

## **ROAD SAFETY COMMITTEE**

### **Inquiry into Pedestrian Safety**

Melbourne — 19 June 2006

Mem	Mr B. W. Bishop	Mr T. W. Mulder
	Mr J. H. Eren	Mr E. G. Stoney
	Dr A. R. Harkness	Mr I. D. Trezise
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#### Staff

Executive Officer: Mr R. Willis

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#### Witnesses

Mr B. Kearney, Chief Executive Officer, and

Mr P. O'Sullivan, General Manager - Public Affairs, Australian Hotels Association

**The CHAIR**—Welcome to Brian Kearney, CEO of the Australian Hotels Association, the AHA; and to Paddy O'Sullivan. Welcome to you also. As you are aware, this committee has conducted a pedestrian safety inquiry, the report on which we tabled in the parliament in 1999. Last year we decided to revisit that inquiry to see exactly what recommendations were made in the parliament and what recommendations have or have not been implemented by the state government since that time. Hence the purpose of this inquiry. I thank the AHA for your participation today. Paddy or Brian, do you have any opening remarks?

**Mr KEARNEY**—No, I do not think we have any opening remarks. I have to be honest: we were not aware that the committee was revisiting it, and we received some documentation in the mail, et cetera, which was of interest to us because it made us go back and look at a particular number of salient recommendations. So we do not have anything to say by way of introduction, but we will be more than happy to talk about the relevant issues.

**The CHAIR**—No worries. I would like to kick off. We have met with some people from an organisation by the name of Breathometer, who are installing breath testing machines into various hotels, clubs and pubs. I would be interested in the AHA's position on those machines and their effectiveness.

**Mr KEARNEY**—There are couple of questions there: the issue of their effectiveness and, secondly, the AHA's view on them. As far as effectiveness goes, in no way is it apparent to us that there is, while I could call it a community acceptance, a public bar, pub frequenters' acceptance of these machines as something that can genuinely assist them in their management of alcohol consumption. From my personal point of view, I have been involved in the liquor business since 1990. Notwithstanding the intrigues of the various manufacturers and suppliers of these machines, they have had minimal market penetration and, when they have been introduced, it has certainly not been apparent to us—but then again we do not have any real factual stuff; I am relying on anecdotal information here—that they have been particularly embraced by or of particular benefit to the customers.

As far as pedestrians go, what is the measure that you use? Okay, we have .05 for driving, but .05 does not apply for walking, so what is the measure that you would use? The management of the machines, the control of the machines, the use of the machines, all the protocols: there seem to be many problematic aspects, such that it is not apparent to us that the machines have grabbed the market's attention at all. We are aware that places like Crown Casino have them. It would be interesting to get reports back on the usage rates there. I would say it would be very much a minority of pubs which have them.

**Mr STONEY**—That might not necessarily mean that there is no demand; it might mean that, for various reasons, publicans and the AHA have not grasped the idea. It does not necessarily mean there is no demand if the pubs have not—

**Mr KEARNEY**—I would agree. It is a chicken and egg thing, isn't it? If the thing is not there, it is very difficult to say there is no demand. I suppose if you have the thing there and nobody uses it, you can say there is no demand. But you have to buy them or lease them or whatever to put them in, you have to allocate space to them and then you have to manage them. There just does not seem to be a call for them.

We are not denigrating them, as with so many other things in the marketplace. The latest one that we have been encouraged to get involved in is the drink coasters which act like a litmus test for certain drugs possibly used in drink spiking. We do not say that they are of no use, but in that case and in this case, if someone sought our advice, we would say, 'It is your own business decision as to whether you get one or not.' We are neither for or against

them. We would never argue against them, but we certainly would not be saying to our publicans, 'This is something that we believe is an absolutely essential component of your responsible serving of alcohol kit.'

**Mr STONEY**—One of the difficulties I see for people is that they have no idea of how their body will absorb alcohol, and they have no way of finding out. I do not know, and I have been drinking and driving all my life, but not at the same time. I have no idea if I can have two beers or what. People who go to clubs and pubs would be in the same position, and I am leaning towards helping them know what their own system can do.

**Mr KEARNEY**—In my honest opinion, I doubt that. I think most regular drinkers have a good appreciation of the effect of alcohol on their body and the amount that they can reasonably drink.

**Mr STONEY**—How would they know?

**Mr KEARNEY**—They would know just from their own behaviour.

**Mr STONEY**—But I do not think you can tell. I do not think you can tell if you are .04, .05 or .06.

**Mr KEARNEY**—If you are a pedestrian you do not need to know whether you are .04 or .05; you just need to know whether you are capable of walking.

**Mr STONEY**—No, I am talking about drivers now. I do not think you can pick your own behaviour.

**Mr KEARNEY**—I would certainly agree that it would be difficult for any individual to be specific as to whether they are .04 or .05, because that is a function of a whole range of factors which can vary. Certainly from my perspective, I would think that most people who regularly drink in pubs know when they are at that point where they have to make decisions as to whether or not to keep drinking.

**Mr STONEY**—We had anecdotal evidence just before about a young girl who had two glasses of wine, I think, over whatever period it was, and she was .08. She was absolutely flabbergasted, and she had no idea that her particular system did not process alcohol very well, that she did not have a high metabolic rate or whatever it was.

**Mr KEARNEY**—The federal government and other agencies have put out a lot of information about standard drinks. I would accept that a female, because of the double factor that alcohol has in that regard, certainly can get over .05 very rapidly without realising it. But I am not sure that having a breathalyser unit in a pub is going to assist in that regard.

**Mr MULDER**—Can I ask a question. It might be a little bit off the cue, but in relation to the gaming components of the licensed premises, for someone who moves over from say a bar or whatever into gaming premises or has been drinking heavily, what mechanism is there in terms of their ability to gamble in a responsible

manner and in terms of the amount of alcohol they consume? Is that something that the managers of the gaming components look at?

**Mr KEARNEY**—One of the concepts that underpins the whole pub operation is the concept of customer care. That applies whether you are at the bar drinking or playing gaming machines or you are doing both. It is about the public, the management and the staff having an awareness of the state of their customers and that they are in an appropriate state to be doing what they are doing such that they are not harming themselves or others. It is an offence for an intoxicated person to be on the premises, whether they are just drinking or whether they are playing gaming machines or whatever. So a person moving from a bar to a gaming area would be managed the same as anybody in a licensed environment.

**The CHAIR**—Brian, what responsibility does it extend to when your customer is about to become a pedestrian?

**Mr KEARNEY**—That is problematic, isn't it, because with drink-driving you have .05, at or over which everybody knows you would be a fool to drive. There is no measure for the pedestrian, so one would really come back to the law, which says you shall not serve an intoxicated person or allow an intoxicated person on the premises.

**Dr HARKNESS**—The only measure is whether a pedestrian is behaving in a disorderly manner, but you are a danger to yourself by the time you get to that point, I guess.

**Mr KEARNEY**—There are a lot of issues to do with intoxication, drunkenness and the migratory path to them. Programs such as responsible serving of alcohol and others try to have systems in place within the premises to be alert to the way people are drinking and their behaviour as they continue to drink. The key, of course, is to intervene at the appropriate time. When somebody is intoxicated, it is too late to intervene to stop that intoxication.

**Mr BISHOP**—Brian, one of the issues we are chasing up here is recommendation 13 in the last time round, in 1996, that breathalyser units be available at all licensed premises and their use encouraged. That was one of the recommendations, and that was supported in principle. That is the very good reason why we are chasing it up. We know of the AHA's commitment to responsible management of alcohol, and we have heard during the process of this hearing of organisations that have evolved out of the liquor accord in a particular area. It might include a Road Safety Council and the police, and in particular areas they have done an enthusiastic job in this regard. We have been told that a number of machines have been put in those areas. It does not matter whose they are; they have been put in, and obviously the licensees believe that they are an advantage to them in relation to the better management of alcohol. Does the AHA encourage any of those groups?

**Mr KEARNEY**—Certainly there have been 60 accords in operation around the state and the number is growing.

**Mr BISHOP**—That is a good thing.

**Mr KEARNEY**—Of course it is. It is difficult for me to be in the minds of the individual licensees, but I would imagine that a number would have had the units installed. If the accord group decides it is beneficial to put them in the interests of a unified accord, I can imagine that they would put them in. I would not presume that they were committed to them as an effective concept of continuing responsible serving of alcohol on their premises. I have to be honest: in any of those situations, no data has come to me from police or anybody else that has indicated that they have made a meaningful contribution.

**Mr BISHOP**—That runs a bit against some of the stuff we have heard during this inquiry.

**Mr KEARNEY**—I can only talk about what I know, which is a function of what I have been told from these accords and the like. If some of those accord members come before this committee and say, 'Yes, we have put them in and they have been very successful,' and they have presented evidence to you in that regard, I am in absolutely no position to have a contrary view, because none of that material has ever been put before me.

**Mr STONEY**—Has the AHA thought about taking its own legal advice to reassure itself that its members are in no way exposed legally if they have a machine on their premises? The spectre or the rumour of some sort of legal liability might be holding the AHA back from moving forward on this matter. Perhaps it would assist if you could reassure yourselves or give yourselves comfort about the legal position.

**Mr KEARNEY**—From our point of view, we would not want to promote something just to avoid a legal liability. Let me say in the various decisions of courts, particularly the recent High Court case, the issue of the availability of breath test machines to my knowledge has not been raised.

**Mr STONEY**—No, but I just flag this: it might be that the status quo is easier than proactively looking into it, and it might give the AHA members comfort.

**Mr KEARNEY**—That brings us back full circle.

**Mr STONEY**—It is much easier to do nothing.

**Mr KEARNEY**—Yes, that brings us back full circle: do we think they are of such value that they warrant 1,900 pubs in this state having them? It would be easy to say yes, but we have to have regard to our members, to the pubs, and any additional costs, et cetera, and create an expectation that they are in fact removing some liability by having these machines there. That sort of thing cuts both ways.

Your committee might have evidence in due course and be able to bring it forward, which would be very valuable, but at this point we do not have any evidence, a bit like the drink-spiking coasters, that this is something that is generally advantageous. These things have been around, to my knowledge, since 1991, and here we are in 2006. If their merit were so great, I think we would have all been convinced by now.

**The CHAIR**—Brian, I need to back in Geelong, so I am going to leave. I will leave the committee in the very capable hands of Mr Stoney.

**Mr KEARNEY**—I do not want to appear obstructionist on this, but we would like to see the evidence.

**Mr MULDER**—Brian, I have a question in relation to late trading and trading into the early hours of the morning, particularly in some of the rural and regional centres, and the lack of taxis in those hours of the morning. What is the association's position in relation to unloading people, usually in a fairly intoxicated condition, at those hours of the morning out of those nightclubs and clubs?

**Mr KEARNEY**—Behaviour in and around late night venues I think is one of the top two or three issues as far as alcohol policy in this state is concerned. Local accords we are very supportive of. We actively participate in them. We encourage our membership to participate in them, particularly if they are late-night venues, because they are the groups that are best placed to come up with what we say are local solutions to local problems. However, behaviours these days are not solely driven by alcohol; they can be driven by drugs, they can be driven by youth and the behaviour of younger people anyway. They are not always intoxicated, but I would not say that liquor does not play a significant part in it. Then you have people who are leaving venues, you have people refused entry to venues, you have people who come to a precinct with no intention of going into a venue because they do not want to spend the money, so they drink out of the boot of their car and muck up on the street. You have a whole combination of things. This is where local accords are hopefully starting to make some progress on a localised level.

But that leads to the issue of police. We are concerned that the police presence that was time-honoured in licensed businesses is not there any more. The walk-through by the local police just does not happen any more. Police are totally reactive in their policing advice to businesses.

**Mr MULDER**—Have you had discussions about that with the police?

**Mr KEARNEY**—These discussions have been going on for seven, eight, nine years now.

**Mr MULDER**—Is that an operational matter or a policy matter, do you know?

**Mr KEARNEY**—I suspect it has a lot to do with resources. You would have thought community policing would take one that way—to be proactive and to have a presence, to try to cut off problems before they come apparent—but that is not the way. Typically we find now if there is an issue of a licensed business, in particular late-night one, the manager or the licensee has to ring the police, so more than likely the issue will come and go rather rapidly. Police at night have minimum resources. I think someone mentioned there were two police in Ballarat last weekend on the very late night shift. If there is a road accident or some incident, they are not going to get to the local pub or the local nightclub. If that happens, it is dealt with at the local nightclub. A very unfortunate situation we are finding now is that police log those calls and count them almost as a quasi-offence. So when they are concerned about the behaviour of a particular venue, they will go through their log and say, 'Hang on, they rang us 10 times in the last month saying that there was a blue in which they needed assistance.' They did not come to any of them, but they count such calls in terms of trying to create the view that a place is inappropriately managed.

I see one of the recommendations was about policing. We are concerned that that time-honoured practice of just walking through does not happen any more. In fact, I think it is actively discouraged.

**Mr STONEY**—Is there anything else just to tidy up?

**Mr KEARNEY**—Just on the legal definition of 'intoxication', are you aware of the act now?

**Mr STONEY**—Yes.

**Mr KEARNEY**—This morning, reading the latest copy of the act, I could not find it. They seem to have forgotten to put it in the latest print. Section 3AB is not in the latest copy, so I am not sure how they think those who rely on the act should be able to—

**Mr BISHOP**—I suppose, Brian, on the issues that some of us are looking at, or were looking at, as you quite rightly say, .05 is the line in relation to driving a vehicle. There is a description of 'intoxication' now, but we are concerned also for the safety of pedestrians.

**Mr KEARNEY**—Absolutely.

**Mr BISHOP**— You leave the pub and blunder out over the footpath and are cleaned up, or a car might do something else. I guess that has triggered part of this proposal. The question to you is: have you a policy in relation to these breathometer machines in hotels?

**Mr KEARNEY**—No, we do not have a policy. We have a position but it is not a policy. We are not hard and fast about it, but we have not seen any evidence yet to convince us that it is worth the investment and then the procedures within the pub to make sure that they are effective and, importantly, that they are not misused. I have to be honest: I am a bit surprised. In the 15 years that these things have been in the marketplace there have been plenty of occasions when the manufacturers and suppliers of these machines have come to us and others, and yourselves, but we are not convinced. It is not a policy, it is a position. The report of this committee might well contain evidence that we were not aware of, and we might say, 'Okay, yes, there is information out there that we were not aware of. We need to take a step forward.' Certainly the manufacturers have not put anything like that to us.

I noticed recommendation 15. I am not aware that any of that material is available yet. Some appropriate signage in pubs to alerts those intending to walk home that there are issues related to that would be helpful.

**Mr BISHOP**—That is a good point, because during the whole run of this committee the onus has been on, if you like, the driver. There has been little responsibility, to my way of thinking, put on the pedestrians themselves in a pedestrian inquiry, so we could take note of that point in relation to the management of alcohol for pedestrians.

**Mr STONEY**—Paddy, is there anything you would like to add?

**Mr O'SULLIVAN**—No, nothing further to what Brian has already provided, thank you.

**Mr STONEY**—Thank you very much.

**Mr KEARNEY**—Thanks very much.

**Witnesses withdrew.**

**Committee adjourned.**