

LAW, PROCEDURES, AND STATISTICS RELATING TO DRINK-DRIVING IN QUEENSLAND

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Excessive use of alcohol is recognised as the most important single contributing factor in death and injury on our roads. It is likely that, unless a disciplined effort is made, its importance will increase with time. The problem of the drinking driver is world-wide with the effects of alcohol on the roads involving major national expenditures. In this so called westernised, motorised nation the motor car has caught us relatively unprepared for the problem in the road traffic field due to the heavy consumption of alcohol before drivers get behind the steering wheels of their vehicles, thus creating the "drink-driving" monster.

The law in Queensland appertaining to "drink-driving" is contained principally in Section 16, 16A and 20 of our Traffic Act and Regulation 178 of the Traffic Regulations. The Act sets out the minimum legal limit as .08% with the statutory presumption that any person with a blood alcohol concentration of .15% or greater is conclusively presumed to

be under the influence of liquor. It provides for the "Breathalyzer" to be the approved breath analysing instrument for the purpose of determining a person's blood alcohol concentration, for the "alcotest" to be the approved roadside breath testing or screening device, and empowers the Commissioner of Police to authorise such members of the Police Force whom he is satisfied are competent to do so as "approved breathalyzer operators". Such operators must successfully complete a 3 weeks' Breathalyzer Training Course conducted by specialist personnel and they are precluded from operating a breathalyzer where they themselves have been actively associated with action or investigation which has led to the arrest or detention of any person.

OFFENCES

The following are five offences which are associated with drink-driving:

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|----------------------|--|
| Section 16(1) | any person who drives, is in charge of or attempts to put into motion any motor vehicle, tram, train, or vessel upon a road or elsewhere whilst he is under the influence of liquor or a drug; |
| Section 16(2) | any person who drives, etc., any motor vehicle, etc., upon a road or elsewhere whilst he has a blood alcohol concentration equalling or exceeding .08% but less than .15%; |
| Section 16(7) | any person who drives etc., any vehicle (other than a motor vehicle), horse or animal upon a roadway whilst he is under the influence of liquor or a drug; |
| Section 16A (11) (a) | failure to provide as prescribed a specimen of breath or blood for analysis when duly required by the provisions of Section 16A; |
| Section 16A (22) (e) | driving when driver's license is suspended for a period of twenty-four (24) hours by virtue of the provisions of that subsection. |

It will be noted that the distinction between the offences in Section 16(1) and Section 16(2) is that in the first instance the emphasis is on the *effect* of alcohol, whilst in the second the emphasis is on the *concentration* of alcohol without regard to any effect of alcohol. Section 16(1) is the "drink-driving" offence whilst Section 16(2) is a charge of having a certain prescribed blood alcohol concentration. These two offences

are commonly referred to as the "major" and "minor" charges. Whilst alcohol can be classed as a form of "drug" the law expressly provides that it is not bad for "duplicitous" to charge a person with driving, etc., whilst under the influence of liquor or a drug even though he may be affected by alcohol only.

A "breath test" is carried out by means of an *Alcotest* device whilst a "breath analysis" is carried out by means of the approved breath analysing instrument, i.e. a *breathalyzer*. A "request" is made for a breath test — there is no offence if a person refuses — whilst a "requirement" is made for a breath analysis, and here an offence is committed if there is a refusal.

PROCEDURES

(1) Breath Specimens

In Queensland, unlike Victoria, there is no random testing and for a person to be requested by a police officer to submit to a roadside breath test (alcotest) he must come within the scope of the provisions laid down in the Traffic Act, that is, whilst he was driving, in charge of, or attempting to put into motion any motor vehicle, tram, train or vessel on a roadway or elsewhere he either committed a breach of the Traffic Act, was involved in an accident causing damage or injury, or his behaviour (or the behaviour of his vehicle) was such as to give a police officer reasonable grounds for suspecting that during the previous two hours he had alcohol or drugs in his blood. In short, a breach, accident or behaviour situation must exist. Then, and only then, can that person become the subject of a police officer's request, which must be made as soon as practicable and within two hours of the event to which it relates. The general provision is that the alcotest is made at the time and place where the "request" is made, but should a police officer be not in possession of an alcotest at the relevant time he can request the person to accompany him to a police station for an alcotest and if there is a failure or refusal to do so the police officer may use force as is necessary to take the individual to the police station for that purpose. The alcotest provisions do not relate to vehicles other than motor vehicles, horses or animals.

Hypothetically, assuming a police officer has detained a motorist for some breach of the Traffic Act and during his conversation with that person he detects the odour of liquor on his breath he then has one of two courses open to him to require that motorist to undergo a breathalyzer test. These are —

- (i) by initial *arrest at the scene*, or
- (ii) by resort to the use of the "breath-testing" (alcotest) device.

(a) Arrest situation

If, in addition to the smell of liquor, the police officer observes other evidence of "indicia" to indicate that the person is visibly effected by liquor . . . that is, evidence of slurred speech, unsteady gait, bloodshot eyes, etc. — and he is of the opinion that the person is under the influence of liquor, he can exercise his powers under Section 42 of the Traffic Act and arrest him. However, by not then having any knowledge of what the person's blood alcohol concentration might be he can only arrest him for an offence against Section 16(1) — the major charge — as before he can be charged with an offence against Section 16(2) — the minor charge — his blood alcohol concentration must be known.

Once having charged the motorist with this offence the police officer then requires him to supply a specimen of breath for analysis on a breathalyzer. If his blood alcohol concentration is .15% or greater he is conclusively presumed to be under the influence of liquor, but if the analysis indicates a reading lower than .15% then if he desires he can contest the matter and the Court, if satisfied on the evidence, can reduce the original charge to an offence under Section 16(2), providing the breathalyzer reading equals or exceeds .08%. If the blood alcohol concentration is lower than .08% he will either be found guilty or not guilty of the offence as charged. The motorist can, if he desires, plead guilty to the major charge even though his blood alcohol concentration is less than .15%.

(b) Non-arrest or "alcotest" situation

If at the time of detaining the driver, the police officer does not observe any other evidence of "indicia" he can exercise his powers and request that person to undergo a "breath test" (alcotest).

If it appears to a police officer that the alcotest indicates a concentration of alcohol equalling or exceeding .08% or if the person requested elects not to provide the specimen or fails to provide or declines to wait until the alcotest is assembled, then any police officer, using such force as is necessary, may take such person to a police station (if he is not already there), a hospital or other authorised place, and detain him at any such place so that a specimen of breath or blood for analysis may be obtained. The right of election as to which specimen is required rests solely with the police officer, and it logically follows that where a breathalyzer is available a specimen of breath will be required. Assuming he is less than .08% he is immediately released. If his reading is .08% or more but less than .15% he is charged with an offence against Section 16(2). If his reading is .15% or greater he is charged with an offence against Section 16(1). In effect, he is charged in accordance with his breathalyzer reading.

After a person has supplied, or refused to supply, a specimen of his breath, the authorised breathalyzer operator then issues his relevant certificate, in duplicate, handing the original to the police officer who made the requirement, and a copy to the person concerned.

A person required to provide a specimen of breath shall do so when directed, and in the manner prescribed, by the authorised breathalyzer operator unless he is unable to do so on medical grounds, in which event his driver's license should be endorsed accordingly. He may not defer the giving of a specimen until he has sought legal advice. If the breathalyzer malfunctions after the requirement has been made, there is power to require a specimen of blood in substitution for the breath, and if a medical practitioner is available the blood specimen may be taken at the police station or some other place where he is available.

Breathalyzer reading inconsistent with "indicia"

Should a person exhibit "indicia" suggesting that he is under the influence of liquor and on supplying a specimen of breath, the analysis of such specimen is inconsistent with the "indicia" observed, a requirement can then be made for blood and urine, particularly if it is suspected that the person may be taking drugs. The specimen of blood and urine is to be given in the manner

directed by the medical practitioner and a refusal to supply blood brings the individual within the scope of the offence created by Section 16A(11)(a).

(2) Blood Specimens

(a) At Police Stations

The same basic requirements as outlined earlier in respect of breath also exist in respect of blood — namely, a breach, accident or behaviour situation followed by an arrest or the use of an alcotest device. Once at the police station the services of a medical practitioner are then obtained for the purpose of taking a specimen of blood.

If the person refuses or fails to supply a specimen of blood either on an arrest situation or an alcotest situation he comes within the scope of the offence created by Section 16A(11)(a) as is the case with breath refusal. In this instance the medical practitioner is required to issue a Blood Refusal Certificate, giving the original to the police officer and a copy to the person who failed to supply. In obtaining a specimen of blood the medical practitioner must strictly comply with Regulation 178 of The Traffic Regulations regarding the taking and bottling of the blood (take specimen from any vein selected by him; not use any alcoholic swab when cleaning the site of the vein-puncture; take sufficient blood to make an analysis; place specimen in a receptacle containing anti-coagulant; affix label containing names, times, date and place when specimen obtained) and the police officer then arranges for the specimen to be delivered to the Government Analyst either personally or by forwarding it by registered post or certified mail.

Where the result of the analysis of blood indicates a blood alcohol concentration of .08% or greater and the person concerned has not been arrested, action is commenced by way of complaint and summons for the appropriate offence. When the blood alcohol concentration is less than .08% and the person concerned has not been arrested, he is advised by letter that no proceedings as for an offence will be instituted.

Where the person has been arrested then —

(a) If the result indicates .15% or greater he is conclusively presumed to be under the influence of liquor, but if the reading is less than .15% but greater than .08% then as with breath, if he desires he can contest the matter and the Court, if satisfied on the evidence, can reduce the charge from the "major" charge to the "minor" charge.

(b) If the result indicates less than .08% he will be found either guilty or not guilty of the offence as charged.

When a person is served with a summons in respect of a charge arising out of the supply by him of a specimen of blood and he makes application accordingly he will be supplied with a copy of the analyst's certificate.

(b) At Hospitals

There are cases where motorists are taken to a hospital for treatment as a result of injuries sustained in a road accident, and here there is one important provision in the law — the requirement for blood must be made as soon as practicable and within two hours from the particular event — in most cases the time of the road accident. Approval must also be obtained from a medical practitioner familiar with the injuries and apparent

state of health of the person concerned — not necessarily any particular doctor.

In the event of a refusal at the hospital to supply blood, the medical practitioner is required to complete a certificate giving particulars of the request and the refusal.

(3) "Breath" or "Blood" requirement outside two hour period

Apart from the two hour requirement for blood from a person at a hospital for treatment, there is no time limitation provided for in the Act in requiring a specimen of breath for analysis or blood for a laboratory test. The analysis of both breath and blood is evidence of two things — what the concentration was at the time of the analysis of breath or the time of providing the specimen of blood, and for a period of two hours back from the relevant time the specimens were provided and the relevant certificates are conclusive for these two hours. After the "two hour period" the certificate loses its conclusiveness in law, and then becomes evidence of consumption only.

The only defence available to negate the conclusiveness of the certificate is for the defendant to prove that the Breathalyzer was defective or improperly operated or the laboratory test of the specimen of blood was not a correct result.

(4) Failure or Refusal to provide a specimen of breath or blood

Section 16A(11)(a) provides that in each situation where there is a "failure" or "refusal" to provide a specimen for analysis, whether it be breath or blood, there is an offence committed, and by virtue of such failure or refusal the person who does so, when duly required as prescribed, is deemed to commit an offence against Section 16(1) — the major charge. This offence is a specific offence and is separate from any which may have been committed at an earlier time on a road or elsewhere.

Where there has been an initial arrest at the scene for an offence against Section 16(1) that offence is separate from the offence committed by virtue of the failure to provide the specimen.

Where there has been no initial arrest and the subject has been taken to a police station, hospital or other authorised place by virtue of the alcotest procedure and then there is a failure or refusal to provide a specimen for analysis there is, as it were, an instant offence at the place of such failure or refusal and he is charged accordingly.

A refusal to supply blood after a breathalyzer reading is inconsistent with the indicia observed (drugs suspected) or when a breathalyzer malfunctions also brings the individual within the scope of the provisions of Section 16A(11)(a) and he is charged accordingly, even though he had earlier supplied a specimen of breath.

(5) Twenty-Four Hour Suspension

Section 16A(22) sets out the circumstances where a 24 hour suspension of a driver's license is to be imposed, namely:

- (a) where there is a breath analysis, the concentration exceeds .08%.
- (b) a refusal to supply a specimen of breath for analysis.

- (c) a refusal to supply a specimen of blood for laboratory test.
- (d) in the case of a person whose breathalyzer reading is inconsistent with indicia observed — a suspension for 24 hours may be made on a certificate from the medical practitioner who took the specimen of blood.
- (e) in the case of a person who has supplied a specimen of blood and who has not been arrested, provision is made for an alcotest to be required in order to determine whether any 24 hour suspension should be imposed. If the concentration by means of the alcotest indicates .08% or more, or if the person fails to provide such a specimen, then a 24 hour suspension is imposed.

Where a person holding an interstate or overseas driver's license comes within the ambit of the provision relating to the 24 hour suspension, the privilege to drive on that license in Queensland is withdrawn also.

(6) Exculpatory Provisions

The Traffic Act creates a defence in respect of a charge of being "in charge" and it is a complete defence, irrespective of whether the person concerned was or was not under the influence of liquor, but it is imperative that he bring himself completely within the provisions of the defence. Briefly they are:

- (1) that he occupied a compartment other than the driving compartment, or was not in the vehicle.
- (2) that he was not under the influence of liquor to such an extent as to be incapable of knowing what he was doing or incapable of manifesting an intention not to drive.
- (3) that the motor vehicle was correctly parked and not a source of danger to any other person or vehicle.
- (4) that he had not been previously convicted for a drink-driving offence.

These provisions are to cover the situation where a person who has consumed liquor genuinely decides not to drive his vehicle but "sleep it off" as it were in the back seat.

(7) Other Offences

Section 16(7) creates the offence of being under the influence of liquor or a drug whilst driving or in charge of a horse or other animal or any vehicle other than a motor vehicle, or attempts to put into motion any such vehicle, upon a road.

There is no power to request an alcotest in these instances as the alcotest provisions relate only to motor vehicles, trams, trains or vessels. Consequently, there is no concentration charge in respect of the offence under Section 16(7). The police officer must decide on the spot whether to arrest the person then and there or allow him to go free, but once arrested that person can then be required to supply a specimen of breath for analysis or a specimen of blood for a laboratory test.

(8) Statistics

	1976-77	1977-78
Accidents (only where death, personal injury or damage exceeds prescribed amount)	24,303	26,613
Breathalyzer or blood alcohol tests	2,376	2,330
Positive readings obtained	1,972	1,997
Readings .08% or above	1,757	1,783
Road users killed	587	560
Number of tests performed on road users killed	375	327
Number of positive tests obtained on road users killed	200	175

Classification (by the type of road user killed) —

motor vehicle driver killed	210	220
motor vehicle driver tested	170	157
positive readings	100	92
motor cycle riders killed	82	87
motor cycle riders tested	63	62
positive readings	30	30
pedestrians killed	96	79
pedestrians tested	54	32
positive readings	28	14
other road users killed (not categorised)	199	174
other road users tested	88	76
positive readings	42	39

During 1976-77 the greatest number of deaths occurred on Saturdays (139) followed by Fridays (100) and Sundays (92), with injuries following a similar pattern. Almost one-third of the total accidents and total casualties were recorded between the hours of 4pm and 8pm. The highest rates for death and cases of injury per 10,000 persons occurred in the 17 to 20 years age group. The death rate for this group was approximately three times the rate for all other age groups, and the injury rate approximately 4 times.

Breathalyzer or Blood Alcohol tests - by age group of road users (including fatalities)

	1976-77	1977-78
21 to 29 age group	750	746
17 to 20 age group	649	609
(each group almost double any other age group)		
Under 17 years old	35 (9 positive)	28 (14 positive)

Breathalyzer only for 12 months ending 31.12.78

	Reading	Failure	Total
State total	12,575	576	13,151
Under .08%	13%		
.08% but less than .15%	37%		
.15% and greater	45%		
Failures	4.5%		

Summarising Statistics

Approximately one-third of road users killed have .08% or greater. Age group with greatest number of breathalyzer tests — 21-29 years.

Persons under 25 years of age	48%
Persons over 25 years of age	52%

During 1978 the greatest number of breathalyzer tests were conducted on Saturdays, followed by Friday and SUNDays — the same as for death and injury accidents. The greatest number of breathalyzer tests carried out by time of day were between 6pm and 8pm, whereas one-third of total accidents occurred between 4pm and 8pm. This indicates a clear relativity between the times and days when motorists are involved in accidents and when they are tested for blood alcohol concentrations.

(9) Conclusion

In 1972 Doctor J. Tonge of Brisbane, addressing a national road safety symposium, urged that compulsory blood alcohol accident victims over 14 years of age, hgh-lighting some of the results of a study he made which showed that of 152 car drivers killed during 1963-71 in single vehicle accidents, 71 per cent had alcohol level of more than .05%; 64 per cent had more than .10%; 30 per cent had more than .20% and one per cent more than .30%. Also, that of patients admitted to a Brisbane hospital following road accidents he found that 38 per cent of drivers had blood alcohol concentration levels exceeding .05% and 29 per cent exceeded .10%.

Dr. Kenneth Jamieson of Brisbane in a paper presented to the Australian Automobile Association forum conducted in Sydney in 1968 set out a table in relation to the risk of causing an accident.

Blood Alcohol Level Increase in Risk

Blood Alcohol Level	Increase in Risk
Up to —	
.04%	none
.05%	Twice normal
.08%	3 times normal
.10%	6 times normal
.12%	12 times normal
.14%	20 times normal
.16%	45 times normal

Victoria's random roadside breath test surveys indicate that less than 3 per cent of the driving population exceeds the "safe" .05% limit. The horrifying conclusion drawn from this is that 3 per cent of drivers in Victoria account for almost half of all driving fatalities.

Whilst the presence of most drugs can be detected in blood and urine samples, there is no roadside screening device for drugs as is with the alcotest device for alcohol. Drugs other than alcohol probably play the major role in causing 5 to 10 per cent of traffic accidents and 10 to 15 per cent of all road deaths.

The two particular skills essential to Traffic Safety, both from a drivers and/or pedestrians point of view, which are reduced first by alcohol are perception and judgement. "Perception" referring to observation, recognition and understanding of objects, and "judgment" focusing on estimation of distances and speeds. Laboratory tests show that blood alcohol levels as low as .02%, representing only one or two small beers, reduce perception and judgment of the type important in driving, adding credence to the "Increase in Risk" table formulated by Dr. Jamieson.

How often, as a police officer, is one asked "How many drinks can I have before I reach the limit?" — not "What are my chances of having an accident if I have "x" number of glasses". It would appear that the average driver is more concerned with getting caught for drink-driving than worrying about his chances of contributing to the cause of an accident, a narrow, selfish attitude for one's own welfare without consideration for death or injury to others which can, and often does, arise from road accidents.

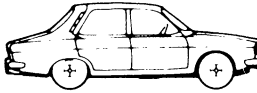
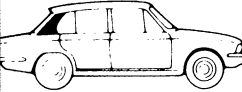
Basically, the role of a police office in Road Safety is a secondary one, enforcing laws and performing duties only when those persons who are primarily responsible for road safety — all road users — fail to accept their responsibilities.

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