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J.R. Odgers
Clerk of the Senate

*Joint Committee on the
Australian Capital Territory*

**REPORT ON
BREATH ANALYSING
EQUIPMENT FOR DRIVERS
OF MOTOR VEHICLES**

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

*Joint Committee on the
Australian Capital Territory*

**Report on whether Breath Analysing
Equipment should be introduced
into the Australian Capital Territory
to assist in Detecting and Preventing
Persons driving Motor Vehicles
while their Ability to do so
is Impaired by the
Consumption of Alcohol**

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JOINT COMMITTEE ON THE AUSTRALIAN CAPITAL TERRITORY

1. The Committee was appointed for the life of the 26th Parliament by Resolutions of the House of Representatives and the Senate on 7 March and 8 March 1967 respectively. It was first appointed by Resolutions of both Houses of the Parliament on 8 November 1956 and re-appointed in succeeding Parliaments.

2. The duties of the Committee are to:

- (a) examine and report on all proposals for modifications or variations of the plan of lay-out of the City of Canberra and its environs published in the *Commonwealth of Australia Gazette* on the nineteenth day of November 1925, as previously modified or varied, which are referred to the Committee by the Minister for the Interior; and
- (b) examine and report on such other matters relating to the Australian Capital Territory as may be referred to the Committee by the Minister for the Interior.

3. PERSONNEL OF THE COMMITTEE—November 1968 to May 1969

Chairman: Senator J. E. Marriott

Deputy Chairman: Mr J. R. Fraser, M.P.

Members: Senator D. M. Devitt
 Senator C. R. Maunsell
 Senator J. P. Toohey
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SUMMARY OF PRINCIPAL RECOMMENDATIONS

- (1) That compulsory breath analysis tests conducted by Breathalyzer* machines be introduced into the Australian Capital Territory.
- (2) That a person required to undergo a breath analysis test should have the right to undergo a blood test as an alternative.
- (3) That a new offence of driving a motor vehicle while having a blood alcohol level in excess of a prescribed figure should be created.
- (4) That the prescribed figure in the new offence should be 0.05 per cent.
- (5) That two levels of penalties should be provided in relation to the new offence, firstly blood alcohol levels in excess of 0.05 per cent up to 0.08 per cent, and secondly, those in excess of 0.08 per cent up to 0.15 per cent.
- (6) That a level of 0.15 per cent blood alcohol content should be *conclusive* evidence that a person is driving under the influence of alcohol.
- (7) That random testing of drivers of motor vehicles should not be permitted at this stage but that, if proposed legislation proves inadequate to deal with the problem of drinking drivers, random tests should then be considered.
- (8) That where a breath analysis test or blood test has been taken, the results obtained should be admitted as evidence in all prosecutions relating to the driving of a motor vehicle.
- (9) That breath analysis tests be conducted by officers of a Breath Analysis Section to be formed within the Australian Capital Territory Police Force.
- (10) That breath analysis tests should be conducted at a Police Station or other central location and not at the roadside.
- (11) That refusal to undergo a breath test or the alternative blood test should constitute an offence of the same magnitude as driving under the influence of alcohol.
- (12) That a survey be conducted prior to the introduction of breath analysing legislation to determine the blood alcohol levels of drivers in the Australian Capital Territory.
- (13) That a survey of the causes of road accidents including the types of vehicles involved be undertaken in the Australian Capital Territory.
- (14) That an intensive campaign be conducted by the Commonwealth on a national basis to educate the young and old alike of the effects of alcohol on the human body and the dangers involved in drinking and driving.

* Registered Trade Mark.

JOINT COMMITTEE ON THE AUSTRALIAN CAPITAL
TERRITORY

**Report on whether Breath Analysing Equipment
should be Introduced into the Australian Capital
Territory to Assist in Detecting and Preventing Persons
Driving Motor Vehicles while their Ability to do so is
Impaired by the Consumption of Alcohol**

THE INQUIRY

1. On 21 November 1968, the Minister for the Interior, the Hon. P. J. Nixon, M.P., wrote to the Committee asking it to inquire into whether the Breathalyzer* should be introduced into the Australian Capital Territory as an instrument to assist the Australian Capital Territory Police in the detection of the offence of driving under the influence of intoxicating liquor and, if so, under what conditions. The Minister readily agreed to the Committee's request that the terms of reference should be widened to enable it to also consider possible ways of preventing persons driving whilst under the influence of intoxicating liquor.

2. Following representations to and by the Committee, the Minister made further amendments to the proposed terms of reference to ensure that the inquiry was not limited by any possible narrow interpretation of those terms of reference and so that the Committee could consider all types of breath analysing equipment. The inquiry undertaken by the Committee was as follows:

Whether breath analysing equipment should be introduced into the Australian Capital Territory and under what conditions to assist the A.C.T. Police in detecting and preventing persons driving vehicles while their ability to do so is impaired by consumption of alcohol.

INTRODUCTORY

3. The Committee advertised throughout Australia inviting submissions from interested persons and organisations and evidence was sought from The Australian Road Safety Council, all state Road Safety Councils, motoring organisations in all States, the federal and State organisations of the Australian Medical Association and all Law Societies and Institutes. Persons known to have expert knowledge of the subject were contacted and the co-operation of all Police Departments was sought. In all 67 written or oral submissions were received by the Committee which conducted 22 public hearings and deliberative meetings in all States except Queensland.

4. The workings of the Breathalyzer were examined in detail at the Forensic Science Laboratory of the Victoria Police Force and methods of testing

* Registered Trade Mark.

the equipment studied. Members of the Committee subjected themselves to tests on the instrument before, during and after consumption of alcohol in recorded quantities.

5. With the approval of the Chairman, two officers of the Department of the Interior accompanied the Committee throughout its interstate hearings.

ALCOHOL AND ROAD ACCIDENTS

6. Alcohol is a sedative. When taken by a person it dulls the nervous system impairing two essentials for safe driving—perception and judgment. Its effect upon a driver of a motor vehicle has been studied extensively throughout the world and these studies and laboratory tests have shown conclusively that even small quantities of alcohol reduce driving ability.

7. In Australia, there is a dearth of statistical information available to show what part alcohol plays in accidents involving motor vehicles. The Committee's inquiry was handicapped to some extent by this lack of carefully formulated statistics.

8. Limited studies undertaken in Brisbane by Dr K. G. Jamieson and Dr I. A. Tait showed that approximately 40 per cent of drivers taken to hospital as a result of traffic accidents had a blood alcohol level of 0.05 per cent* or greater, that 50 per cent of dead drivers had blood alcohol levels in excess of 0.10 per cent and that 80 per cent of dead drivers involved in fatal single-vehicle accidents had blood alcohol levels in excess of 0.10 per cent. In Victoria, studies by the police surgeon, Dr J. H. Birrell, revealed that at least half of all fatal accidents were caused by problem drinkers.†

9. Between August 1959 and March 1966, a team headed by Professor J. S. Robertson, Professor of Pathology, University of Adelaide, made an analysis of 788 victims of fatal traffic accidents. Post mortem examinations revealed that 19.2 per cent of all victims had a blood alcohol level in excess of 0.05 per cent and of car drivers killed in these accidents, 32.6 per cent had blood alcohol levels in excess of 0.05 per cent and 26.6 per cent blood alcohol levels greater than 0.10 per cent.

10. The Committee has received a great deal of evidence from doctors, psychiatrists, scientists, police officers and others of the part played by alcohol in road accidents. There is no doubt that alcohol is a significant factor in the causation of accidents involving motor vehicles.

IS PRESENT LEGISLATION ADEQUATE TO DEAL WITH THE PROBLEM

11. There are at present in the Australian Capital Territory three separate offences relating to alcohol and the driving of a motor vehicle. These offences are:

- (i) culpable driving under the influence resulting in death;
- (ii) culpable driving under the influence resulting in injury, and
- (iii) driving under the influence of liquor.

* See Appendix II for table of equivalent methods of expressing the concentration of blood alcohol.
† See definition, paragraph 56.

There is no requirement for the taking of a chemical test to determine the alcohol content of a defendant but he may request that a blood test be taken at his own expense.

12. It has been stated that, while grosser symptoms of intoxication are easily recognised, there is great difficulty in deciding when the observed abnormalities of behaviour are sufficient to put a person into the category of being under the influence of liquor. Further and more serious difficulties arise in relation to communication between the police witness and the tribunal when the witness is required to describe those things which led him to the conclusion that the defendant was affected by liquor.

13. In addition to legislation existing in the Australian States and Territories making it an offence to drive a motor vehicle while under the influence of alcohol, all States have introduced legislation which requires drivers suspected of driving under the influence to submit to a breath test. All States prescribe that it is an offence to drive with levels of blood alcohol beyond certain fixed limits.

14. Present legislation in the Australian Capital Territory to deal with drivers of motor vehicles whose ability is impaired by consumption of alcohol is inadequate and difficult of enforcement. The Committee believes that the creation of a new offence of a person driving a motor vehicle while his blood alcohol concentration is in excess of a prescribed level is essential and that an acceptable chemical test should be introduced to determine the level of blood alcohol in his body.

PERMISSIBLE LEVELS OF ALCOHOL

15. Although there are individual variations of tolerance to alcohol, the deterioration in driving efficiency observed in an individual can be related to his blood alcohol level. There is, however, an area of controversy concerning the level of alcohol which should be permitted in the drivers of motor vehicles.

16. Research undertaken in various parts of the world shows that, at a blood alcohol concentration of 0.05 per cent, the risk of drivers being involved in motor accidents is twice as much as at a zero reading, that at 0.08 per cent it is at least three times as much, and at 0.15 per cent the risk is 25 times as great.

17. In Victoria, it is an offence for a person to drive a motor vehicle with a blood alcohol level in excess of 0.05 per cent. All other Australian States have set the level for this offence at any figure in excess of 0.08 per cent.

18. The Committee has examined all available material and has taken a wealth of evidence from medical experts, scientists, police officers and others on this subject. It believes that, at a level of 0.05 per cent, there is a substantial and direct impairment of the ability to apply the skills required in driving, and recommends most strongly that, in the new offence of driving with a blood alcohol level in excess of a prescribed figure, the prescribed figure should be 0.05 per cent.

19. In recommending that the prescribed figure in the new offence should be 0.05 per cent, the Committee further recommends that degrees of severity of the offence should be provided for in the legislation. It believes, and recommends in its table of recommended penalties at page 18, that between the levels of 0.05 per cent and 0.08 per cent there should be relatively light penalties but that at levels in excess of 0.08 per cent up to 0.15 per cent much more severe penalties should be provided.

20. The Committee is also satisfied that when the blood alcohol concentration of a person exceeds the level of 0.15 per cent he is clearly under the influence of alcohol. It recommends that, in the case of a driver of a motor vehicle, a blood alcohol level in excess of 0.15 per cent should be accepted as conclusive evidence that he is driving under the influence of alcohol.

TYPES OF CHEMICAL TESTS

21. It is generally accepted that there are three main types of chemical tests to determine the level of alcohol in the blood, namely, blood, urine and breath tests. Analysis of blood requires the taking of a sample of blood, usually by a doctor, from some part of the subject's body, generally the forearm, although other parts of the subject's body, including the tip of a finger or lobe of an ear, may be selected. The level of alcohol is determined generally by distillation of the alcohol from the blood sample and then oxidation (known as the Kozelka and Hine method), by gas chromatographic or gas dehydrogenase methods. Urine tests are regarded as unsatisfactory and somewhat unreliable. Delays are necessary to ensure that the specimen tested has been excreted by the kidneys after the course of drinking and not as a result of an earlier build-up in the bladder.

22. Breath analysis tests for the determination of the level of alcohol are used in many parts of the world. There are two main types of breath analysing equipment, the first being a simple tube type tester consisting of a tube filled with chemical reagent which changes colour in the presence of alcohol. It is manufactured purely as a preliminary or screening device and does not purport to give an accurate measurement of the level of alcohol in the blood. Sold under the brand name 'Alcotest', this instrument is used in New South Wales, Queensland and Western Australia and other parts of the world as a screening device but its use in the Australian Capital Territory, which is a relatively small area, appears unnecessary and is not recommended by the Committee.

23. The second type of breath analysing equipment is far more sophisticated and measures alcohol in air or breath with a high degree of accuracy. The best known and most widely used instrument of this type is the Breathalyzer.

24. Developed by Professor R. F. Borkenstein, Chairman of the Department of Police Administration, Indiana University, in 1956, it is a portable instrument contained in a metal case. A person to be tested blows into a mouthpiece and the last part of the expelled air—from deep in the lungs—is trapped in a cylinder in the instrument. The breath sample is then passed

through an ampule containing potassium dichromate and sulphuric acid in precise quantities, resulting in the alcohol in the sample being oxidised to acetic acid and a corresponding reduction in the yellow potassium dichromate. The amount of blue light which can be transmitted through the test ampule is compared with the amount which will pass through a standard ampule and the difference is recorded on a galvanometer. The galvanometer is then balanced and, in the course of balancing, a reading of the percentage of alcohol in the sample is produced on a scale.

25. The Breathalyzer is used in various parts of the world, including all Australian States. It gives a reading of the level of blood alcohol within minutes and, being portable, may be used equally as well by the roadside as in some static position.

26. Extensive tests have been conducted in Australia and overseas on the accuracy of the Breathalyzer and the results are well documented. In addition, comparisons with other types of breath analysing equipment were conducted by the Forensic Science laboratory, Victoria Police Force, prior to the introduction of the Breathalyzer into Victoria.

27. The instrument has proved valuable in the detection of diabetes and other illnesses. When tested on the Breathalyzer, drivers suspected of being under the influence of alcohol have recorded negative or low blood alcohol readings totally inconsistent with their apparent alcoholic state. Prompt medical attention has been possible for these persons who may otherwise have been imprisoned as drunken drivers.

28. Having taken evidence from medical officers, scientists, police officers and others experienced in the use of this equipment, the Committee is satisfied that the Breathalyzer is an accurate instrument providing a reliable method of measuring blood alcohol concentrations in the human body.

DOES COMPULSION TO UNDERTAKE A BREATH ANALYSIS TEST INFRINGE CIVIL LIBERTIES

29. It has been said that it is an infringement of civil liberties to require a motorist to undergo a breath analysis test, the result of which may incriminate him. At the Committee's request, Professor J. E. Richardson, Robert Garran Professor of Law and Dean of the Faculty of Law, Australian National University, Canberra, prepared a submission on this subject for the Committee's consideration. Part of Professor Richardson's submission reads as follows:

It seems clear that there is no traditional right vested in a person to drive a motor vehicle in a public place and, so far as my research extends, ever since motor vehicles have been common means of transport, qualification to drive a motor vehicle has depended on the grant of a licence under the authority of legislation. At least technically, therefore, a motorist has a licence to drive but not a right to drive. Civil liberties are not violated by granting a licence subject to such conditions as reasonably relate to the safe operation of motor vehicles. Since qualification to drive a car depends on the grant of a licence, limitations attached to the grant of a licence are in a different category to restrictions operating directly to curtail a traditional private right.

Probably most motorists consider they have a 'right' to drive a car on a public road. Accepting that there is by usage something equivalent to a right in this regard, it is nevertheless a right of a different nature from the traditional private rights of the individual. The individual exercises traditional liberties or rights as a human being capable of enjoying them entirely as an exercise of his own volition. Thus a person exercises his right to free speech by his own speech or his right of assembly by himself assembling with others. The exercise of a 'right' to drive a motor vehicle depends on having control of a vehicle to make it effective. Advances in modern technology and in the standard of living have enabled individual members of the community to acquire the necessary instruments or vehicles which, by reason of weight, size and speed, are capable of unusual destruction of a physical kind. Exercises of traditional rights have no similar capabilities. Yet, as seen, traditional liberties cannot be pressed by the individual to the point of harming others, for example another subject's reputation. Since, in the wrong hands, vehicles can cause harm, by analogy, rules may be imposed consistently with the concept of civil rights or liberties to reduce destruction potential to a minimum.

Motor vehicles are driven on public roads available for public use for purposes of transport and communication. In fact, public roads in modern times make possible the much greater physical contact that members of the public are able to have with each other as a result of advances in living standards and technology, including the evolution of the motor car itself. A vehicle, using a public road, which is defectively controlled constitutes an interference with the right of others to use the highways for transport and communication, that is the purposes for which public roads exist and are maintained.

The foregoing analysis shows that compulsory Breathalyzer testing including roadside testing does not, in principle, raise fundamental issues involving the infringement of civil liberties. On the assumption that Breathalyzer tests are beyond doubt useful in deterring and preventing persons from driving vehicles when their capabilities are impaired by the consumption of alcohol their imposition is consistent with the protection of countervailing rights of others, including the traditional freedoms and the use of public roads for transport and communication.

30. No evidence contrary to the analyses of Professor Richardson was received by the Committee and it agrees with the views expressed by the Professor.

31. The Committee finds that there is no infringement of civil liberties involved in the requirement that, under certain conditions, a driver of a motor vehicle should be compelled to undergo a breath analysis test for the purpose of determining the level of alcohol in his blood and his fitness to drive that vehicle. The Committee recommends, however, that any person may in lieu of a breath analysis test have the right to submit to a blood test.

UNDER WHAT CONDITIONS SHOULD A DRIVER BE COMPELLED TO UNDERGO A BREATH ANALYSIS TEST

32. The Committee has examined the statutory provisions existing in each Australian State which permit a police officer to require a person to undergo a breath analysis test. It believes that a police officer must have the power to require any person whose behaviour has led the police to suspect that he has driven under the influence of alcohol to submit to a breath analysis test.

33. The Committee recommends that, where an officer of the Australian Capital Territory Police Force has reasonable cause to believe that:

- (i) whilst driving a motor vehicle any person has by act or omission contravened or failed to comply with any provision of the Australian Capital Territory Motor Traffic Ordinance;
- (ii) by the manner in which any person drives a motor vehicle, or occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, that person has alcohol in his body; or
- (iii) any person over the age of fourteen years was involved in an accident upon a public street in which a motor vehicle was involved,

that officer may require that person to undergo a breath analysis test in accordance with the directions of that officer.

34. In recommending that any person over the age of fourteen years who is involved in a motor vehicle accident upon a public street should be required to undergo a breath analysis test, the Committee believes that the blood/alcohol concentrations of pedestrians and others should be obtained, if not for the determination of legal responsibility, then at least for statistical purposes.

35. It is recognised that, due to injuries sustained in an accident or other medical condition, it may not be desirable to require a person to submit to a breath analysis test. Accordingly, the Committee recommends:

That an officer of the Australian Capital Territory Police Force shall not require a person to undergo a breath analysis test—

- (i) if that person has been admitted to hospital for medical treatment, unless the medical practitioner in immediate charge of his treatment has been notified of the intention to make the requisition and the medical practitioner does not object on the grounds that compliance therewith would be prejudicial to the proper care or treatment of that person, or
- (ii) if it appears to that officer that it would, by reason of injuries sustained by that person, be dangerous to that person's medical condition to undergo a breath analysis test.

36. The desirability of conducting random tests of drivers has been examined fully throughout this inquiry. The Committee stresses that, in referring to random tests, it means spot checking of any driver at any time and on any road. Such tests would have to be fair and undiscriminating.

37. The Committee believes that one of the greatest deterrents to a person driving a motor vehicle whilst his ability to do so is impaired by consumption of alcohol would be the knowledge that, at any time, he may be stopped and required to undergo a breath analysis test. The ability to conduct such tests would unquestionably increase the effectiveness of breath analysis legislation.

38. It is important, however, that legislation to be introduced should be acceptable to the community. From evidence received, it appears that random testing of drivers would not at this time be acceptable to the community. Therefore, the Committee does not support its introduction at this stage.

39. The Committee recommends that the Minister for the Interior should keep under review the effectiveness of legislation introduced and should it prove inadequate to deal with the problem of drinking drivers after a reasonable period of, say, two years, random testing of drivers should then be considered.

ADMISSIBILITY OF EVIDENCE OF BLOOD/ALCOHOL LEVEL

40. In this Report the Committee has recommended the creation of new offences of driving while having a blood alcohol concentration in excess of the prescribed figure of 0.05 per cent and that a blood alcohol level in excess of 0.15 per cent should be conclusive evidence of driving under the influence of alcohol. Evidence obtained from the compulsory breath analysis test or the alternative blood test should be used in these charges.

41. The Committee also recommends that, where a breath analysis test or blood test has been taken, the results obtained should be admitted as evidence in all prosecutions relating to the driving of a motor vehicle.

WHO SHOULD CONDUCT BREATH ANALYSIS TESTS

42. The Committee can see no reason why breath analysis tests should not be conducted by officers of the Australian Capital Territory Police Force. It believes that there should be created within the Force a breath analysis section engaged entirely in the carrying out of these tests. Such a section would, of necessity, be on call 24 hours daily.

43. Officers forming the breath analysis section should be specially selected for their ability, integrity and experience in traffic offences involving alcohol, and preferably, should not be intolerant to the consumption of alcohol. They should not be the informants or responsible for the conduct of the prosecution of drinking/driver offences in the Courts.

44. In making these recommendations, the Committee observes that it was greatly impressed by the working practices of the Breath Analysis Section of the Victoria Police Force and of the ability of its officers. It believes that officers selected to form this Section in the Australian Capital Territory should have the opportunity of observing the practices of the Breath Analysis Section of the Victoria Police Force prior to the introduction of the equipment in the Australian Capital Territory.

THE METHOD OF CONDUCTING BREATH ANALYSIS TESTS

45. The portability of the Breathalyzer enables it to be used equally as well by the roadside in a police car or van as in an office or other fixed position. This flexibility has proved useful in the various States where a large area is to be controlled.

46. The Australian Capital Territory is a relatively small compact area and it is possible to drive to a central point in a relatively short time.

47. In the opinion of the Committee, roadside testing of drivers suspected of being under the influence of alcohol is unnecessary and socially undesirable in an area of the size of the Australian Capital Territory. A period of 20 minutes must elapse after the last drink before the breath test is conducted to ensure that all mouth alcohol has disappeared. The time taken to travel to a central point can be offset against this requirement.

48. Accordingly, the Committee recommends that roadside breath testing should not be practised and that tests be conducted at a police station or other central point.

49. In Western Australia, police may conduct a Breathalyzer test of a suspected driver up to four hours after his apprehension. The Committee believes that this period of time is undesirable and unnecessary in the Australian Capital Territory. It recommends that police should be required to carry out a breath test on a suspected driver within two hours of his apprehension.

50. A procedure form is used by police in Western Australia in dealing with drivers suspected of driving under the influence. Under this procedure, police are required to inform an accused person that he has the right to send for a solicitor, doctor or other person and to have a blood test taken at his own expense if he should so desire. The form also sets out questions that must be asked of the person and makes provision for his answers to be recorded.

51. This practice offers a desirable safeguard for the rights of the driver and the Committee recommends that a similar procedure form should be introduced for use by the police in the Australian Capital Territory.

52. The Committee also recommends that procedures followed by the Victoria Police Force in carrying out Breathalyzer tests and for the regular checking and maintenance of the machines should be observed completely by police in the use of the equipment in the Australian Capital Territory.

RECORD OF BREATHALYZER READING

53. A printed record card is available for use with the Breathalyzer and a copy of this card is reproduced as Appendix III. After attaching one of these cards to the Breathalyzer, the blood/alcohol reading is recorded on the card by means of pressing the protective cover over the pre-inked needle on the scale of the instrument. Western Australian Police make use of this record card which is handed to the tested person.

54. The Committee recommends that a printed card recording the blood/alcohol level should be used with Breathalyzer units in the Australian Capital Territory and that this card should be handed to the tested person as soon as the test has been completed.

PROBLEM DRINKERS

55. It was submitted to the Committee that there is a need to categorise the types of drinking driver in the community. Evidence suggests that there are three groups of people who are likely to be driving and drinking at the same time. These groups have been classified as firstly, social drinkers (0.05 per cent-0.10 per cent), secondly, a mixture of social drinkers and problem drinkers (0.10 per cent-0.15 per cent) and thirdly, problem drinkers (above 0.15 per cent). Doctors experienced in the illness of addiction to alcohol state that it would be unusual for a social drinker to reach a blood alcohol level of 0.15 per cent and be handling a motor vehicle. Therefore the Committee believes that where a motorist has a level in excess of 0.15 per cent, there is *prima facie* evidence that that person is a problem drinker.

56. A problem drinker has been described as a person who has a chronic emotional illness characterised by repeated drinking in amounts sufficient to interfere with his health, or social or economic functioning. He may be involved in drunken driving, domestic difficulties and in trouble in his employment.

57. The Committee has been impressed by this approach to the problem. Statistics have shown that problem drinkers are responsible for at least half of the fatalities on the roads. Special attention to the group of problem drinkers appears necessary.

58. **The Committee recommends that any person found guilty on a second occasion of driving with a blood alcohol concentration in excess of 0.15 per cent, or any self-confessed problem drinker, should have his driving licence cancelled immediately. In these circumstances, another driving licence shall not be issued until the offender satisfies the Court on medical evidence provided by the offender that he has received treatment and has been rehabilitated in respect of his drinking and driving problem.**

REFUSAL TO UNDERGO BREATH ANALYSIS TEST

59. In paragraph 35 the Committee recognised that, in certain circumstances due to injuries or some other medical condition, there may be justification for refusal to submit to a breath analysis test. It could obtain no evidence to justify refusal on religious or other grounds and believes that, in most cases, a refusal would be based on the knowledge of certain conviction.

60. **It recommends that refusal to submit to a breath analysis test when required so to do by an authorised person should constitute an offence of the same magnitude as driving under the influence of alcohol except where refusal is based on medical grounds and a blood test taken.**

DRIVING WHILE DISQUALIFIED

61. Evidence from all States points to the increasing problem of persons driving motor vehicles while their licences are suspended or cancelled. Police experience great difficulty in apprehending offenders in this category.

62. The prevalence of the offence of driving whilst disqualified is viewed by the Committee with concern. It believes that severe penalties should be imposed on such offenders and has recommended penalties which it believes are appropriate in its Table of Recommended Penalties at pages 18 and 19.

OFFENCE OF AIDING AND ABETTING

63. The Committee received evidence concerning the offence of aiding and abetting in respect of driving offences and recommends that the possibility of this offence being committed be taken into consideration in framing the legislation.

NEED FOR PROMPT DETERMINATION OF CHARGES

64. The need for prompt determination by the Courts of drinking/driver offences is apparent. The Committee believes that delays in the prosecution of such offences may permit problem drinkers to continue to drive for some time, thus creating a grave danger to other road users and pedestrians alike.

65. The Committee urges that machinery be implemented which will permit drinking/driver charges to be brought before the Courts with a minimum of delay.

PENALTIES

66. The Committee believes that it has a responsibility to recommend penalties which it believes appropriate for offences related to the introduction of breath analysing equipment. From evidence produced to the Committee, it is of opinion that the best penalty to be imposed is the suspension or cancellation of driving licences rather than the imposition of monetary penalties. The Committee's recommendations are contained in Appendix IV. It may well be that monetary penalties should also be imposed but the Committee makes no recommendations concerning the scale of such fines.

SURVEY OF BLOOD/ALCOHOL LEVELS

67. Reference has already been made in this Report to the lack of statistics available to show how important a part alcohol plays in road accidents. It has been suggested that the Australian Capital Territory is an ideal area to undertake a survey to provide information of this nature.

68. The Committee fully supports this suggestion and believes that prior to the commencement of compulsory breath analysis legislation such a survey should be conducted in the Australian Capital Territory with the co-operation of the motoring public.

69. It recommends that the survey should be conducted over a period of 2 months by female students or graduates of the Australian National University sponsored by the Department of the Interior. They should be provided with distinctive uniforms clearly marked 'Traffic Survey' and carry out Breathalyzer tests so as to obtain a valid statistical sample. The level of

blood/alcohol should be recorded in all cases, together with the hour of the day or night and the age and sex of the driver and State of registration of the vehicle. Results obtained should be published and freely available.

70. In no circumstances should the name of the driver or the registration number of the vehicle be recorded and the information obtained should be used for statistical purposes only.

SURVEY OF VEHICLES AND CAUSES OF ROAD ACCIDENTS

71. Referring to the causes of road accidents, Sir Philip Phillips, Q.C., Royal Commissioner into the Sale, etc., of Liquor in Victoria (1963-65), made the following comments in his submission to the Committee.

. . . I suggest that one of our difficulties is that we have not begun to collect the necessary statistics to make an adequate attack on this problem; and we ought to. We ought to have a picture of the average vehicular fleet operating. You can do this very well in the Australian Capital Territory. It is not too extensive. We ought to do it in Victoria. We ought to determine what is the statistical sample that will give an adequate picture of all the vehicles on the road, and then, although it costs a little money, we should get out a fair picture of what that sample shows in size, power of vehicles, class of vehicle—it is probably not possible to get the age of vehicles—and then begin correlating the picture of the fleet with the record of accidents. Do more accidents arise from small high-powered vehicles, small low-powered vehicles, or large high-powered vehicles? We really do not know, and we are not beginning to find out. One of the most useful things to make sense of inquiries of this kind would be a good, continuous statistical inquiry into the motor fleet, as to how it is constituted and how it acts in regard to accidents. The next step is obvious, is it not? If the small 4-passenger vehicle constitutes, say, 5 per cent of the total vehicular fleet and is involved in 7 per cent of the total accidents, we would begin to think. Alternatively, if the very large high-powered vehicle constitutes 2 per cent of the total vehicular fleet and is involved in 3 per cent of accidents, we would begin to think. We still do not know what kinds of vehicles are involved in accidents more frequently and therefore causing them more often. . . .

72. The Committee commends this suggestion for consideration by the Department of the Interior in the firm belief that a survey of this nature would be of significant benefit in attacking the appalling toll on the roads.

THE NEED FOR EDUCATION

73. Alcohol has a place in the community but there is clearly a need for education of the public about it. In the words of Sir Philip Phillips, Q.C.,

On the whole, the great mass of individuals in our society are extraordinarily ignorant about alcoholic liquor: its nature, how it acts, its consequences, the social implications—everything about it. . . . We ought to have a more educated community which understands this instrument which it uses.

74. The Committee's inquiry has revealed the need for urgent action to be taken to acquaint the community of dangers involved in the consumption of alcohol and the driving of a motor vehicle at the same time. It recommends

that the Commonwealth should undertake an intensive campaign on a national basis to educate the young and old alike of the effects of alcohol on the human body with particular reference to the dangers involved in combining drinking and driving.

75. Production of films in colour of road accidents for screening to drivers involved in drinking/driving offences may be helpful. Intensification of driver education in the schools by qualified instructors is desirable. Exhibitions of the type produced by the Alcoholism Foundation of Victoria and displayed at the Melbourne Motor Show, shopping centres, and other locations are to be commended. The Committee urges the Commonwealth to make sufficient funds available to appropriate authorities to permit intensification of education of this nature.

76. In evidence to the Committee, Dr K. G. Jamieson, stated—

I believe that a driver's licence should be issued to people subject to qualifying at the age of 15. Various States in Australia have different age barriers. In Victoria it is 18; in Queensland it is 17; in South Australia and Tasmania it is 16, and in New Zealand it is 15. In Texas it is 14. I am sure that children of 15 years are capable of the technical exercises of driving a car. I believe it to be desirable that they ought to be taught at this age so as to become competent drivers. This teaching should be done while they are under reasonable discipline. School leaving ages are rising. There is this period in which children are under reasonable discipline and can be disciplined in their usage of a car in relation to school. . . . Just because a man can teach chemistry or arithmetic does not mean to say that he can teach children to drive efficiently. The young master might have all these attitudes in relation to the enjoyment of driving and the interests of cars which in fact go to make accident expectancy. I believe it to be desirable for children to be taught to drive properly by somebody competent in teaching to drive in the community at large

77. The Committee commends this proposal. It recommends that the Department of the Interior should investigate this proposition in the belief that it may prove an aid to better driving habits and responsibility.

ACKNOWLEDGMENTS

78. The Committee gratefully acknowledges the assistance given to it throughout this inquiry by all witnesses and by the various State Ministers who made officers available to assist the Committee. It particularly records its appreciation of the facilities made available to the Committee by the Chief Commissioner of Police, Victoria, and by his officers of the Forensic Science Laboratory and Breath Analysis Section.

79. The Committee also records its appreciation of its Clerk, the Serjeant-at-Arms in the House of Representatives, Mr L. M. Barlin, whose continued devotion to duty and unremitting attention to the work of the Committee has been of outstanding value throughout the inquiry.

JOHN E. MARRIOTT
Chairman

23 May 1969

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APPENDIX I

LIST OF WITNESSES

ANGAS, Sir J. Keith, Senior Vice-President, Royal Automobile Association of South Australia.

APPLEBY, Dr C. A.

BANTING, Mr A. F.

BIRRELL, Dr J. H., Police Surgeon, Victoria Police Force.

BLOOM, Professor H., Department of Chemistry, University of Tasmania.

BOYKETT, Mr B. H., Chairman, South Australian Road Safety Council.

BRINKLEY, Mr T. A.

BROBERG, Mr H. N.

CAMERON, Mr A. R., Australian Director, Drager (Aust.) Pty Ltd.

CHALKER, Mr L. M., Executive Engineer, H. B. Selby & Company Pty Ltd, Sydney.

CHRISTIANSEN, Mr B. F., Officer-in-charge, Public Health Laboratory, Department of Health, Canberra.

CRANSWICK, Mr P. R., Member, Law Society of Tasmania.

DYSTER, Mr A. E., Executive Assistant, Projects and Legislation Branch, Department of the Interior, Canberra.

ELLIOTT, Mr R. K., General Manager, The Royal Automobile Club of Tasmania (also representing Australian Automobile Association).

FITZGERALD, Mr A. J., Elected Member, Australian Capital Territory Advisory Council.

FRAGAR, Mr J. D.

GOLLEDOE, Dr J. G., Deputy Medical Superintendent and Chief Casualty Medical Officer, Royal Perth Hospital.

GOVE, Dr W., Police Medical Officer, Adelaide.

GREEN, Mr G. S. M., Member, Law Society of Tasmania.

HANKS, Mr J. N.

HARPER, Mr A. J., Elected Member, Australian Capital Territory Advisory Council.

HARRISON, Mr W. W. D., Executive Officer and Secretary, Road Safety Council of New South Wales.

HEENAN, Mr D. C., Member, The Law Society of Western Australia.

HERMES, Mr C. L., Stipendiary Magistrate, Australian Capital Territory Court of Petty Sessions.

HEYMANSON, Mr A., Secretary, Law Institute of Victoria.

HUXTABLE, Mr E. A., Chief Traffic Engineer, National Roads and Motorists' Association.

JAMIESON, Dr K. G., Neurosurgeon, Royal Brisbane Hospital.

JOUGHIN, Mr F. N., Solicitor, Transport Commission, Hobart.

LAURIE, Dr W., Chief Crown Pathologist and Director, Public Health Laboratory, Sir Charles Gairdner Hospital, Perth.

MACKELLAR, Mr D. C.

MASAWAN, Mr F. S., Section Manager, Scientific Instruments Division, Astronics Australasia Pty Ltd.

MCCALLUM, Dr N. E. W., Reader-in-charge, Department of Forensic Medicine, University of Melbourne.

MCKAY, Mr T. R., Chromatography Applications Engineer, Astronics Australasia Pty Ltd.

MILNER, Dr G., Psychiatrist, Mental Health Services, Perth.

MOXON, Rev. B. J., General Secretary, Victorian Temperance Alliance.

NUTT, Mr J. A., Member, The Law Society of the Australian Capital Territory.

O'LEARY, Mr K. F., President, The Law Society of the Australian Capital Territory.

PARR, Mr E. T., Secretary, Australian Capital Territory Road Safety Council.

PEAD, Mr J. H., Chairman, Australian Capital Territory Advisory Council.

PERCIVAL, Mr G. M., Deputy Chairman, Australian Capital Territory Road Safety Council.

PHILLIPS, Rev. H. Palmer, Vice-President, Australian Temperance Council.

PHILLIPS, Sir Philip D., Q.C.

PITMAN, Mr D. A. A., Education and Research Director, Temperance Alliance of South Australia Inc.

RANKIN, Dr J. G. D'A., Physician-in-charge, Alcoholism Clinic, St Vincent's Hospital Melbourne.

REES, Mr N. C., Medical Superintendent, Royal Perth Hospital.

REID, Superintendent H. T., Officer-in-charge, Traffic Branch, Tasmania Police Force.

RICHARDSON, Professor J. E., Robert Garran Professor of Law and Dean of the Faculty of Law, Australian National University.

ROBERTSON, Professor J. S., Professor of Pathology, University of Adelaide.

SAMUEL, Dr L. W., Director, Government Chemical Laboratories, Perth.

SANTAMARIA, Dr J. N., Assistant Physician, Alcoholism Clinic, St Vincent's Hospital, Melbourne.

SIMONSEN, Mr N. F., General Manager, H. B. Selby & Company Pty Ltd., Sydney

SPENCER, Mr J. W., Assistant Director, Traffic Section, Department of the Interior, Canberra

STENHOUSE, Mr N. S., Director of Medical Statistics, University of Western Australia.

TERRY, Miss W.

THEEL, Mr R. E., Assistant General Manager (Public Affairs), Royal Automobile Association of South Australia.

THOMAS, Sgt J. O., Officer-in-charge, Breath Analysis Section, Victoria Police Force.

TROY, Mr P. N., Research Fellow, Urban Research Unit, Australian National University.

TURNER, Mr L. K., Director, Norman McCallum Forensic Science Laboratory, Victoria Police Force.

UNDERWOOD, Mr P. G., Member, Law Society of Tasmania.

VOGELANG, Superintendent J. A. Officer-in-charge, Traffic Section, South Australian Police Force.

WALSH, Mr G. J., Elected Member, Australian Capital Territory Advisory Council.

WATERS, Mr R. H., General Manager, Royal Automobile Association of South Australia.

WHEELER, Mr M. E.

WILLIAMS, Mr N. J., Secretary, The Law Society of New South Wales.

WILSON, Mr R. A., Commissioner of Australian Capital Territory Police Force.

WOOD, Mr L. C., Secretary, The Law Society of Western Australia.

WOODLEY, Sgt R. C., Officer-in-charge, Breath Analysis Section, Western Australian Police Force.

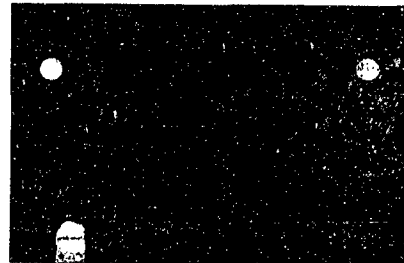
APPENDIX II

TABLE OF EQUIVALENT METHODS OF EXPRESSING THE
CONCENTRATION OF BLOOD ALCOHOL

Milligrammes per 100 millilitres (mg/100 ml) (mg %)	Grammes per litre parts per thousand (Promille) (0/00)	Grammes per 100 millilitres (GM/100 ml) Percentage (%)
5	0.05	0.005
10	0.1	0.01
20	0.2	0.02
30	0.3	0.03
40	0.4	0.04
50	0.5	0.05
60	0.6	0.06
70	0.7	0.07
80	0.8	0.08
90	0.9	0.09
100	1.0	0.10
110	1.1	0.11
120	1.2	0.12
130	1.3	0.13
140	1.4	0.14
150	1.5	0.15
160	1.6	0.16
170	1.7	0.17
180	1.8	0.18
190	1.9	0.19
200	2.0	0.20
250	2.5	0.25
300	3.0	0.30
350	3.5	0.35
400	4.0	0.40

APPENDIX III

REPRODUCTION OF BREATHALYZER CARD



APPENDIX IV

TABLE OF RECOMMENDED PENALTIES

B.A.C. %	First offence	Second offence	Third offence	Fourth offence
+ .05 . . to .08 . .	No Min. S Max. S 2 mths	Min. S 2 mths Max. S 12 mths	Min. S 12 mths Max. S 24 mths	Min. C
+ .08 . . to .15 . .	Min. S 6 mths Max. S 24 mths	Min. S 24 mths Max. C	Min. C	
+ .15 and/or D.U.I. and/or refusal	Min. S 24 mths	Min. C		
Driving whilst suspended	Min. C Max. G 6 mths	Min. G 6 mths Max. G 24 mths		
Driving whilst cancelled	Min. G 6 mths Max. G 24 mths	Min. G 24 mths		

B.A.C.% : Blood alcohol content expressed in percentage
 Min. : Minimum
 Max. : Maximum
 S : Suspension of licence
 C : Cancellation of licence
 G : Imprisonment
 mths : Months
 D.U.I. : Driving under the influence of alcohol

S.: Suspension of Licence

- (a) Licence to be suspended by the court within the minimum and the maximum: as the court considers fits the particular case.
- (b) At the end of the period set down by the court, the licence to be automatically returned to the motorist by the Issuing Authority.
- (c) Where the licence has been suspended, a first offender motorist may, at the expiration of one-half of the period of suspension or 12 months, whichever is the less, apply to a court for the issue of a Special Licence. The Special Licence to permit the suspended motorist to drive between such hours and on such days as the courts considers reasonable if such a Special Licence is shown to the court's satisfaction to be necessary for the motorist to earn his:

living. It to be a condition of such a Special Licence that the holder of such a Special Licence must not consume liquor between the hours specified in the Special Licence. A motorist holding a Special Licence who is tested and found to have a B.A.C. reading to be regarded as a second offender in respect to the B.A.C. for which the motorist was first convicted.

C.: Cancellation of Licence

- (a) Licence to be cancelled and another licence not to be issued unless the offender shall satisfy a court on medical evidence produced by the offender that the offender has received treatment and has been rehabilitated in respect of his drinking and driving problem.
- (b) Where a licence has been cancelled the court may suspend the further penalty of fine or imprisonment on condition that the offender voluntarily undertakes to undergo Government or Government-supervised treatment to effect a rehabilitation of the motorist in respect of his drinking and driving problem. The penalty to be cancelled upon the court being satisfied that the motorist is rehabilitated or has made every reasonable effort to become rehabilitated. If the offender does not undertake rehabilitation treatment or refuses or willfully fails to complete such rehabilitation, the court shall order the enforcement of the penalty.

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FOREIGN AFFAIRS - JOINT COMMITTEE

**LETTER FROM THE LEADER OF THE
GOVERNMENT IN THE SENATE APPOINTING
SENATOR SIM TO FILL A VACANCY NOW
EXISTING ON THE JOINT COMMITTEE OF
FOREIGN AFFAIRS**

**PAPER MISSING FROM Tabled PAPERS AT TIME
OF MICROFILMING**