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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY
ELEVENTH ASSEMBLY**

ROAD TRANSPORT (ALCOHOL AND DRUGS) AMENDMENT BILL 2026

**EXPLANATORY STATEMENT
including
HUMAN RIGHTS COMPATIBILITY CONSIDERATIONS
(*Human Rights Act*, s37)**

**Presented by
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This explanatory statement relates to the *Road Transport (Alcohol and Drugs) Amendment Bill 2026* (the Bill).

The Bill is a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and warrant more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*. The Bill makes targeted, evidence-based amendments to the Road Transport (Alcohol and Drugs) Act 1977 to address a documented injustice in the treatment of prescribed medicinal cannabis patients.

The Bill advances three concurrent policy purposes:

- **Road safety integrity:** the existing evidence does not support treating THC presence as a reliable indicator of impairment, particularly in regular medicinal users. The Bill ensures that enforcement resources are directed toward actual impairment rather than lawful medication use.
- **Legal consistency:** the Bill brings medicinal cannabis patients into alignment with the framework that already governs all other patients prescribed potentially impairing medicines in the ACT.
- **Individual rights protection:** the Bill removes an unjustifiable criminal exposure for patients who are taking their medicine as directed. Patients who are genuinely impaired remain subject to the full force of section 24.

OVERVIEW OF THE BILL

1.1 Purpose and Policy Objective

The Road Transport (Alcohol and Drugs) Amendment Bill 2026 amends the *Road Transport (Alcohol and Drugs) Act 1977* (the Act) to establish a statutory defence for persons who obtained and administered delta-9-tetrahydrocannabinol (THC) in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law within the meaning of that Act, when detected by roadside drug testing.

The Bill's policy objective is harmonisation: bringing medicinal cannabis patients into the same legal framework that already governs every other patient legally prescribed a potentially impairing medicine in the ACT. Under the Act as it presently stands, a person prescribed opioids or benzodiazepines — drugs that can cause material driving impairment — is subject only to the impairment offence under section 24. A person prescribed medicinal cannabis is additionally subject to the strict presence offence under section 20 and the prescribed concentration offence under section 21. The distinction is not supported by road safety evidence, academic medical research on driving impairment arising from THC, and derives from the historical status of cannabis as a prohibited drug rather than from any evidence-based road safety rationale.

The Bill does not decriminalise drug-impaired driving. The section 24 offence — driving under the influence of intoxicating liquor or a drug — is wholly preserved and continues to apply to medicinal cannabis patients. Police powers to test for impairment, to direct persons not to drive where impairment is suspected, and to

conduct post-crash blood and urine analysis are unaffected. The change operates narrowly: it provides that a person who lawfully used THC under direction from a qualified and registered medical practitioner has a defence to a charge based solely on THC presence or concentration. A person who is genuinely impaired remains subject to prosecution under section 24 regardless of whether they lawfully used the prescribed drug.

The roadside testing devices used under the Act detect the presence of THC but do not measure impairment. THC is fat-soluble and metabolises slowly. It can remain detectable in oral fluid for hours or days after any impairing effects have resolved. Four peer-reviewed Australian studies — two from Swinburne University of Technology and two from the University of the Sunshine Coast — found negligible impairment on objective driving and cognitive measures in medicinal cannabis patients using their prescribed doses.¹ Research from the Lambert Initiative for Cannabinoid Therapeutics at the University of Sydney found that THC concentration in oral fluid is a poor predictor of actual driving impairment, particularly in regular users who develop pharmacological tolerance.²

1.2 Background: The Current Law and Its Operation

The Act currently creates two relevant offences applicable to drivers detected with THC.

Section 20 — Prescribed drug in oral fluid or blood. A strict liability offence. The mere presence of THC in a driver’s oral fluid or blood constitutes the offence. No impairment is required to be proven. No causal link between the drug and driving is required. A patient tested hours after dosing, when the impairing effects of their medicine have fully resolved, commits this offence if any detectable trace of THC is present.

Section 21 — Prescribed concentration of alcohol and prescribed drug in bodily fluid. Creates an offence where a prescribed drug is present at or above a prescribed concentration. THC is a prescribed drug for this purpose.

Section 24 — Driving under the influence of intoxicating liquor or a drug.

Requires actual impairment — that the person was under the influence of a drug to such an extent as to be incapable of having proper control of the vehicle. There is no prescribed blood concentration threshold for THC under this section; impairment is a question of fact determined by the evidence, including police observations and

¹ Arkell TR, Manning B, Downey LA & Hayley AC (2023). “A semi-naturalistic open-label trial examining the effect of prescribed medical cannabis on neurocognitive performance.” *CNS Drugs* 37: 981-992; Manning B, Arkell TR, Hayley A & Downey L (2024). “A semi-naturalistic open-label study examining the effect of prescribed medical cannabis use on simulated driving performance.” *Journal of Psychopharmacology* 38(3): 247-257; Stefanidis KB, Schiemer C, Mieran T, Hill A, Horswill MS & Summers MJ (2025). “Elucidating the acute effects of medically prescribed oral and vaporised delta-9-tetrahydrocannabinol on cognitive functions important for driving.” *Drug and Alcohol Review* 44(4): 1010-1023; Schiemer C, Horswill MS, Hill A, Summers MJ & Stefanidis KB (2025). “The acute effects of vaporized cannabis on drivers’ hazard perception and risk-taking behaviors in medicinal patients: A within-subjects experiment.” *Journal of Safety Research* 92: 385-392.

² McCartney D, Arkell TR, Irwin C, Kevin RC & McGregor IS (2021). “Are blood and oral fluid Δ^9 -tetrahydrocannabinol (THC) and metabolite concentrations related to impairment? A meta-regression analysis.” *Neuroscience & Biobehavioral Reviews* 126: 175-193.

the circumstances of driving. This is consistent with the approach for all other prescribed drugs. This offence applies to all drivers and is fully preserved by the Bill.

Sections 20(3) and 20(4) currently exclude the mistake of fact defence in relation to THC presence. A patient who genuinely believed they were not impaired, and who was objectively not impaired, has no defence available under the existing law.

1.3 What the Bill Does

The Bill amends the Act in five operational areas:

- It inserts a defence into section 20 (presence offence) where THC was the only prescribed drug detected and was lawfully used.
- It inserts a parallel defence into section 21 (concentration offence) in equivalent circumstances.
- It modifies the detention power under section 13D so that a person detected with THC only — and where lawful use is reasonably apparent — must not be taken into custody, unless an offence under section 24 (driving under the influence of intoxicating liquor or a drug) or culpable driving is reasonably suspected.
- It modifies the direction-not-to-drive power under section 47B so that a police officer does not have reasonable cause to suspect impairment merely because a drug-related test indicates THC presence, where only THC is detected and lawful use is reasonably apparent.
- It inserts transitional provisions to confirm that the defences apply to THC lawfully used before the commencement of the amending Act.

1.4 Consultation

The amendment reflects a sustained body of peer-reviewed research conducted across Australia's leading cannabinoid research institutions, including the Lambert Initiative for Cannabinoid Therapeutics at the University of Sydney, Swinburne University of Technology, and the University of the Sunshine Coast. The policy position has been informed by the work of Dr Michael White, Adjunct Senior Fellow at the University of Adelaide, whose 20 years as a South Australian Government road safety research director and service as SA Government representative on the Austroads Drug-Driving Working Group provides direct expertise in the evidence base.

The reform is consistent with the direction taken by Tasmania (statutory defence for lawfully prescribed drugs under section 6A(2) of the *Road Safety (Alcohol and Drugs) Act 1970*)³, the United Kingdom (statutory medical defence since 2015)⁴, and the reform announced by the NSW Minns Government on 4 June 2026.⁵

³ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1970-077>

⁴ Information on the United Kingdom's regime: <https://www.gov.uk/drug-driving-law>

⁵ See: <https://www.nsw.gov.au/ministerial-releases/cannabis-drivers-not-immediately-penalised>

1.5 Financial Impact

No direct financial cost to the ACT Government is anticipated from the Bill. The number of prosecutions that would not proceed as a result of the defence being established is not expected to impose material costs on the court system. To the extent that the defence results in fewer prosecutions of non-impaired prescribed patients, there will be a corresponding reduction in court administration and legal aid expenditure associated with those matters. Licence reinstatement processes for persons who successfully establish the defence may generate minor administrative activity within the relevant agency. No new regulatory or monitoring body is required.

CLIMATE IMPACT

This bill has no direct or indirect implications for climate change.

JURISDICTIONAL CONTEXT

The Bill is consistent with the direction of reform in Tasmania, the United Kingdom, and the reform announced by the NSW Minns Government on 4 June 2026, and in several respects advances beyond each of those models toward a more principled and evidence-aligned outcome.

2.1 Tasmania

Tasmania is the only Australian jurisdiction that currently applies a defence for lawful medicinal cannabis users in relation to the presence offence. Under the *Road Safety (Alcohol and Drugs) Act 1970* (TAS), section 6A(2), a person does not commit the offence of driving with a prescribed illicit drug present in oral fluid or blood if the drug was obtained and administered in accordance with the *Poisons Act 1971* (TAS). This model has been operational for several years without evidence of road safety deterioration. It constitutes a domestic proof of concept for the principle this Bill advances.

2.2 Victoria

The *Roads and Road Safety Legislation Amendment Act 2024* (VIC)⁶, in force from 1 March 2025, grants magistrates discretion not to cancel a licence where the only substance detected is a prescribed medicinal cannabis product used as directed. The criminal charge, fine, and criminal record remain. This represents a procedural softening in the direction of reform rather than full harmonisation.

2.3 New South Wales

On 4 June 2026, the NSW Minns Labor Government announced legislation to establish a registration-based warning system for prescribed medicinal cannabis patients.⁷ The model applies only to unrestricted licence holders, requires registration with Transport for NSW and completion of an online education program,

⁶ <https://www.legislation.vic.gov.au/as-made/acts/roads-and-road-safety-legislation-amendment-act-2024>

⁷ See: <https://www.nsw.gov.au/ministerial-releases/cannabis-drivers-not-immediately-penalised>

and imposes a three-strike warning system before penalties apply on a third detection within two years.

The ACT Bill differs from the NSW model in important respects. The NSW approach retains the presence offence and applies it progressively; the ACT Bill inserts a statutory defence that removes criminal liability under the presence and concentration offences for prescribed patients who lawfully used THC. The ACT Bill does not require patient registration with a transport authority — a barrier that does not apply to patients prescribed opioids or benzodiazepines. The ACT model is more closely aligned with the evidence-based principle of full harmonisation.

2.4 United Kingdom

The United Kingdom has operated a statutory medical defence for prescribed cannabis patients under section 5A of the *Road Traffic Act 1988* since March 2015. The defence applies where the specified controlled drug was prescribed for medical or dental purposes and was taken in accordance with that prescription and advice given by the prescribing practitioner. This comparable common law jurisdiction has operated the defence for over a decade without evidence of road safety compromise.

HUMAN RIGHTS COMPATIBILITY

These considerations have been prepared with regard to section 37 of the *Human Rights Act 2004* (HRA).

Rights Engaged

The Bill engages the following rights protected under the HRA:

- **Section 8 — Recognition and equality before the law.** The Bill creates a defence that is available to persons who have obtained and administered THC in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law. This right is engaged to the extent that the defence is available to all persons who lawfully used THC regardless of licence class. Any future amendment to exclude particular licence classes from the defence would require careful analysis under this section.
- **Section 18 — Right to liberty and security.** Engaged by the modification of the detention powers under section 13D.
- **Section 12 — Right to privacy.** Engaged in the sense that the reform narrows the circumstances in which a person may be processed through the criminal justice system for lawful medical conduct.
- **Section 22 — Rights in criminal proceedings.** Engaged by the allocation of an evidential burden to the defendant in sections 20(4A) and 21(5A). The evidential burden engages the right to be presumed innocent under section 22(1).

The Bill does not, of itself, impose new limits on any HRA right. Its effect is to reduce the scope of existing criminalisation. The following analysis addresses the evidential

burden provisions under sections 20(4A) and 21(5A), and the modification to the detention power under section 13D.

The Evidential Burden — Sections 20(4A) and 21(5A)

Sections 20(4A) and 21(5A) provide that the defence does not apply unless the defendant establishes: (a) that THC was the only prescribed drug detected; and (b) that the THC was lawfully used. A note in each provision confirms that the defendant bears an evidential burden in accordance with section 58 of the *Criminal Code 2002* (ACT).

An evidential burden requires the defendant to point to evidence that suggests a reasonable possibility that the matter exists — not to prove it on the balance of probabilities. Once the evidential burden is discharged, the prosecution bears the burden of negating the defence beyond reasonable doubt.

The following analysis applies the factors under HRA section 28(2).

The nature of the right affected (s28(2)(a))

The right to be presumed innocent is a fundamental protection with deep roots in common law and international human rights instruments. However, courts in Australia and comparable jurisdictions have consistently held that the presumption may be qualified — including by evidential burdens — in the context of regulatory offences where the relevant facts are particularly within the knowledge of the accused. The present provisions concern a defence: the prosecution retains the burden of proving each element of the underlying offence beyond reasonable doubt.

The importance of the purpose of the limitation (s28(2)(b))

The evidential burden serves a legitimate and important purpose: it ensures that the defence is available only to persons who can demonstrate that they obtained and administered THC lawfully within the meaning of the Act. ‘Lawfully used’ is defined in the Dictionary to the Act as meaning obtained and administered in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law. A prescription document and dispensing records will ordinarily be sufficient to demonstrate this. Without an evidential burden, the defence could be invoked by any person detected with THC — including recreational users — without any connection to a lawful scheme of administration. The burden is the mechanism by which the defence is confined to its intended beneficiaries.

The nature and extent of the limitation (s28(2)(c))

The limitation is an evidential burden only — not a legal burden. The defendant is required only to raise a reasonable possibility that the conditions are satisfied: that THC was the only prescribed drug detected, and that it was obtained and administered in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law. Dispensing records, prescription documentation, and treating practitioner records will ordinarily be sufficient to discharge this burden. The prosecution then bears the full onus of disproving the defence. The quantum of proof required from the defendant is low. The offence does not carry a term of imprisonment. The limitation is therefore limited in extent.

The relationship between the limitation and its purpose (s28(2)(d))

The connection between the evidential burden and its purpose is direct. The burden is imposed on the element of lawful use — the distinguishing feature that separates a person who obtained and administered THC in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law, from a recreational user who did not. The defendant, not the prosecution, has ready access to their dispensing records, prescription documentation, and treating practitioner records. The allocation of the evidential burden to the defendant on this element is rationally connected to the purpose of confining the defence to lawful users.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s28(2)(e))

A defence with no evidential burden would be less restrictive on the right to be presumed innocent but would significantly undermine the integrity of the defence by making it available to persons who cannot demonstrate lawful use. A full legal burden on the defendant (balance of probabilities) would achieve the same purpose but would impose a more significant restriction. An evidential burden is therefore the least restrictive means of achieving the purpose while maintaining the integrity of the defence.

Having regard to the above factors, the evidential burden under sections 20(4A) and 21(5A) is a reasonable limit on the right to be presumed innocent that is demonstrably justified in a free and democratic society for the purposes of HRA section 28.

Other Rights Considerations

The modification of the detention power under section 13D(2A) and (2B) reduces the current restrictions to the right to liberty and security. Where a drug screening device indicates only THC and there are reasonable grounds to believe the THC was lawfully used, the police officer must not take the person into custody. This is a restriction on executive power in favour of individual liberty, not a limitation on a right.

Beyond the specific limitation analysed above, the Bill positively advances several HRA rights. The right to liberty and security (section 18) is advanced by inserting a mandatory constraint on the custody power under section 13D(2A), creating an enforceable protection for lawful THC users who are not suspected of impairment or culpable driving. The right to privacy (section 12) is advanced by reducing the circumstances in which a person's private medical status — their use of a lawfully prescribed medicine — leads to processing through the criminal justice system and exposure on their criminal record. The right to recognition and equality before the law (section 8) is advanced by removing the differential treatment of medicinal cannabis patients compared to patients prescribed other potentially impairing drugs such as opioids and benzodiazepines; under the current law, the latter group is subject only to the impairment offence under section 24, while medicinal

cannabis patients face additional strict liability under sections 20 and 21. The Bill closes this gap.

The Bill is compatible with human rights.

SCRUTINY CONSIDERATIONS

4.1 Personal Rights and Liberties

The Bill reduces the scope of criminal liability under the presence and concentration offences for persons who lawfully used THC. To the extent it engages the Committee's concern for personal rights and liberties, it does so in favour of the individual. The current law, by imposing strict liability for the presence of a metabolite of a lawfully prescribed medicine, limits the personal liberty of patients in a manner that is not evidence-based. The Bill addresses this by inserting a qualified defence. Persons who are genuinely impaired remain subject to prosecution under section 24 (driving under the influence of intoxicating liquor or a drug).

4.2 Delegation of Legislative Power

The Bill does not delegate any legislative power. The definition of 'lawfully used' operates by reference to the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) and corresponding laws within the meaning of that Act. No new regulation-making powers are conferred.

4.3 Non-Reviewable Decisions

The Bill does not confer any non-reviewable administrative discretion. The question of whether the defence is established is a question of fact for the court. The modification to police discretion under sections 13D and 47B is structured as a mandatory constraint on executive power rather than a discretionary administrative determination.

4.4 Retrospectivity

The transitional provision in section 114 has a deliberately retrospective effect: the defences apply even where the THC was lawfully used before the amending Act commenced. The Scrutiny Committee has consistently recognised that retrospective provisions warrant particular scrutiny, and the Committee's terms of reference direct attention to provisions that may unduly trespass on personal rights and liberties.

In this case, the retrospective operation confers a benefit on individuals rather than imposing a new burden. No person acquires new criminal liability as a result of the transitional provision. The effect is to ensure that a person who lawfully used THC prior to commencement — whether the night before a roadside test, or at any earlier point — can rely on the defence where the other conditions are satisfied. This is consistent with the principle that provisions conferring benefits may operate retrospectively without constitutional difficulty.

The retrospective operation may also bear on proceedings initiated prior to commencement. Where a charge under section 20 or section 21 is before the courts at the time the amending Act commences, the defence under new subsection 20(4A) or 21(5A) will be available to the defendant if the conditions are met. This is the intended effect. The current law exposes prescribed patients to criminal liability for conduct that, following commencement, will not constitute an offence where the defence is established. It would be inconsistent with the purpose of the Bill to allow those proceedings to continue to a conviction where the defendant can demonstrate that the THC was lawfully used and was the only prescribed drug detected. The transitional provision ensures that the reform benefits all affected persons from the date of commencement, regardless of when the relevant conduct occurred or when proceedings were initiated.

CLAUSE NOTES

Clause 1 – Name of Act

This identifies the Bill, once prospectively passed, as the *Road Transport (Alcohol and Drugs) Amendment Act 2026*.

Clause 2 – Commencement

The Act commences on the day after its notification day. Commencement on notification-plus-one-day is the standard ACT approach for Acts that do not require advance notice for compliance purposes. The Bill does not impose new obligations on any person; it creates a defence. Immediate commencement is therefore appropriate.

Clause 3 – Legislation amended

The Bill amends the *Road Transport (Alcohol and Drugs) Act 1977*.

Clause 4 – Detention for oral fluid analysis — new section 13D(2A) and (2B)

Purpose: Section 13D of the Act provides that a police officer who has required a person to undergo oral fluid analysis may take the person into custody if the analysis indicates the presence of a prescribed drug. This provision is modified so that the general rule does not operate in the specific circumstances of a lawful THC-only detection.

Operation of new subsection 13D(2A): The police officer must not take the person into custody where three conditions are simultaneously satisfied:

- (a) the drug screening device indicates to the police officer that THC is present in the person's oral fluid;
- (b) the device does not indicate to the police officer that any other prescribed drug is present in the person's oral fluid; and
- (c) there are reasonable grounds for the police officer to believe the THC was lawfully used.

The third element — reasonable grounds to believe lawful use — is a low threshold. ‘Lawfully used’ in the Bill means THC obtained and administered in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law within the meaning of that Act. In practice, a person presenting dispensing records or a prescription document issued under that regime will ordinarily satisfy the officer that this element is met. It is an objective test assessed from the position of the police officer at the time. It does not require the officer to make a legal determination on lawful use; it requires only that the belief be reasonably grounded on the available information.

Operation of new subsection 13D(2B): Subsection (2A) does not apply if the police officer has reasonable cause to suspect that the person has committed an offence against section 24 (driving under the influence of intoxicating liquor or a drug) or an offence of culpable driving. This preserves the full operation of the custody power in impairment or serious driving cases. It means that a person who exhibits signs of impairment, or who has been involved in a crash, cannot rely on the protection of subsection (2A) to avoid custody.

The carve-out is appropriately targeted. It does not apply merely because THC is detected — it applies only where the officer has reasonable cause to suspect active impairment or culpable conduct. This maintains the protection for non-impaired prescribed patients while preserving police powers in serious situations.

Clause 5 – Section 20(4) — definition substitution

Section 20(4) currently uses the term ‘delta-9-tetrahydrocannabinol’ in the context of provisions that exclude the mistake of fact defence. Clause 5 substitutes the abbreviation ‘THC’ for the full chemical name. This is a drafting consistency amendment. The abbreviation ‘THC’ is defined in the Dictionary to the Act by clause 12 as meaning delta-9-tetrahydrocannabinol. The substitution aligns the terminology of subsection (4) with the abbreviation used in new subsection (4A) inserted by clause 6. It has no substantive effect.

Clause 6 – Section 20 — New subsection (4A): Medicinal cannabis defence to the presence offence

Purpose: This is the central operative provision of the Bill. Section 20 of the Act creates a strict liability offence for driving with a prescribed drug — including THC — in oral fluid or blood. Sections 20(3) and (4) currently exclude the mistake of fact defence in relation to THC. New subsection (4A) inserts a qualified statutory defence that restores a narrow and conditional pathway for lawful users.

Operation: Subsection (1) of section 20 — the presence offence — does not apply if two conditions are established:

- THC was the only prescribed drug in the defendant’s oral fluid or blood within the relevant period; and
- The THC was lawfully used.

The defence is narrow in scope. It does not apply where any other prescribed drug is also detected. It operates only where lawful use is established. A person detected

with THC alongside another prescribed drug — whether illicitly or lawfully obtained — cannot invoke the defence.

Evidential burden: A note to the provision confirms that the defendant bears an evidential burden in relation to the matters in subsection (4A), in accordance with section 58 of the *Criminal Code 2002* (ACT). This is an evidential burden only — the defendant is required to raise a reasonable possibility that THC was the only prescribed drug detected and that it was obtained and administered in accordance with the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) or a corresponding law within the meaning of that Act. Once that burden is discharged, the prosecution bears the burden of negating the defence beyond reasonable doubt. The defendant has ready access to the evidence necessary to discharge this burden: dispensing records, prescription documentation, and the records of their treating practitioner.

Relationship to section 24: The defence under section 20(4A) operates only in relation to the strict liability presence offence under section 20(1). It has no effect on the operation of section 24 (driving under the influence of intoxicating liquor or a drug). A medicinal cannabis patient who drives while genuinely impaired by THC commits an offence against section 24 regardless of whether the conditions in subsection (4A) are otherwise met.

Clause 7 – Section 21(5) — definition substitution

Parallel to clause 5, section 21 creates an offence for driving with a prescribed drug at or above a prescribed concentration. Clause 7 substitutes ‘THC’ for ‘delta-9-tetrahydrocannabinol’ in subsection (5), consistent with the Dictionary definition inserted by clause 12, to align terminology with new subsection (5A) inserted by clause 8. No substantive effect.

Clause 8 – Section 21 — New subsection (5A): Medicinal cannabis defence to the concentration offence

Purpose: Section 21(1) creates an offence for driving with a prescribed drug present at or above a prescribed concentration in oral fluid or blood. New subsection (5A) inserts a defence to this offence in equivalent terms to new section 20(4A).

Operation: Subsection (1) of section 21 does not apply if:

- (a) THC was the only prescribed drug in the defendant’s oral fluid or blood within the relevant period; and
- (b) the THC was lawfully used.

The evidential burden provisions and the relationship to section 24 are equivalent to those described for clause 6. The parallel structure of sections 20(4A) and 21(5A) is intentional — a person who lawfully used THC should not face criminal liability under either the presence offence or the concentration offence for that lawful use. The two defences operate together to ensure complete coverage of the relevant charging pathways. A person who is genuinely impaired remains subject to section 24 regardless.

Clause 9 – Section 47B(1)(b) — cross-reference to new subsection (7)

Section 47B(1)(b) provides that a police officer may direct a person not to drive if the officer has reasonable cause to suspect that the person’s ability to drive is impaired by a prescribed drug. The examples under that paragraph illustrate circumstances that may give rise to that suspicion, including the results of drug-related tests.

Clause 9 inserts the words ‘(subject to s (7))’ after ‘person’s oral fluid’ at the third dot point of those examples. This is a drafting link that alerts the reader of subsection (1)(b) and its examples to the qualification introduced by new subsection (7) in clause 10.

Clause 10 – Section 47B — New subsections (7) and (8): Modification of direction-not-to-drive power

Purpose: Section 47B empowers a police officer to direct a person not to drive where the officer has reasonable cause to suspect that the person’s ability to drive safely is impaired by a prescribed drug. New subsection (7) provides that a drug-related test result indicating only THC — where lawful use is reasonably apparent — cannot by itself ground that reasonable cause to suspect.

Operation of new subsection 47B(7): A police officer does not have reasonable cause to suspect that a person’s ability to drive a motor vehicle safely is impaired by a prescribed drug, merely because a drug-related test indicates the presence of THC in the person’s oral fluid or blood, if:

- (a) the drug-related test does not indicate any other prescribed drug is present; and
- (b) there are reasonable grounds to believe the THC was lawfully used.

This provision is critical to the coherence of the reform. Without it, a police officer could direct a prescribed medicinal cannabis patient not to drive based solely on THC detection, even where a complete defence would be available to any subsequent charge. The direction power would otherwise operate as a de facto penalty that circumvents the defence. New subsection (7) ensures the law’s treatment of prescribed patients is consistent at both the enforcement and prosecution stages.

The provision does not prevent a police officer from directing a person not to drive on other grounds — for example, where signs of impairment are observed independently of the test result, or where another prescribed drug is also detected.

Operation of new subsection 47B(8) — Definition of drug-related test:

Subsection (8) defines ‘drug-related test’ for the purposes of section 47B. The definition captures:

- (a) a drug screening test under Division 2.4;
- (b) an oral fluid analysis under Division 2.5; and
- (c) an analysis of blood for a prescribed drug under Division 2.7.

This comprehensive definition ensures that subsection (7) operates across all testing modalities under the Act — roadside screening, confirmatory oral fluid analysis, and blood analysis — and cannot be circumvented by reference to the type of test used.

Clause 11 – Part 23 (new) — Transitional provisions

Section 114 — Prior lawful use of THC: Section 114 provides that the amendments of the Act made by the *Road Transport (Alcohol and Drugs) Amendment Act 2026* apply even if the THC was lawfully used before the day that Act, section 3 commenced. Without this provision, a technical argument might be advanced that the defences do not apply to THC consumed prior to commencement — for example, by a person whose medication was taken the previous evening and who is tested the following morning.

The transitional provision removes this ambiguity. It ensures that a prescribed patient whose medicine was lawfully consumed before commencement can rely on the defence where the other conditions are met. This is consistent with the general principle that provisions conferring benefits (rather than creating new liabilities) may operate retrospectively without constitutional difficulty.

Section 115 — Expiry of Part 23: Part 23 expires one year after the day it commences, in accordance with standard ACT drafting practice for transitional provisions. As noted in the Bill, a transitional provision is repealed on its expiry but continues to have effect after its repeal under section 88 of the *Legislation Act 2001*.

Clause 12 – Dictionary — new definitions of ‘lawfully used’ and ‘THC’

Definition of ‘lawfully used’: Clause 12 inserts two definitions into the Dictionary to the Act. The first is the definition of ‘lawfully used’, which is the central gating concept for the defences in sections 20(4A) and 21(5A) and the modified police powers in sections 13D(2A) and 47B(7). The term is defined to mean, in relation to THC, obtained and administered in accordance with:

- (a) the *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT); or
- (b) a corresponding law within the meaning of that Act.

The *Medicines, Poisons and Therapeutic Goods Act 2008* (ACT) is the ACT statute that regulates the prescribing, dispensing, and administration of scheduled substances including medicinal cannabis products. The reference to ‘a corresponding law within the meaning of that Act’ ensures the defence is available to a person who obtained and was administered THC lawfully under the equivalent legislation of another Australian State or Territory. This means, for example, that a patient prescribed medicinal cannabis in New South Wales under that jurisdiction’s medicines and poisons legislation, who is detected with THC while driving in the ACT, can rely on the defence. The definition confines ‘lawful use’ to use within a regulated prescribing and dispensing framework. It excludes recreational use and any use that was not obtained and administered in accordance with the relevant regulatory scheme.

Definition of ‘THC’: The second definition provides that ‘THC’ means delta-9-tetrahydrocannabinol. This Dictionary definition supports the terminology substitutions made by clauses 5 and 7, which replace the full chemical name with the abbreviation ‘THC’ in sections 20(4) and 21(5) respectively. The abbreviation is used throughout the new provisions inserted by the Bill. Placing the definition in the Dictionary ensures that the term has a consistent and authoritative meaning across the Act.