023. The Minister for Roads and Road Safety, the Hon. Melissa Horne, stated that 'the main purpose of the Bill is to continue the Government's strong commitment to road safety and the delivery of the Road Safety Strategy'.¹ While the speech discussed parliament's intentions behind the entire Bill, below is a summary of what the minister said on medicinal cannabis use and driving.

The minister stated that the issue of medicinal cannabis use and road safety is a 'challenge' and 'an issue of human rights'.² She acknowledged that, while the safety of drivers is the highest priority, people who have a genuine need to use medicinal cannabis also need to drive. Victoria 'is a leader in medical cannabis in Australia' as the first state to approve medicinal cannabis for therapeutic use in 2016.³ The minister highlighted the issues facing people who have been prescribed medical cannabis, who 'choose between taking prescription medicinal cannabis and having the freedom to drive for work, education or family purposes'.⁴

She stressed that THC can be detected in a person's system for days after taking medicinal cannabis, and long after any impairment has subsided. She indicated that the Government is embarking on this Australian-first study to 'expand our knowledge of the impairment medicinal cannabis causes on driving, while ensuring the safety of all road users'.⁵

The minister further stated that, while the proposed amendments will first enable the study of medicinal cannabis and driving, they will provide the Government with the flexibility for studies in other areas to develop improvements and reforms in all 'road safety outcomes'.⁶

2 | The Bill

The Transport Legislation Amendment Bill 2023 will amend nine Acts, focusing on improving transport and road safety.⁷ It will amend the following:

- *Bus Safety Act 2009*
- *Commercial Passenger Vehicle Industry Act 2017*
- *Marine (Domestic Commercial Vessel National Law Application) Act 2013*
- *Road Management Act 200*
- *Road Safety Act 1986*
- *Sentencing Act 1991*
- *Transport Accident Act 1986*
- *Transport (Compliance and Miscellaneous) Act 1983*
- *Transport Integration Act 2010*.

This section of the paper looks at the Bill's proposed amendments to the *Road Safety Act 1986* that would allow a study of medicinal cannabis and road safety to be carried out.

Clause 56 of the Bill will insert new section 99C into the *Road Safety Act 1986*.⁸ This will come into operation on a day to be proclaimed or on 17 October 2024. This new section will allow the minister to 'designate a road safety research trial', through the Government Gazette. These trials will have the following purposes:

¹ M. Horne, Minister for Roads and Road Safety (2023) '[Second reading speech: Transport Legislation Amendment Bill 2023](#)', *Debates*, Victoria, Legislative Assembly, 18 October, p. 3815.

² Horne (2023) *op. cit.*, p. 3815.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ *ibid.*

⁷ [Transport Legislation Amendment Bill 2023](#), cl 1.

⁸ *ibid.*, cl 56.

- determining to what degree it is safe for someone to drive or be in charge of a vehicle after consuming or using a drug, combination of drugs, or a drug or combination of drugs and alcohol;
- determining to what degree it is safe for someone to drive or be in charge of a vehicle while affected by fatigue; and
- informing the development of methods to be used by police officers in assessing to what degree a person driving or in charge of a vehicle is impaired by a drug, a combination of drugs, a drug or combination of drugs and alcohol, or fatigue.⁹

While the Bill's stated intent is to enable the study of medicinal cannabis and driving, the amendments are sufficiently broad to allow the Government to embark on other studies at a different time.¹⁰

The Bill requires the minister who publishes a notice of a trial in the Government Gazette to have consulted with other ministers whose areas of responsibility may be affected by the trial. Under new section 99C, subsection (2) clarifies that any notice made under subsection (1) can differ 'according to time, place or circumstance' and can 'impose requirements or conditions on how a trial is conducted'.¹¹

These amendments will allow the minister to declare that the Road Safety Act and any regulations or rules made under the Act will not apply to trial participants.¹² In this circumstance, it will ensure that medicinal cannabis users involved in the trial cannot be charged with an offence for driving.

3 | Stakeholder discussion and responses to the Bill

There has been a long lead-in to the introduction of the Transport Legislation Amendment Bill 2023. The intersection of medicinal cannabis and road safety has been the subject of debate for several years. This section will focus on the most recent context for the Bill's introduction and then outline some of the responses.

The lead-up: Road Safety Amendment (Medicinal Cannabis) Bill 2023

Much of the recent Victorian commentary on the issue of medicinal cannabis and road safety has been in response to the PMB proposed by LCV earlier in 2023.¹³ The Road Safety Amendment (Medicinal Cannabis) Bill 2023 proposed an exemption for medicinal cannabis users found with traces of THC while driving and was almost identical to a PMB proposed by former Reason Party MP Fiona Patten in 2019.¹⁴ Ms Patten's Bill lapsed at the end of the 59th Parliament but led to the establishment of the Medicinal Cannabis and Safe Driving Working Group, which investigated the issues around cannabis, driver impairment and policing approaches.¹⁵

⁹ *ibid.*

¹⁰ *ibid.*, Horne (2023) *op. cit.*, p. 3815.

¹¹ [Transport Legislation Amendment Bill 2023](#), cl 56.

¹² *ibid.*

¹³ [Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)

¹⁴ [Road Safety Amendment \(Medicinal Cannabis\) Bill 2019](#)

¹⁵ Medicinal Cannabis and Safe Driving Working Group (2021) *Assisting medicinal cannabis patients to drive safely*, Melbourne, Department of Justice and Community Safety, February, p. 3; H. Shing, Minister for Water (2023) '[Second reading debate: Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)', *Debates*, Victoria, Legislative Council, 8 March, p. 619.

In the second reading speech delivered on 8 March, the LCV Bill sponsor, David Ettershank MP, said, ‘This is reform that will reduce stigma and it will stop driving patients back towards other dangerous and addictive medications’.¹⁶ Specifically, he stated:

The bill provides that it is not an offence for a person’s blood or oral fluid to contain lawful medicinal cannabis that is prescribed by a medical professional and taken in accordance with that prescription.

This exception does not apply to a driver of a motor vehicle who is impaired, or incapable of having proper control of a motor vehicle – ensuring that these changes do not affect the safety of other road users. If you drive whilst impaired, it will remain an offence.¹⁷

In response, the Government indicated support for reform regarding medicinal cannabis users and road safety but stopped short of supporting the Bill. The Hon. Harriet Shing, the Government’s lead speaker on LCV’s Bill and a member of the aforementioned working group, said in the second reading debate that the Government supported the expansion of access to medicinal cannabis. She added that the intersection with road safety was a ‘complex area’ and expressed a willingness to ‘find a way through all of this so that all drivers are able to be safe on our roads and so that we can provide those medical supports that Victorians need and indeed deserve’.¹⁸

Ms Shing foreshadowed work to be conducted ‘in good faith’ by the Government through engagement with LCV MPs David Ettershank and Rachel Payne,¹⁹ and highlighted the need for an ‘agreed standard or best practice when it comes to road safety and driving with medicinal cannabis’.²⁰ She also raised the concern that there is ‘not currently ... a way of testing if people are taking medicinal cannabis as a consequence of a prescription or on the basis of recreational activity’.²¹

The Coalition’s lead speaker, Matthew Bach, echoed Ms Shing’s comments on road safety and agreed that ‘that there is clearly an inconsistency in the current arrangements’ and emphasised the need to work together to find ‘the tools ... to properly test for ... impairment’.²² He also cited the Monash University Accident Research Centre’s (MUARC) assessment of the current research around cannabis and road safety: ‘Given the recency of medicinal cannabis programs and the international experience on managing driving, there are a number of questions that remain outstanding’.²³

Greens MLC Aiv Puglielli indicated the party would support the Bill, saying it proposed a ‘very reasonable minor change that ensures medicinal cannabis is treated with the same standard as other prescription medication under the *Road Safety Act 1986*’.²⁴ The Libertarian Party’s David Limbrick also supported the Bill, calling the current system that captures medicinal patients regardless of impairment ‘unjust’, and expressed ‘hope that we see some policy reform in our drug-driving laws as soon as possible’.²⁵

¹⁶ D. Ettershank (2023) ‘[Second reading speech: Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)’, *Debates*, Victoria, Legislative Council, 22 February, pp. 348.

¹⁷ *ibid.*, p. 347.

¹⁸ Shing (2023) *op. cit.*, p. 621.

¹⁹ *ibid.*, p. 621.

²⁰ *Ibid.*, p. 620.

²¹ *ibid.*, p. 621.

²² M. Bach (2023) ‘[Second reading debate: Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)’, *Debates*, Victoria, Legislative Council, 8 March, pp. 623–24.

²³ M. Fitzharris & S. Liu (2020) *International and Australian Experience Of Medicinal Cannabis Programs with Respect To Driving and Road Safety*, Report to MUARC Baseline Committee on Medicinal Cannabis and Driving, Monash University Accident Research Centre, 16 October, p. xii.

²⁴ A. Puglielli (2023) ‘[Second reading debate: Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)’, *Debates*, Victoria, Legislative Council, 8 March, p. 624.

²⁵ D. Limbrick (2023) ‘[Second reading debate: Road Safety Amendment \(Medicinal Cannabis\) Bill 2023](#)’, *Debates*, Victoria, Legislative Council, 8 March, p. 629.

Responses to the Transport Legislation Amendment Bill 2023

LCV's Bill is currently before the Legislative Council but was adjourned in March 2023 with the understanding that the Government was planning to introduce legislation on this issue at a later date.²⁶ The Government announced in late August that legislation would soon be introduced for a closed-track trial to establish an evidence base around medicinal cannabis road safety provisions.²⁷

LCV welcomed the amendments allowing a trial to occur but was concerned that 'this process will take too long'.²⁸ Mr Ettershank compared cannabis with other therapeutic drugs entering the market and expressed concern that an extended process of testing, like the one proposed, was inconsistent with the treatment of other therapeutic drugs—such as antihistamines and painkillers—which also have potential impairment risks.²⁹ He also characterised the trial as 'kicking the can down the road', saying that the trial will 'replicate what has already been done in dozens of studies both here and overseas'.³⁰ However, with the party to be involved in the design process,³¹ Ms Payne said, 'The bottom line is to see a medicinal cannabis patient treated like any other patient taking prescription medication'.³²

On the introduction of the Transport Legislation Amendment Bill 2023 in October, Ms Payne maintained, 'A medicinal cannabis patient should be treated like any other patient who is prescribed medicine by a doctor who also provides appropriate advice about when that patient is safe to drive'.³³

Drive Change, a campaign by the Cannabis Law Reform Alliance advocating for an exemption for legally prescribed cannabis users, reiterated its position on 16 October in the week of the Bill's introduction. CEO Ean Alexander wrote:

The path to reparation requires a two-pronged approach. First, we must advocate for legal reform that redefines the standards for determining a medicinal cannabis patient's fitness to drive. Second, legal assistance should be provided to those patients who have been wrongly charged.³⁴

There has been support for change from the legal community. Speaking to the *Herald Sun*, criminal lawyer Ben Watson said many of his clients have had their licences cancelled due to having tested positive to THC presence from legally taken medicinal cannabis. He stated, 'No one should be ostracised from society due to taking a prescribed medication which impacts their life so positively'.³⁵ The Australian Lawyers Alliance opposed the trial on similar grounds to LCV and said that police prosecutions of THC-positive drivers should cease for the duration of the Government's research trial.³⁶ Spokesperson Greg Barns said, 'Current drug-driving laws were developed before cannabis became a legally recognised prescribed medication and the law needs to change to stay relevant'.³⁷

²⁶ B. Kolovos (2023) 'Victoria's major parties back overhaul of drug-driving laws for medicinal cannabis users', *The Guardian Australia*, 8 March.

²⁷ R. Eddie (2023) 'Trial to test when users of medicinal cannabis can safely drive', *The Age*, 27 August.
²⁸ *ibid.*

²⁹ Eddie (2023) *op. cit.*; D. Perkins et al. (2021) 'Medicinal cannabis and driving: the intersection of health and road safety policy', *International Journal of Drug Policy*, 97, 103307, p. 3.

³⁰ S. Jones (2023) "'Crushing" news for patients as Victoria flags 18-month, off-road driving trial', *Cannabiz*, 28 August.

³¹ *ibid.*

³² Eddie (2023) *op. cit.*

³³ B. Kolovos (2023) 'Victoria prepares to launch medicinal cannabis driving trial', *The Guardian Australia*, 17 October.

³⁴ E. Alexander (2023) 'It's time to be kind and drive change for medicinal cannabis', blog post, Drive Change website blog, 16 October.

³⁵ M. Clarke & K. Rooney (2023) 'Medicinal cannabis users could soon be allowed to drive in Victoria', *Herald Sun*, 23 July.

³⁶ *ibid.*

³⁷ *ibid.*

4 | Key issues

The Government's proposed introduction of a closed-track trial for medicinal cannabis users through the Bill is significant for a number of reasons. While the amendment allowing the trial will enable the Government to conduct other trials in the future, the Government's announcement focused specifically on medicinal cannabis users.³⁸ Accordingly, the following section is a non-exhaustive outline of some of the key issues around medicinal cannabis and road safety.

Medicinal cannabis products

Cannabis contains a large number of components called cannabinoids, but the most notable is THC—the main psychoactive cannabinoid in cannabis. The other major component in cannabis, Cannabidiol (CBD), can be separated out and is also widely used. It is not known for creating the 'high' effect that THC can create in certain doses and, consequently, is not prohibited in drivers. Products containing predominantly CBD (over 98 per cent) are considered schedule 4 drugs under the Therapeutic Goods (Poisons Standard—October 2023) Instrument 2023 (Cth).

THC is a schedule 8 drug, the most strictly controlled category. Accordingly, in Victorian road safety legislation, THC is listed in the definition of 'prescribed illicit substances' for which drivers are tested for presence, along with methamphetamine and MDMA.³⁹ While governments around Australia have been reluctant to change from the status quo, there have been calls for change for some years now, with Tasmania's medicinal exemption from THC presence offences being one example of an alternative approach.

Increase in medicinal cannabis users

In 2014, the Victorian Government asked the Victorian Law Reform Commission (VLRC) to report on what would have to come about if Victoria were to allow the introduction of medicinal cannabis as a therapeutic tool.⁴⁰ Ultimately, the VLRC found that 'While some jurisdictions overseas have set the prescribed concentration of THC above zero, the Commission does not recommend that this occur in Victoria'.⁴¹ Subsequently, the Federal Government's amendments to the *Narcotic Drugs Act 1967* (Cth) in 2016 established a nationwide scheme for the cultivation of cannabis for medicinal purposes. Victoria's *Access to Medicinal Cannabis Act 2016* was also enacted, approving use of medicinal cannabis among 'defined groups of patients', with Victoria becoming the first state to be approved by the Office of Drug Control to cultivate medicinal cannabis.⁴² Since that time, a zero-tolerance approach to THC presence in drivers, including both medicinal and recreational users, has remained in force.

The numbers of people applying for the prescription of medicinal cannabis in Victoria have grown sharply year on year (Graphs 1 and 2). Medicinal cannabis can be accessed through the Therapeutic Goods Administration's (TGA) Special Access Scheme and the Authorised Prescriber Scheme, with Special Access Scheme Category B (SAS-B), the most convention route, accounting for the vast majority of applications. According to the TGA, Victoria as a jurisdiction has the country's second-highest amount of SAS-B applications for use of

³⁸ M. Horne, Minister for Roads and Road Safety (2023) *Legislation to allow medicinal cannabis trial*, media release, 17 October.

³⁹ *Road Safety Act 1986* (Vic), s 3, p. 40; Therapeutic Drugs Administration (2023) 'Medicinal cannabis: Access pathways and patient access data', TGA website, 21 September.

⁴⁰ Department of Agriculture (2021) *Victoria's Medicinal Cannabis Industry*, infographic, Victorian Government, March, p. 1.

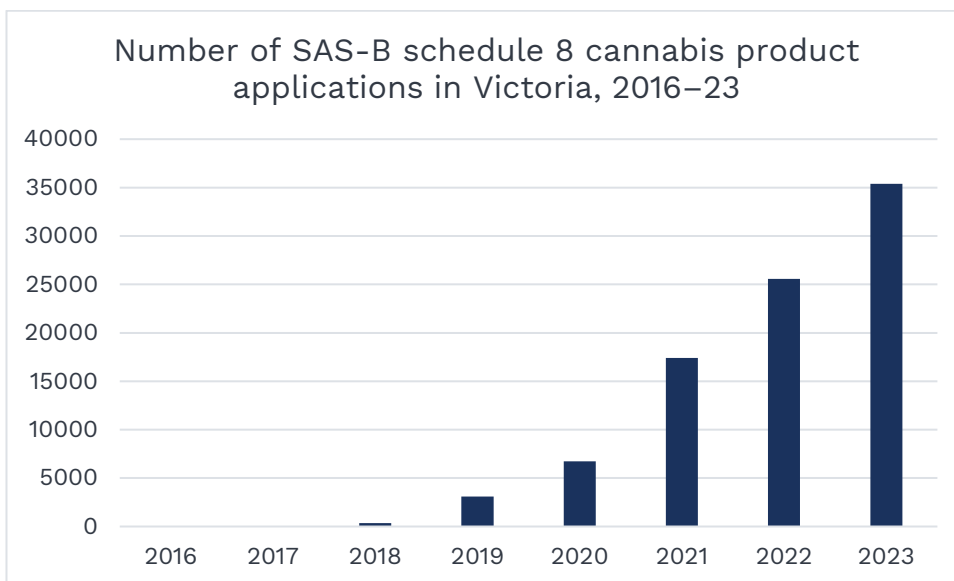
⁴¹ Victorian Law Reform Commission (VLRC) (2015) *Medicinal cannabis: report*, Melbourne, VLRC, August, pp. 92–93.

⁴² Department of Agriculture (2021) op. cit.; J. McMillan (2019) *Review of the Narcotic Drugs Act 1967*, Final report, Canberra, Australian Government, July, pp. 20–21.

schedule 8 medicinal cannabis products, with 88,621 applications made since 2016. Chronic pain (38,613) and anxiety (26,576) are the main conditions being treated.⁴³

While only 373 applications were made across 2016–18, in 2023 alone 35,383 applications have been made in Victoria.⁴⁴ Consequently, this could increase the number of cannabis users at risk of penalties under the current laws. Drive Change, a campaign organised by the Cannabis Law Reform Alliance, indicates that as many as 600,000 roadside tests are conducted for cannabis each year nationally.⁴⁵

Graph 1: Number of SAS-B schedule 8 cannabis product applications in Victoria, 2016–23



Source: TGA

Note that the TGA’s data is merely a count of applications and is not indicative of the number of patients prescribed or using medicinal cannabis containing THC. The TGA explains that ‘one patient can be associated with repeat applications for a single product as well as with approvals for multiple products’ and that ‘it is not possible for the TGA to report on individual patient numbers’.⁴⁶ When breaking these applications down by age cohort, we can see that there has been a rapid surge in interest from people between 18 and 44 years old (Graph 2).

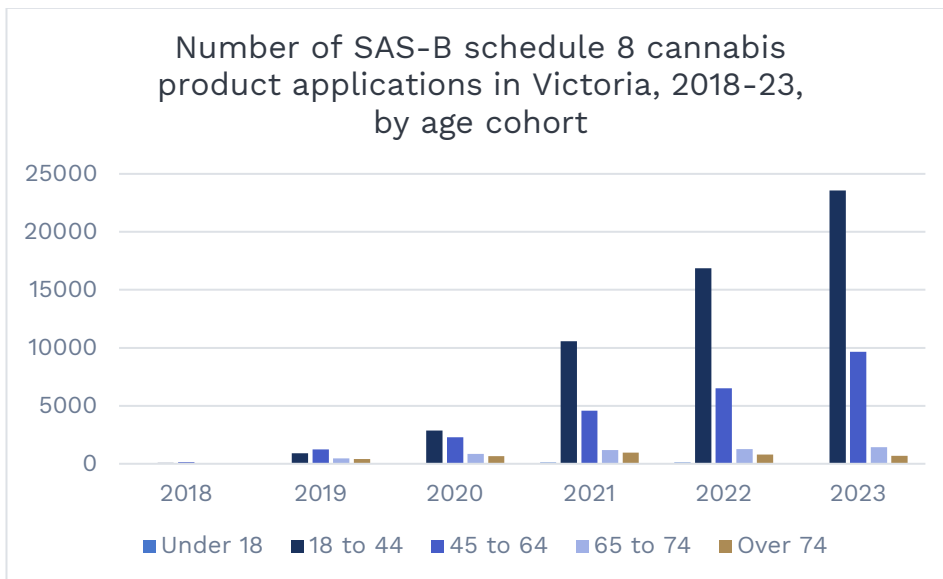
⁴³ Therapeutic Goods Administration (2023) ‘SAS-B Applications’, data dashboard, TGA website, 21 September.

⁴⁴ *ibid.*

⁴⁵ Cannabis Law Reform Alliance (2023) ‘Home page’, Drive Change website.

⁴⁶ Therapeutic Goods Administration (2023) ‘Medicinal cannabis: Access pathways and patient access data’, TGA website, 21 September.

Graph 2: Number of SAS-B schedule 8 cannabis product applications in Victoria, 2016–23, by age cohort.



Source: TGA

Reviews

In addition to the two PMBs mentioned previously, there have been two reviews undertaken into cannabis-related matters stemming from parliamentary debate.

The Victorian Government’s Medicinal Cannabis and Safe Driving Working Group, which published its report in February 2021, investigated the existing research around the intersection of road safety and medicinal cannabis use. The report indicates ‘conflicting views could not be reconciled within the context of the Working Group’ and recommended further research.⁴⁷ Its key insights included THC’s prevalence in road crash fatalities (12 per cent), the existence of a large recreational user cohort, the inability to distinguish between recreational and medicinal use, and some inter-jurisdictional inconsistency in approaches.⁴⁸ The report also found that point-of-prescription processes could be improved in ensuring patient safety.⁴⁹

A Legislative Council Legal and Social Issues Committee (LCLSIC) inquiry into the use of cannabis in Victoria also heard evidence on this topic and published its report on 5 August 2021. Having heard from various stakeholders in favour of change, such as Cann Group and Medicinal Cannabis Industry Australia, and a number of scientists, including from the Monash Addiction Research Centre, the committee’s recommendations 13 and 14 recommended further research on ‘drug driving offences relating to cannabis’.⁵⁰ Recommendation 13 suggested a review should consider:

... alternative methods that could be used for detection and measuring impairment, noting that current tests do not adequately measure impairment and that THC can be detected in a person’s system long after they are no longer affected by the drug.⁵¹

Further, recommendation 14 urged the government to explore ‘ways to exempt medicinal cannabis patients from section 49(1)(bb) of the *Road Safety Act 1986* (Vic)’, and consider

⁴⁷ Medicinal Cannabis and Safe Driving Working Group (2021) op. cit., p. 11.

⁴⁸ *ibid.*, pp. 11–12.

⁴⁹ *ibid.*, p. 13.

⁵⁰ Legislative Council Legal and Social Issues Committee (2021) *Inquiry into the use of cannabis in Victoria*, final report, Melbourne, The Committee, August, p. 178.

⁵¹ *ibid.*, p. 178.

modifying ‘impairment-based drug driving offences’ to exempt medicinal cannabis patients from penalties.⁵²

Perceived discrimination

Outside of Parliament, one of the most vocal voices for more forgiving drug-driving laws for medicinal cannabis users has been the Drive Change campaign, an initiative of the Cannabis Law Reform Alliance.⁵³ A Drive Change [change.org](https://drivechange.org) petition advocating for such measures currently has over 32,000 signatures.⁵⁴ Part of the campaign’s reasoning is that medicinal cannabis constitutes the only legal medication to put users at risk of losing their licence if they test positive for presence, and that ‘Current laws deter patients from medical cannabis and heightens anxiety for those who drive’.⁵⁵

Discrimination against medicinal cannabis users is cited in a number of other ways. THC may be detectable in roadside oral fluid tests for around 30 hours post-use in regular users, and traces may be evident in urine testing for as long as a month.⁵⁶ This is well past the typical period of impairment of 4 hours post-use or up to 6 or 7 hours when higher doses of THC are taken and tasks such as driving are taken into account.⁵⁷

Many users have expressed that fear of being penalised prevents them from driving, posing challenges for their ability to conduct day-to-day activities. LCV MP Rachel Payne, a medicinal cannabis user herself, told *The Guardian* that current rules—combined with the need to drive in order, for example, to work or to pick up kids from school—are ‘impeding people from accessing a medicine that has much lower harm profile than other medications that are easily prescribed and aren’t tested in roadside testing’.⁵⁸ Another user, Alice Davy, told *The Age*, ‘You’re taking away someone’s life by not allowing someone to drive on a prescribed medication’.⁵⁹ This was also recognised in March 2023 by then Premier Daniel Andrews when flagging that reform was on the Government’s agenda, saying, ‘There can be as many as 200,000 [Victorians] who are currently using medicinal cannabis with a script from a doctor and they cannot drive’.⁶⁰

Fines and licence cancellation are big deterrents to driving. Even without evidence of impairment, Victoria’s fines for driving under the influence (presence of an illicit substance) escalate markedly from as low as 3 penalty units for a first offence (equal as of 1 July 2023 to \$576) to 120 units for a third offence (just over \$23,000).⁶¹ The penalties for driving while impaired range from 12 penalty units for a first offence to 180 for a third.⁶² Members of the government’s working group raised the perceived unfairness of the current impositions on medicinal cannabis patients regarding their ability to drive—as compared to drivers consuming other types of prescription medication—as a ‘key concern’.⁶³

⁵² *ibid.*, p. 181.

⁵³ Cannabis Law Reform Alliance (2023) ‘[About page](#)’, Drive Change website.

⁵⁴ Drive Change (2021) ‘[End discrimination against medicinal cannabis patients in Australian drug driving laws](#)’, Change.org website.

⁵⁵ Cannabis Law Reform Alliance (2023) ‘[Home page](#)’ *op. cit.*

⁵⁶ Alcohol and Drug Foundation (2021) ‘[Roadside drug testing](#)’, ADF website.

⁵⁷ University of Sydney (2021) ‘[Scientists put the stopwatch on cannabis intoxication](#)’, University of Sydney website.

⁵⁸ B. Kolovos (2023) ‘[“I’m not impaired”: Victoria’s parliament to debate drug driving in age of medicinal cannabis](#)’, *The Guardian Australia*, 7 March.

⁵⁹ Eddie (2023) *op. cit.*

⁶⁰ *ibid.*

⁶¹ VicRoads (2020) ‘[Drug-driving penalties](#)’, VicRoads website; Department of Justice and Community Safety (2023) ‘[Penalties and values](#)’, DJCS website.

⁶² VicRoads (2020) *op. cit.*; DJCS (2023) *op. cit.*

⁶³ Medicinal Cannabis and Safe Driving Working Group (2021) *op. cit.*, p. 18.

Data gaps

With medicinal cannabis being a relatively recent introduction to healthcare, many have called for more research to make up for a lack of adequate data upon which to base policymaking and legislative decisions.

A 2020 MUARC report analysed Victoria's medicinal cannabis road safety provisions and indicated a few avenues where further work was needed, including the 'pharmacokinetics of medicinal cannabis and detection of THC at the roadside, as well as measures of impairment and fitness-to-drive assessment procedures specific to this group'.⁶⁴ Further research was mooted for best practice models for managing safe driving and 'an assessment of the driving behaviour and crash-involvement rates of medicinal cannabis users'.⁶⁵

A paper from 2020, analysing Australian medicinal cannabis user perspectives on driving ability, noted that there were still unknowns owing to the difference in the profiles of medicinal users and recreational users:

The cannabis and driving research to date has focused almost entirely on non-medical cannabis use, yet there are clear differences between medical and non-medical cannabis use that may have relevance for driving.⁶⁶

Another study of the issues around cannabis and driving says gaps in data, due to lack of adequate studies around the effects of cannabis on driving, are 'dangerous given the prevalence of medical use' and makes the observation that 'many believe that therapeutic cannabis users are able to drive safely after using the drug'.⁶⁷

The working group also indicated substantial gaps in the existing data, impacting the ability to determine whether THC was merely present in crash statistics or a causative factor. These gaps include data on: underlying condition and co-morbidities; the reason for the prescription; combination prescription drug use; other relevant behavioural factors, such as alcohol and illicit drug use and driving patterns; and licence type.⁶⁸

Balancing road safety with medicinal cannabis access

Cannabis has long been associated with a risk of impairment. Labels and warnings are required to be attached to medicinal cannabis to warn of possible impairing effects.⁶⁹ In Australia, the recently updated *Assessing fitness to drive for commercial and private vehicle owners* document (described as 'Medical standards for licensing and clinical management guidelines') has added guidance around medicinal cannabis, saying:

The pharmacokinetics of cannabinoids are complex, making it difficult to predict the severity of impairment. Other influencing factors include the history of use, frequency of dose, ratio of cannabinoids and route of administration (vaporised, oral, oral-mucosal, transdermal). The onset and duration of impairing effects can vary significantly between individuals.⁷⁰

The same guidelines currently advise on ways to mitigate risk at the point of prescription, noting the differences in tolerance between users, and warn of the unpredictability of effects from mixing medications.⁷¹

⁶⁴ Fitzharris & Liu (2020) op. cit., p. 65.

⁶⁵ *ibid.*, p. 65.

⁶⁶ T. Arkell et al. (2020) 'Driving-Related Behaviours, Attitudes and Perceptions among Australian Medical Cannabis Users: Results from the CAMS 18-19 Survey', *Accident Analysis & Prevention*, 148, p. 6.

⁶⁷ B. Brands, P. Di Ciano & R. E. Mann (2021) 'Cannabis, Impaired Driving, and Road Safety: An Overview of Key Questions and Issues', *Frontiers in Psychiatry*, 12, pp. 4–5.

⁶⁸ Medicinal Cannabis and Safe Driving Working Group (2021) op. cit., pp. 5–6.

⁶⁹ *ibid.*, p. 5; Perkins et al. (2021) op. cit., p. 3.

⁷⁰ Austroads (2022) *Assessing Fitness to Drive 2022*, Medical standards for licensing and clinical management guidelines, Sydney, Austroads, pp. 19–20.

⁷¹ *ibid.*, p. 19.

A summary of research thus far in the *Australian Journal of General Practice* concluded that THC's effect on drivers is 'generally modest' and 'similar to the effects of low-dose alcohol'.⁷² However, the article did say that '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'.⁷³

From Victoria Police's point of view, 'cannabis use remains a significant threat to road safety'.⁷⁴ In a submission to the LCLSIC inquiry, the commission describes THC as likely 'to reduce a driver's ability to have full control of a vehicle' through slowing down reaction times, distorting perception of speed and distance, and reducing concentration.⁷⁵ This is affirmed by other agencies, such as the Transport Accident Commission and VicRoads.⁷⁶

There are data to suggest that cannabis is present in a significant amount of road incidents. A study of road fatalities in Victoria from 2006 to 2016 found that THC was the third most commonly found drug detected (found in 13.1 per cent of drivers), behind alcohol (18.4 per cent) and opioids (17.3 per cent).⁷⁷ Those data, however, were recorded prior to the introduction of medicinal cannabis.

The Government's working group acknowledged 'it is likely that medicinal cannabis patients are a different demographic to those drivers currently overrepresented in THC related crashes (typically younger males)'.⁷⁸ A typical driver caught driving under the influence (DUI) is a 'young, male adult, a subpopulation holding "high risk" attitudes towards driving and an elevated crash risk irrespective of cannabis use'.⁷⁹ While the working group asserted in 2021 that the typical medicinal cannabis user was female and over 50 years of age,⁸⁰ Graph 2 indicates an uptick in the subsequent years of medicinal cannabis applications from those aged between 18 and 44 years old. Regardless of who is driving in crash statistics, one OECD report explains, 'The key issue, however, is not how frequently drugs are detected among drivers, but the extent to which consumption of a particular psychoactive substance contributed to the crash'.⁸¹

Studies to date have been inconclusive on whether there is a causative link between cannabis use and crash statistics, owing to a number of factors. In their summary of the debates around medicinal cannabis and road safety policy, Perkins et al. write that studies generally have trouble taking into account 'all potential confounding variables', including 'simultaneous use of other drugs (including alcohol), polypharmacy, time delays between crashes and drug testing, plus un-observed confounding factors'.⁸² They also suggest that medicinal cannabis may, through prescribed use to treat symptoms, amount to a 'potential risk reduction factor'.⁸³ Their paper highlights that 'patients accessing legal medicinal cannabis are doing so under the supervision of a doctor and the goal of this treatment is to achieve a clinical benefit using dosing strategies that can avoid unwanted psychoactive side effects'—something not typically the case with recreational users.⁸⁴

⁷² T. Arkell et al. (2021) 'Medical cannabis and driving', *Australian Journal of General Practice*, 50(6), p. 361.

⁷³ *ibid.*, p. 361.

⁷⁴ Victoria Police (2019) *Submission to the inquiry into the use of cannabis in Victoria*, *Inquiry into the use of cannabis in Victoria*, Melbourne, The Committee, p. 5.

⁷⁵ *ibid.*, p. 4.

⁷⁶ Transport Accident Commission (unknown) 'Drug driving', TAC website; VicRoads (2021) 'Medicinal Cannabis and Driving', VicRoads website.

⁷⁷ Schumann et al. (2021) 'The prevalence of alcohol and other drugs in fatal road crashes in Victoria, Australia', *Accident Analysis & Prevention*, 153.

⁷⁸ Medicinal Cannabis and Safe Driving Working Group (2021) *op. cit.*, pp. 5–6.

⁷⁹ Perkins et al. (2021) *op. cit.*, p. 5.

⁸⁰ Medicinal Cannabis and Safe Driving Working Group (2021) *op. cit.*, Appendix G, p. 4.

⁸¹ OECD (2010) *Drugs and Driving: Detection and Deterrence*, OECD Publishing, p. 12.

⁸² Perkins et al. (2021) *op. cit.*, p. 2.

⁸³ *ibid.*, p. 5.

⁸⁴ *ibid.*, p. 5.

Proposed and established approaches

The Medicinal Cannabis and Safe Driving Working Group, in analysing these matters, separated their lines of inquiry into point-of-prescription and point-of-detection processes. There were not able to agree on how to manage medicinal cannabis patients in roadside drug testing (point of detection), saying that more research into road safety risks associated with medicinal cannabis was needed.⁸⁵ However, they advocated for a point-of-prescription framework guiding prescribers in informing medicinal cannabis patients on their driving rights and risks.⁸⁶

There are a number of drug-driving approaches around the world in regard to drug driving. Some of these are explored in the ‘Jurisdictional Comparison’ section below, but a few general methods emerge. A study in 2022 summarised three legislative approaches used to date:

- **Zero tolerance**—no level of an illicit substance tolerated
- **Impairment focus**—uses impairment testing in conjunction with drug analysis
- **‘Per se’ approach**—uses a blood concentration threshold, like the blood-alcohol concentration (BAC), to prove impairment.⁸⁷

Zero tolerance is what Victoria (and much of Australia) currently operates under, with roadside drug testing technology limiting police’s ability to measure THC concentration.⁸⁸ Drivers are subject to laws covering DUI and driving while impaired (DWI) offences. In order for a drug-driving charge to be laid, two samples are taken—one is tested at the roadside, with the other sent to a laboratory for confirmation.⁸⁹ The rationale for testing for presence is explained as follows:

The 2003 legislation is based on a presence approach as THC in saliva is not consistent with blood levels as THC does not pass from blood to saliva but is rather mouth residue from smoking or consumption. That is, no per-se impairment level can be determined from saliva. The quick metabolism of THC (tens of minutes to a few hours) in saliva to non-impairing and non-prosecutable forms of THC, means that a saliva detection is indicative of recent consumption that is likely to be associated with a level of impairment.⁹⁰

The impairment and per se approaches can be seen in some countries which have legal limits for THC but do not typically request samples unless there is ‘evidence of impaired driving’.⁹¹ Impairment testing may include field sobriety tests, like in Canada, with police trained to assess for cannabis intoxication.⁹² The Victorian Institute of Forensic Medicine, however, deems sobriety testing as ‘neither practicable nor feasible to perform’ as a policing strategy, owing to the signs of impairment (reduced concentration, divided attention, reduced visual acuity) being subtle and likely to dissipate by the time of formal assessment.⁹³

Regarding ‘per se’ limits, where THC over a certain concentration triggers an offence, the correlation between impairment and THC concentrations found in oral fluid testing is highly contested, with one recent study from Sydney’s Lambert Initiative showing that THC

⁸⁵ Medicinal Cannabis and Safe Driving Working Group (2021) op. cit., p. 11.

⁸⁶ *ibid.*, p. 13.

⁸⁷ A. Blandino et al. (2022) ‘Driving under the influence of drugs: Correlation between blood psychoactive drug concentrations and cognitive impairment. A narrative review taking into account forensic issues’, *Forensic Science International: Synergy*, 4., p. 7; H. Poulsen et al. (2021) *Recommending Statutory Limits for Drug Concentrations Relating to Impaired Driving*, Independent Expert Panel on Drug Driving (New Zealand), April, p. 13.

⁸⁸ Medicinal Cannabis and Safe Driving Working Group (2021) op. cit., p. 8.

⁸⁹ VicRoads (2021) ‘[Medicinal Cannabis and Driving](#)’, op. cit.

⁹⁰ Medicinal Cannabis and Safe Driving Working Group (2021) op. cit., Appendix G, p. 3; Poulsen et al. (2021) op. cit., p. 39.

⁹¹ Arkell et al. (2021) op. cit., p. 360; Fitzharris & Liu (2020) op. cit., p. xii.

⁹² Royal Canadian Mounted Police (2018) ‘[Training police to detect drug-impaired driving](#)’, RCMP website.

⁹³ O. Drummer, D. Gerostamoulos & N. Woodford (2021) *Medicinal Cannabis and Driving*, Melbourne, Victorian Institute of Forensic Medicine, p. 1.

concentrations in blood and saliva were poor measures of impairment.⁹⁴ Another recent study recommended ‘against oral fluid THC screening in randomly selected drivers in countries with non-zero per se limits for blood THC’ and instead favoured ‘investigating “high-risk” drivers’.⁹⁵

Comparisons with alcohol testing methods are also widely deemed not to be applicable, with much variability in assessments of correlations between THC concentration and impairment.⁹⁶ Lambert Initiative Associate Director Professor Iain McGregor highlighted the problems with assuming correlations between impairment and detected concentrations:

A cannabis-inexperienced person can ingest a large oral dose of THC and be completely unfit to drive yet register extremely low blood and oral fluid THC concentrations. On the other hand, an experienced cannabis user, might smoke a joint, show very high THC concentrations, but show little if any impairment.⁹⁷

Numerous countries, however, still institute ‘per se’ limits, but ‘no evidence has been found to date for the identification of international agreed cut-off points’.⁹⁸ As a result, there is large variation in per se limits among countries such as the United Kingdom and the Scandinavian countries.⁹⁹

5 | Jurisdictional comparison

New South Wales

In New South Wales, people prescribed medicinal cannabis that contains THC are currently not allowed to drive.¹⁰⁰ The Centre for Medicinal Cannabis Research and Innovation states that: ‘This is because THC can affect the cognitive and motor skills necessary for safe driving, such as attention, judgement, memory, vision and coordination’.¹⁰¹ Those who are taking medicinal cannabis that only contains CBD are able to drive legally.

In August 2023, NSW Legislative Council Legalise Cannabis member Jeremy Buckingham introduced the Road Transport Amendment (Medicinal Cannabis) Bill 2023.¹⁰² The Bill would ‘create a defence for users of medicinal cannabis for the offence relating to driving while a prescribed illicit drug is present in a person’s oral fluid, blood or urine’.¹⁰³

Greens MP Cate Faehrmann introduced a similar Bill in 2021—the Road Transport Amendment (Medicinal Cannabis - Exemptions from Offences) Bill 2021.¹⁰⁴ This Bill would ‘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’.¹⁰⁵ The Legislative Council Standing Committee of Law and Justice completed an inquiry into the Bill. It recommended that the Bill be debated in the house but did not make any further recommendations.¹⁰⁶ The Government has not responded to the report and the second

⁹⁴ University of Sydney (2021) ‘[THC in blood and saliva are poor measures of cannabis impairment](#)’, University of Sydney website.

⁹⁵ M. B. Robertson et al. (2022) ‘[Correlation between oral fluid and blood THC concentration: A systematic review and discussion of policy implications](#)’, *Accident Analysis & Prevention*, 173, Abstract.

⁹⁶ Poulsen et al. (2021) op. cit., p. 40.

⁹⁷ University of Sydney (2021) ‘[THC in blood and saliva are poor measures of cannabis impairment](#)’, op. cit.

⁹⁸ Blandino et al. (2022) op. cit., p. 4.

⁹⁹ Poulsen et al. (2021) op. cit., p. 51; A. W. Jones (2022) ‘[How Nordic Countries Enforce Impaired Driving Legislation](#)’, *Forensic Science Review*, 34(2), p. 134.

¹⁰⁰ Centre for Medicinal Cannabis Research and Innovation (no date) ‘[Driving](#)’, NSW Government website.

¹⁰¹ *ibid.*

¹⁰² [Road Transport Amendment \(Medicinal Cannabis\) Bill 2023](#) (NSW)

¹⁰³ *ibid.*, explanatory memorandum

¹⁰⁴ [Road Transport Amendment \(Medicinal Cannabis - Exceptions from Offences\) Bill 2021](#) (NSW)

¹⁰⁵ *ibid.*

¹⁰⁶ Legislative Council Standing Committee on Law and Justice (2022) [Road Transport Amendment \(Medicinal Cannabis - Exemptions from Offences\) Bill 2021](#), final report, Sydney, The Committee, August, p. viii.

reading was negated in October 2022. In response to the Bill, then Minister for Metropolitan Roads, the Hon. Natalie Ward, said that the government would not support it because ‘it would compromise our longstanding road safety principles’.¹⁰⁷ Current Minister for Roads (then Shadow Minister) the Hon. John Graham stated that the opposition would not be supporting the Bill, but that ‘More research is required’ and committed that if a Labor government was elected in 2023, it would ‘look to invest in ... research in order to move this issue along and do so rapidly’.¹⁰⁸

In August 2023, NSW Premier Chris Minns stated that the issue is ‘hard because impairment is really difficult to determine’, but that more and more people were accessing prescription medicinal cannabis.¹⁰⁹

Queensland

Currently in Queensland, users of medicinal cannabis that contains THC cannot drive.¹¹⁰ In 2022, the Queensland Department of Transport and Main Roads committed to reviewing medicinal cannabis laws, including restrictions on driving. The general manager of Transport and Main Roads said that the issue was a ‘complex and difficult one to solve’.¹¹¹ In response to a question without notice asked by Greens MP Michael Berkman in April 2023, the Minister for Transport Mark Bailey said that:

Measuring impairment is not possible at the moment technologically in terms of drug driving. There is research going on in this regard internationally. We are looking at work being done in other states and in other countries. There is research going on in corporations. Those people with chronic pain who need to take medicinal cannabis where this is not an issue of impairment are advocating that we look at whether impairment can be measured.¹¹²

The Minister stated that the review is due to be completed in 2024.

Western Australia

In Western Australia, ‘Drug driving offences ... are applicable regardless of whether the person is under treatment with prescribed medicinal cannabis or has used illicit cannabis’.¹¹³

The Select Committee into Cannabis and Hemp, chaired by Legalise Cannabis MP Brian Walker, published its report on *Medicinal cannabis and industrial hemp in Western Australia* in March 2023.¹¹⁴ One of its 16 recommendations was that the *Road Traffic Act 1974* and Road Traffic (Drug Driving) Regulations 2007 be amended:

... to introduce a defence for patients using medicinal cannabis as prescribed who are not:

- driving whilst impaired; or
- under the influence of alcohol.¹¹⁵

¹⁰⁷ N. Ward, Minister for Roads (2021) ‘[Second reading speech: Road Transport Amendment \(Medicinal Cannabis – Exemptions from Offences\) Bill 2021](#)’, *Debates*, New South Wales, Legislative Council, 17 November, p. 7252.

¹⁰⁸ J. Graham (2023) ‘[Second reading speech: Road Transport Amendment \(Medicinal Cannabis – Exemptions from Offences\) Bill 2021](#)’, *Debates*, New South Wales, Legislative Council, 17 November, p. 7256.

¹⁰⁹ A. Davies & T. Rose (2023) ‘[Chris Minns’ first 100 days: what the NSW premier has learned so far and what he plans to do next](#)’, *The Guardian Australia*, 3 July.

¹¹⁰ Queensland Government (2022) ‘[Accessing medicinal cannabis](#)’, Queensland Government website, 18 March.

¹¹¹ A. Vidler (2022) ‘[Medicinal cannabis users could be granted drug driving exemption in Queensland](#)’, *9News*, 29 August.

¹¹² M. Bailey, Minister for Transport (2023) ‘[Questions without notice: Roadside drug testing](#)’, *Debates*, Queensland, Queensland Parliament, 20 April, p. 1124.

¹¹³ Department of Health (no date) ‘[Cannabis-based products](#)’, DoH website.

¹¹⁴ Select Committee into Cannabis and Hemp (2023) *Medicinal cannabis and industrial hemp in Western Australia*, final report, Perth, The Committee, March.

¹¹⁵ *ibid.*, pp. vi, 65.

During evidence given to the committee from the Royal Australian College of General Practitioners, the committee heard that some GPs were hesitant to prescribe medicinal cannabis containing THC due to the possibility their patient could be charged with a driving offence.¹¹⁶

While the Government supported many of the committee's recommendations, it only noted the recommendation to amend the road safety Acts.¹¹⁷ It did, however, commit to establishing a Medicinal Cannabis and Safe Driving Working Group to investigate this issue. In response to the report, a spokesperson told the ABC:

We want to be very clear that this government would never support any amendment which would allow a person to drive while impaired.¹¹⁸

Mr Walker said that while he is happy that the government has committed to the working group, he was 'distressed' that people were allowed to drive with a blood alcohol level of 0.05 but that the issue of how to 'detect impairment in other cases' had not been addressed.¹¹⁹

South Australia

Drivers in South Australia who have been prescribed medicinal cannabis with THC cannot drive.¹²⁰ Two relevant bills have been introduced to the South Australian Parliament, but neither has progressed to the second reading stage. The Road Traffic (Medicinal Cannabis) Amendment Bill 2021 was introduced by Greens MP, the Hon. Tammy Franks in February 2021 and the Statutes Amendment (Medicinal Cannabis Defence) Bill 2023 was introduced in February 2023 by One Nation member, Sarah Game.¹²¹ Both Bills would have provided a defence for a person found to be driving with THC in their system who has a medicinal cannabis prescription.

A Joint Committee into the Legalisation of Medicinal Cannabis was appointed in February 2023 to look into the 'legalisation of medicinal cannabis in South Australia with reference to legal frameworks and approaches in other jurisdictions including implications for justice, health and the economy'.¹²² The committee is still hearing evidence. Ms Franks told *The Advertiser* that she is hoping that the committee can:

... in a cross-party collaborative way, find a way that we can do something and give patients a defence, allowing them to keep their jobs, be able to pick up their kids, go about their lives and not be punished for being sick or injured.¹²³

Police Minister Joe Szakacs stated that the government is 'open-minded' to legislative changes that are backed by research and ensure that road safety outcomes are maintained.¹²⁴

¹¹⁶ *ibid.*, p. 50.

¹¹⁷ Western Australian Government (2023) [Western Australian Government response to Legislative Council Select Committee into Cannabis and Hemp report on Medicinal Cannabis and Industrial Hemp in Western Australia, Inquiry into Medicinal Cannabis and Industrial Hemp](#), 29 August, p. 4.

¹¹⁸ G. Loney & S. Bold (2023) ['WA medicinal cannabis regulations to be reviewed amid call for immediate action'](#), *ABC News*, 29 August.

¹¹⁹ Loney & Bold (2023) *op. cit.*

¹²⁰ SA Health (2022) ['Frequently asked questions on medicinal cannabis'](#), Government of South Australia website.

¹²¹ [Road Traffic \(Medicinal Cannabis\) Amendment Bill 2021 \(SA\)](#); [Statutes Amendment \(Medicinal Cannabis Defence\) Bill 2023 \(SA\)](#)

¹²² Joint Committee on the Legislation of Medicinal Cannabis (2023) 'Terms of Reference', Adelaide.

¹²³ M. McGuire (2023) ["'I'd be dead without that stuff": Inside SA's medicinal cannabis push'](#), *The Advertiser*, 23 September.

¹²⁴ D. Sulda & N. Graham (2023) ['Calls to exclude medicinal cannabis users from new SA drug-drivers rules'](#), *ABC News*, 13 February.

Tasmania

Tasmania is currently the only Australian jurisdiction where there is a medical defence for testing positive for THC whilst driving. Police then assess a driver for impairment, and if a driver is found to be impaired, they can be charged with an offence.

Section 6A of the *Road Safety (Alcohol and Drugs) Act 1970*, states:

A person does not commit an offence against subsection (1) if the prescribed illicit drug was obtained and administered in accordance with the Poisons Act 1971.¹²⁵

When asked about this during an estimates hearing in 2021, then Commissioner of Police Darren Hine said in response to a question from the Hon. Rosemary Armitage:

If medicinal cannabis is prescribed, that is a defence under the act. Therefore, you're not charged with drug driving. But the additional charge, if you are so affected by prescribed medicinal cannabis, or any illicit drugs, where it's prescribed ...

...

... As in, so it's like anything; your medication might be prescribed to you, but if you're then driving whilst under the influence of a drug, as in, you don't have proper control of your vehicle, that is an offence.¹²⁶

¹²⁵ *Road Safety (Alcohol and Drugs) Act 1970* (Tasmania), s 6A.

¹²⁶ D. Hine (2021) 'Transcript: Legislative Council Estimates Committee B', Tasmania, Legislative Council, 6 September.

International

Jurisdiction	THC presence offence?	Situation for medicinal cannabis patients	Additional information
New Zealand	Yes	<p>The Land Transport (Drug Driving) Amendment Act 2022 commenced on 11 March 2023. Changes include introducing drug concentration levels, including for THC (cannabis). This new law includes a medical defence for people who are taking prescription medication as prescribed by their doctor and are found to be driving (Land Transport Act 1998, section 64(1A)). If a person is issued an infringement notice, they are able to submit a Medical Defence- Application form with proof of their valid prescription or relevant evidence.</p> <p>A person cannot drive if they are in any way impaired by their prescription medication. A Compulsory Impairment Test may be used to assess their impairment. This test includes eye, turn and walk and a one-leg stand assessment.</p>	<p>In April 2021, the Independent Expert Panel on Drug Driving released a report titled: 'Recommending statutory limits for drug concentrations relating to impaired driving'.</p>
England	Yes	<p>Section 5A of the Road Safety Act 1988 has a defence for a person charged with an offence if a specified drug had been prescribed to them and they took it in accordance with instructions. This may cover users of medicinal cannabis. People who are impaired should not drive.</p> <p>The Preliminary Impairment Test includes pupil examination; walk and turn test; finder-to-nose test and one-leg stand test.</p>	<p>A research report on Medicinal cannabis and safety was released by the Department of Transport in 2021. The Health and Social Care Select Committee also completed an inquiry into Drugs Policy: medicinal cannabis in 2019.</p>
Ireland	Yes	<p>A statutory medical exemption certificate is provided in the law for people who have been prescribed medical marijuana, under sections 4(1B) and 5(1B) of the Road Traffic Act 2010. People cannot be impaired while driving and must carry the certificate with them while driving.</p> <p>The impairment assessment test conducted by the Gardaí includes: a pupil dilation test, modified Romberg balance test; walk and turn test; one-leg stand and a finger-to-nose test.</p>	

Jurisdiction	THC presence offence?	Situation for medicinal cannabis patients	Additional information
Norway	Yes	While Norway does have a limit for the level of THC in a driver's blood, 'the legislative limits do not apply to drivers who take medications as prescribed by their doctor, if the drugs/medications are used in accordance with the prescription'.	
The Netherlands	Yes	The Netherlands recommends that people who use cannabis for daily medicinal use do not drive for the first two weeks or for 15 hours after occasional use . The legal limits for drug use in traffic also includes the medical use of cannabis.	
Canada	Yes	<p>Canada does not have a medical exemption for those with a medical authorisation for cannabis who test above the legal limit. In some provinces, such as Ontario, medical cannabis users who are usually subject to zero tolerance laws (such as those under 21) may be exempt if they test positive but are not found to be impaired in any way.</p> <p>The Royal Canadian Mounted Police are responsible for the majority of drug and alcohol impairment testing. They ask a person suspected of being impaired while driving to submit to a Standardized Field Sobriety Test or a Drug Recognition Expert Evaluation.</p>	
United States of America	Yes, but state-dependent	<p>Each state has different laws regarding cannabis (both medicinal and recreational) and restrictions on driving whilst using cannabis (both medicinal and recreational).</p> <p>Eighteen US states have some kind of limit on the amount of THC in your blood before you are deemed to be under the influence while driving. Depending on the state, a person may introduce an affirmative defence that, even though they were over the set limit, they were not impaired. In other states, such as New York or Washington, medicinal cannabis users are subject to the same impaired driving laws as recreational users.</p>	

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