



Our Ref: 63-17141

Ms Janine Freeman MLA
Chair
Education and Health Standing Committee of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear ~~Madam~~ Chair *Janine*

I refer to your correspondence concerning Recommendation 20 made in the report *Current barriers to patient access to medicinal cannabis in Australia*, and apologise for the delay in responding while advice was sought.

The Western Australia Police Force advise that:

Introducing an amnesty, of the kind recommended by the Senate Committee, would require police to investigate cannabis possession or cultivation to determine the veracity of the claim that a person is entitled to self-medicate before deciding how to proceed. Their advice is that law enforcement officers in Queensland and the Northern Territory report having encountered illicit cannabis user using medicinal cannabis packaging to conceal their illicit cannabis.

An amnesty could be exploited by criminal elements to recruit cannabis growers for the illicit market under the guise of self-medication. This would undermine existing drug laws and would have the effect of increasing the availability of illicit cannabis.

Any increase in illicit cannabis activity would lead to a resultant increase in public health harms and mental health disorders. These outcomes would outweigh any benefits that any amnesty might provide to medicinal cannabis users. On that basis the suggested amnesty is not supported by the Western Australia Police Force.

In relation to drug driving, the WA Police Force advise:

Under section 64AC of the *Road Traffic Act 1974* (RTA), it is an offence for a person to drive a motor vehicle while a 'prescribed illicit drug' is present in their oral fluid or blood. The drugs that are 'prescribed illicit drugs' for the purposes of this section include tetrahydrocannabinol, methylamphetamine and MDMA. This offence relies upon the presence of such substances.

To be charged for an offence against section 64AC, a three-stage process is prescribed by the RTA for oral fluid testing for the presence of prescribed illicit drugs. Stage one is a preliminary oral fluid test, stage two is drug testing and stage

three is confirmatory analysis performed by the ChemCentre WA. Only the results of the confirmatory analysis is deemed *prima facie* evidence and only those results may be admitted as evidence in proceedings for an offence against section 64AC.

There are other offences under the RTA that deal with driving while under the influence of drugs [section 63(1)(b)] and driving while impaired by drugs [section 64AB]. The definition of drug used in those sections is:

*a drug to which the Misuse of Drugs Act 1981 applies; or
a Schedule 4 poison as defined in the Medicines and Poisons Act 2014; or
a substance (other than alcohol) that, when consumed or used by a person, deprives the person (temporarily or permanently) of any of the person's normal mental or physical faculties.*

Also, both of those sections have a defence available to the accused. The defence available for s.63(1)(b) is:

that the drugs, under the influence of which the accused is alleged or appears on the evidence to be, were —

*taken by him pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or
administered to him by a medical practitioner, nurse practitioner or dentist,
for therapeutic purposes; and*

that he was not aware, and could not reasonably have been expected to be aware, that those drugs were likely to render him incapable of having proper control of a motor vehicle.

The defence available for section 64AB is:

(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; and*

(b) that where the drug was received or obtained by the accused in a packaged form, the packaging of the drug did not include a label advising that the drug was likely to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle; and

(c) that the accused was not aware, and could not reasonably have been expected to be aware, that the drug was likely to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle.

Global research indicates that any consumption of cannabis that results in tetrahydrocannabinol (THC) being in the driver's system impairs the ability to drive and therefore individuals shouldn't be getting behind the wheel of a car. It is recommended that a person taking prescribed medicinal cannabis does not drive a motor vehicle for at least 24 hours.

In that regard, the Parliament has recently passed the *Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019*, which introduces new polydrug offences for drivers who have consumed both prescribed drugs and an illegal amount of alcohol. Once in effect, these changes will apply to all drivers, including those taking legally prescribed medicinal cannabis. From a road safety perspective, it is important to discourage people from driving when they have taken a drug known to impair driving performance.

Given the variables around a person's sensitivity to THC, and the different strains and concentrations of medicinal cannabis products, the WA Police Force and the Road Safety Commission do not recommend that changes are made to road laws with regard to medicinal cannabis at this time.

I hope this information is of assistance.

Yours sincerely



**HON MICHELLE ROBERTS MLA
MINISTER FOR POLICE; ROAD SAFETY**

13 AUG 2020