CANNABIS — LAW REFORM

Motion

HON SOPHIA MOERMOND (South West) [1.05 pm]: I move —

(1) That this house welcomes the Cook government's commitment to establish a working group to investigate sensible changes to our driving laws that would allow patients prescribed medicinal cannabis to drive if not impaired and urges the working group to consider the establishment of a complete defence to the presence of THC in a driver's oral fluid, blood or urine in circumstances whereby —

(a) the driver has a valid doctor's prescription for a medicine containing THC;

(b) the offence does not involve dangerous or reckless driving; and

(c) an officer has not established driver impairment by another means.

(2) This house further calls upon the government to set a reporting date for the working group, such that legislative changes can be debated ahead of the next election.

I am pleased to note that the government has adopted most of the recommendations of the report of the Select Committee into Cannabis and Hemp, with three of the recommendations supported, six recommendations supported in principle, two recommendations noted, one recommendation partially supported and, unfortunately, two recommendations not supported. Today I will focus on recommendation 8, which states —

> The Western Australian government amend the *Road Traffic Act 1974* and *Road Traffic (Drug Driving) Regulations 2007* to introduce a defence for patients using medicinal cannabis as prescribed who are not:
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> - driving whilst impaired; or
> - under the influence of alcohol.

The report found that the inclusion of tetrahydrocannabinol as a prescribed illicit drug in the Road Traffic (Drug Driving) Regulations 2007 predates the legalisation of medicinal cannabis, and that current roadside drug testing for THC does not adequately assess the actual or likely risk a driver may pose to themselves or others on the road. Current roadside testing for cannabis sits at five micrograms, which is an incredibly sensitive test. This would undoubtedly prove presence but does not necessarily prove impairment. Other jurisdictions in which THC is used medicinally, and where people can get a medical exemption for it, test at 15 to 20 micrograms in a saliva swab. Those tests are less sensitive and might be more useful in deciding impairment separate from the THC medication the person is on.

Although it should be obvious, no-one in the Legalise Cannabis Parties in Australia wants impaired drivers to be on the road. We want a system that ensures the safety of everyone, but we also want a system that is fair to those on medicinal cannabis. Currently, people who are medicated are being discriminated against, especially when those who use other medications that may cause impairment are allowed to drive. Plenty of medications can cause an altered state, including over-the-counter medications like Phenergan. That is often forgotten about. Phenergan can be used to induce sleep; it is a hypnotic, because it crosses the blood–brain barrier. People will happily use that medication for allergies, particularly hay fever and the like, but it can alter their state. The report also found that a medical defence for unimpaired drivers who are detected with prescribed medicinal cannabis in their system is available in Tasmania and is currently before the Parliament in Victoria, providing a point of reference for comparable legislative changes that may be suitable for Western Australia.

The WA government's response to the report included a commitment to establish a medicinal cannabis and safe driving working group to consider reasonable amendments to the Road Traffic Act 1974 and the Road Traffic (Drug Driving) Regulations 2007 that would allow a medical defence for patients who use medicinal cannabis as prescribed and who do not drive whilst impaired, thus ensuring the safety of all Western Australian road users. The WA government also indicated that the working group should include representatives from WA police, the Department of Transport, the Road Safety Commission, the Department of Health and medical practitioners. We have so far suggested three suitable candidates—one is an adjunct professor for accident research and road safety who has specialised in driver behaviour for the last 20 years, and the other two are doctors who prescribe cannabis for their patients and have been doing so for quite some time.

There has been a worldwide renaissance in the use of cannabis for medical purposes for a range of conditions. Up to 150 conditions have been noted specifically, but we are looking at chronic pain; muscle spasticity, for instance in multiple sclerosis; chemotherapy-induced nausea and vomiting; palliative care; and severe forms of childhood epilepsy and epilepsy. This mainstreaming of cannabis medicine shows a need for regulatory change. Otherwise, we

will have a discriminatory system that will specifically target people who have difficult-to-treat medical conditions. A regulatory framework allowing legal access to medicinal cannabis products has operated in Australia since November 2016 through the special access scheme pathway. This enables prescribers to apply to the Therapeutic Goods Administration for approval to prescribe a product to an individual who is suffering from a specific indication. According to the federal Department of Health, between July 2016 and June 2023, a total of 797 218 patients had been prescribed medicinal cannabis in Australia. I have not come across any data that shows an increase in accidents during that time. I feel it is quite safe to state that some of those people who have been prescribed cannabis are driving and are not necessarily reducing safety on our roads. However, in all Australian states, if a person is found to have drugs in their system, including cannabis, when driving or in charge of a vehicle, they will potentially infringe the law. In most Australian states, it is not significant whether a person was prescribed medicinal cannabis or obtained the cannabis from the black market. It is also not noted whether the person was impaired by the substance or the drug affected their ability to operate a vehicle in any way. For our purposes today, I note that the distinction between medicinal use, which is entirely legal, and black market cannabis, which is not legal, is important in ending discrimination.

It is useful to note that people are allowed to drive without restriction when taking cannabidiol-only cannabis products. In Tasmania, it is unlawful to drive under the influence of tetrahydrocannabinol unless it is administered in accordance with the Poisons Act 1971. In that state, a person is not permitted to drive a vehicle to the extent that they are incapable of having proper control of the vehicle—for example, if they are impaired. If there is no impairment but they test positive to THC, they can use that as their defence. Penalties for being caught for drug driving in our state are not insignificant. Under the charge of driving with specific drugs in oral fluid, the penalty for a first offence is a fine of $1 250 and the loss of three demerit points. Second and subsequent offences carry penalties of fines ranging from $1 250 to $2 000 and a minimum six-month licence disqualification.

Imagine that a person who is taking cannabis medicine for nausea during their chemo treatment is pulled over when driving to hospital. They are not impaired, but they are also not nauseous, which is good! However, they will end up having their licence taken away from them. This would be a shame because it would make it more difficult for them to access further treatments in the future. The more serious offence of drug-impaired driving or driving under the influence of drugs applies to drivers found to be so impaired by either prescription or illicit drugs that they are not capable of proper control of a vehicle. Penalties range from fines of $1 750 to $7 500 and licence disqualification from 10 months to life. I think that is fair. No-one should be behind a steering wheel if they are impaired. In the event of a car accident, the insurer may invalidate the driver's right to coverage if the driver is charged with driving under the influence of drugs, even if impairment has not been noted. Once again, thinking of the cancer patient who is going to hospital for chemotherapy and is not impaired but is in an accident, that would be quite discriminatory against them.

Hon Dr Brian Walker and I are here today to advocate for people who have been prescribed medicinal cannabis. They are not criminals and they should not be penalised as such with negative effects on their life. Their capacity to work and take care of their loved ones should not be impeded by their use of medicinal cannabis. We acknowledge the difficulties associated with regulating this issue, because both native cannabinoids and metabolised cannabinoids show a long positivity at low concentration in biological fluids, especially in the case of regular or chronic consumption. It is known that THC can be found up to three months after use as it can be stored in body fat. It can be found during hair testing as well. Those things have nothing whatsoever to do with impairment. It also has been noted that people can test positive to cannabis—to THC—just by being exposed to second-hand smoke. If someone was at a wild party and inhaled some of that smoke, as happened when people used to smoke normal cigarettes, that could also lead to a positive test and would not in itself indicate that the person was using or was impaired. Testing for such low dosages—the five microgram mark—does not show impairment either. They are obviously very sensitive tests. The more sensitive a test is, the more expensive it tends to be as well. If the WA police used less sensitive tests that moved away from proving presence and towards proving impairment, that would actually reduce the cost of testing. A recent study based on the Australian situation and published in 2021 showed that the road safety risk associated with medicinal cannabis appears to be similar to or lower than numerous other potentially impairing prescription medications. Methadone was one of the drugs it was tested against.

The application of presence-based offences to medicinal cannabis patients appears to derive from the historical status of cannabis as a prohibited drug with no legitimate medical application. This approach is now resulting in patient harms, including criminal sanctions when not impaired and using the drug as directed by their doctor, or the forfeiting of car use and related mobility. Others who need to drive are excluded from accessing needed medications and associated therapeutic benefits. Medical exemptions for medicinal cannabis in comparable jurisdictions and other drugs included in presence offences in Australia demonstrate a feasible alternative approach. The study concluded that in medical-only access models, there is little evidence to justify the differential treatment of medicinal cannabis patients compared with those taking other prescription drugs with potentially impairing effects.

I acknowledge that the literature on cannabis use and risks to road safety can suggest a low to moderate increase in crash risk compared with driving sober and that a small fraction of total crashes could be avoided by eliminating cannabis-impaired driving. The impact of cannabis-impaired driving is minor though, relative to that of alcohol-impaired driving. In the tests being done, it is not distinguished whether people are also on alcohol or other drugs. When they are tested, the presence of THC is noted and is then seen as an issue, but the combination of THC with other substances, including alcohol, is not specifically being studied here.

Quite a few studies have been undertaken in the Netherlands. One of the ways they measure impairment is in-lane weaving. If you have a new car, the car will beep if you get too close to the lines in the road. In-lane weaving is one indicator of impairment. Four groups of people were tested. One group got stoned, another got stoned and took alcohol, one group just drank alcohol and the final group was sober. They found that the group who had alcohol and THC in their system displayed the most amount of in-lane weaving. That started with a blood alcohol level of 0.02 per cent. It was actually the combination of cannabis and alcohol that caused the greatest impairment. Going forward, I would like to see that acknowledged and when we have patients on medicinal cannabis, they should be told not to drink, especially if they use some of the medications early in the day. I thought it was quite interesting that the combination of cannabis and alcohol with a blood alcohol level of 0.02 per cent created greater in-lane weaving than people with a blood alcohol level of 0.05. I do not think that is in the public consciousness yet. It will need to be discussed and the public needs to be educated about it.

In this motion, we are advocating for medicinal cannabis users who are not impaired. We request that regulation policies regarding the legality of driving by medicinal cannabis users adopt a focus on the cannabinoid's concentration above a defined threshold or the presence of a demonstrated state of cognitive alteration. We used to have sobriety tests for people before we had the breath tests that the police now use for blood alcohol level. Those sobriety tests included things like walking in a straight line and being able to touch your nose. They were simple tasks that require a certain level of coordination. Moving forward, it may well be that a combination of blood, saliva or urine testing is used with an impairment test, which we are seeing in other countries as well. Some of the impairment tests are becoming more and more popular. One is called DRUID. I have spoken about it before in the chamber. It is a fairly accurate test to look at task changing and the speed of task changing, listening to or reading instructions, and someone's balance. Combining these with a test like a saliva test will give a fairly accurate idea of whether someone is impaired. If they are, they should absolutely not be on the road.

There is an issue with tests for blood or saliva in that some people have greater tolerance. We have noted this in places like Nimbin, for instance, where there are quite a few hippies. They have great tolerance. They smoke on a regular basis but they do not seem to be impaired. However, for new patients who first start using it, they need to figure out what dose is suitable. That may create more impairment initially, but certainly if they are working with a doctor, they can get their dose right and, in the end, they should not be impaired on the road.

Another thing we need to look at is making it simple for police to carry out roadside testing. Would the easiest way to do that be a blood test, oral fluid or through breath-testing like we do with alcohol, or do we need to look at urine testing? Obviously urine and blood tests are much more invasive and require more equipment. For urine tests, obviously you need to have some urine in your bladder to be able to test it. The tests need to be quick and relatively cheap. A university student who chose cannabis testing for impairment did a lot of research and came up with the conclusion that a combination of testing—impairment and presence testing—is probably the way forward.

In the end, we hope that our motion is seen by the government. We request that this house calls upon the government to set a reporting date for the working group such that legislative changes can be debated ahead of the next election.

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.27 pm]: I would like to thank the honourable member for bringing this motion before the house. As she indicated, on 30 March this year the select committee tabled its report, *Medicinal cannabis and industrial hemp in Western Australia*. The committee made 16 recommendations, of which the government supported 11, partially supported one, noted two and did not support two. The motion before us is in two parts, so we find ourselves in a difficult position. We would like to say thank you for welcoming the establishment of the working group, but we find ourselves in a position where we cannot support the whole motion because we are not in a position to commit to a finite date to conclude that working group's work and we cannot commit to bringing legislation before the house for it to be debated before a specified date either. Although we are sympathetic to what the member is trying to achieve in setting a time line, we are just not in a position to agree to it. We understand entirely why the member would want one and I will make some comment on the work that the minister is doing.

The specific paragraph in the government response that deals with part (1) of the motion reads —

> The WA Government will establish a … Working Group to consider reasonable amendments to the Road Traffic Act 1974 and … Regulations … which would allow a defence for patients using medicinal

> cannabis as prescribed who are not driving whilst impaired, while ensuring the safety of all Western Australian road users.

Further to that, the government has committed to establishing a working group that could include membership from Health, WA Police, Road Safety, the Department of Transport and medical experts. The minister notes, as the honourable member raised, that Hon Dr Brian Walker sent a list of recommended medical experts to the government, which has been provided to the Minister for Health. We thank him for doing that. We could support part (1) of the motion but part (2) causes us some difficulty. It effectively calls for a bill to be put before the house and be debated by a finite date. Given that we are early in the process of establishing the working group, we are not in a position to agree to that. I can advise the house that the Department of Health has commenced the process of establishing the medicinal cannabis and safe driving working group. The membership has not yet been finalised and some internal administrative arrangements need to be made so the working group can be set up and start to do the work it needs to do. The Minister for Health will give consideration in due course as to when she asks the working group to report back to her. Until that occurs, we are not in a position to support the motion before us because of the second part.

I can update the house on the 11 other recommendations made by the Select Committee into Cannabis and Hemp that we supported either in full or in principle. Considerable work is already in process to implement those recommendations. The government supported the recommendation to make the prescription of medicinal cannabis less restrictive for medical practitioners, including reducing the administrative burden and improving health consumer access. That work is underway and much of it relates to the current requirement of the Medicines and Poisons Regulations 2016. Comprehensive consultation is complete on the regulatory amendments that will remove the need for prescribers to always gain authorisation from the department, allow interstate doctors to prescribe, and relax maximum treatment dose limits. The resulting impact statement from this consultation has now been published by the Department of Health online and, if I may, I will table a hard copy of that.

[See paper 2697.]

Hon SUE ELLERY: Drafting activities for these amendments has commenced and it is anticipated that the updated regulations will be delivered in 2024. Those changes will work alongside the ScriptCheckWA real-time prescription monitoring system that was successfully implemented by the Department of Health earlier this year. The department has also commenced targeted discussions with specialist health practitioner groups on detailed aspects of the schedule 8 medicines prescribing code, which will support the regulatory amendments. Following delivery of the updated regulations, the department intends to commence work on updating and enhancing medicinal cannabis advisory materials for health professionals and health consumers. Work on assessing the feasibility of a medicinal cannabis advisory service is currently in the planning stage.

Again, I would like to thank the chair, the members of the select committee and the member today for bringing the motion before the house. The minister has advised me that we intend to implement the changes we have agreed to already within a reasonable time frame and work is well underway on many of those recommendations.

HON DR BRIAN WALKER (East Metropolitan) [1.32 pm]: Thank you, President, and thank you also Leader of the House. I was delighted to hear that contribution and so thankful that action has been taken. I have to criticise the Leader of the House on one point. I now have to rewrite my entire speech that I was going to give, so I will have to do this on the fly. I want to acknowledge that all of us in this house generally would agree with the principle of this motion and share our point of view that no-one should be driving while impaired—absolutely no-one. As a practising general practitioner, I often have to recommend whether somebody's licence should be retained. Once I have done all the tests, I ask myself whether I would be happy for this driver to be on the road if my wife and children were driving towards them from the opposite direction. If my gut feeling is no, I have to reconsider my recommendation and send that person on for special testing because it is paramount that if my wife and children need to be kept safe, so too does every single member of this state and nation. Driving while impaired for whatever reason is simply unacceptable.

We in the Legalise Cannabis WA Party welcome the government's commitment to creating this working group and we thank it very much for having listened to the select committee. I must congratulate all the members of that committee for doing a sterling job. I really do appreciate that. I agree very much with the Leader of the House who commented on the last part of the motion —

> This house further calls upon the government to set a reporting date for the working group, such that legislative changes can be debated ahead of the next election.

I would like very much to put some personal faces to this because this is talking about people in all our communities. Each one of us in this room will have people in our electorates who will embody one of these examples that I am going to give. The names have been altered but the facts are there—you see, I am a practising doctor.

Adam contacted my office about six months ago. He was receiving toxic cancer treatment and had debilitating nausea. None of the medication that we prescribed—not even Ondansetron—worked. Cannabis, however, provided him with relief from that debilitating nausea. Of course, the police then conducted a random roadside drug test on him for THC and now this business owner is faced with losing his licence and therefore his business. Adam's other option was to refuse the lifesaving medication, cannabis, and suffer the debilitating effects of the treatment that would have left him unfit for work with his employees losing their job because the business would collapse. Can members imagine losing their livelihood because they tested positive for a drug that I had prescribed? One would have to deny themselves treatment and suffer quite horribly because they did not want to let themselves or their employees down. It is unacceptable. When I spoke to Adam he was distraught. Losing the licence might perhaps cost him his business, but what about his family? While he is receiving lifesaving treatment with those horrible side effects, they are facing the loss of their husband and father and, on top of that, they risk losing their livelihood or their accommodation. Although Adam was found to have THC in his system, not a single speck of evidence suggested that he was driving while impaired. A perfectly normal, law-abiding, unimpaired citizen is facing catastrophic loss because of a law that we have created—an unscientific law, an inaccurate law, a lie of a law. That is unacceptable. We cannot tolerate even for one second to have a lie enshrined in law.

Carol, a teacher, suffered from back pain. She had been lifting and bending over small children and there was an accident at school. Let me list the drugs that she is taking just to get through the day right now: tapentadol, a synthetic opioid, 200 mg twice a day; quick release tapentadol, 50 milligrams as needed; amitriptyline, a fairly major anti-depressant but also useful for pain but makes the patient sleepy, 10 milligrams in the morning and 25 milligrams at night to help her sleep; and oxycodone, an opiate, for breakthrough pain. If a person is taking all those drugs and teaching children, they are going to be impaired while teaching, let alone driving. None of those drugs comes with a ban on driving. The obligation, if required, is that a person should not drive if they feel impaired. The onus is on the person who is taking the drugs. If they do not think that they can drive, they should not drive, but there is no ban. It is up to the person to decide. The side effects of those drugs are well known and documented: drowsiness, reduced cognitive ability, blurred vision, confusion and a loss of concentration. I can assure all members from my personal clinical experience and direct observations that that is correct for each of those individual drugs. Can members imagine what the accumulative effect of putting these drugs together would have on a person's cognition? The effect is much worse, and yet the opiates that Carol is now taking are habituating, addictive and potentially fatal, even when taken alone. How much worse is it when they are taken in combination, especially with alcohol and benzodiazepines? Yet, such patients are permitted to drive and do not get tested either for impairment or for presence. What is the legal reason for such discrimination against a medicine such as cannabis, which is both proven to be effective and also, be it clearly said, much safer?

No-one here argues for the right to drive when impaired—no-one—yet it appears that the law currently permits people to drive when impaired. Let me say that again: the law, as it stands today, currently allows people who are impaired to continue driving. We in the Legalise Cannabis WA Party do not support this at all. We believe that no-one should be driving while impaired. We support recognising that driving with THC in measurable quantities is not correlated with evidence of impairment, so we advocate not for a test of presence but for an accurate measure of impairment, which can test for the impairment effects of driving while sleep deprived or when a person's mood is altered for whatever reason, such as stress or anxiety. These impairments are measurable and have an effect on our driving ability. How many fatal accidents occur because people drive while impaired by other substances or situations? We would like the police to possess adequate testing for impairment to keep our roads safe—to keep my wife and children safe, if I want to be very personal—and all of us here would agree.

Carol came to me asking whether medicinal cannabis might be a workable alternative for the basket load of highly addictive opioids she was taking, and it might. In recent years, the Neurosciences Institute in Seattle has done a lot of promising work in this area and concluded that cannabis has been shown to be effective in treating back pain and has an acceptable side effect profile. She would be much safer using cannabis than the medications she is taking now. She would be much more cognitively aware, able to teach her students better, able to drive better and able to function better in her daily life. Carol is a teacher and needs a car to get to her work, and she must not lose her licence. In other words, because of the laws that we created and currently support, she has to make a choice between worse health and suffering or driving illegally. I am permitted to prescribe the medication for her, but she is not permitted to drive with it in her system. I regularly see this situation in my clinic; I see this every day I am prescribing. This cannot be allowed to continue.

The last point in the motion calls for a reporting date. I appreciate the Leader of the House's words; they are very correct. She is unable to guarantee to put down a firm date. I am asking for a prick of urgency so this is not left to linger while other things—perhaps more important things—are being done. People are suffering acutely right now. Their health is suffering because we are not taking the urgent action needed. I hope that this house will agree that we should take note and work very hard to speed up the process because in my electorate and among my patients, and I am sure among all the people in members' electorates, this story will be repeated again and again.

David was in a car accident, but he was not at fault. Someone else caused the accident; however, all involved were given roadside tests, including tests for alcohol, and he tested positive for THC. He is taking cannabis to manage his post-traumatic stress disorder, a debilitating mental illness. With cannabis, he is able to function as a normal human being. When he got to court, he found that he had not been charged with driving while impaired by drugs, which is section 64AB of the Road Traffic Act 1974. He was charged under section 64AC(1), which makes it illegal to drive with a prescribed illicit substance in a person's system, whether they are impaired or not. This is very interesting because it appears that Western Australia Police Force clearly knows that the mere presence of THC does not imply impairment. It appears that legislators also knew that full well because they included these catch-all sections. The police and the lawmakers who signed off on these sections—that is us—were aware that impairment is simply not present in many instances. The police fallback is, therefore, the discriminatory and scientifically debunked fear of cannabis. The fallback is the argument that THC presence alone is equivalent to impairment. The fault-ridden, inaccurate and unscientific law states that THC presence equates with impairment and, therefore, police are obliged to obey, against their better judgement.

David asked WAPOL for advice in the run-up to his trial. Police told him that he should buy his own oral drug-testing kits for five micrograms. Members might have heard about them. They are very sensitive and test people who are absolutely not impaired. Even so, he could not get his hands on oral drug-testing kits, only on urine kits, which are used when people go on site and measure positive readings for cannabis six to 12 weeks later. How ridiculous is that? We will talk about people's issues with being unable to work FIFO with cannabis in their system. That perfectly correct advice from the police was completely wrong and unsuitable. His own GP, the expert in this, gave other advice. The GP said, "After four hours, you should be quite fine and unimpaired." David, being very safe and conservative, waited eight hours before driving. That is a very safe window, and most conservative estimates put that as being safe, scientific and medically proven.

A lack of scientific rigour, a lack of evidence and a lack of a verifiable measure of impairment have resulted in this lie being crafted to sit on the statute books, so David was caught in the application of a faulty law. It is a well-meaning law; it is designed to help reduce the carnage on our roads, but it is inadequate for the purpose. If we take no action now or delay action, we will be responsible for continuing a process of manifest injustice. We should not do that. David stuck to his guns and pleaded not guilty on the grounds that he was adhering to the advice he received from his doctor. There was a lot of to and fro, and his mental health suffered. He was anguished because the unjust law was being applied and he could lose his insurance support, which would cost him money. He did not have any money and was living at barely survivable levels as it was. There was a fair bit of back-and-forth between his lawyer and WAPOL, and then the police sensibly decided to drop the charge and issue him with a simple warning. That is good common sense and good policing, but does it mean that the law is working as it was intended? I do not think we can argue that when we clearly have an issue with section 64AC(1).

Clearly, the planned working group has much to do. We need to serve the people of the state. We need to ensure that the laws we pass are correct and serve the people as we intend. This is our job and our duty. If we do not do that, we fail in our duty. We currently have a law on our statute books that is neither true nor serving the people.

As in Adam's, Carol's and David's experiences, we have current damage to the physical, mental, social and financial health of law-abiding citizens who are properly using a prescribed drug. So far, we have been happy with that; if we were not happy with that, we would make changes urgently. We would make them now, and we would not hang around. We would want to do something this very moment.

I have established that the foundations of wellness as we measure them—physical, mental, social and financial—are being harmed by adhering to an outdated and past-its-sell-by-date law, which does not serve the people and is factually a lie. I could call it incorrect, but it is a lie.

I am asking, please: although I appreciate that this house will not support the excellent motion of my colleague, and I appreciate the reasons, could I—in the back chambers, behind the chair and amongst ourselves—encourage all of us to put pressure on the system and on the people who have a hand in this to move forward with more urgency than is currently perceived. I must say that I thank the government for listening to the select committee. I thank the government for the work it has already begun; this is magnificent and beautiful to hear. I was delighted to hear that, but we must have a little bit more urgency because people are suffering right now. Members' constituents are suffering right now, and that cannot be tolerated. We have the power to change this. Adam, Carol and David and thousands of others are waiting on us to do this. Societal peace and safety is ultimately in our hands, is it not? The wellbeing of the community is in our hands. We must stand up to the challenge and take urgent action now. I seriously ask the government—after this is over, in our private time, having a cup of coffee or tea, or eating with our colleagues across the chamber—let us urge each other to take more urgent action because this is needed. I thank the government for its agreement to create this working group. Let us set an urgent time frame and rectify at least this small aspect of legislation.

HON LORNA HARPER (East Metropolitan) [1.49 pm]: As a person who was part of the Select Committee into Cannabis and Hemp process, I thought it would be appropriate to get up to say a few words. I let the member know that I will not be supporting the motion.

As usual when following Hon Dr Brian Walker, there are so many words to respond to! His enthusiasm for the benefits of medical cannabis can be seen all throughout the committee's considerations. However, one of the undeniable facts was that everywhere we went, nobody had the answer for the issue of someone driving with medical cannabis in their system. It is a very complex issue that needs time and a lot of consideration before we come up with a solution. Yes, the government has agreed to the committee's recommendations, and a group is working towards their implementation. We need to give this group time to consider this because, as the member said, it is a safety issue. Believe me, when one little can of worms about medicinal cannabis is opened, about 50 other things pop up. There is an issue.

This working group is looking at medicinal cannabis and driving with impairment. Hon Dr Brian Walker talked a lot about driving on opiates et cetera. I understand that he feels there is a link; however, it is a completely different subject. It is not what this working group is going to look at. Moving forward, we need to be very careful that whilst looking at the impairment to driving due to medicinal cannabis, we do not open up the possibility of anything else.

The government already has a group up and working and is moving forward. A lot of recommendations in the select committee report have been agreed to. However, there is no easy and quick answer. We need to take our time and be considerate. Whether it is 2024 or 2025, we need to take time to ensure that whatever we come up with is endorsed by medical professionals, the police force, the judiciary et cetera. We need to all come together to come up with a working law.

Does it suck for these people? Yes, it does. It is upsetting. However, until that time, it is still illegal for somebody to drive with tetrahydrocannabinol in their system. That is the current law. The government has agreed that it needs to be looked at, but, again, it will not be a quick process. Although the member has raised this again, and I am sure he will raise it again and again, we must take our time to make sure that we do it right. That is all I have to say.

HON MARTIN ALDRIDGE (Agricultural) [1.52 pm]: I thank Hon Sophia Moermond for bringing the motion to the house, as well as the Select Committee into Cannabis and Hemp, which initially brought this matter, among many others, to the attention of the house in March this year. I think this exchange so far has been very useful. The select committee report and the conversation today has certainly brought this issue to the fore in my mind, and I think some compelling arguments have been made. I think it is fair to say that as jurisdictions normalise the medicinal use of cannabis, issues like this will arise. The regulatory arrangements in Western Australia and other jurisdictions are such that if someone is going to seek a prescription and take a drug with THC in it, they will, in effect, have to give up their opportunity to drive because to do so would be unlawful, as illustrated quite well to the house just now by Hon Lorna Harper.

It is not just about driving a motor vehicle. The Road Traffic Act applies to e-rideables, motorised mobility scooters, motorised wheelchairs, motorcycles, quad bikes, tractors and agricultural vehicles. Bicycles are not listed. My understanding is that the Road Traffic Act also applies to bicycles, but it is not listed, so I am not exactly clear —

Hon Dan Caddy: What about horses?

Hon MARTIN ALDRIDGE: Hon Dan Caddy has also raised the issue of horses, and, indeed, any other animals that someone might like to ride on a road. On that point, the Road Traffic Act is not just applicable to roads. It is also applicable to path, tracks, car parks and any other place that the public can access. The application of the Road Traffic Act is quite broad and it should not be interpreted as applying just to the driving of a motor vehicle on public roads.

As the wait-a-while state, we usually have the benefit of learning how every other jurisdiction within Australia, and indeed internationally, has addressed an issue and then we generally cherrypick the best response and implement it. Looking at both the report from the select committee and contributions today, including that just now by Hon Lorna Harper, it is obvious that this is an emerging space. We are not the only ones seeking to address it. I will speak about that a little further on in my contribution this afternoon.

As members would be aware, cannabis-based medicinal products have been lawful within Australian jurisdictions, including Western Australia, since 2016 following changes to various state and commonwealth regulatory frameworks. According to the Therapeutic Goods Administration, since 2017, there have been 22 000 prescriptions for medicinal cannabis in WA and more than 423 000 Australia-wide. Prescriptions in Western Australia amounted to 6 600 in 2021, 6 000 in 2022 and 3 400 in 2023 to date. This needs to be put into some context. According to the pharmaceutical benefits scheme, in 2021, around 14 million prescriptions were dispensed for opioids in Australia,

and approximately 5.2 million for benzodiazepines. I think that goes to Hon Dr Brian Walker's point about the medical defence that exists in the Road Traffic Act for other prescribed medicines.

As I stated, the Select Committee into Cannabis and Hemp released its report in March that outlined a number of barriers, one of which was obviously the driving laws the issue in focus in today's motion. Division 2 of the RTA deals with alcohol and drug-related offences while driving a vehicle and section 64AB refers to driving while impaired by drug. Section 64AB(1) states —

> A person who drives or attempts to drive a motor vehicle while impaired by drugs commits an offence … and the offender may be arrested without warrant.

Section 64AB(5) states —

> The accused may be convicted of an offence against this section if the prosecutor proves that —
>
> (a) the accused drove or attempted to drive a motor vehicle; and
>
> (b) one or more drugs were present in the accused's body at the time of that driving or attempted driving; and
>
> (c) the conduct, condition or appearance of the accused at or after the time of that driving or attempted driving, or during a driver assessment, was consistent with conduct, a condition or an appearance associated with a person who has consumed or used that drug or those drugs; and
>
> (d) the conduct or condition associated with a person who has consumed or used that drug or those drugs would be inconsistent with the person being capable of having proper control of a motor vehicle.

It is also important to note section 64AB(8), which states —

> In any proceeding for an offence against this section it is a defence for the accused to prove in respect of the drug, or each drug, referred to in subsection (5) —
>
> (a) that the drug was —
>
> (i) taken pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or
>
> (ii) administered by a medical practitioner, nurse practitioner or dentist, for therapeutic purposes;

The Road Traffic Act establishes an offence for driving while impaired by a drug and a defence for driving if that drug is prescribed by a medical practitioner. The RTA also defines that a prescribed illicit drug means "a drug that is declared by the regulations to be a prescribed illicit drug". The Road Traffic (Drug Driving) Regulations 2007, which I note were established some 10 years before medicinal cannabis was legally available, prescribe just three drugs: tetrahydrocannabinol, methylamphetamine and MDMA.

Section 64AC(1) of the Road Traffic Act 1974, "Driving with prescribed illicit drug in oral fluid or blood", states —

> A person who drives or attempts to drive a motor vehicle while a prescribed illicit drug is present in the person's oral fluid or blood commits an offence.

There does not appear to be a defence for section 64AC. This is in contrast to section 64AB, which states that the person must be impaired by the drug and presents an offence for those holding a prescription. The first point I make is that only three illicit drugs are listed in the regulations, which begs the question how other illicit drugs would be dealt with under the Road Traffic Act, but that is a separate issue to the motion before us. The select committee concluded that under WA's Road Traffic Act it is unlawful for anybody to drive with any THC in their system, regardless of whether it is legally prescribed or whether the person is impaired. These barriers are summarised in findings 13 to 16 and recommendation 8 of the report. Recommendation 8 has been well canvassed, and I will not repeat it, but for the first limb of this motion it is relatively uncontroversial. The committee made a recommendation. My read of the response from the government, although it says that the recommendation is noted, is that it is probably more than noted because the government went on to say that it would establish a medicinal cannabis and safe driving working group—that is quite a mouthful—of relevant experts, both road safety and medical. Obviously, this group has not yet been formed. The government only handed down its response to the report in August this year. This might have been one of the reports to which the government's response was delayed quite significantly—from the report being presented in March to the government response being available in August, but I might be mistaken; it might be another report. However, I think there were a number of pieces of advice to the house about a delayed response. The report has been responded to only since late August, effectively early September, so the clock is ticking. I would have thought it a priority to establish this working group as quickly as possible, at least before the year's end, so we can start to scope the work required to provide advice to government on how to address this issue.

The recommendation in the committee's report aligns with the motion before us. As I said, I have not heard anyone dispute the fact that there needs to be some legislative and regulatory change in this respect. There is dispute on how quickly that should or could be done. Hon Dr Brian Walker set out some very compelling personal examples that helped us personalise this issue, as not everybody may have personal experience on the impact of somebody relying on medicinal cannabis as part of their treatment for whatever condition they may have and their ability to drive. On that point, removing somebody's ability to drive even whilst unimpaired presents more significant challenges in regional and remote areas where a person may not have family or support networks and they most likely do not have any public transport. They might have some regular air transport, but they may not be able to rely upon it. Therefore, there are added issues to somebody simply giving up their ability to drive in a regional or remote area, whether that be a motorised wheelchair, a motor vehicle or some other form of transport, as opposed to a metropolitan area where other options are available.

A lot of good information is available in a number of tables in the report. Table 4 sets out how we are dealing with opioids, for example codeine, fentanyl, methadone morphine, oxycodone and tramadol; sedatives, for example diazepam, lorazepam, oxazepam; stimulants such as dexamphetamine and methylphenidate; and over-the-counter medication such as antihistamines, Sudafed and cold and flu tablets. Hon Sophia Moermond focused on these drugs in her contribution. If taken, it is legal to drive provided there is not impairment to a person's ability to drive. That is in contrast to medicinal cannabis containing THC, under the influence of which it is not legal to do so. Table 5 follows and it sets out a jurisdictional comparison to approaches around the world. As I, and Hon Lorna Harper before me, have said, how we might address this issue is an emerging area. Coming to this debate, I thought there might be a simple approach of dealing with prescribed medicinal cannabis in a similar way to other drugs, but in her contribution Hon Sophia Moermond referred to a study—I am sorry did not write down the name—that found that the most impaired drivers were those under the influence of THC at a low level blood alcohol content rating. That goes to the complexity of the issue that needs to be addressed.

Hon Sophia Moermond made an important point about making sure that the impairment test used is simple. We are a large state, we are a large jurisdiction and we have a large road network, so making sure it is practicable to provide these tests, in whatever form, in a jurisdiction like ours is an important factor to consider.

It is interesting to note that Victoria has established a working group. I am not sure to what extent it will be similar to the working group that will be established Western Australia. We will all be looking for detail from the government about what it will look like, its terms of reference and its reporting date, which is clearly the contentious part of this motion. The Victorian government has set up a working group to examine this issue following a private member's bill advanced by the Legalise Cannabis Party in Victoria, and that is the Road Safety Amendment (Medicinal Cannabis) Bill. In Victoria both the Labor government and the coalition opposition have spoken in support of changing driving laws for medicinal cannabis users. The government announced just in August that it would begin an 18-month trial of medicinal cannabis users on a closed test track. I suspect that was not the study that Hon Sophia Moermond referred to because the trial only kicked off in August. The point that critics of the Victorian approach make is whether medicinal cannabis is being treated in a different way from other pharmaceuticals and prescription medicines, and whether there is justification for doing so. I accept that there is complexity to this matter, but public and road safety are paramount in considering this issue and probably will have primacy over other factors. I think we can all agree on that. I think the select committee and the Western Australia Police Force agree. We have universal agreement on that issue. It is important also to recognise the experience of people who seek a prescription for medicinal cannabis and the impact it has on their ability to lawfully drive in Western Australia, even when it cannot be demonstrated that they are driving whilst impaired by the drug. That goes for some of the complex issues, particularly around testing. I think Hon Dr Brian Walker made the point, as did the select committee, that although the impairment period can be quite limited—the report states that there is a range of five to seven hours, with seven hours being for a higher dose—someone can return a positive test result for days and weeks following, obviously whilst not impaired by the drug.

It is also important to recognise that in Western Australia we have a significant road safety problem. I think that is why everyone involved in this debate either today, in the lead-up to the committee's report recommendations or even before that, first and foremost outlines that the public safety element is a primary issue. We are trending for one of our most challenging road serious injury and fatality rates this year, more than we have seen in the last decade. Many involve alcohol and other drugs. Although some of this data is a little old, the Road Safety Commission released a report in 2016 that showed one in five people killed on WA roads were involved in an alcohol-related crash, and three-quarters of these occurred in regional Western Australia, despite just 20 per cent of the population living in our regions. It went on to say that the number of reported drug use prior to driving is low, but it is on the increase. That data is a few years old, but it is important to keep in mind in the context of this debate. That report also states that cannabis is the most used illicit drug in Australia, and the second most common drug type identified in toxicology for road crash fatalities in 2016.

A number of issues need to be weighed up. Obviously, the Road Safety Commission was talking generally about the issue of drug use and driving. This motion is talking about the issue of driving whilst having a valid and legal prescription

for medicinal cannabis. There are distinctions to be made, but I agree with the arguments about the need to make sure that we respond appropriately, particularly with thought in mind for those people whom Hon Dr Brian Walker described, making sure that we do it to an extent that ensures we preserve public and community safety on our roads.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.12 pm]: I must admit I have come to the legalise cannabis discussion a bit late, and I come with a very conservative view, generally. I know it is a surprise to members opposite. They might find me on the right wing of the opposition.

Hon Darren West: Did you inhale?

Hon Dr STEVE THOMAS: It is not a Thursday yet, member. It is only a Wednesday, so settle down.

Several members interjected.

The ACTING PRESIDENT: Order!

Hon Dr STEVE THOMAS: I thought this was a very interesting motion by Hon Sophia Moermond in that it is not calling for a specific change, apart from an investigation and for the investigation to be set with a reporting date that might deliver an outcome. The outcome might be that the committee looks at this and says that it remains concerned about the impact of THC on drivers and it could not, in good conscience, recommend that it be allowable under the circumstances proposed by the Legalise Cannabis WA Party. It is something I have experienced. I have had constituents who have been prescribed cannabis in a legal sense, in fact, with an in-law family member, which might be a step down from a constituent—let us be cautious there—who is in that exact position, whereby they have been prescribed cannabis for very long-term back pain following work in the mining industry many decades ago. They also run the same risk that I am sure constituents of Hon Sophia Moermond and Hon Dr Brian Walker have experienced. That is the reason that they brought the motion before the house today.

Although I am not necessarily 100 per cent behind their cause, I thought that their motion was very good in that it simply calls for the investigation to be done in a timely manner. In fact, this may be the only time in my parliamentary career that I support to some degree the intent of someone who moves a welcoming of a government activity. I suspect it is not very common that I do that. Paragraph 1 of the motion states that the mover would welcome the Cook government's commitment to establish a working group. It urges the working group to consider the establishment of a defence; it does not say that a defence must be established, it says that it should be examined. I thought that was relatively reasonable. As the Leader of the House in presenting the government's response said, the government agreed to many parts of this motion, in particular because the government has committed to establishing a working group. I think the issue that the government has is in paragraph 2, which states —

> This house further calls upon the government to set a reporting date for the working group, such that legislative changes can be debated ahead of the next election.

I thought that Hon Martin Aldridge gave an excellent overview of activity across various states and he made reference to the Victorian research that will take well more than a year. The response and information gleaned from that will presumably inform part of Victoria's response to this issue. That will take longer than the period set by the motion before the house. It is certainly the case, as I understood the response from the Leader of the House, that that was the part of this debate to which the government had the most problem, and that it is in fact examining these issues and is committed to a working group. I do not think it has established the working group as yet; it has simply committed to putting one in place. Perhaps the motion might have suggested a time frame by which the group was established, as opposed to reporting. We might have jumped ahead a little. As the debate unfolds, or what is left of it, the member might give some thought to the possibility of an establishment date rather than a reporting date. I understand the issues of the government. As I started off by saying, I am not an avid supporter of the use of cannabis, but I accept that I might be something of a dinosaur in some of my views. I am not going to conduct a pharmacological debate here, although I think Hon Dr Brian Walker and I are probably the only people here qualified to do so, but in my view, this is a political question about due process within the house, and due process with government.

I thought that the mover of the motion and the Legalise Cannabis WA Party might look to set an establishment date and an operational date rather than a reporting date. One of the options to us is to amend the motion to set an establishing date. I had a quick look at and considered an amendment, which I may well find myself moving in a few minutes, but I thought I might instead remove the time frame. It could still be a reporting date. I would propose that in paragraph 2 of the motion before the house—because there is a generalised agreement on paragraph 1—that we get rid of all the words in the final line —

> … such that legislative changes can be debated ahead of the next election.

We would remove that urgent time frame. The issue that I see, with having legislation debated before the next election, is that the party would be competing with the government's legislative agenda, assuming it would not be government legislation. It would not help if it is Legalise Cannabis WA Party legislation, because next year that party will get two opportunities for a couple of hours to debate it. That will not proceed askance in any way, shape or

form. While the government has a massive one-sided Parliament, it will try to push through all the legislation it thinks is to its advantage as a priority over legislation like this. Effectively, we have a year of legislation left. The final year year's sitting schedule is out today. There are a few weeks of sitting left this year and 19 weeks next year.

Hon Martin Aldridge: And 83 bills.

Hon Dr STEVE THOMAS: And 83 bills. There is plenty of work to be done already. I would not have thought there would be enough time even if the government wanted to progress the legislation. By the time the committee has reported and the legislation has gone through the process of being drafted and then debated—the lower house is usually pretty quick with legislation—there would not be enough time, even if the debate on it was only a couple of hours. I think the Leader of the House is right. It is probably unrealistic to do that after the research has been done, taking into account all the other legislation the government will try to pass. If Victoria spends 12 or 18 months researching a trial, for example, it will not be in a position to make a recommendation until after that. The government would then have to give drafting instructions. Even with the best will of the world and even if the government was entirely behind the member's motion, there would not be enough time, although I am not sure whether the government is entirely behind the member's motion. Hon Sophia Moermond welcomed the potential that the government was open to it, which is a good and constructive conversation. It is a Wednesday not a Thursday, and we are all here to help. It is possible that the government will ultimately come down on the member's side of the argument, but I do not think there is any possibility that what is contained in the motion can be done within the formal and strict time frame that is set out in the motion before the house. That is the message I took from the contribution of the Leader of the House today.

I propose to simply remove the time frame and ask the government to set a date sometime in the future. That could be an indicative time frame rather than a strict time frame. The member has proposed setting a reporting date. We often ask the government when something is coming and the government will say that it is roughly March next year or mid-2027 or whenever it is. At least we get an indication of when we can hold the government to account. I suspect that even with the changes that the government put in place to shatter regional representation in the Legislative Council with this new statewide Senate model, there is a fair chance that there will be representation from the Legalise Cannabis Party in the chamber after that. The party might find itself in a position to hold the government to account after the next election. I do not think there is any chance of doing what is contained in the motion before the next election. I have sympathy for the government's argument. I also have sympathy for the member's argument that this should be looked at and the government should not have an open-ended version of this motion so that it could say, effectively, that it was not interested.

Amendment to Motion

Hon Dr STEVE THOMAS: Purely in an effort to be constructive and assist the house in its deliberations, because that is what the opposition is here to do, I take this opportunity to move the amendment that I have foreshadowed. I move —

To delete all words after "group" at paragraph (2).

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.23 pm]: As I indicated when I responded to the motion, there are two parts to it. We can live with paragraph (1) but we cannot support the motion while it includes paragraph (2). Paragraph (2) has two parts to it, which include setting a reporting date and then bringing in legislation. The amendment that has just been moved would remove the second part of paragraph (2), not the first part. If someone wants to move an amendment to the amendment to delete paragraph (2), we would be happy to support the motion. However, if the only amendment is to remove part of paragraph (2), we will vote against that amendment because we will not be in a position to support a final motion that has any part of paragraph (2) in it.

Division

Amendment put and a division taken, the Acting President (Hon Sandra Carr) casting her vote with the noes, with the following result —

Ayes (11)

Hon Martin Aldridge	Hon Louise Kingston	Hon Dr Steve Thomas	Hon Dr Brian Walker
Hon Peter Collier	Hon Sophia Moermond	Hon Neil Thomson	Hon Colin de Grussa *(Teller)*
Hon Nick Goiran	Hon Tjorn Sibma	Hon Wilson Tucker	

Noes (18)

Hon Klara Andric	Hon Sue Ellery	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Lorna Harper	Hon Stephen Pratt	Hon Darren West
Hon Sandra Carr	Hon Jackie Jarvis	Hon Martin Pritchard	Hon Peter Foster *(Teller)*
Hon Stephen Dawson	Hon Ayor Makur Chuot	Hon Samantha Rowe	
Hon Kate Doust	Hon Kyle McGinn	Hon Rosie Sahanna	

Pairs

Hon Steve Martin	Hon Pierre Yang
Hon Donna Faragher	Hon Dr Sally Talbot

Amendment thus negatived.

Motion Resumed

HON SOPHIA MOERMOND (South West) [2.28 pm] — in reply: I would like to thank everyone for their contributions today. I am surprised and pleased to see the amount of support we have had for this motion, including by the Leader of the House in regard to supporting the first paragraph of the motion. It is a shame that we have not been able to tie the government down to a very specific date on this, but I understand why. I thank Hon Dr Steve Thomas for his contribution on the amendment. I think that was very useful.

I would like to touch upon the fact that Tasmania has medicinal cannabis as a driving defence and the sky has not fallen down or anything like that and there has not been any noticeable increase in road safety issues. Tasmania is doing well with that. It would be relatively simple to implement something like that here. We would not necessarily have to reinvent the wheel; we could just follow Tasmania. I have to say that it is quite surprising that Tasmania is ahead of the rest of Australia on this. It would be lovely if we could add WA—"Wait Awhile"—to that as well. That is not going to happen, but we feel confident that we are moving forward with our mission to help make medicinal cannabis more easily and fairly available. I thank all members who contributed to the debate.

Division

Question put and a division taken, the Acting President (Hon Sandra Carr) casting her vote with the noes, with the following result —

Ayes (3)

Hon Sophia Moermond	Hon Wilson Tucker	Hon Dr Brian Walker *(Teller)*

Noes (29)

Hon Martin Aldridge	Hon Sue Ellery	Hon Kyle McGinn	Hon Dr Sally Talbot
Hon Klara Andric	Hon Donna Faragher	Hon Shelley Payne	Hon Dr Steve Thomas
Hon Dan Caddy	Hon Nick Goiran	Hon Stephen Pratt	Hon Neil Thomson
Hon Sandra Carr	Hon Lorna Harper	Hon Martin Pritchard	Hon Darren West
Hon Peter Collier	Hon Jackie Jarvis	Hon Samantha Rowe	Hon Peter Foster *(Teller)*
Hon Stephen Dawson	Hon Louise Kingston	Hon Rosie Sahanna	
Hon Colin de Grussa	Hon Ayor Makur Chuot	Hon Tjorn Sibma	
Hon Kate Doust	Hon Steve Martin	Hon Matthew Swinbourn	

Question thus negatived.