7. Managing Driver Impairment

7.1 Background

This chapter examines methods currently used for assessing and recording driver impairment in Australia and overseas. This data is then used to develop an impairment testing procedure proposed by the Committee for Victoria.

The chapter addresses the Committee's fourth and fifth terms of reference:

4. Report on methods for measuring driving impairment and crash risk of drivers who have consumed drugs (other than alcohol).

5. Report on evidence which could be admissible in determining legal sanctions against drivers who have consumed drugs (other than alcohol).

The Committee agreed early in its Inquiry to concentrate on recognised models of driver impairment. As Victoria has no routine structured driver impairment tests the Committee examined the limited number of Australian and overseas models, the most significant being the Drug Recognition Expert Program initiated by the Los Angeles Police Department in the United States.

7.2 Testing Methods

Impairment tests can be conducted by police or medical practitioners. Both methods have been used in Australia. They generally involve observing a driver's ability to respond to requests to perform specific tasks such as walking a number of steps. Observations can provide information to assess a driver's physical condition, attitude and actions. Tests can be structured or unstructured.

The paper in the Committee’s First Report by Dr Judith Perl of the New South Wales Police Service provides an example of a checklist provided to assist police to perform roadside observations and assessment. The observations made by police may become admissible evidence when the matter is brought before the court.
Behavioural observations may be supplemented by physical data such as pulse rate, heartbeat, skin colour, muscle tone and eye movements. In Australia such measurements are usually made by police doctors but in the United States they are generally performed by specially trained Drug Recognition Expert police.

Tests by Police

The simplest roadside assessments involve observations of psychomotor tests and divided attention tests. The most complex behavioural tests involve divided attention tasks, vital physical sign measurements and a knowledge of the pharmacology of drugs.

Driver tasks involving vigilance, information processing under varying circumstances, risk-taking and visual search and recognition are all involved in any assessment of a person’s ability to drive effectively.²

Sergeant Thomas Page of the Los Angeles Police Department informed the Committee that studies at Johns Hopkins University in the United States had found:

... there are approximately 1,500 separate tasks involved in motor vehicle operation, many of which are done simultaneously.³

There are two levels of proven behavioural impairment tests used successfully by police forces overseas, mostly in the United States. They are:

- Standardised Field Sobriety Test (SFST).

- Drug Evaluation and Classification (DEC) Program.⁴

• Standardised Field Sobriety Tests

In the early 1980s the United States Department of Transportation supported research which led to the development of a Standardised Field Sobriety Test which now forms part of the curriculum for police officer training in ‘driving under the influence’ detection skills throughout the United States. IS 7.2
The three tests selected as the basis of the Standardised Field Sobriety Test were:

- the horizontal gaze nystagmus test.
- a walk and turn test.
- a one-leg stand test.\textsuperscript{5} IS 7.3

The tests have been evaluated by Dr Marcie Burns of the Southern California Research Institute and found to be effective in detecting drivers under the influence of alcohol and/or drugs in both laboratory and field trials. Elements of the Standardised Field Sobriety Tests are used by police trained as Drug Recognition Experts.\textsuperscript{6}

The two key advantages of the tests are primarily that they have been developed from a scientific base and secondly that they use a standardised field application procedure. This ensures that trained police officers at the roadside can establish in a consistent manner if there is driver impairment.

\textbf{• Drug Evaluation and Classification Program}

During the 1970s the Los Angeles Police Department developed the Drug Recognition Expert Program to train police officers to recognise driver behaviours and physiological states associated with seven categories of psychoactive drugs. IS 7.4 The Drug Recognition Expert Program became the Drug Evaluation and Classification Program when it was more widely adopted in the United States.

The program has 12 steps and includes blood pressure, body temperature, pulse, eye movement, pupil size, skin colour and muscle tone, observations often performed by medical practitioners.
Table 7.1  The 12-Step Drug Recognition Expert Procedure

1. Breath test for alcohol.
2. Interview of the driver by the apprehending police officer.
3. Preliminary examination, including first pulse measurements.
4. Eye examination, including horizontal and vertical gaze nystagmus and eye convergence.
5. Divided attention testing, including Romberg balance test, walk and turn test, one–leg stand test and finger–to–nose test.
6. Vital signs measurements, blood pressure, body temperature and second pulse rate.
7. Darkroom examination in room light, near total darkness, indirect artificial light and direct light.
9. Injection sites examinations and third pulse measurement.
10. Statements and interrogation of driver.
11. DRE forms opinion on reason for impairment and drug(s) involved.
12. Toxicological tests, ie body fluid sample taken and analysed.


Police officers trained in the program are known as Drug Recognition Experts (DREs). Officers are trained to recognise drugs and impairment through established training and certification procedures. Initial training takes about two weeks and on-going experience with impaired drivers is essential for officers to retain skills and official accreditation.

Police can request that a Drug Recognition Expert examine someone who has been apprehended and is shown by a breath test to have a blood-alcohol concentration too low to explain the driver’s behaviour.

The program is a standardised, systematic method of examining a driver suspected of being impaired by alcohol and/or drugs in order to determine:

- whether the driver is impaired.
- whether the impairment is drug-related or medically related (illness or injury).
• if the impairment is drug-related the broad category of drug or combination of categories likely to have caused the impairment.  

The drugs detected can be categorised according to the observable behavioural signs they generate:

• central nervous system depressants.
• central nervous system stimulants.
• hallucinogens.
• phencyclidine (PCP).
• narcotic analgesics.
• inhalants.
• cannabis.

Tests by Doctors

The involvement of medical practitioners in testing for driver impairment has a long history in most Western countries. Charges for 'driving under the influence of alcohol' in most jurisdictions require a blood sample to be taken by a doctor and it provides an obvious opportunity for the doctor to make an assessment of whether illness or injury is involved.

Similarly a doctor could make an assessment if a blood test was required from a driver injured in a crash.

In most countries doctors also continue to have some role in assessing fitness to hold a driver's licence when a person is suffering from illness, injury or a medical condition.

In Australia the States have different requirements for tests to be conducted by a doctor. In South Australia, Western Australia, Australian Capital Territory and Tasmania medical assessments by a doctor are required before blood and urine samples can be taken. In New South Wales and Queensland medical intervention is limited to the taking of blood on the request from police. Victoria and the Northern Territory do not have any formal procedure for medical intervention and samples may be taken only when an injured driver is hospitalised.
In some overseas jurisdictions the use of doctors to conduct tests is more common. In Germany a person convicted of driving under the influence of drugs or alcohol may be required to have a medical examination to prove himself or herself drug-free as a part of the process of regaining a licence.\textsuperscript{10}

Norway requires an examination by a doctor after a driver has failed a standard roadside driver impairment test and the apprehending police officer suspects drug involvement.\textsuperscript{11} The examination includes:

- tests of impairment.
- measurement of pulse rate and other physiological measures.
- screening for various neurological signs.
- evaluation of mental state.
- tests of memory and cognition.

The results are recorded on a standard form. The driver must provide body fluid samples if requested by police. The Committee noted that the blood sample may be taken before the clinical examination.\textsuperscript{12}

Drivers suspected of being under the influence of drugs in Finland are taken to a municipal health centre where a Clinical Test for Drunkenness is conducted by a medical practitioner and when requested by police to take blood samples.\textsuperscript{13}

The test was developed in the 1950s for screening alcohol-induced impairment but has been used also to provide information on drug influence.\textsuperscript{15 7.6} A key feature of the procedure is the use of a numerically weighted scoring system which enables the extent of impairment to be approximately quantified.

The Committee noted that while the test is conducted within a recognised medical clinic, the doctor is required only to use observational skills for which non-medical persons and police could be trained.
Comparison of Procedures

The Committee obtained evidence on police procedures in each Australian State to test for driver impairment caused by drugs other than alcohol. It noted that no standardised national procedure exists in Australia.

Victoria has no test procedure.

A comparison of driver impairment tests used in Australian States with the Drug Evaluation and Classification Program in the United States has been made available to the Committee. Table 7.2 compares the following elements:

- police officers’ observations, including the questioning of drivers.
- handwriting tasks.
- divided attention tasks.
- measurement of vital signs.
- eye examinations, including a dark room test in the case of the Drug Evaluation and Classification Program.
- toxicological tests.
Table 7.2  Comparison of Driver Impairment Standards

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**DIVIDED ATTENTION TASKS:**

| Finger-to-nose | -   | -   | -   | -  | y  | Y & y| -   | Y   |
| Tandem gait    | -   | -   | -   | Y  | -  | Y & y| -   | Y   |
| One leg stand  | -   | -   | -   | Y  | -  | -   | -   | Y   |
| Romberg test   | -   | -   | -   | Y  | -  | -   | -   | Y   |
Table 7.2 (continued)

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**OTHER DARK ROOM EXAMINATIONS:**

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**Legend:**

- Lower case = performed by a medical practitioner/police medical officer.
- UPPER CASE = performed by police or a drug recognition expert in jurisdictions which have the Drug Evaluation and Classification Program.
7.3 Are Impairment Tests Effective?

The Committee found a limited number of impairment testing systems are used in normal daily police environments in the United States and the European Union. It found that standardised impairment testing is not widely practised within Australia and there is none in Victoria. It therefore concentrated on the major user of impairment testing systems, the United States.

In the United States in July 1995 the Committee conferred with the Los Angeles Police Department and other police forces on the success of its Drug Recognition Expert Program and the Drug Evaluation and Classification Program which developed from it. At the time of the Committee’s visit police agencies in 28 states had adopted the program. The United States has approximately 4,000 trained drug recognition experts and 400 instructors certified by the International Association of Chiefs of Police.\textsuperscript{16}

The social environment in Los Angeles in the early 1970s which led to the development of this program was very different from that of Australian cities at the time. In urban Los Angeles police officers experienced a significantly different range of social problems, violence and drug abuse which are still not comparable to cities in Australia.

The Committee recognised that the scope and magnitude of problems facing American and Australian legislators were different but the methods and experiences of American police forces in managing problems common to both countries could be of benefit.

Until the development of the Drug Recognition Expert Program no co-ordinated method of evaluating the level of driver impairment was used by the Los Angeles Police Department. Each police officer had to deal individually with growing drug abuse and associated road safety problems.
Sergeant Thomas Page of the Los Angeles Police Department stated that:

Each officer would develop his or her own procedures for determining if the individual was under the influence of alcohol and/or drugs. Junior officers would model their procedures after those used by senior officers and would often add their own nuances to the procedures. These roadside sobriety tests would frequently include variations of ‘counting exercises’, alphabet tests, coin pick-ups and questioning techniques.\textsuperscript{17}

From this process the Los Angeles program adopted a standardised procedure containing direct observation techniques which could be supported by laboratory analysis of urine or blood specimens taken following a crash or apprehension of a driver. The corroboration of trained police officers’ findings and the acceptance by Los Angeles courts of their evidence as expert testimony gained the Department’s program national recognition.\textsuperscript{18}

The program was evaluated in 1984, 1985 and 1992.

In 1984 the American National Institute on Drug Abuse and the National Highway Traffic Safety Administration (NHTSA) sponsored a controlled laboratory evaluation of the process by the Johns Hopkins University.\textsuperscript{15 7.7} Drug recognition experts participating in the evaluation were able to correctly identify 95 per cent of subjects who were drug impaired.\textsuperscript{19}

Following these successful results the National Highway Traffic Safety Administration conducted a field validation study of the program.\textsuperscript{20} The 1985 study involved a larger group of drug recognition experts and drivers actually arrested for suspicion of driving under the influence of drugs.\textsuperscript{15 7.8}

The Administration used an independent laboratory to conduct blood analyses of samples obtained from each arrested driver to compare with the opinion developed by each drug recognition expert. The laboratory tests confirmed the views formed by each DRE as to the impaired state of the driver in 94 per cent of cases.

The overall conclusion of the two studies was:

\textit{The LAPD drug recognition procedure provides the trained police officer with the ability to accurately recognise the symptoms of many types of drugs used by drivers.}\textsuperscript{21}
The success of the 1985 evaluation prompted the Administration to fund standardisation of the program and development of a curriculum package for administrators, police instructors and police students which was completed in 1987. It was then re-named the Drug Evaluation and Classification (DEC) Program.

In 1988 the Administration funded a large-scale expansion of the program to encourage police agencies across the United States to adopt the program.

The most comprehensive evaluation of the program was completed for the National Highway Traffic Safety Administration in 1992 when the program was operating in 23 American states. The study by the Preusser Research Group reaffirmed that drug recognition experts were able to identify drivers who were impaired by drugs other than alcohol.

The consultant’s conclusion was:

\[ \text{DEC programs are associated with a marked increase in impaired driving charges against suspects whose impairment is related to one or more drugs other than alcohol.} \]

The Administration has maintained its role in the program by sponsoring curriculum update conferences, co-ordinating courses nationwide, developing and issuing training materials and generally providing administrative support for the program.

An independent evaluation of the program was conducted in 1994 by Dr Marcie Burns of the Southern California Research Institute in conjunction with the Arizona Department of Public Safety. Dr Burns examined the records of 500 drug recognition expert evaluations and concluded that:

\[ \text{... the DRE program, supported by the toxicology laboratory, is a valid method for detecting and classifying drug-impaired individuals.} \]

When in Washington, DC, the Committee discussed a number of issues with Authority staff. The following points were noted:

- the program adds a set of skills which increases the professionalism, self-perception and departmental perception of traffic police units.
the skills can be used in a variety of non-traffic situations such as prison work release programs.

the original program expectations of one evaluation per week for each officer were not met which raises the question of skill retention.

after introduction of the program drug-driving charges and convictions increased and these increases were highest in the first one or two years of the programs.29

The outcome of this study appeared to demonstrate that while drug recognition expert skills increase potential for the detection of drug-affected people, the skills required need to be exercised constantly. This assumes a higher level of drug-affected drivers than may be the case in Victoria. The question then is whether such a high level of police training and police intervention is required. This is addressed later in this chapter.

7.4 A Program for Victoria

The Committee received evidence on existing behavioural testing procedures in other Australian States and overseas and considered the suitability of a Drug Recognition Expert Program for Victoria.

The need and justification for such a program can be determined only by the number of drug-affected drivers, the cost of training and equipment for police and the likelihood of success with cases brought to court.

The Committee sought information on what work had been done in Victoria on the use of a structured impairment test and the use of specialist field officers.

VicRoads outlined in its submission work it had undertaken to evaluate the need for a drug evaluation and classification program by:

- conducting a national police workshop in conjunction with the Victorian Institute of Forensic Pathology and the Federal Office of Road Safety.
developing a pilot roadside impairment test for Victoria Police.\textsuperscript{30}

The results of both of these activities were of importance to the Committee in assessing the direction to be taken in its recommendations to the Parliament.

National Police Workshop

The national police workshop held in Melbourne on 22 June 1994 was attended by approximately 40 people.\textsuperscript{51}\textsuperscript{7.11} VicRoads said that the views formed by police and road safety representatives were:

\begin{itemize}
  \item In each State there has been a decline in the traditional skills needed for Driving Under the Influence (DUI) enforcement. This has been due to a change in emphasis in enforcement practices. In the past enforcement focused on stopping alcohol impaired drivers, which were identified using observation skills and then tested using some form of field sobriety test. The current approach in all States is to emphasise the deterrence effect of Random Breath Testing, which stops all drivers and relies on new technology (breath testing devices for alcohol).
  
  \item Each State has a different system for dealing with road safety problems caused by non alcoholic drugs. There are major differences in approaches which vary from limited legislation in Victoria to more enforceable legislation in New South Wales. However no Australian State has a scientifically validated Standardised Field Sobriety Test or a DEC Program.
  
  \item Each State has limited knowledge of both Standardised Field Sobriety Tests and the DEC program and has not evaluated their suitability for Australian use. The general impression of all State’s representatives from the workshop was that the program was effective but had relatively high training requirements and associated costs.
  
  \item The New South Wales system would be improved by:
    \begin{itemize}
      \item adopting the Queensland legislation definition of a “drug”.
      \item implementing a behavioural toxicology system to give some valid estimate of the degree of impairment relative to an alcohol benchmark.
    \end{itemize}
  
  \item Zero blood non alcoholic drug legislation should be considered for those drugs which are a road safety problem and have little medical justification, such as amphetamine type stimulants.\textsuperscript{32}
\end{itemize}
Pilot Behavioural Testing Program

Training in the traditional police skills of observing and recording suspects’ particulars in addition to more sophisticated observational techniques would be required under a drug evaluation and classification program unless assessment of suspects for drugs could be reduced to a mechanised system of measurement like the 0.05 per cent blood-alcohol testing method for alcohol.

No roadside testing method similar to the blood-alcohol test exists and all assessments of the level of drug impairment can be made only through observation and recording. VicRoads’ submission emphasises the lack of standard procedures, both in practice and legislation, for conducting behavioural tests in Victoria.

In particular, the submission highlights cost differences between a Standardised Field Sobriety Test and a full Drug Evaluation and Classification Program:

> While the costs associated with the DEC program in terms of police training and chemical testing are high the costs of Standardised Field Sobriety Tests are relatively low. For example the Standardised Field Sobriety Test requires only 16 hours of training per person while the full DEC program requires 196 hours.33

To consider whether a Standardised Field Sobriety Test could be implemented in Victoria, a pilot training program for Victoria Police was conducted in 1994.35 7.12 13

The outcome was:

- participants developed an understanding of drug terminology, categories and drug effects.
- participants quickly became familiar with measuring vital signs and administering Standardised Field Sobriety Tests, to both sober and impaired persons.
- while performance on the three Standardised Field Sobriety Tests directly decreased with increasing BAC, eye measurements and vital sign measurements were difficult to relate to BAC levels in a consistent manner.34

The pilot course was valuable in raising awareness and increasing sobriety detection skills for Standardised Field Sobriety Tests but it also showed that a great deal of further training would be required to achieve expert or professional levels in evidence on the effects of drugs.35
Views of the Community

Submissions to the Inquiry offered a range of views and concerns as to the need for the American approach and its effectiveness in the Australian road safety environment. The Committee has reproduced a representative sample of the views put before it:

- Federal Office of Road Safety

The Federal Office of Road Safety stated that the Drug Evaluation and Classification Program is resource-intensive and the on-going success rate of trained experts relies on their being able to continuously reinforce their training by frequently carrying out the procedure.

Current evidence on the extent of drug involvement in Australian road crashes suggests that such experts would be insufficiently utilised for them to maintain the required skill level.

*FORS is also unaware of any evaluation or monitoring that indicates whether Drug Evaluation and Classification Programs have had any effect on drug-driving rates or drug-related crash involvement.*

The Office concluded that the program does not appear appropriate for Australia.

The Federal Office of Road Safety has been collaborating with VicRoads in a review of research on tests with the intention of consulting with relevant Australian authorities to develop recommendations for a standardised approach to testing in Australia.

- Canada

Canada has a similar constitutional background to that of Australia and the views of Canadians were of interest to the Committee.

Mr G W Mercer, Senior Analyst with the Insurance Corporation of British Columbia, advised the Committee in June 1996 that some Canadian provinces investigated and evaluated the Drug Evaluation and Classification Program to see if it had application for Canada.
The Corporation financed the training of 25 police officers from British Columbia as drug recognition experts late in 1995.

Mr Mercer said a few charges had since been laid but no case had yet gone to court. He said the problem was that under Canada’s criminal code there were no provisions to test for drugs other than alcohol even though it is illegal to drive in Canada while impaired by drugs.

He considered that if DREs laid charges on the basis of behavioural rather than chemical evidence courts might accept evidence in the way that they accept behavioural evidence of alcohol impairment.

- **Department of Human Services**

The Victorian Department of Human Services submitted that the Los Angeles Police Department model of the program warrants serious consideration but added:

> The cost-effectiveness of this model in the circumstances of drug use in Victoria may be considerably different from that in Los Angeles, where drug use prevalence and patterns may be profoundly different.\(^39\)

The Department’s submission warns that many cases of driving under the influence of drugs could be missed if reliance was placed solely on assessment of driver impairment. It refers to a study by D Brookoff in Memphis, Tennessee of drivers detected for reckless driving whose urine was chemically tested on the spot for cocaine and marijuana:

> Nearly half the drivers intoxicated with cocaine performed normally on standard sobriety tests.\(^40\)

These drivers would have escaped a conviction for driving under the influence of drugs.

If reliance had been solely on sobriety testing they would not have benefited from programs designed to help them acknowledge their drug problem and commence treatment.\(^41\)
• Dr E. Ogden

Dr Edward Ogden, the former Victorian police medical officer who devised the Victorian pilot behavioural testing program, provided the Committee with evidence on the testing program and a copy of the course training manual.42

He said that:

We taught that course to some 60 police officers, representing the Accident Investigation Section and the State Task Force. They have been using the technique for almost a year, and from time to time they have sent in results of their evaluations.

..... The police officers who did that course have found it useful and they believe it has improved their ability to detect and document moderate to severe impairment.

My difficulty with the DRE program is that it remains somewhat subjective. It really requires the examining officer to be very professional and, therefore, because there are subjective parts to it, it could of course be exaggerated by an officer, wittingly or unwittingly, in either direction. So part of the challenge, I think, is to come up with something more independent.43

Dr Ogden also made reference to the need for more objective measures of driver impairment based on new technology. This is discussed later in this chapter.

Development of a National Model

In August 1995 a Working Party on Drugs and Driving issued a report which provides the first step towards development of a national model for legislation and enforcement practices for driving under the influence of drugs offences in Australia.44 The report contained 16 recommendations on various elements of a proposed national model.15 7.13

The Working Party was chaired by Professor O. Drummer, Assistant Director of the Victorian Institute of Forensic Pathology. Membership included Dr J. Perl, New South Wales Police forensic pharmacologist, Dr D. Joyce, University of Western Australia, Dr P. Swann, VicRoads, Senior Sergeant M. Boorman, Victoria Police and Senior Sergeant R. Laslett, South Australia Police.
7.5 Victoria Police Proposal

Victoria Police made two submissions to the Inquiry.

In September 1995 the Police proposed use of the drug recognition expert approach similar to the United States model. At a public hearing in September 1995 the Police expressed concerns about the staff resources and training implications in establishing and maintaining such an approach over the entire State.

Following further discussions between the Committee and senior police officers, Victoria Police made a second submission in May 1996 in which they proposed a method of managing driver impairment which was less labour intensive and costly and reflected suggestions made by the Committee.

The impaired driving detection procedure recommended by the Victoria Police was considered by the Committee. The procedure recommended by the Victoria Police appears as Table 7.3 on the following page.
Table 7.3  Victoria Police
Proposed Impaired Driving Detection Procedure

Legend:
BAC = Blood alcohol concentration  PCA = Percent Concentration of Alcohol
O/C T.A.S. = Officer in Charge, Traffic Alcohol Section

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Two impairment assessment phases were proposed in the Police submission:

- Roadside Impairment Assessment.
- Standard Impairment Assessment.

**Roadside Impairment Assessment**

The Roadside Impairment Assessment recommended by Victoria Police consists of:

**Phase 1:**  
- *initial observation of vehicle in operation.*  
- *driving behaviour indicates that police should intercept the vehicle.*  
- *observation of stopping sequence.*

**Phase 2:**  
- *face-to-face observation and interview of driver.*  
- *observation and interview of driver indicates driver should alight from vehicle.*  
- *observation of driver alighting from vehicle.*

**Phase 3:**  
- *preliminary breath test for presence of alcohol.*

If the driver is within the legal alcohol limit but appears to be impaired the police officer would proceed to Phase Four.

**Phase 4:**  
- *roadside impairment assessment.*  
- *driver accompanies police to police station for indoor impairment assessment.*

If a driver passed the roadside impairment test and is not impaired by alcohol he or she would be free to continue the journey. However if the test is failed the driver would be required to go to a police station or another controlled environment for a second test.
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**Standard Impairment Assessment**

The second test proposed by Victoria Police is designed for police to recognise impairment and consists of 8 major components:

1. *breath alcohol test.*
2. *interview by police.*
3. *preliminary examination. A structured series of questions, observations and simple tests (eg, 30 seconds time test).*
4. *eye examination (eg, horizontal and vertical gaze nystagmus).*
5. *divided attention tests (eg, walk and turn test, one-leg test).*
6. *suspect statements and other observations.*
7. *impairment identified.*
8. *body fluid sample obtained.*

The Committee was aware that the Police proposal was only in a conceptual form and that there was a need for further development in consultation with other agencies.

### 7.6 Comments on the Victoria Police Proposal

Comments on the Victoria Police proposal were sought from the Department of Human Services, the Royal Automotive Club of Victoria and VicRoads. Each organisation gave support but emphasised a need for further clarification and amendment.

- **Department of Human Services**

The Department of Human Services supported the broad directions of the Victoria Police Proposal:

> ... it is consistent with the Department’s submission to the Inquiry, and with injury prevention policy.\(^{50}\)

One area of concern was:

> ... the dearth of scientific evidence about the relationship between drug concentrations in body fluids and impairment of driving skills.\(^{51}\)
The Committee has recognised this dearth of scientific evidence but there is no formal procedure for collecting primary admissible evidence in body fluids which is supported by legislation. Therefore it is impossible to obtain data to demonstrate the level of drug concentrations in body samples to confirm the perception of a police officer that a driver is impaired.

The Department was further concerned that the apparent exclusion of drivers with a blood-alcohol concentration higher than 0.05 per cent from impairment testing:

... will prevent the identification of impaired drivers whose impairment is caused by the co-abuse of alcohol and drugs.52

• Royal Automobile Club of Victoria

The Royal Automobile Club of Victoria (RACV) supported the overall initiatives proposed in the Victoria Police submission and said:

... it is imperative to remove impaired drivers from the roads and [supports] the principle that driver impairment rather than the presence of drugs in a driver’s system should be the criterion on which any legal provisions are made.

RACV believes in the philosophy that prosecution will not always be effective in altering the behaviour of drug impaired drivers and that education and rehabilitation need to be incorporated into the system.

Behaviour-based impairment tests used in conjunction with evidential breath tests and blood and urine samples is also supported as the most effective means available at present of detecting drug-impaired drivers.53

Like the Department of Human Services, the RACV held a number of concerns which it believed needed to be examined if the proposal was to proceed. The Club supported use of an indoor impairment assessment:

It is important, however that this assessment be developed under the guidance of road safety professionals and the procedure should be thoroughly evaluated to ensure that it is effective before it is implemented. The public should also be educated about the assessment procedure and be informed of what their individual rights are.54
The RACV concluded:

RACV is concerned that a provision to deal with drivers who have a low level of alcohol as well as a therapeutic drug at therapeutic dosage in their systems could be unfair to drivers who have not received information about the combined effects of alcohol and prescribed medication.55

The Committee noted the RACV’s concerns which indicated some of the issues to be resolved in developing both the roadside impairment test and the standard impairment test.

• VicRoads

VicRoads noted:

The submission states that driver impairment will be measured by firstly a "Roadside Impairment Assessment" and a "Standard Impairment Assessment". Both of these assessments use key elements of the USA ‘Standardised Field Sobriety Test” and “Drug Evaluation and Classification“ programs.

It is important to note that these behavioural tests have been specifically developed for impairment caused by drugs and have been validated for drug impairment. It would be very difficult to interpret the results of these tests in situations where drugs were not involved.56

7.7 Procedure Proposed by the Committee

The notion of impairment is fundamental to the Committee’s proposal.

As a result of the information gathered by the Committee and through the submission and public hearing processes plus its overseas tour of inspection the Committee considers that the model developed by the Victoria Police for detecting and removing impaired drivers from Victorian roads provides a basis for its recommendations.

The Committee has made changes to the program which it considers necessary to reflect its experiences elsewhere in its Inquiry. In particular the Committee highlights the need for the model to be developed into an effective and equitable process by a specialist working party.
While the American Drug Evaluation and Classification Program has been demonstrated to the Committee to be a useful model to follow the Committee does not consider that evidence of the current number of drug impaired drivers in Victoria would justify the Government in committing itself to such an intensive program.

There are already significant training requirements in the Committee's proposal which would require re-allocation of resources. Any proposal must recognise the financial constraints on government.

The concept developed by the Committee for the assessment of impaired drivers is supported by the Victoria Police, Department of Human Services, the Royal Automobile Club of Victoria and VicRoads. It would require changes to the Road Traffic Act 1986 and associated regulations.

The procedure is an improvement on existing best practice in Australia such as procedures in New South Wales and Western Australia. The proposal would need to be further developed by a specialist working party mentioned later in this chapter.

The proposal has four key elements:

1. **Legislation**

Legislation is required to give Victoria Police specific powers to:

- require drivers to undertake behavioural impairment tests.

- when prosecution is proposed drivers be required to provide body fluid samples.

- penalise drivers failing to co-operate with tests and/or providing body fluid samples.

- suspend a driver’s licence until he or she is fit to drive again.
The Committee’s fundamental proposition is that someone who is impaired must not drive. This builds on existing provisions in the Road Traffic Act 1986 under which impaired drivers can be removed from the road. Police could suspend a driver's licence immediately after failure of the standard impairment assessment test or after receiving results of a subsequent chemical analysis. This procedure would be similar to the situation with drivers whose blood alcohol concentration (BAC) is in excess of the legal limit.

2. **Roadside Impairment Assessment.**

When police suspect a driver of impairment they would require the driver to stop and undertake a standard breathalyser test.

If the breathalyser shows that the driver’s blood alcohol concentration is within legal limits but the police officer suspects impairment the driver could be required to leave the vehicle and undertake a roadside impairment test. Failure of this test is the precursor to the second or standard impairment assessment test.

Persons who pass the Roadside Impairment Assessment test would be free to continue on their journeys.

3. **Standard Impairment Assessment**

A more intensive test would be conducted in a controlled indoor environment and observed by a specially trained police officer.

This assessment would determine whether impairment was due to drugs or another cause, such as ill-health, medication or age. The assessment should be recorded on video to be used as admissible evidence to protect the driver's rights and monitor police adherence to procedures.

Failure of the second assessment will require the police to determine if the prosecution is to proceed. If the case is to proceed the police shall require a qualified person to obtain blood and/or urine samples from the driver for analysis to identify any drug(s) present.
A driver failing the second assessment would not be permitted to drive until it could be demonstrated at a later time that he or she was no longer impaired.

Records of all police observations including visual recordings and written records should be kept in a standard format. This would ensure compliance with authorised procedures and provide records to compare the results of the analysis of body fluids for the presence of drugs to the observed degree of impairment.

4. Laboratory Testing of Body Fluid Samples

On receipt of the laboratory analysis results police could decide to either prosecute the driver or refer the driver to health or driver re-education processes.

Combinations of Alcohol and Other Drugs

The Committee does not support the practice in some jurisdictions such as New South Wales where a high breath-alcohol reading excludes tests for other drugs.

Evidence to the Committee was that alcohol and drugs of impairment when mixed together create an effect different from that of alcohol or drugs alone. Legislation therefore must not exclude one cause of impairment from the other. The Committee recognises this in its recommendation that legislation address ‘driver impairment’.

7.8 Selection of Impairment Test Components

The components of the Impaired Driving Detection Procedure need to be established by a specialist working party. The working party should include representatives of police, road safety and health agencies experienced in the behavioural, scientific and medical issues that need to be considered. A public advocate must be a member of the specialist working party during the selection of these procedures.
The tests selected should reflect the need to establish a national approach to what is a common problem. The recommendations of the National Institute of Forensic Science Working Party on Drugs and Driving to use tests such as the walk and turn, one-leg stand and horizontal gaze nystagmus should be considered as a part of the test selection process.\textsuperscript{57}

When developed the procedure should be released for public comment.

### 7.9 Rights of the Individual

The Committee insists that the legal rights of the individual be protected.

One means of addressing this concern would be to record by video suspects undertaking the second assessment test. Police video and written records of the procedures followed for each test should be retained so that the accuracy of observations remains beyond doubt.

The recording of suspects would also lead to a better understanding of observations of behaviour and police training could be constantly attuned to changes.

The rights of the individual will be protected by the inclusion of a public advocate on each specialist working party. The Committee stresses that there must be no diminishing of safeguards which prevent injustice to individuals.

### 7.10 Emerging Technology

During the Inquiry the Committee obtained information on new technology which is attempting to develop more objective measures of impairment. Although such devices are currently only at the experimental stage Victorian road safety authorities should monitor them for their potential use in drug-driving enforcement and research.
Some examples of emerging technology are: IS 7.15

- a Simulated Evaluation of Drug Impairment (SEDI) machine.
- hazard perception tests.
- eye measuring devices.
- remote viewing and recording of a suspect's impairment.

A major feature of each is the recording of observations or the results of a driver’s performance of a task. This may assist both prosecution and research in the future.

### 7.11 Conclusion and Findings

The Committee has considered methods of measuring driver impairment, in particular observations of driver behaviour conducted by:

- police with minimal training (New South Wales and Western Australia).
- highly trained police (American Drug Recognition Experts).
- medical practitioners (especially Norway and Finland).

While the Drug Recognition Expert approach may be appropriate for American political, legal and social conditions, the Committee concludes that the Drug Recognition Expert model is not directly applicable to Victoria.

The Committee proposes adoption of an Impaired Driving Detection Procedure based on a modification of the Los Angeles Model. It excludes elements such as the darkroom eye examinations and measurements of blood pressure, body temperature and pulse rate.

Nevertheless, the Procedure proposed is more extensive than the procedure being used in New South Wales as it requires a second systematic set of observations to be conducted indoors by a more highly trained police officer.
Future technology may be able to supplement police observations with more objective measurements particularly in hazard perception, judgement and risk taking which cannot be readily identified by physical observations. There are also possibilities of remote viewing through video conferencing to assess suspects at the roadside, in a booze bus or at remote locations.

The Committee has examined each proposal and drawn on the comments of key Victorian organisations in developing an Impaired Driver Assessment Procedure for Victoria. The components of the procedure need to be established by a specialist working party and on its development it would become one part of an integrated program to ensure people remain aware that they cannot drive if impaired by drugs.

**RECOMMENDATIONS**

7. That the *Road Traffic Act* 1986 be amended to give Victoria Police specific power to require drivers suspected of being impaired to undergo a roadside test of impairment and if necessary a second more detailed test.

8. That a specialist working party determine the components of the test procedures.

9. That where a driver fails the second impairment test and Police conclude that the impairment may be drug-related and prosecution is contemplated a sample of blood and/or urine shall be provided and analysed for drugs.

**Footnotes**


4. VicRoads, op. cit., p.47
Managing Driver Impairment

5 Ibid., p.38.
6 Ibid.
8 VicRoads, op. cit., p.40.
9 Ibid.
10 Bundesanstalt für Straßenwesen, Germany, Submission, 18 September 1995, p.2.
12 Ibid., p.2.
14 Victoria Police, Minutes of Evidence, 19 September 1995, pp.18-32.
16 Page, T E, op. cit., p.131.
17 Ibid, p.123.
18 VicRoads, op. cit., p.39.
21 Page, T E, op cit, p.130.
22 VicRoads, op. cit., p.39.
23 Unlike Australia, which has State police forces, the Committee discovered that each American State has a multitude of local and state agencies. For example, California has 600 agencies ranging from municipal forces of less than 10 officers to the Los Angeles Police Department with 8000 sworn officers.
26 Page, T E, op. cit., p.131.
28 VicRoads, op. cit., p.42.
29 Ibid.
30 Ibid., p.43.
32 VicRoads, op. cit., p. 44.
33 Ibid., p.45.
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34 Ibid., pp.45-46.
35 Ibid., p.46.
36 Federal Office of Road Safety, Submission, p.9.
37 Ibid.
38 Insurance Corporation of British Columbia, Correspondence, 26 June 1996.
39 Victoria, Department of Health and Community Services, Submission, 15 September 1995, p.18.
41 Ibid., p.18.
45 Victoria Police, Submission, 6 September 1995.
46 Victoria Police, Minutes of Evidence, 19 September 1995, pp.18-32.
47 Victoria Police, Submission, 24 May 1996.
48 Ibid., Appendix A, p.17.
49 Ibid., Appendix B, p.18.
51 Ibid.
52 Ibid., p.2.
53 Royal Automotive Club of Victoria, Correspondence, 14 June 1996, p.1.
54 Ibid., p.3.
55 Ibid., p.2.
56 VicRoads, Correspondence, 14 June 1996, p.2.
57 National Institute of Forensic Science, op cit, p.16.