

Why regulations must be in place before marijuana is legalised

 By Rhys Evans

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The legalisation of marijuana in South Africa is a topic met with both anticipation and apprehension, depending on your views of the substance. Regardless, should marijuana use be legalised, there are a number of concerns and questions around regulation and control that need to be addressed to ensure the safety of both users and non-users - particularly when it comes to road safety.



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As with alcohol consumption, use of marijuana leads to intoxication. However, unlike alcohol, testing for marijuana intoxication is a lot more complex than simply doing a breathalyser. Laws and limits exist for driving under the influence of alcohol but, as Tetrahydrocannabinol (THC) - the principal psychoactive constituent of marijuana – remains in a user's system for far longer than alcohol does, it makes it tricky to establish limits and laws around marijuana use.

Since marijuana use has been fairly common despite use not yet being legal, it's highly likely that there have been drivers under the influence of THC (marijuana) whilst operating a vehicle up until now, although there are no real statistics to confirm this.



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According to Section 65 of the National Road Traffic Act, "No person may drive a vehicle or occupy the driver's seat of a motor vehicle of which the engine is running on a public road while under the influence of intoxicating liquor or drug having narcotic effect."

In theory, any person caught with even traces of marijuana in their system whilst driving can currently be arrested and/or prosecuted. But because it can remain in a person's bloodstream for hours to days after use, a person who tests positive for marijuana isn't necessarily intoxicated. At present, no limit has been established to determine how much THC needs to be present in the bloodstream for a person to be considered intoxicated.

The chance of a driver being tested for drugs in a road block are minimal due to a lack of testing equipment available to officers and the fact that there are grey areas that need to be clarified and legislated. As a result, drivers that indulge in substances such as marijuana are less concerned with being caught in a road block than if they have consumed alcohol.

Currently, THC can be detected in blood tests, urine tests and saliva tests. Saliva testing would be the most likely to be used to test for roadside marijuana intoxication, but test limits need to be set up in order to establish more than just the presence of THC. The process is also a lengthy one, with results only typically showing within three to five minutes.



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Saliva tests comprise a disposable cartridge containing a cotton swab or collection pad, similar to a large earbud. The person being tested would need to hold the swab in their mouth for a minimum of twenty seconds to gather sufficient saliva (the swab changes colour when enough saliva has been accumulated). This can be longer for those under the influence of marijuana, as a known side effect is dry mouth.

The swab is then inserted into the cartridge and results appear within three to five minutes. Evans says that the entire process takes approximately seven minutes, which is longer than a breathalyser test but still very necessary to ensure the safety of road user from intoxicated drivers.

Traffic enforcers are likely to only test based on visual suspicion of intoxication, as the time constraints of saliva testing make it onerous to test all drivers at, say, a roadblock. It would make sense for drivers to be tested on a random basis or possibly only if they are suspected of being under the influence, giving visual cues such as erratic or inconsistent driving.

Regardless of the actual procedure, it is critical for relevant governing bodies to be proactive in formulating regulations, limits and testing requirements well ahead of legalisation.



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It is likely that legalisation of marijuana will only increase the number of active users driving a vehicle while under the influence. Until regulations are in place, however, it will be extremely difficult if not impossible to prove actual intoxication and there will be little to stop these drivers from taking to our roads.

It is essential that regulations are drawn and parameters set before legalisation, to avoid a spike in intoxication-related traffic incidents and ensure that our roads remain safe.

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