Department of Transport and Main Roads

Queensland
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Cannabis and driving in Queensland

Community consultation

Queensland Government

Contents

1. Introduction

Queensland is seeing an increase in lives lost and serious injuries due to crashes that involve drugs. To address this, the Queensland Road Safety Action Plan 2022-2024 commits to developing a package of drug driving reforms based on best practice, contemporary research evidence and stakeholder consultation.

The Queensland Government is currently undertaking a wide-ranging review into Queensland's drug driving program.

As part of this, we are seeking to better understand the impact that Queensland's drug driving laws have on people who take cannabis, including medicinal cannabis, as well as the impacts on the broader community.

This paper is a key component of our stakeholder consultation in relation to cannabis and driving. It will explore what currently happens in Queensland, what is happening elsewhere and some of the challenges that cannabis creates for setting a policy direction.

This paper on cannabis and driving will support the public and stakeholders to provide informed feedback that will be considered as part of the broader drug driving reform program.

Responses to this paper will be collated and considered alongside other research and consultation to help guide the development of a package of reforms to be considered by the Queensland Government.

Medicinal cannabis

Medicinal cannabis products may contain delta-9-tetrahydrocannabinol (THC) and/or cannabidiol (CBD).

Depending on a person's medical condition, they may be prescribed a THC, CBD, or THC/CBD combination medication.

Their prescriber and pharmacist should advise if their medication has THC. Currently, it's not legal to drive in Queensland with THC in your system.

2. Drug driving program in Queensland

There are two drug driving offences in Queensland. The first offence is driving a motor vehicle when a relevant drug is present in saliva or blood. Relevant drugs include:

- THC (the active ingredient in cannabis, also known as delta-9-tetrahydrocannabinol)
- Methylamphetamine (also known as speed and ice)
- MDMA (the active ingredient in ecstasy)
- Cocaine

This presence-based drug driving offence means that people who take cannabis that contains THC, including for medicinal purposes, cannot legally drive while it is present in their saliva or blood. THC can sometimes be detected for longer than a day due to the way it is processed by the body. How long THC can be detected varies for each person and is influenced by factors including strength of dose, the way it was consumed (for example, smoking or vaping, oils or oral ingestion) and other body factors and health conditions. THC is also very lipophilic, meaning it sticks to fatty tissues, therefore increasing its processing time.

The second offence is driving whilst under the influence of liquor or another drug. If a driver appears to be adversely affected by a drug, including prescription medication, they may be charged with this more serious offence.

The penalties for these offences are shown in Table 1.

Table 1: Drug driving penalties in Queensland

Offence	First offence	Second offence	Subsequent offence
Driving while a relevant drug is present in blood or saliva	Minimum licence disqualification: 1 month Maximum fine: $2,167 (14 penalty units) Maximum imprisonment: 3 months	Minimum licence disqualification: 3 months Maximum fine: $3,096 (20 penalty units) Maximum imprisonment: 6 months	Minimum licence disqualification: 6 months Maximum fine: $4,334 (28 penalty units) Maximum imprisonment: 9 months
Driving under the influence of alcohol or another drug	Minimum licence disqualification: 6 months Maximum fine: $4,334 (28 penalty units) Maximum imprisonment: 9 months	Minimum licence disqualification: 12 months Maximum fine: $9,288 (60 penalty units) Maximum imprisonment: 18 months	Minimum licence disqualification: 24 months Maximum fine: Court's discretion Maximum imprisonment: Court's discretion (must be included)

3. Data

3.1 Crash

In 2022, 61 people died as a result of crashes involving a drug driver, representing approximately 20.5% of the lives lost on Queensland roads. For the previous five years, lives lost from crashes involving a drug driver represented around 1 in every 5 deaths on Queensland roads (on average, 18.5%) (see Figure 1).

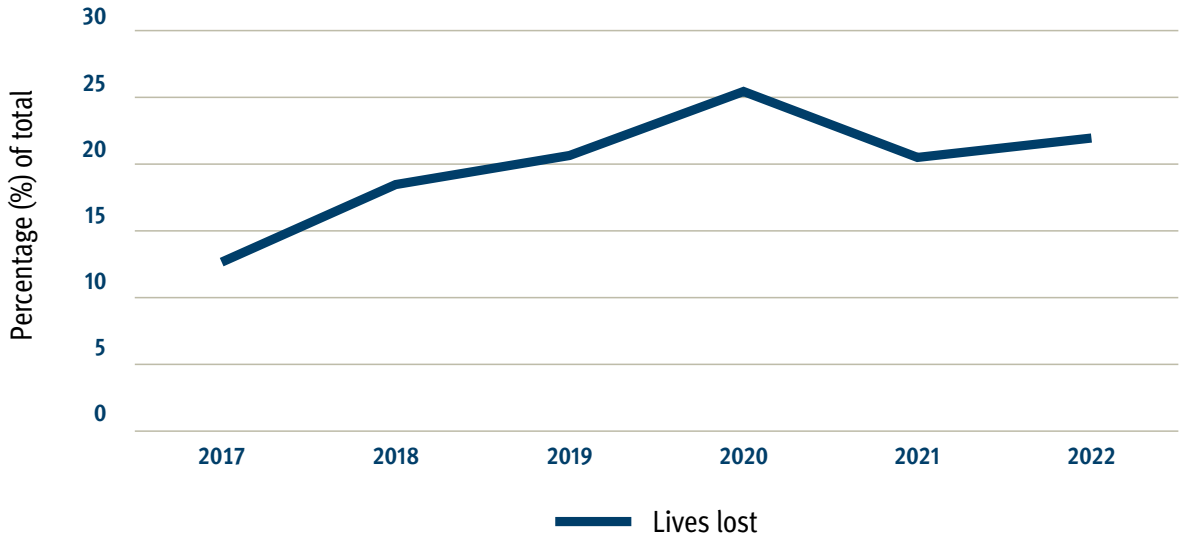

Figure 1: Percentage of lives lost where a drug driver/rider was involved, where known, 2017 to 2022, Queensland

In 2022, 83.6% (n=46) of drug drivers involved in a fatal crash had THC (the active ingredient in cannabis) detected, an increase from the previous five-year average of 58.4% (n=22).

In 2021, there were 272 hospitalised casualties from crashes involving a drug driver (representing approximately 3.5% of the total number of hospitalised casualties). Data from 2021 is used for hospitalisations as crashes are considered preliminary for up to 12 months and may still undergo revision after this. This is due to the time required for Queensland Police forensic crash unit investigations, Coroner's findings and data collection from other sources (such as drug, alcohol and toxicology reports).

It is also important to note that the true contribution of drugs to crashes in Queensland is difficult to accurately determine. This is because Queensland doesn't have compulsory drug testing following a crash, so actual rates of drug driving may be much higher. Further, records report only the presence of drugs, not their level of involvement in the crash.

3.2 Offence

The primary source of drug driving offence data in Queensland is from the roadside drug testing (RDT) program. Between 2015 and 2022, there were approximately 52,000 roadside tests conducted per year, with an average of 1 in 5 testing positive. Of these, approximately 60% had THC detected (see Figure 3).

It should be noted that as cocaine was added as a relevant drug on 7 July 2023, none of the below presence-based offence data includes cocaine.

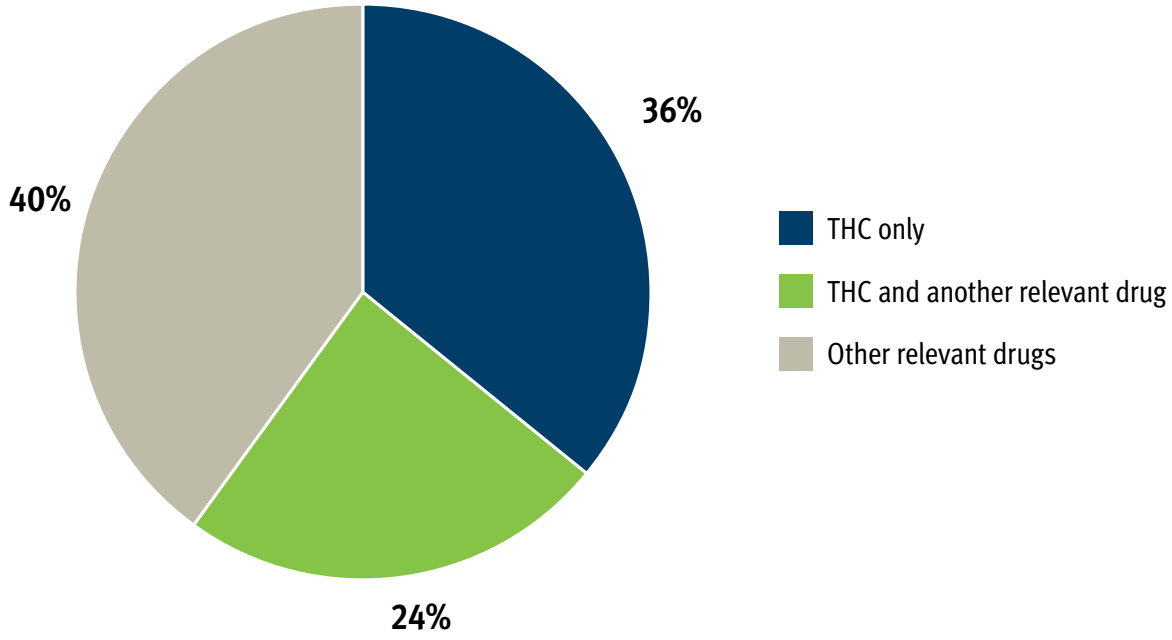

Figure 3: Proportion of drug driving occurrences where THC was detected in oral fluid, 2015 to 2022, Queensland

Further, between 2015 and 2022, an average of 686 drivers were charged with driving under the influence of drugs each year.

4. Crash risk

There is an extensive body of research literature that describes the increased crash risk associated with THC (the active ingredient in cannabis). Driving related impacts that may occur include slower reaction time, increased lane deviations, decreased car handling performance, impaired time and distance estimation, inability to maintain distance between vehicles and impaired sustained vigilance (Couper and Logan, 2014). Studies on crash risk in medicinal cannabis patients are less common and have less clear results (for example, Bosker et al, 2012).

5. What happens elsewhere?

There are differences between countries regarding how they manage drug driving enforcement. For instance, Australia employs RDT, a mass screening strategy to discourage individuals from taking drugs and driving. The focus is on deterring the behaviour by increasing the perceived likelihood of getting caught.

On the other hand, other jurisdictions like the United States, Canada and some European countries do not have mass screening and enforcement occurs after an incident (for example, following a crash). In general, these countries conduct significantly fewer roadside tests compared to Australian jurisdictions, and they lack the authority to randomly stop drivers for drug testing purposes.

The sections below provide information on different approaches to cannabis and driving.

Zero-tolerance

Like Queensland, all other Australian jurisdictions excluding Tasmania take a zero-tolerance approach to driving while THC (the active ingredient in cannabis) is detectable. Many other international jurisdictions such as some states in the United States, Spain, Iceland and Sweden also take this approach.

Thresholds

A number of jurisdictions worldwide have adopted or are moving towards setting limits in blood to align drug driving enforcement with drink driving. These include some states in the United States, Canada, New Zealand, and some European jurisdictions including Denmark, France and the Netherlands.

In some of these jurisdictions, multiple thresholds have been set to align with BAC levels (such as 0.02, 0.05 and/or 0.08), others have set a single threshold.

Currently, there is no scientific consensus on what a blood THC impairment level is. An additional challenge to implementing this approach in Queensland is that it requires collecting a blood specimen. This is not part of our mass screening program and requires an arrest. Collecting a blood specimen is also an invasive test. It requires the person to travel to a location for collection which adds additional time to the testing process, and uses more resources including health practitioners to collect the specimen.

No jurisdictions have set thresholds in saliva, and there is no clear link between levels of THC in saliva and degrees of impairment. This may partly be due to a lack of research as most international jurisdictions test for drugs using blood rather than saliva.

Medical defence

Another approach taken by some jurisdictions to manage cannabis and driving is to provide medical defence provisions for those who take cannabis containing THC in accordance with a valid prescription. The only Australian jurisdiction that does this is Tasmania, where they have a medical defence in place for any illicit drug that is prescribed, including THC. This applies only to the presence-based offence and a driver can still be charged with driving under the influence of drugs.

International jurisdictions that have medical defences include New Zealand, Norway, the United Kingdom, Ireland and Germany. In many of these countries the medical defence applies to various prescription drugs, including medicinal cannabis, and they have set limits in blood or oral fluid deemed to reflect impairment. Further, for a medical defence, the driver must not be impaired and must be using the prescribed medicine as directed. Ireland uses a statutory medical exemption certificate and in Norway they recommend the patient not drive for two weeks after starting treatment.

Impairment testing

In many countries, including some of those with threshold limits, drug driving enforcement relies on analysing blood samples and other impairment testing. Some tests used include a Standard Field Sobriety Test or a Drug Recognition Expert Evaluation. These tests involve an expert, such as a specially trained police officer or medical professional (making them resource intensive), observing, recording and assessing various behaviours and abilities of suspected drug drivers. These tests are subjective and may result in false positives and negatives.

They also take longer to complete roadside than an oral fluid test and were originally developed to detect alcohol, not other drugs.

Further research is required to develop technology that can be used to identify impairment in people that take drugs and drive.

6. Challenges

There are many challenges that require consideration when thinking about cannabis and driving. This section outlines the key issues.

How medicinal cannabis is prescribed

Most patients receiving medicinal cannabis are prescribed an unapproved product. This means that the product has not been tested by the Therapeutic Goods Administration (TGA) for quality, safety, efficacy or performance, and poses several challenges including that there is no standard dosage. Further, as medicinal cannabis products are generally not listed on the Pharmaceutical Benefits Scheme, they may be more expensive than illicit sources, which have no regulation at all.

Access to medicinal cannabis

In Australia, cannabis is prescribed for various medical reasons. The number of prescriptions issued has increased significantly in recent years and the most common health conditions reported are chronic pain, anxiety and sleep disorders. Comparatively, some international jurisdictions which have a medical exemption, such as Ireland and the United Kingdom, primarily or only prescribe cannabis for three conditions: epilepsy, nausea and vomiting caused by chemotherapy, and multiple sclerosis.

Impairment testing

Currently, there is no definitive and agreed upon method to measure impairment from cannabis, either in blood, oral fluid or by physical examination.

Variability

The effect of a given amount of THC (the active ingredient in cannabis) varies significantly both between and within individuals. This is impacted by many factors including how the cannabis is consumed, some diseases, combination with other medications and individual body characteristics.

This makes it especially challenging from a road safety perspective, as it is not possible to be certain of the effects of a given dose on any one individual. As identified by the Victorian Department of Justice and Community Safety (2021), it is not feasible to account for individual differences in the context of a mass screening drug driving program.

Perceived vs actual impairment

People who are impaired by THC are not necessarily able to assess their own impairment (Couper and Logan, 2014; Marcotte et al., 2022). This is a challenge because it indicates that a person may not be able to determine if they are safe to drive.

Comparison to alcohol and other prescription drugs

Cannabis and alcohol behave very differently in the body. Alcohol is much more predictable in the way it impairs and leaves the body, making it very challenging to set a limit for cannabis like the 0.05 BAC limit for alcohol.

Cannabis is also hard to compare to other prescription drugs, mostly due to its widespread use and availability as a recreational drug. Cannabis is also detected at higher rates in fatal crashes than any other prescription drug. This may be due to its widespread medicinal and recreational use, which cannot be separated in crash data or through laboratory analysis.

Discussion Questions

1. Queensland's drug driving laws currently take a zero-tolerance approach to drug driving, meaning that it is illegal to drive while a relevant drug, including THC, is present in your saliva or blood. It is also illegal to drive while under the influence of any drug. Prior to completing this survey, how aware were you of Queensland's drug driving laws?
2. How do Queensland's drug driving laws impact you?
3. Should Queensland change or retain its existing approach to drug driving?
4. Do you have any further comments or suggestions on cannabis and driving in Queensland?

7. How you can have your say

Everyone in the community is invited to share comments on cannabis and driving in Queensland.

Submissions can be made by:

- completing the online feedback form on the Queensland Government's Get Involved website: www.getinvolved.qld.gov.au.
- written submission to:
  Drug Driving Review Team
  Department of Transport and Main Roads
  PO Box 673 Fortitude Valley Qld 4006
  Email: roadsafety@tmr.qld.gov.au

8. Next steps in the consultation process

The results from this community consultation process will be analysed by the MAIC/University of the Sunshine Coast Road Safety Research Collaboration and used to help inform the Queensland Government's review of our drug driving laws.

9. Privacy

The Queensland Government is bound by the *Information Privacy Act 2009* when handling personal information. Your personal information will only be used for collating responses. It will not be provided to anyone without your consent unless a law requires it.

Find out more by reading our privacy statement.

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