

DECRIMINALISATION OF CANNABIS AND DRUG DRIVING LAWS – AN ANOMOLY

Adele Stevens

Decriminalisation of cannabis use has been occurring in the ACT since the early 1990s. The Simple Cannabis Offence Notice (SCON) was introduced in 1992 and allowed people to grow 2 cannabis plants for their own use. This was followed by the decriminalisation of personal cannabis use (up to 50 grams and 2 plants per person) in January 2020 following the passing of the Cannabis personal use bill in 2019.

When the change in the 1990s occurred, there were no drug driving laws and so cannabis use was partially removed from the criminal justice system. However, with the introduction of drug driving laws in the 2000s, things changed. In April 2010, FFDLR made a submission to the ACT Government about the proposed drug driving laws. It is at <http://www.ffdlr.org.au/wp-content/uploads/2018/02/FFDLR-Submission-to-Drugs-and-Driving-Laws-2010.pdf>

Since the passage of these drug driving laws, which provide a zero tolerance for drug driving, there has been a new form of drug law enforcement as predicted by FFDLR in the above submission. Unlike alcohol, which has a .05 limit **any** cannabis detected by roadside testing, involves a penalty of loss of driving license for 3-12 months depending on first or subsequent offence.

Yet, many of these people arrested for drug driving will not be impaired. Michael White in a submission to Australia's National Road Safety Strategy 2021-30 argues that up to 70% of the drivers who have been charged with cannabis-presence driving offences are not actually impaired at the time that the police arrest them.

The research shows that contrary to the assumptions under the present zero tolerance law, all cannabis use does not impair driving. For medical cannabis users, the impairment window is up to 4 hours (Eadie et al, Perkins et al). Eadie et al summarise their findings as follows:

“Impairment following cannabis inhalation lasts less than or equal to **4 hours** in medical cannabis patients, independent of their dosing regimen (e.g., daily, intermittent, or infrequent). Impairment is THC-dose dependent.”

Also a meta analysis by McCartney et al found that for recreational users of cannabis the impairment window was up to 5 hours for light use and 7 hours for heavier use. And regular users had less impairment than occasional users.

Yet the THC-detection window is much longer, past the time when users may be impaired. White notes that:

Drivers (and especially if they were heavy users of cannabis) could test positive to THC for many days after last using cannabis (e.g., Odell *et al.*, 2015).

Magistrate David Heilpern was so concerned at the injustice of taking away licences for drug driving from people appearing in his Lismore court (sometimes as many as 30 in a day) that it was his main reason for stepping down (ABC Law Report June 2020).

Some of the drug driving cases that came through Mr Heilpern's court made headlines, after he found the defendants not guilty because of their "honest and reasonable mistake of fact". One driver had been told by a police officer that the cannabis would be out of his system in a week. The next time he smoked he waited 9 days before driving, but when the police pulled him over, the test detected the cannabis in his system.

The very harsh penalties for low range drug driving (which presently can not be measured by roadside test) can have huge impacts on a person's ability to be able to continue their employment or get their children to school.

I know at least 10 people in my local southside area (ie Weston Creek) who use illegal drugs and 4 of these have lost their driving licences for drug driving, all including cannabis. Given the assumptions made by White, probably 2-3 of those who lost their licences were NOT impaired and were safe drivers. The story of David (an assumed name and some minor details changed to protect his identity) below demonstrates the harms associated with this policy.

David is guy who has been using marijuana since he was 12 years of age and now he is nearly 40. He has tried going off marijuana, substituting it for alcohol, thus becoming like the legal drug using population.

But the alcohol was bad for him so he went back to using "weed". Cannabis keeps him normal and calm. When he has not had any for a few days, people ask if he is on drugs because he is so hipped up.

He tells me he has been arrested 8 times for drug (cannabis)driving. In the latest arrest, he had been using "weed" on Saturday night and he was pulled over by police on the following Wednesday and tested positive for cannabis.

The court case following that arrest resulted in another conviction. He lost his driving licence for 12 months and was placed on probation for 6 months with twice weekly drug tests. If he fails such as testing positive for cannabis, he was told he would go to jail for 3 months.

He is a single dad (a very good one) with 3 teenage kids. He had a job which involves driving a heavy vehicle and his employer is very happy with his performance. He performs well driving at work. But this loss of licence meant he had to give up his job which involved driving, so he was then unemployed for nearly a year.

Now, 18 months later, David has done his time, regained his licence and found another job driving a heavy vehicle. But getting back his licence was not easy. He had to attend the required 2 drinking and drug driving seminars and then he was issued with a probationary licence. But he has continuing problems because, with his renewed licence, he is classified as a probationary driver. For example, his son has just reached the age when he is ready to get his own licence but David, his father who is on a probationary licence, can not be the licenced driver who assists his son as an L plate driver. Despite the fact that David is an experienced driver who has assisted all his children to learn to drive on the farm, David is not allowed to be the licenced driver when his son needs to practice driving in Canberra with his L plates.

David's story is an example of the way the current system operates as a way of punishing people for using illegal drugs, despite the attempts to decriminalise the personal use of

cannabis. A test for impairment would be useful as occurs in Norway, as mentioned in this article in the blog by a Sydney Criminal Lawyers group:

<https://www.sydneycriminallawyers.com.au/blog/drug-driving-laws-criminalise-the-legal-use-of-cannabis/>

As discussed in this article, since the legalisation of medical cannabis, it has become increasingly obvious that the drug driving regime needs a drastic overhaul. Particularly as there is no evidence of increased road safety since the legislation of the drug driving laws, unlike the improvement seen following the drink driving laws and seat belt legislation.

A first step in the right direction might be to set aside cannabis presence driving offences for registered users of medical cannabis (unless they are judged to be impaired on the grounds of behavioral evidence).

This would allow patients on medical cannabis to drive without fear as occurs with those on methadone.

In summary, the plans to decriminalize personal illegal drug use will have limited benefit given the propensity for most Canberrans to drive as they will still be subject to the drug driving laws which put them into the criminal justice system.

REFERENCES

Eadie, L., Lo, L. A., Christiansen, A., Brubacher, J. R., Barr, A. M., Panenka, W. J., & MacCallum, C. A. (2021). Duration of neurocognitive impairment with medical cannabis use: A scoping review. *Frontiers in Psychiatry, 12*, Article 638962.

Perkins, D, Brophy, H, McGregor, IS, O'Brien, P, Quilter, J, McNamara, L, Sarris, J, Stevenson, M, Gleeson, P, Sinclair, J & Dietze, P 2021, 'Medicinal cannabis and driving: the intersection of health and road safety policy', *International Journal of Drug Policy*, vol. 97, p. 103307.

McCartney, D, Arkell, TR, Irwin, C & McGregor, IS 2021, 'Determining the magnitude and duration of acute Δ^9 -tetrahydrocannabinol (Δ^9 -THC)-induced driving and cognitive impairment: a systematic and meta-analytic review', *Neuroscience & Biobehavioral Reviews*, vol. 126, pp. 175-93, open access <https://doi.org/10.1016/j.neubiorev.2021.01.003>.

Odell, M. S., Frei, M. Y., Gerostamoulos, D., Chu, M. & Lubman, D. I. (2015). Residual cannabis levels in blood, urine and oral fluid following heavy cannabis use. *Forensic Science International, 249*, 173-180.