



AFPA

Australian Federal
Police Association

Discussion Paper: Opposition to Proposed ACT Drug Driving Law Reform for Medicinal Cannabis Patients

Submission by the Australian Federal Police Association

Prepared by Mr Troy Roberts – Government Relations Manager

Level 3/53 Blackall Street

Barton ACT 2600

Tel: (02) 62851677

Email: afpa@afpa.org.au

INTRODUCTION

This paper outlines the AFPA's opposition to the proposed amendments to the *Road Transport (Alcohol and Drugs) Act 1977*, as raised in e-Petition E-PET-046-25. The petition seeks to exempt drivers with valid medicinal cannabis prescriptions from automatic licence suspension when THC is detected in their system and to investigate a shift toward impairment-based testing.

We understand the concerns behind the petition. Medicinal cannabis is now widely prescribed, and many patients are looking for legal clarity. However, the issue of drug driving cannot be addressed on good intentions alone. Public safety must come first, and the current scientific and enforcement tools are not yet capable of supporting this kind of legal change.

BACKGROUND

The petition, sponsored by Mr Thomas Emerson, proposes two major reforms. First, it calls for drivers with valid medicinal cannabis prescriptions to avoid automatic licence suspension if they test positive for THC but show no signs of impairment. Second, it recommends that the ACT Government investigate impairment-based testing methods for cannabis use.

The petition references reforms in Victoria and proposed changes in New South Wales. However, it overlooks the fact that even in those jurisdictions, practical and scientific challenges remain unresolved. There is currently no reliable, real-time roadside test for cannabis impairment. Where reforms have been introduced, they rely heavily on officer discretion and subjective judgment, raising issues around legal consistency, enforceability, and public confidence.

EMERGING CANNABIS IMPAIRMENT TESTING TECHNOLOGIES

Several new tools designed to measure cannabis impairment rather than just detect the presence of THC are currently being developed and tested. Examples include OcuPro, which uses eye-tracking technology to assess impairment, Gaize, which employs automated ocular tests, the Quantitative Marijuana Impairment Test (QMIT) that provides objective roadside data, IMMAD-VR, which measures peripheral vision and visual field, and Cognivue, a cognitive assessment device. These technologies aim to provide more accurate and reliable assessments of impairment compared to traditional oral fluid screening and subjective observations.

However, none of these emerging tests have yet been adopted by law enforcement agencies anywhere in the world. Current policing methods still rely on oral fluid drug screening devices that detect THC presence but do not measure impairment directly. When officers need to assess impairment, they depend on standardised field sobriety tests and the expertise of Drug Recognition Experts, both of which involve subjective judgment and extensive training.

While promising, these new technologies remain largely in the development or pilot stages. Significant barriers such as legal acceptance, standardisation, cost, and the need for comprehensive officer training must be overcome before they can be integrated into mainstream law enforcement and road safety practice.

KEY CONCERNS

Public safety must remain the priority

THC impairs key functions needed for safe driving, reaction time, coordination, judgment and concentration. The presence of THC in a driver's system can affect their ability to safely operate a vehicle, even if the driver feels unimpaired.

What makes this different to alcohol is the lack of a clear, measurable threshold that applies across the board.

THC is processed differently depending on the person, their frequency of use, and how the drug is consumed. A regular user might test positive while not displaying obvious signs of impairment, while an infrequent user

may be significantly affected at the same level. Without a roadside test that can accurately and objectively measure cannabis impairment, it is not safe to rely on driver self-assessment or officer observation alone.

No jurisdiction has solved the impairment-testing problem

Around the world, countries are grappling with the same issue, how to fairly enforce drug driving laws when science hasn't yet caught up. The examples below show why moving to impairment-based enforcement without robust tools is risky.

In the United States, states like Colorado have set per se blood THC limits (e.g. 5 ng/mL), but police still rely on field sobriety tests and specially trained Drug Recognition Experts (DREs) to assess actual impairment. Even then, courts regularly face challenges due to the inconsistency between THC levels and observed behaviour.

Canada uses oral fluid screening devices to detect the presence of THC, but enforcement depends heavily on field sobriety tests and structured observations. Officers look for physical cues like eyelid tremors, balance issues, or disorientation. The Canadian Centre on Substance Use and Addiction has found that combining observational tools with THC screening increases detection accuracy but does not replace the need for behavioural assessment.

New Zealand uses a hybrid approach. Police first conduct a roadside sobriety test. If the driver fails and THC is found, a legal offence is triggered. As with other jurisdictions, this system still leans heavily on behavioural indicators.

In Europe, most countries enforce either zero-detection or low-threshold limits for THC in blood or saliva. For example, Germany uses a limit of 1 ng/mL. In practice, convictions usually rely on additional behavioural evidence gathered through field sobriety tests.

Even Victoria's recent reforms, which allow some medicinal cannabis patients to avoid penalties if not impaired, highlight how complicated this issue is in practice. Enforcement depends on officer judgment, and there's still no standard method to prove or disprove impairment at the roadside. The ACT would face the same limitations.

In Hong Kong, suspected drug-impaired drivers are taken to a station for a formal impairment test. Any detection of THC or other drugs leads to immediate licence suspension, regardless of prescription.

No jurisdiction has yet developed a scientifically validated, reliable roadside tool that can measure cannabis impairment in the same way a breathalyser works for alcohol. Until that changes, enforcement will remain subjective and open to legal challenge.

Why ACT Policing can't adopt a similar impairment test

Unlike some jurisdictions with formal Drug Recognition Expert programs, ACT Policing does not currently have a standardised, legally supported field sobriety testing regime for drug impairment. Officers do not have access to roadside protocols comparable to alcohol breath testing, nor are they trained or equipped to conduct structured observational assessments for drug impairment that would hold up in court.

Even if a behavioural testing approach were adopted in future, it would require extensive training, legal reform, and new infrastructure. Observational tests are time-consuming, rely heavily on officer discretion, and are far less objective than breathalyser results. They are also more vulnerable to being challenged in court, particularly in the absence of a biological marker like blood alcohol content.

Without a scientifically validated tool for real-time THC impairment, ACT Policing would be left with a system that is difficult to enforce, inconsistent in its application, and open to legal disputes and challenges. That creates confusion for both police officers and the community and significantly increases the risk of unsafe drivers remaining on the road.

Consistency and clarity in the law matters

One of the strengths of the ACT's current approach is that it provides a clear, enforceable standard. Any presence of THC while driving is an offence. That rule applies equally, whether THC came from medicinal or recreational use.

Changing the law to allow exemptions would create a two-tiered system. Some drivers would be allowed on the road with THC in their system, while others would not. That could quickly extend to other impairing substances like opioids or benzodiazepines. The result would be a complex patchwork of rules that's harder to enforce and harder for the public to understand.

There's a risk of abuse

The petition rightly focuses on patients who are prescribed cannabis for legitimate medical reasons, but it's important to acknowledge that prescriptions for medicinal cannabis have become easier to obtain in recent years.

In Australia, by the end of 2019, more than 28,000 individual applications for medical cannabis had been approved, with around 18,000 patients accessing it. This suggests many were receiving repeat prescriptions. By June 2020, approvals were being granted at a rate of about 4,500 per month.

Between February 2016 and September 2021, there were 159,665 prescriptions approved under the Therapeutic Goods Administration (TGA) Special Access Scheme Category B (SAS-B). This number climbed to more than 248,000 by May 2022, with 85 percent of those approvals occurring after January 2020.

From 2021 to 2023, annual SAS-B approvals ranged between 100,000 and 120,000. During the same period, prescriptions under the Authorised Prescriber (AP) scheme grew substantially. By 2023, the volume of AP prescriptions was approximately five times higher than those under SAS-B.

TGA regulatory data shows a clear rise in applications over time: 231 in 2017, 2,560 in 2018, 25,160 in 2019, 57,710 in 2020, and 122,490 in 2021.

This raises the risk that some individuals could seek a prescription not for medical need, but as a way to avoid drug driving penalties. Without strict oversight and eligibility controls, the proposed exemption could be exploited.

It would make roadside enforcement much harder

Frontline police need clear rules and practical tools to do their job effectively. At present, if THC is detected in a roadside test, officers can act with confidence. Under the proposed reform, they would be required to verify whether the driver has a valid prescription, assess whether the driver appears impaired, and justify that assessment in court, potentially without reliable scientific tools.

This approach adds complexity, consumes more time, and introduces legal uncertainty. It also exposes officers to disputes over medical privacy and clinical judgments for which they are not trained. Introducing exemptions would increase workloads and create confusion at the roadside, ultimately weakening the deterrent effect of current laws.

Roadside Sobriety Tests and Compliance with the ACT Human Rights Act 2004

A roadside sobriety test could raise human rights concerns in the ACT, particularly under the *Human Rights Act 2004 (ACT)*. That doesn't mean sobriety testing is unlawful, but any such measure must be lawful, necessary, and proportionate to withstand scrutiny under the Act.

Right to privacy (Section 12)

Roadside sobriety tests, especially those that involve physical or behavioural assessments, raise questions under the right to privacy protected by the *Human Rights Act 2004 (ACT)*. This right includes respect for bodily autonomy and protection from arbitrary or unlawful interference by police. When a person is required to perform physical tasks or submit to close observation at the roadside, that could be viewed as an intrusive exercise of state power.

For such interference to be compatible with the Human Rights Act, it must meet three key conditions. It must be lawful, meaning it is clearly permitted under legislation. It must not be arbitrary, which requires that it be based on reasonable suspicion or clear objective criteria, and it must be proportionate, in that it is necessary to achieve a legitimate purpose such as ensuring road safety and not excessive in its scope or application.

Right to a fair trial (Section 21)

If the outcome of a sobriety test forms the basis for a criminal charge, the way the test is conducted may impact the person's right to a fair hearing. This includes the right to be presumed innocent, the right to be informed of the reason for the test or detention, and the right to challenge the results or methods used in court.

Subjective assessments by police, such as those based on a person's coordination or speech, carry a higher risk of bias or error. They are also more difficult to defend or contest than objective results from tools like a breathalyser. This raises important concerns about procedural fairness and the reliability of evidence.

In short, a roadside sobriety test could impact someone's human rights in the ACT, but not necessarily unlawfully. The key is how the test is done. If it's vague, subjective, or inconsistently applied, it risks violating individual rights. If it's lawful, proportionate, and carefully regulated, it can be a legitimate tool for public safety.

CONCLUSION

The AFPA opposes the reforms proposed in e-Petition E-PET-046-25. While we recognise the importance of fair and reasonable treatment for medicinal cannabis users, public safety must come first.

There is currently no reliable way to test for cannabis impairment at the roadside. International experience shows that jurisdictions have not yet found a safe or scientifically credible way to move beyond THC detection. Attempting to implement exemptions or impairment-based testing now would create enforcement challenges, reduce road safety, and open the door to legal uncertainty.

Until robust, evidence-based tools are available, the ACT should retain its current zero-tolerance approach.