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Driving Law Changes for Medical Cannabis Patients

This factsheet provides general legal information and is not a substitute for legal advice. Consider your options carefully and seek legal advice if you're unsure

Key Points:

- From 1 March 2025, medical cannabis patients will no longer be subject to mandatory licence cancellation or suspension for driving with medical cannabis in their system.¹
- It remains an offence to drive with medical cannabis that contains tetrahydrocannabinol (THC) in your system.²
- Courts may still cancel your licence, considering surrounding circumstances.³ You will have to go to court to have your individual circumstances considered.
- Those charged with driving while impaired will still face mandatory licence cancellation.⁴

OVERVIEW:

Amendments to the Road Safety Act means that from March 1st 2025, medical cannabis patients will not be subject to mandatory licence cancellation or suspension for driving with medical cannabis in their system.⁵

It will remain an offence to drive with medical cannabis that contains THC in your system.⁶ Courts will retain the authority to impose a fine⁷ or cancel a driving licence if they deem it necessary but will have full discretion based on the individual circumstances of each case.⁸ It will be open to the Courts to impose no penalty.

THE LAW BEFORE THE CHANGE:

Before these amendments, medical cannabis patients who tested positive for having any THC in their system while driving faced having their licence automatically cancelled or suspended. Patients who tested positive during a roadside drug test would either be:

- 1) Issued with a Traffic Infringement Notice (TIN), which is an on the spot fine, and VicRoads would automatically suspend their licence;⁹ or
- 2) Issued a *Summons to Attend Court*, where magistrates had no discretion and had to cancel their licence.

AVOIDING LICENCE CANCELLATION OR SUSPENSION:

To give yourself the chance of not having your licence cancelled or suspended, you must attend court. If the police issued you a Summons to Attend Court, you must attend at the nominated hearing date.

If you received a Traffic Infringement Notice (TIN) instead, you have 28 days to elect to take the matter to court by filling out and returning the section as set out on the back of the TIN. You will then receive a Summons to Attend Court on a nominated date.

If you decide not to challenge your TIN in court, VicRoads will automatically suspend your licence.

WHAT EVIDENCE YOU WILL NEED TO PROVIDE:

At your court hearing you will want to present either a current medical cannabis script or a letter from your prescribing doctor. A medicine container with your and your prescriber's name may also suffice.

The Magistrate may also ask you to take an oath to tell the truth and then confirm that you took your medication in line with your prescription.¹⁰ This is a standard procedure. The prosecutor may also ask you some questions to confirm this.

WHAT HAPPENS IF MEDICAL CANNABIS IMPAIRED YOUR DRIVING?:

If your driving was impaired by medical cannabis, the police will charge you with the more serious offence of driving while impaired by a drug¹¹ and you will face mandatory licence cancellation, fines, and possible imprisonment.¹²

To determine if you were impaired, police will conduct a standard impairment test. This involves assessing a person's balance, coordination, and overall behaviour. They will also consider any driving patterns that indicate impairment, such as dangerous acceleration or breaking, or swerving across lanes.

References:

1. *Roads and Road Safety Legislation Amendment Act 2024*, cl 42B; *Roads Safety Act 1986* (VIC), s 50(1F)
2. *Roads Safety Act*, s 49(1)(bb)
3. *Ibid*, s 50(1F)(b)
4. *Ibid*, s 49(1)(ba)
5. *Roads and Road Safety Legislation Amendment Act 2024*
6. *Roads Safety Act*, s 49(1)(bb)
7. *Ibid*, s 49(3AAA)
8. *Ibid*, s 50(1F)
9. Transport Victoria, Drug Driving Penalties (<https://transport.vic.gov.au/road-rules-and-safety/alcohol-drugs-and-driving/drug-driving-penalties>)
10. *Roads Safety Act*, s 50(1F)
11. *Ibid*, s 49(1)(ba)
12. *Ibid*, s 49(3)

We would always encourage anyone facing a charge of drug driving to contact a community legal centre for free and confidential legal advice.

Our state wide advice service is ready to help.

Contact us:

Fitzroy Legal Service

☎ (03) 9419 3744

✉ enquiries@fls.org.au



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