

Australia's Drug-Driving Laws

In relation to the use of medicinal cannabis

AMCA, UIC & SCCAC

Planning day for the future of medicinal cannabis in Australia

Offices of Mills Oakley, Sydney, 27 July 2022

Dr Michael White

mawhite8@internode.on.net

Australia's *per se* drug-driving laws

- A drug-presence (*per se*) driving offence requires toxicological evidence of a proscribed *illegal* drug in a driver's body fluid
- The focus is on methamphetamine and cannabis; in oral fluid (OF)
- For cannabis, only the psychoactive ingredient, THC, is tested for
- In theory, there is zero tolerance for any detectable level of THC
- In practice, Australian Standard above-zero levels are used
- An offence does not require any evidence of impairment
- There is no exemption for cannabis when used medically

Australia's RDT programs

The *per se* drug-driving laws are enforced through roadside drug testing (RDT) programs:

1. The driver is pulled over by the police (at random or targeted)
2. A first OF screening test is conducted in the driver's car. If +ve ...
3. A second OF screening test is conducted in a booze bus or at a police station. If +ve ...
4. A portion of the second OF sample is sent to a toxicology laboratory for evidential analysis. If +ve ...
5. The driver charged with a *per se* drug-driving offence

Caveat in relation to research findings

- There is very little or no road-safety-relevant research on medicinal cannabis (MC), as distinct from cannabis in general
- So, the research discussed here relates to cannabis in general

Background on cannabis and road crashes

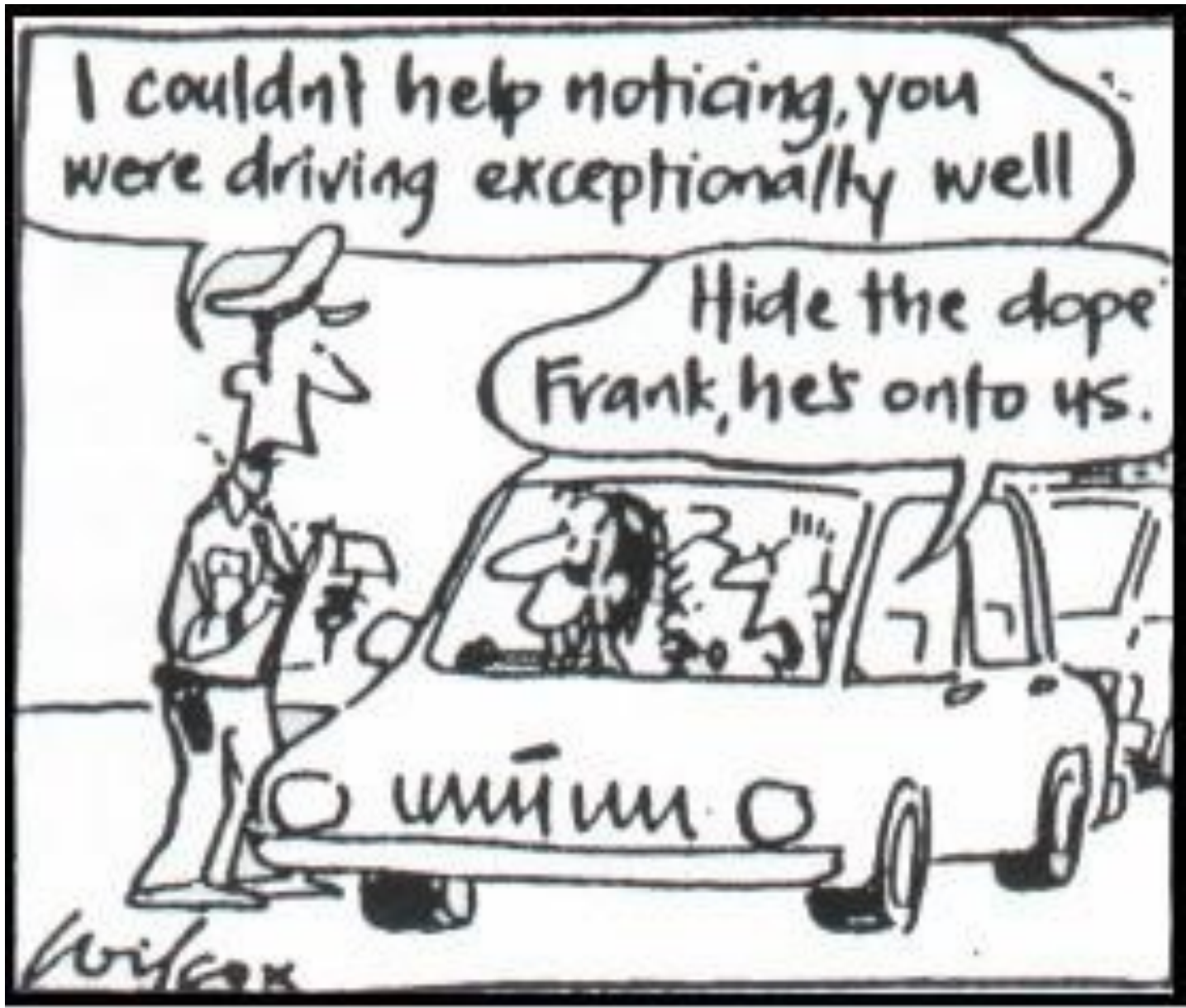
(White & Burns, 2021)

- There is no *conclusive* epidemiological (crash-based) evidence that the recent use of cannabis actually increases the risk of crashing
- However, a commonly accepted view is that the recent use of cannabis increases the risk of crashing by about 40%
- More technically, the accepted value of the cannabis-crash odds ratio (OR) is 1.40
- This cannabis-crash OR is less than for a BAC of 0.05 (OR = 2.00)
- And less than for travelling at 55 km/h in a 50 km/h zone (OR = 2.00)

Background on cannabis and impairment

(White & Burns, 2022)

- It is not easy to experimentally demonstrate *any* impairment from cannabis, either in the laboratory, or on the road
- When statistically-significant impairments *are* found, they can be inconsequential: Humans are over-engineered for safety, and small impairments can be within the safety margins
- Regular, moderate users of cannabis (including users of medicinal cannabis - MC) are unlikely to be demonstrably impaired
- According to a recent review by Simmons *et al.* (2022), where impairments are found, they are equivalent to those at a BAC of 0.05
- According to a recent study by Wickens *et al.* (2022), cannabis should be considered to be a *mood-altering* rather than an *impairing* drug; while alcohol has the opposite effects



Arguments by Perkins *et al.* (2021) for exemptions for users of MC

- Road-safety risks associated with MC are similar to, or lower than, the risks for numerous other potentially impairing prescription medicines
- The fact that MC patients are not exempt from presence-based offences derives from the historical status of cannabis as a prohibited drug with no legitimate medical application (which is no longer the case)
- Harms caused to MC users by the current drug-driving laws include:
 - Criminal sanctions when driving unimpaired while using MC as directed
 - Or, the forfeiting of car use and related mobility
 - Or, the forfeiting of required MC medication in order to drive legally
- There are exemptions for MC in comparable jurisdictions; and there are medical exemptions for methadone in Australia

Bills for exemptions from cannabis-presence driving offences for users of MC



- Fiona Patten. Victoria. Reason Party.
 - Road Safety Amendment (Medicinal Cannabis) Bill
 - Introduced 10 September 2019



- Tammy Franks. South Australia. Greens.
 - Road Traffic (Medicinal Cannabis) Amendment Bill
 - Introduced 3 February 2021



- Cate Faehrmann. New South Wales. Greens.
 - Road Transport Amendment (Medicinal Cannabis- Exemptions from Offences) Bill
 - Introduced 17 November 2021

Four arguments against the NSW Bill

- The following four arguments were contained in a submission from the NSW Government (2022) in opposition to the NSW Bill...
- These arguments were defended in the related Inquiry by:
 - Bernard Carlon – Transport NSW
 - Peter Dunphy – Transport NSW
 - Brett McFadden – NSW Police

First argument

- The NSW Government (2022) used words which imply that drug *prevalence* in crashes is equivalent to drug *causation* of those crashes:
 - “In numerical terms, this means that, of the 264 fatal crashes in NSW in 2020, THC was a **factor in** nearly 60 deaths” (p. 8).
 - “... THC continues to **feature significantly** in fatal crashes on NSW roads” (p. 14).
- But: “**factor in**” and “**feature significantly**” are weasel words ...
- *Caffeine* also “features significantly in fatal crashes”!
- So: When discussing exemptions for MC users, it is important to start from a common understanding of the *actual* crash risks (see Slide 3)
- And any discussion of the prevalence of THC in road crashes should be called out as irrelevant and disingenuous.

Second argument

- The NSW Government (2022) describes cannabis-related impairments in terms of *presence* (yes/no) rather than *likelihood* and *degree* (quantitative). The implication is that all impairments are equal, such that cannabis is as impairing as alcohol:
 - “THC *impairs* the skills required for driving ...” (p. 3).
 - “There is compelling evidence regarding the *impairing* effects of THC” (p. 16).
- Yes, but: How often? How much?
- So: When discussing exemptions for MC users, it is important to start from a common understanding of the likelihood and strength of impairment (see Slide 4). Don’t be afraid of quantitative discussions. They are OK!

Third argument

- The NSW Government (2022) claims that RDT is very effective:
 - “An evaluation of the Victorian RDT program, conducted by the Monash University Accident Research Centre (MUARC), found that ... roadside drug tests are effective and highly cost-beneficial, and are estimated to have saved a significant number of fatal and serious injury crashes per year” (p. 7).
 - “Australia’s pioneering approach to drug-driving is world leading, effective and efficient” (p. 16).
- Some MUARC researchers (Cameron *et al.*, 2022) claim that RDT has been remarkably successful against cannabis-caused crashes. That claim rests on the assumption that cannabis-caused crashes are very common.
- But, the assumption is *false*. Cannabis-caused crashes are rare. MUARC’s evaluation of RDT in Victoria is seriously flawed (White, 2022a & 2022b). In fact, there has never been a rigorous evaluation of RDT in Australia.

Fourth argument

- The NSW Government (2022) claims that:
 - “THC is used recreationally by a larger number of Victorians in comparison to other recreational drugs, and to other prescription drugs used recreationally, which likely explains its higher rate of involvement in road crashes” (p. 13).
- Here, to justify the continued discrimination against MC, the NSW Government argues that MC is different from other medical drugs
- But: It is untrue that *cannabis* causes more road crashes than *opioids* when used recreationally ...
- According to a consortium of drug-harm researchers, the use of *cannabis* caused **23** road-crash fatalities in Australia in 2015/16 (Whetton *et al.*, 2020a), while the illicit use of *opioids* caused **47** fatalities (Whetton *et al.*, 2020b; Larney *et al.*, 2020)

Two arguments against the Victorian Bill

(Medicinal Cannabis and Safe Driving Working Group, 2022)

- (1) “The research literature specifically on *medicinal* cannabis products containing THC and road safety risk is limited” (p. 4).
- Yes, but: One can assume that the risk from the *medicinal* use of cannabis is the same as, or lower than, from *recreational* use.
- (2) “The Victorian Institute of Forensic Medicine (VIFM) also noted that should any driver have a detectable THC level in their *blood* arising from cannabis use either *many hours or days prior*, impairment may be inferred” (p. 9).
- But: What absolute rubbish!

Two inappropriate responses

- (1) An above-zero cut-off concentration of THC in OF should be established for cannabis-presence driving offences that identifies impairment, but which MC users would not normally exceed
- But, there is no dose-response relationship between THC concentration in OF and impairment; so there can be no impairment-based scientific justification for an above-zero cut-off level of THC
- (2) The toxicological evidence of THC presence should be confirmed by a *behavioral* test of impairment for an offence to be committed
- But, no such test can account for large individual differences in sober performance levels

References

- Cameron, M., Newstead, S., Clark, B., & Thompson, L. (2022). Evaluation of an increase in roadside drug testing in Victoria based on models of the crash effects of random and targeted roadside tests. *Journal of Safety Research*, 33 (2), 17-32.
- Larney, S., Tran, L. T., Leung, J., Santo, T., *et al.* (2020). All-cause and cause-specific mortality among people using extramedical opioids: A systematic review and meta-analysis. *JAMA Psychiatry*, 77 (5), 493-502.
- Medicinal Cannabis and Safe Driving Working Group. (2022). *Assisting medicinal cannabis patients to drive safely*. Melbourne, Victoria, Australia: Department of Justice and Community Safety (DJCS) of the Victorian Government.
- New South Wales Government. (2022). Submission Number 105 to the Inquiry into Road Transport Amendment (Medicinal Cannabis Exemptions from Offences) Bill 2021.
- Perkins, D., Brophy, H., McGregor, I. S., *et al.* (2021). Medicinal cannabis and driving: The intersection of health and road safety policy. *International Journal of Drug Policy*, 97, 103307.
- Simmons, S., Caird, J. K., Sterzer, F., & Asbridge, M. (2022). The effects of cannabis and alcohol on driving performance and driver behaviour: A systematic review and meta-analysis. *Addiction*, 117, 1843-1856.
- Whetton, S., Tait, R.J., Chrzanowska, A., *et al.* (2020a). *Quantifying the social costs of cannabis use to Australia in 2015/16*. Perth, Western Australia: National Drug Research Institute (NDRI), Curtin University.

Continued

- Whetton, S., Tait, R.J., Chrzanowska, A., *et al.* (2020b). *Quantifying the social costs of pharmaceutical opioid misuse & illicit opioid use to Australia in 2015/16*. Perth, Western Australia: National Drug Research Institute (NDRI), Curtin University.
- White, M. (2022a). *Evaluation of roadside drug testing in Victoria*. Supplementary Submission Number 49b to the Inquiry into Road Transport Amendment (Medicinal Cannabis Exemptions from Offences) Bill 2021.
- White, M. (2022b). *Comparison of Cameron et al. (2022) with Zahra et al. (2020)*. Briefing paper available from the author.
- White, M. A., & Burns, N. R. (2021). The risk of being culpable for or involved in a road crash after using cannabis: A systematic review and meta-analyses. *Drug Science, Policy and Law*, 7, 1-20.
- White, M. A., & Burns, N. R. (2022). How to read a paper on the short-term impairing effects of cannabis: A selective and critical review of the literature. *Drug Science, Policy and Law*, Accepted for publication.
- Wickens, C.M., Wright, M., Mann, R. E., *et al.* (2022). Separate and combined effects of alcohol and cannabis on mood, subjective experience, cognition and psychomotor performance: A randomized trial. *Progress in Neuro-psychopharmacology & Biological Psychiatry*, 118, 110570.