



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON THE DRUGS OF DEPENDENCE (PERSONAL USE)
AMENDMENT BILL 2021

Mr Peter Cain MLA (Chair), Dr Marisa Paterson MLA (Deputy Chair),
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Submission Cover Sheet

Inquiry into the Drugs of Dependence
(Personal Use) Amendment Bill 2021

Submission Number: 46

Date Authorised for Publication: 30 June 2021

**Submission to the select committee on drugs of dependence
personal use amendment Bill 2021**

Submission by Dr Adele Stevens and Suzanne Eastwood.

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Introduction

The drugs of dependents personal use amendment bill 2021 is the welcome step in the right direction towards harm minimisation and reducing stigma from people who are choosing to use decriminalised drugs. The aim of reducing peoples contact with the criminal justice system in the ACT is to be applauded. Our concern is this bill is only addressing part of the criminalised picture associated with drug use.

The argument in our submission relates to cannabis use and levels of impairment, not to all drug driving. We are particularly concerned about the impacts of “ low range” where the driver has not and did not commit other driving offences. Like alcohol use, the research shows that contrary to the present Zero Tolerance law, all cannabis use does not impair driving. For medical cannabis users, the impairment window is up to 4 hours (Eddie et al, Perkins et al). Also a meta analysis by McCartney et al found that for recreational users of cannabis the impairment window was up to 5 hours for light use and 7 hours for heavier use. Also that regular users had less impairment than occasional users.

The argument by the police that all drug driving increases the road toll is like arguing that all alcohol use increases the road toll. With both alcohol and cannabis, there are impairment windows. Just having some cannabis in your system is not evidence of impairment.

Since the ACT law change, there has been no change in the arrest rate for drug driving with cannabis whereas the possession arrests have fallen substantially, down to 5 in the last year versus 57 arrests for drug driving, some of these drivers who most likely would not have been impaired and were not driving dangerously. This proposed bill may take some people out of the criminal justice system but the drug driving laws leave many people unnecessarily exposed to the criminal justice system with very harsh penalties for what would be low range drug driving. A Zero Tolerance regime causes people unnecessary, untold harm such as loss of income, job loss and possible jail time with no evidence of impact on the road toll from “low range” drug driving offences. We would be interested to know how many people have been jailed for drug driving offences, by which drug, and whether that is expected to increase. Also, how many people have been arrested for unlicensed driving following losing their driving license from a drug driving conviction.

There are a number of concerns about the impacts of this bill. Particularly when the aim of the bill is to keep people out of the criminal justice system and a move towards a treatment and a health based approach. We intend to raise issues of concerns that we think should be considered by this inquiry. We may not have answers, just questions mainly about fairness, access to accurate information and monitoring for unintended future impacts.

Concerns

1. Continuing the zero tolerance drug driving approach and not addressing the impact of drug use on the crimes act and traffic offences is a major concern. People who choose to use decriminalised drugs are often adults of working and driving age and as such need to be carefully coached about the impact of roadside drug testing and the zero tolerance approach. (and probably given a Bus Pass!) We do not believe that the zero tolerance approach to driving under the influence of drugs is recognised enough by the general population of Canberra. Particularly because it is difficult, if not impossible, to predict the impact of decriminalised low range drug use for a driver. For example, cannabis use on a Saturday night will probably be detectable days later. How many unimpaired drug drivers under a zero tolerance approach are we prepared to penalise to keep dangerous drug drivers off the roads? We believe the number of people impacted by the continuing drug driving zero tolerance regime has the potential to grow.

The very harsh penalties for low range drug driving (which cannot currently be measured by the roadside test) can have huge impacts on a person's ability to be able to continue their employment or get children to school. A magistrate apparently has little flexibility to be able to take personal considerations into mandatory sentencing, as reported by Magistrate David Heilpern in the ABC Law Report in June, 2020.

Our concern is that this decriminalisation proposal is taking people out of the criminal justice system with one hand but is actually pushing them back into the criminal justice system with the other when they can be picked up for drug driving offences possibly days after using small amounts of drugs that are decriminalised or will be decriminalised.

All Canberrans are well aware of the horrific loss of life and injury caused by Drivers who have been driving, usually under the influence of a cocktail of drugs and alcohol well over legal limits. A Zero Tolerance approach did not keep these criminal drivers off the road and harsh penalties for low range users are unlikely to influence such devastating, impulsive, harmful and criminal driving behaviour.

2. The type of roadside drug test that is used in the ACT cannot distinguish between recent use and impaired driving after use and unimpaired driving perhaps days after consumption. Particularly when the driver was not committing a traffic offence when pulled over or is pulled over because of targeted policing of particular number plates, vehicles or drivers.
3. The apparent use of "targeted policing". Anecdotally "targeted policing" is used because roadside drug testing kits are expensive and targeting particular drivers, known vehicles or number plates produces results. Targeted policing has the potential to create an

underclass of low range offenders who may face extended loss of licence, job loss, jail and other severe and ongoing penalties.

Anecdotally people picked up for one off or repeated low range drug driving offences report not being offered referrals to Drug & Alcohol Counselling or Treatment Services during any part of their journey through the justice system. The aim of harm minimisation and reduction of using and addressing the issue as a health issue appears not to be operating at this level of contact with the Justice system even though low range drug driving can have a devastating impact on the individual's ability to maintain employment.

4. The impact of a zero tolerance approach to people who use prescription cannabis. Many people who are prescribed medical cannabis are living with chronic conditions or pain that has failed to be controlled by conventional medicine. Or are living with life limiting conditions. Many of these people need to drive because public transport is exhausting and many users may have more health appointments than the average person. The zero tolerance approach induces fear and apprehension when taking children to school and driving to health appointments. Anecdotally people are so fearful of driving they are limiting their lives due to fear of being pulled over and drug tested. There are many other prescription medications that have the potential to impair driving and operating machinery. What is the logic for criminalizing prescription cannabis use and not other prescription medications which are well known to cause impairment?
5. The impact of a zero tolerance approach on people who may have consumed or used hemp based cosmetics or food products either knowingly or inadvertently, for example hemp seeds in muesli. It is not clear if a person who has a high level of consumption and exposure to hemp in food and is using hemp products in cosmetics and soap will test positive at the roadside or after an accident.
6. Impact on learner drivers and their families and P plate drivers on the zero tolerance approach to drug use and driving. There are young people in Canberra who begin consuming and smoking drugs well before their 18th Birthday. If a young person has been known to smoke marijuana before getting their L plates. How can a family or a Driving Instructor manage a young person who may still be consuming drugs? How effective is Road Ready at emphasising the importance of not consuming drugs or alcohol.

We have noticed some young people are struggling with the need to stop consuming all drugs as they are getting their L plates and beginning their driving careers. We believe this could be a pathway into the criminal justice system via potential low range drug driving offences. This potential issue needs to be addressed with easy access into drug treatment for all young people who request it and an emphasis and debate with students & young people during Roadready and Roadready Plus on what

Zero Tolerance really means. Can they commit to being drug free for days or weeks before driving? Some parents may have to make a hard decision not to teach a young person to drive if the young person cannot commit to being drug free. We believe families of young people negotiating drug use and Learner Driving need support with managing zero tolerance with reluctant and unrealistic young people. Along with early P plate drivers.

7. The contrast between the well established and well known connection between alcohol and driving means that most ordinary people can predict if they are approaching .05 after a night of drinking and also if they will still be affected by alcohol the next day if they were drinking late into the night. The general awareness about Drink Driving is such that friends and family can assist the potential Driver make the best decision because everybody understands the basic formula for being under .05. Driver's drinking Alcohol can make a fairly accurate informed decision. Also many venues have a Test machine available for drivers to be able to check themselves. Drivers can also purchase a fairly accurate hand held device to be able to make an accurate informed choice about drink driving. Also a driver drinking Alcohol on the weekend does not risk being picked up days later for alcohol related driving offences.

By contrast, low range drug driving has no easily measurable margin of safety that can be predicted by the user of decriminalised drugs. Anecdotally drivers report using on the weekend and being picked up by "Targeted policing" on Wednesday evening for example on the way home from work. This inability to predict the window when a drug driving offence may occur under a zero tolerance regime seriously impacts a drivers ability to avoid a drug driving offence when the driver is well past the probable impairment window.

For this proposed bill to be effective at decriminalising the use of small amounts of drugs there needs to be further examination regarding the accuracy of the roadside drug testing equipment and the window for impairment when drivers could test positive and be charged with a Drug Driving Offence.

It is not a fair system when the drug driving testing system is not clear about when a driver may test positive using a Roadside testing kit. It surely cannot comply with a Human Rights focus on people clearly understanding their rights and obligations.

For each of the proposed decriminalised drugs an accurate testing window should be publicly available so drivers can make the same informed decisions about drugs and driving that can be made about alcohol and driving.

The Australian Drug Foundation notes that recreational uses of marijuana can test positive within 12 hours and long-term users or frequent users can test positive for up to 30 hours using the Victorian roadside drug testing regime. Accurate information about

the Roadside test used in the ACT must be available so people can make an informed choice about driving

<https://adf.org.au/insights/roadside-drug-testing/>

8. We would be interested if the changed approach to zero tolerance in Norway was further explored in the ACT context. As mentioned in this article from Sydney Lawyers. We do not have the capacity to do that in the context of this submission.

<https://www.sydneycriminallawyers.com.au/blog/drug-driving-laws-criminalise-the-legal-use-of-cannabis/>

Conclusion

We do not want the positive aspects of this bill and the positive benefits of decriminalisation to have an unintended consequence of criminalising drivers who choose to use the decriminalised drugs. At the very least accurate measures and times must be publicly available and active monitoring of drug driving arrests and incarceration must be monitored. We don't want to come back in five years time to find that we have criminalised a large number of people impacted by the zero tolerance regime for low range drug driving offences.

We would be prepared to give evidence to the inquiry.

The Writers

Dr Adele Stevens has a long history working in the illegal drug field beginning in the 1980s when she worked as a research fellow on the ACT Drug Indicators project at the Australian Institute of Criminology. She was also involved in the research at ANU on the feasibility of controlled availability of opioids otherwise known as the ACT Heroin Trial. In 1990 she completed a PhD at the Australian National University on gender and illegal drug use. As part of this research she interviewed over 50 women who had used or were using illegal drugs and this present submission is based on her friendship and contacts with drug users in Canberra.

Suzanne Eastwood has had a long career focused on Social Justice.

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Abstract

The increasing legal availability of cannabis has important implications for road safety. This systematic review characterised the acute effects of Δ^9 -THC on driving performance and driving-related cognitive skills, with a particular focus on the duration of Δ^9 -THC-induced impairment. Eighty publications and 1534 outcomes were reviewed. Several measures of driving performance and driving-related cognitive skills (e.g. lateral control, tracking, divided attention) demonstrated impairment in meta-analyses of “peak” Δ^9 -THC effects (p 's<0.05). Multiple meta-regression analyses further found that regular cannabis users experienced less impairment than ‘other’ (mostly occasional) cannabis users ($p = 0.003$) and that the magnitude of oral ($n = 243$ effect estimates [EE]) and inhaled ($n = 481$ EEs) Δ^9 -THC-induced impairment depended on various factors (dose, post-treatment time interval, the performance domain (skill) assessed) in other cannabis users (p 's<0.05). The latter model predicted that most driving-related cognitive skills would ‘recover’ (Hedges’ $g = -0.25$) within ~5-hs (and almost all within ~7-hs) of inhaling 20 mg of Δ^9 -THC; oral Δ^9 -THC-induced impairment may take longer to subside. These results suggest individuals should wait at least 5 -hs following inhaled cannabis use before performing safety-sensitive tasks.

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