Alcohol and Drug Foundation

30 November 2023

Legislative Council Legal and Social Issues Committee
Parliament House, Spring Street
East Melbourne VIC 3002

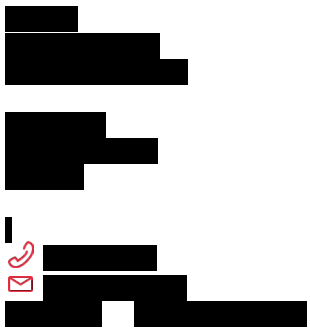
To the Committee Secretary,

Re: Inquiry into workplace drug testing in Victoria

The Alcohol and Drug Foundation (ADF) thanks the Committee for the opportunity to respond to this inquiry. The ADF delivers evidence-based approaches to minimise alcohol and other drug harm. We recognise the power of strong communities and the important role they play in preventing problems occurring in the first place. A community-centric approach is at the heart of everything we do. While the ADF does not have expertise in workplace occupational health and safety regulation in Victoria, it is possible to provide context and framing to the issue that will contribute to the urgency with which this matter needs to be addressed. This submission will outline background information regarding the prescribing of medicinal cannabis in Australia, information regarding the key drivers of growth in prescribing, and concerns regarding the justice and equity in workplace testing. The submission will finish with consideration of possible alternatives to the current approach, and a discussion of best practice approaches to workplace drug testing.

Medicinal Cannabis Prescribing in Australia

Reform of the regulation of cannabis, including the treatment of impairment, is needed. Medicinal cannabis products have been approved for prescription by the TGA in Australia since November 2016 as schedule 8 products. Medicinal cannabis is prescribed in Australia for a range of conditions, including chronic pain, mental health issues, neurological conditions, palliative care, and nausea. Federal and state regulation around prescribing, and a lack of available products, led to a situation where in the first 12 months of prescribing, only around 200 patients were treated with medicinal cannabis products[1]. Data presented below, however, shows the exponential increase in the number of cannabis prescriptions made in Australia since this time.



The prescribing of medicinal cannabis is limited to prescribers who access the products under one of three schemes:

- Special Access Scheme A (SAS-A) – which allows prescribing to individuals who are seriously ill or likely to die
- Special Access Scheme B (SAS-B) – which allows prescribers to make an application to the TGA to treat an individual patient with a product category for a specific condition.
- Authorised prescriber (AP) scheme – which provides prescribers an authority to prescribe a specific product to multiple patients with the same condition.

The following Figure 1 from a study by MacPhail et al.[2] demonstrates the trend in medicinal cannabis prescribing. While this study's data stops at the end of 2021, this trend has continued.[1]

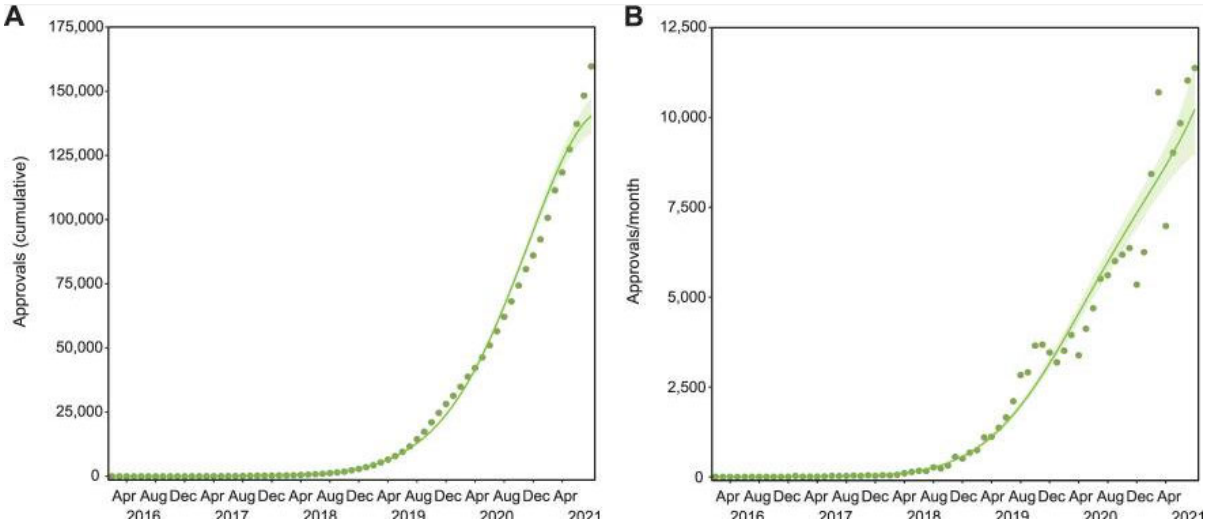


Figure 1 – SAS-B approvals over time

These trends have continued to increase into 2022 and 2023 and extend to the other access pathways. Applications via the AP scheme increased from 3,085 patients in the first six months of 2020, to 178,715 in the second six months of 2022[1]. The above graph shows cumulative SAS-B approvals at around 150,000 at the end of 2021. There are now over 435,000 approvals as of November 2023 – three times the total described in this graph.

Currently, medicinal cannabis products are not indicated for specific conditions. Rather, the prescriber justifies to the TGA the reason for the prescription using available evidence. While the evidence base for medicinal cannabis is established in some areas, systematic reviews consistently point out that evidence is other areas is weaker.[2]

Testing for Presence vs Impairment

With the rapid proliferation of medicinal cannabis prescribing in Australia, impairment testing is a key issue to be resolved. Currently workplace and roadside drug tests test for the presence of THC, the main psychoactive substance in cannabis, rather than for impairment. This is an issue as THC is lipid, rather than water-soluble, and can be detected in the blood for a long time after last use of cannabis – in some cases even months. This presents a complex issue for people prescribed medicinal cannabis who may not be impaired but may still be being detected with cannabis in their system, and potentially face sanction or loss of employment. While the need for work safety is an imperative, the current approach penalises people who are not impaired – undermining the purpose of the law.

Regulatory approaches

A number of potential alternatives to testing simply for presence of a substance have been put forward. Currently there is no silver bullet, and it is likely that any regulatory approach will need to be a pragmatic compromise. Some potential approaches are outlined below, with a brief discussion of their pros and cons. These are mostly presented in terms of roadside drug testing, but are also applicable to work contexts:

- *Field sobriety testing* uses behavioural tests to assess someone's level of impairment. These are seen often in jurisdictions that do not use roadside breathalysers or drug testing and often involve activities like walking in a straight line, reciting the alphabet backwards etc. Field sobriety tests have mixed evidence around them. While they can be effective in detecting impairment, they can also lead to false positives, and are not generally able to be correlated with someone's blood concentrations of THC.[3, 4] While this approach avoids the technological limitations of current presence testing, it introduces new challenges in terms of training, validity, and consistency.

- *Limits on blood concentration* have been adopted in some jurisdictions as a proxy for cannabis impairment. This is recognised as problematic due to the inconsistent relationship between blood concentration but has nonetheless been adopted as a proxy similar to BAC. In some US states this blood concentration is 5ng/ml, and being at or above this limit is an offence. In Colorado, however, someone detected at 5ng/ml must still face a court to determine if they were driving impaired, with the blood concentration serving as part of the evidence in the hearing. This approach is severely limited by the well documented disparity between blood concentration and impairment but has proponents as blood tests are seen as more objective than subjective assessments like field sobriety testing.

- *Exemptions for patients* are use in Tasmania where a person who is prescribed medicinal cannabis is exempted from the offence of driving with a detectable amount of cannabis in their system. The person is still subject to the offence of driving while impaired, however. This approach keeps an option for police to charge someone who is driving while impaired but does not provide for any alternative method of assessing impairment.

- *Novel technological approaches* are as yet under-developed alternatives to blood tests or field sobriety tests for detecting impairment. These have included approaches like using goggles to examine impacts on eye motor function, software-based approaches that test reaction times and motor coordination, and even portable devices to measure brain wave activity. As yet, none of these approaches have been proven to be reliable or deployed at scale. The appeal of a single technological solution is apparent, but there is no guarantee that one will be able to be developed or in a timely manner.

Despite the lack of apparent clear alternatives, the government should not hesitate in working towards a pragmatic solution to this issue. The rapid growth in medicinal cannabis prescribing demonstrates that the need is urgent and growing. It may be the case that a 'least-worst' solution is required in the meantime while longer term solutions, including novel approaches, are developed. It is also important to note that impairment can be multifaceted and effected by numerous factors including someone's level of fatigue, mental state, nutrition, medical conditions, level of distraction, and other factors. Currently our approach to testing and enforcing impairment may be considered overly focused on impairment due to drugs and alcohol. It may be that this policy issue provokes a larger rethink of the way in which impairment is assessed both for drivers and in work contexts that can take into account a wider array of factors.

General considerations for drug testing in the workplace

The ADF fully supports ensuring safety in the workplace as a fundamental requirement for organisations and government. Testing for impairment due to alcohol and other drugs may form a part of a safety regime, however the response of an organisation to a positive detection is something that is modifiable. Responses to personal drug use that are stigmatising and punitive can accelerate alcohol and other drug harm, including accelerating risk in the workplace. The ADF recommends that responses to positive detections should – while ensuring safety – facilitate health-based outcomes for the individuals detected. This may be achieved through referrals to treatment or information services where applicable. Ongoing responses that are solely punitive serve to increase stigmatisation of illicit drug use and prevent help-seeking. Research conducted by the ADF shows that stigma prevents people seeking help and support when they need it. Organisations can encourage healthier environments and minimise illicit drug related harms by ensuring that their responses do not contribute to ongoing stigmatisation. The ADF has done significant work on stigma towards alcohol and other drug use, including a report outlining the impacts of stigma, and a resource called the Power of Words that provides practical information for speaking about alcohol and other drug use in a non-stigmatising manner.[5, 6]

To facilitate the development of a health-based response to workplace drug testing, the ADF recommends engagement with staff in the development of an organisational response to positive detections. Given the complexities raised in this submission, it may be worth including an employee right

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