

Medicinal Cannabis & Drug Driving: Information Sheet

We are approached regularly by persons charged with what is known as “drug driving” in Tasmania. The law as to this has been complicated by the recent availability of “medicinal cannabis”. Whilst this area of law is complicated, this information sheet is intended to work through scenarios that arise in this space and clarify the law relating to drug use (legal and illegal) insofar as it applies to driving offences in Tasmania.

What Drug Driving Laws are there in Tasmania?

There are essentially two “drug driving” offences in Tasmania, being:-

1. Driving with a prescribed illicit drug present in your oral fluid/blood (pursuant to section 6A of the *Road Safety (Alcohol and Drugs) Act 1970* (hereafter “**the section 6A offence**”); and
2. Driving under the influence of a drug (pursuant to section 4 of the *Road Safety (Alcohol and Drugs) Act 1970* (hereafter “**the section 4 offence**”).

The key difference between the above two offences is that the section 6A offence is committed when an illicit drug is detected in your body whereas the section 4 offence requires that the drug impair a person to such a degree that they are incapable of being in control of a motor vehicle.

There is no requirement for impairment with the section 6A offence although this may be a feature of it. A person may also commit the section 4 offence when they overdose on legally prescribed medications as well.

While the list of illicit drugs these laws apply to is very long, commonly this includes methamphetamine/amphetamine (ICE or Speed), cocaine, opiates and cannabis/marijuana (THC).

Both of the above offences if found guilty will result in a disqualification of drivers licence.

What is a valid prescription?

A valid prescription is one that is prescribed in accordance with both Tasmanian and Commonwealth laws.

In order to comply with Commonwealth laws, the medicine must be approved by the Therapeutic Goods Administration to be included on the Australian Register of Therapeutic Goods. On the register, each drug will be classified with a schedule number which includes

requirements for prescription. Medicinal cannabis containing THC is registered as a 'schedule 8' narcotic substance.

In order to comply with Tasmanian laws, the medicine must be prescribed in accordance with the *Poisons Act 1971 (Tas)* and the *Poisons Regulations 2018 (Tas)*.

Can I commit a drug related driving offence if I have a prescription?

Even if prescribed the medication that causes the impairment, a person has no defence to a section 4 offence. However, if you find yourself in this situation you should speak to a lawyer about your specific circumstances as other defences may be available.

Prescribed medications such as “medicinal cannabis” that contain THC, or other medications such as prescribed amphetamines will likely show as positive on a Police Oral Fluid Test (OFT). If you hold a *valid prescription*, you should ensure that

- (a) You are not impaired by the drug when driving;
- (b) That your prescription/General Practitioner permit you to drive while using the drug;
- (c) That you have used the drug in accordance with the directions provided by your prescription/General Practitioner; and
- (d) That you have a copy of the prescription with you while driving.

In the event of a positive result, it is at the discretion of the Police Officer as to what happens next, but you should expect to be required to provide a further sample for testing.

In the event the second test returns a positive result for an illicit drug, you will likely be summonsed to attend Court for the section 6A offence. This is because a prescription for “medicinal cannabis” does not make it legal by default. It simply means that you may attempt to rely on the defence within section 6A(2) of the *Road Safety (Alcohol and Drugs) Act 1970* (hereafter “**the 6A(2) defence**”).

What is the section 6A(2) defence?

Section 6A(2) of the *Road Safety (Alcohol and Drugs) Act 1970* states:

“A person does not commit an offence against subsection (1) if the prescribed illicit drug was obtained and administered in accordance with the Poisons Act 1971.”

In order to rely on the above defence, the medication must be prescribed and administered in accordance with the *Poisons Act 1971 (Tas; hereafter “**Poisons Act**”)*.

What are the key features I need to be aware of from the *Poisons Act*

The key relevant features of the *Poisons Act* for present purposes are:-

1. To be validly prescribed medicinal cannabis (or any other schedule 8 narcotic substance) to have an arguable defence, an application must be made to the *Pharmaceutical Services Board* for authorisation pursuant to section 59E of the *Poisons Act*. Your General Practitioner would typically assist in this task.
2. It is not lawful to possess or use medicinal cannabis in Tasmania (or any other narcotic schedule 8 substance) unless authorisation referred to above is granted.
3. At present, **only** a General Practitioner practising in Tasmania may apply for section 59E approval on behalf of a patient. This is because the term “medical practitioner” is defined within the *Poisons Act* to be a “*medical practitioner, except in section 36 and Parts V and VA in which case the medical practitioner must be present in Tasmania and acting in the course of medical practice in Tasmania*”. Section 59E approval is contained within Part V of the *Poisons Act* meaning the practitioner must be present and practising in Tasmania.

What if my prescription is from interstate?

Anecdotally there has been a significant increase in individuals being prescribed medicinal cannabis (and other schedule 8 narcotic substances) from interstate practitioners, usually based in Victoria and Queensland who assert it is a valid prescription.

While those prescribers obtain the required Commonwealth approval, they are unlikely to have obtained the required Tasmanian approval to make use/possession of the drug legal in Tasmania.

The consequence of this is that unless the approval is granted, the medicine is not prescribed in accordance with the *Poisons Act* and the section 6A(2) defence to a charge under section 6A will not apply.

If you are prescribed by an interstate prescriber, you should clarify with your prescribing General Practitioner whether you have the required Tasmanian approvals and if they do not know about it, you should not drive while using the substance and seek a prescription within Tasmania.

Further, it is also an offence pursuant to section 45 of the *Poisons Act* to import a narcotic substance (schedule 8 drug). Meaning, if you hold a valid prescription for medicinal cannabis, you **must** ensure you source your medicinal cannabis from a Tasmanian pharmacy.

What happens if I am found guilty of a drug driving related offence?

If you are found (or plead) guilty to a drug driving related offence then the Court will impose a sentence on you.

Any sentence will include as a bare minimum a fine and disqualification of your driver's licence. In appropriate cases, the Court can impose terms of home detention and imprisonment.

A secondary matter is that any insurance policy held by you over the vehicle (if your charge for example arose as a result of an accident) may be cancelled by your insurer and a conviction may impact your ability and the cost of insurance moving forward.

What do the Tasmanian Health Service recommend?

The following is quoted from the Tasmanian Health Service as at November 2024:

“Medicinal cannabis and driving

- *Medicinal cannabis can cause impairment and affect fitness to drive.*
- *It is recommended that patients do not drive whilst being treated with medicinal cannabis.*
- *A person who drives a vehicle while under the influence of a drug to the extent that the person is incapable of having proper control of the vehicle is guilty of an offence (even if the drug is prescribed).*
- *THC is the main psychoactive substance in cannabis and is present in some medicinal cannabis products.*
- *Driving with any detectable amount of THC in your system is an offence in Tasmania unless the product was obtained and administered in accordance with the Poisons Act 1971.”*

Summary

At present, you should:

1. Only obtain prescriptions for medicinal cannabis and other narcotic substances from a prescriber practising and dispensing within Tasmania; and
2. Source your medicinal cannabis or other narcotic substance from a Tasmanian pharmacy.

While it is lawful to drive in Tasmania while prescribed medicinal cannabis (provided a person is not impaired), that does not mean you will not be charged and required to attend a Court. It

is for this reason we do not recommend persons drive a motor vehicle even when prescribed medicinal cannabis is present in your body.

It is our view that the current state of the law on prescribed narcotic medicines such as medicinal cannabis is onerous and confusing to individuals, with significant consequences for a person if they misunderstand the law. If you would like to see legislative reform in this area, we encourage that you raise this issue with your local member of parliament.

If you are unsure about the status of your prescription/medicines or have been charged, you should contact us for advice on 6424 8720 or email office@nwclc.org.au to seek our advice relevant to your specific circumstances.

References / Resources:-

- *Poisons Act 1971* (Tas):
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-1971-081>
- Tasmanian Health Service- Medicinal Cannabis Information for Patients and the General Public: <https://www.health.tas.gov.au/health-topics/medicines-and-poisons-regulation/medicinal-cannabis/medicinal-cannabis-information-patients-and-general-public>
- Tasmanian Health Service- Regulatory Framework for Medicinal Cannabis:
<https://www.health.tas.gov.au/health-topics/medicines-and-poisons-regulation/medicinal-cannabis/regulatory-framework-medicinal-cannabis#:~:text=Tasmanian%20legislation,-Poisons%20Act%201971&text=Regulatory%20controls%20vary%20depending%20on,cannabis%20product%20to%20a%20patient>

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