Hon. Paul Lucas MP

Queensland Government

Minister for
Transport and Main Roads

Our ref: MC19848

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TRAVELSAFE COMMITTEE

Mr Jim Pearce MP
Chairman
Parliamentary Travelsafe Committee
Parliament House
George Street
Brisbane Qld 4002

Dear Mr Pearce Jim

Re: Issues Paper No. 10 – Inquiry into Vehicle Impoundment for Drink Drivers

I refer to the above paper which was released on 10 November 2005. I note that an extension to 20 March 2006 for the Queensland Transport (QT) submission was granted, to ensure that discussion from the 2006 Queensland Road Safety Summit fully informed the response.

It is my pleasure to attach the submission from QT, which provides evidence based research for consideration by the Committee in undertaking its evaluative process.

Should you require any further information in relation to the interim response, please contact Mr Tony Kursius, Executive Director (Land Transport & Safety), on (07) 3253 4860. Mr Kursius will be pleased to assist you.

Yours sincerely

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Parliamentary Travelsafe Committee

Issues Paper No. 10 – Inquiry into Vehicle Impoundment for Drink Drivers

QUEENSLAND TRANSPORT SUBMISSION

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Executive Summary

Queensland Transport is aware of the significant road safety risk that recidivist drink drivers pose. These drivers are over-represented in all vehicle crash rates, and this over-representation is even more pronounced when considering road crash fatality figures.

Queensland Transport notes that the Travelsafe Committee is focusing upon recidivist drink drivers in the current inquiry. When considering statistics on drink driving it is important to differentiate between first time offenders and recidivist drink drivers with current research suggesting an association between problem drinking and recidivism. The drink driving statistics indicate that the majority of the driving public are deterred by existing drink driving penalties, with recidivist drink drivers representing only a small minority of the driving public. Recidivist drink drivers (more than one offence in five years) were responsible for approximately one quarter of all drink driving convictions within the time period studied. And in turn, recidivist drink drivers are also over-represented in road fatalities (either their death or the death of others), suggesting that they constitute a significant threat to road safety.

Profiling of recidivist drink drivers has indicated that they are not a homogenous group. Given that several distinct sub-groups can be identified, and based on key announcements from the 2006 Road Safety Summit and the current review of impaired driving legislation being undertaken by Queensland Transport, the department would suggest utilising a suite of sanctions to address the issue of drink driving including:

- vehicle impoundment of repeat drink drivers and disqualified drivers;
- ignition interlock devices required as a perquisite for licensing of drink drivers after the second drink driving offence; and
- licence based penalties and sanctions.

The Department believes that this approach of a combination of sanctions, in addition to an update of the relevant legislation, is the most appropriate and effective method of dealing with this issue – addressing the specific circumstances and/or causes of recidivist drink driving behaviour in each case.

In the following submission, the Department suggests that any further penalties developed to address the issue of recidivist drink drivers consider a complex set of variables. Queensland Transport suggests that implementing sanctions tailored to the specific circumstances of a drink driver and/or other family members, will address issues of social equity and be more effective as a long term deterrent to recidivist drink drivers. These issues will be fully considered under the IDLR.

1. Introduction

In July 2004, Queensland Transport initiated a review of the impaired driving legislation (IDLR), in particular *Sections 79 – 82 of the Transport Operations (Road Use Management) Act 1995*. It was recognised that the impaired driving legislation in its current form may be confusing, difficult to understand and use, and that improved technology and alternative countermeasures might provide more effective ways of managing impaired driving offenders. A significant portion of the IDLR is also the subject of the Travelsafe Issues Paper Number 10 (the Paper). Following a request received in April 2005 from the Minister for Police, the Honourable Judy Spence MP, key confiscation is also included on the work program for IDLR. The IDLR work program consists of research, policy development and legislation development phases. This work program is on-going.

1.1 Impaired Driving Legislation Review (IDLR)

The IDLR Working group, overseen by the IDLR Steering Committee, is comprised of representatives from Queensland Transport, Queensland Police Service (State Traffic Support Branch, and the Drugs and Alcohol Unit), Queensland Health, Department of Justice and Attorney General, Department of Corrective Services, and the Centre for Accident Research and Road Safety – Queensland (CARRS-Q).

The IDLR Working Group is responsible for developing recommendations to enhance the enforcement effectiveness of the impaired driving legislation to deter impaired driving, in particular drink and drug driving, and also fatigued driving where appropriate. The Working Group will develop recommendations that will enhance the management of impaired driving offenders, and will examine the legislative penalties and processes that deter or prevent impaired driving, in order to identify and recommend legislation changes to refine the current legislation. Impaired driving countermeasures are to be examined and where appropriate legislation enabling implementation of these countermeasures is to be adopted.

The approach taken during the IDLR has been to examine best practice both in Australia and internationally for legislation, penalties and sanctions. The scope of the IDLR includes conducting research into the profile of offenders in Queensland including categorisation, crash trends, indigenous issues and drug driving issues. In particular the IDLR will involve a review of innovative (non-traditional) countermeasures including (but not limited to):

- vehicle confiscation and impoundment
- breath alcohol ignition interlock devices
- rehabilitation programs including ‘Under the Limit’ (UTL)
- restricted (work) licences
- compulsory blood testing
- drug driving enforcement
- infringement notices for low BAC impaired driving offences.

This overview of the IDLR highlights that a significant portion of the review is also the subject of the Travelsafe inquiry and Issues Paper Number 10. Extensive research has already been completed, including profiling Queensland's offenders, and research into drug driving, BAC limits and unlicensed driving. Research is well underway for countermeasures including vehicle confiscation and impoundment, key confiscation, alcohol ignition interlocks, rehabilitation programs, work licences and Blood/Breath Alcohol Concentration (BAC) infringement notices. Significant work has been done to examine the impaired driving legislation of other Australian jurisdictions as well as international offender management systems in North America, the United Kingdom and New Zealand.

However as the research is not completed, and has not been examined for policy and legislative implications, Queensland Transport is unable to provide clear recommendations as to the efficacy or benefits of any of the specific vehicle sanctions and countermeasures described in the Paper, and how they might be applied in Queensland. It is recognised that there may be no single best solution to reduce impaired driving, that a combination or combinations of measures might be required, and that Queensland's current legislative environment might support and enhance the effectiveness of one or more countermeasure, but restrict the usefulness of another. Until this work is completed, it is not possible to provide a definitive position on many of the questions asked by the Paper. However, this submission is intended to share the information and knowledge gained to date.

1.2 Deterrence Theory

Classical deterrence theory states that for punishment to be effective, it must be swift, severe and certain to occur (Willis 1994). The efficiency of the penalty with respect to administrative procedures can restrict the capacity to significantly influence the swiftness when punishing offenders.

Gibbs (1975 in Homel, 1988) proposed a universal definition of deterrence, whereby a person knowingly aware of the consequences of behaviour against the law, will avoid following through with that act due to risk and fear of punishment. The theory of this mechanism is that persons can be dissuaded from committing a specified act if the outcome of that act is perceived to be swift, certain, and severe punishment. By punishing the convicted offender and publicizing that fact, the wider public is informed of the legal threat and the threat is made more credible (Ross, 1992).

There are two levels at which deterrence theory operates (Homel 1988, in Vingilis et al, 1990). General deterrence aims to alter the behaviour and attitudes of the general public, particularly those who have not offended. Specific deterrence then focuses on those who have offended, striving to prevent recidivism by enhancing punishment and subsequent sanctions for their actions (National Highway Traffic Safety Administration (NHTSA) and National Institute on Alcohol Abuse and Alcoholism, 1996).

At one end of the spectrum, it seems only general deterrence has an impact on instrumental offenders (whose offences serve a particular end, such as driving to get home), whereas compulsive offenders (those with impaired self control) are relatively unaffected (Mann et al, 2003). Specific deterrence is achieved through the sanctions and penalties imposed on these offenders.

To increase the impact of general deterrence on an offender, the certainty of punishment and the swiftness to activate that punishment is critical. It is believed that certainty rather than severity has a greater deterrent effect on potential traffic infringements (Watson et al., 1996 in Duhs, Dray & Watson, 1997). In other words, if road users are not alarmed at the prospect of being apprehended for a traffic violation, intensifying the severity may be futile. However, once the perceived certainty is clear, severity has the ability to impact on an offender such as losing their licence (Watson and Siskind, 1997).

The vehicle sanctions discussed in this submission have been shown to induce variable levels of specific and general deterrence. The specific deterrent effect of some sanctions appears to predominate over the general deterrent effect, however, many of these sanctions were not widely used, or had not been used for a lengthy period prior to the evaluation. It could be expected that general deterrence – altering the behaviour and attitudes of the driving public – would require a longer period of time to develop.

2. Drink Driving in Queensland

Issues for comment:

1. Do drink drivers in Queensland continue to drive illegally after being apprehended by police or disqualified by the courts?

2. Is this a significant number of drivers?

3. How often do drink drivers in Queensland continue to do this?

2.1 Introduction

It is difficult to estimate the true prevalence of drink or disqualified driving in the community. At best, measures can only be estimates, and the accuracy will largely depend on the research methodology and sampling method used. It is also recognised that using offence data as a measure of prevalence of these behaviours is influenced by prioritisation and targeting of enforcement activities, as increased enforcement increases the probability of detection (Leal, Lewis and King, 2005).

In this submission, Queensland Transport uses the number of drink driving or disqualified driving offences as an indicator of the level of drink and disqualified driving in the community. Queensland Transport recognises that the true level of drink or disqualified driving may differ from these estimates which rely on the offender being detected by police and being charged with the offence. These detections are influenced by enforcement patterns and offenders' efforts to evade detection. Drivers detected committing offences may be offending on other occasions without being detected, and there may be other drivers committing the same offences without being detected.

2.2 Methodology – Data Analysis

Queensland Transport records traffic offence data in the Transport Registration and Integrated Licensing System (TRAILS). Road crash data is obtained from the Roadcrash database, which obtains data electronically from the Queensland Police Service TIRS (Traffic Incident Reporting System) and validated by the Office of Economic and Statistical Research (OESR).

Drink driving and disqualified driving offence data was extracted for the period from 1 January 2002 to 30 June 2005. At the time the data was extracted, offence data for the full year 2005 was not available. Consequently, three and a half years of offence data has been examined. In Queensland, a person is deemed to be a repeat drink driving offender if the person commits two or more offences within a five-year period. As the data is for three and a half years, there will be a proportion of offenders prior to 2002 and after June 2005 that will not be taken into account in this analysis, in particular, where disqualified driving offences are matched to prior drink driving offences.

The drink driving and disqualified driving data was obtained at 'day' level (not 'time of day'). This means that the data was not able to be matched accurately and some offenders will have more than one offence in the same event. For example, a drink driving offence, a disqualified driving offence and a crash would be regarded as one event.

Also, within the time available to prepare this submission, it was not possible to identify the offence leading to disqualification for the disqualified driving offenders. Where possible, disqualified driving offenders were matched to same-day or previous drink driving offences (since 1 January 2002) using the unique Customer Reference Number (CRN).

Crash data was extracted for the period from January 2000 to December 2004. Again, data was incomplete for 2005, so the year was excluded from analyses. This provided five full years of data. Crash data was examined for controllers whose licence was disqualified or cancelled at the time of a crash, and compared with all other drivers involved in crashes. In addition, disqualified drivers who were drink driving at the time of the crash were identified.

Raw data from TRAILS was imported into an MS Access database and the data were matched and information produced using SQL (structured query language).

2.3 Drink Drivers

Queensland Transport data extracted from TRAILS indicates that between January 2002 and June 2005, there were a total of 94,981 drink driving offences committed by 81,680 offenders.

Table 1: Drink driving offences and offenders, January 2002 – June 2005

No of Offences	No Of Offenders	% offenders	Total Offences	% offences
1	70736	86.6	70736	74.5
2	9142	11.2	18284	19.3
3	1405	1.7	4215	4.4
4	291	0.4	1164	1.2
5 or more	106	0.1	582	0.6
	81680	100	94981	100

The majority of offenders (86.6 per cent) were detected drink driving on only one occasion during the period examined.

10,944 (13.4 per cent) of the offenders were repeat offenders, with more than one offence detected during 2002 – mid-2005, and were detected committing 24,245 offences, or 2.15 offences per offender.

One hundred and six offenders (0.1 per cent of all offenders) committed five or more drink driving offences and were responsible for 0.6 per cent of all offences.

It should be noted that defining a repeat offender as having two or more drink driving offences will identify those offenders who are charged with two or more offences for the same drink driving event (on the same occasion). For example, this could include failure to supply a roadside test, but later reconsidering the decision and providing an evidentiary breath or blood specimen. The driver would be charged with 'fail to supply roadside test' as well as the BAC-related drink driving offence. Alternatively, the driver may supply a roadside sample, but refuse to provide the evidentiary sample. Consequently, a driver can be classified as a repeat offender from the one event, or from separate events which gives a larger number of drink driving offences than the number of offenders.

Changes in drink driving offence detections between January 2002 and June 2005 are illustrated in Table 2.

Table 2: Changes in drink driving offences and offenders, January 2002 – June 2005

	2002	2003	2004	2005*	Annual average 2002-2004
Number of offences	26526	26950	27026	14479*	26834
Number of offenders	24409	25123	25101	13784*	24878

* incomplete year: 1 January – 30 June 2005

Note that the total number of offenders for each year from 2002 to 2005 in this table will not match the total number of offenders in the previous table (all offenders, 2002-June 2005), as repeat offenders were identified committing offences both within and across different years.

On average between 2002 and 2004, there were 26,834 drink driving offences committed per annum by 24,878 offenders.

The number of offences and offenders for the first six months of each year was compared to the data available for 2005, in order to identify any recent changes. The number of offences and offenders is observed to increase during 2003 and 2005, with a small dip occurring in 2004.

Table 3: Six-month drink driving offences and offenders (January-June) 2002 – 2005

January – June offences	2002*	2003*	2004*	2005*	Annual 6-month average 2002-2005
Number of offences	12595	13617	13290	14479	13495
Number of offenders	11830	12897	12555	13784	12767

The number of offences and number of offenders appear to have increased marginally in recent years, for example, the annual number of offences increased by 1.9 per cent between 2002 and 2004, and the annual number of offenders increased by 2.8 per cent over the same period, however, a longer period of time would need to be examined to identify if these changes are sustained. It must be reiterated that the number of offences detected is a measure of both the number of offences committed and the level of enforcement by the Queensland Police Service. Enforcement levels were not examined during this analysis. The analysis also does not take into account recent population growth in Queensland.

Recidivist Drink Drivers

Table 1 (Drink driving offences and offenders, January 2002 – June 2005) identified that nearly 87 per cent of drivers were detected drink driving on only one occasion during the time period examined. Just over 13 per cent of drink drivers were identified as repeat offenders.

Further analysis was undertaken to identify the incidence of repeat offences following an initial offence. In this analysis, 'initial' offence means a drink driving offence committed during 2002. It is recognised that the offender's first offence may have occurred prior to 2002, but this data could not be obtained due to data access limitations in the time available for the preparation of this submission.

The cohort of drink drivers detected committing an offence during 2002 had subsequent drink driving offences identified via the driver CRN.

Table 4: Repeat drink driving offences January 2002 – June 2005

The analysis used the CRNs of all drink drivers detected during 2002, to identify repeat offences during 2002, 2003, 2004 and to June 2005.

Number of Offences	Base 2002 DD CRN's			
	2002	2003	2004	2005
1	22560	1449	1313	708
2	1634	155	132	31
3	179	22	25	4
4	24	2	3	1
5	8	1	0	1
6	3	0	0	0
7	1	0	0	0
Total	24409	1629	1473	745

The significant majority of drink driving offenders detected during 2002 were not identified committing a second drink driving offence during the subsequent 2.5 years examined.

Ninety-two percent of offenders (n=22560) committed only one offence during 2002, and 6.7 per cent (n=1634) committed two offences, although an unknown proportion of these may include two offences committed as part of the same drink driving event. There were 215 offenders (0.88 per cent) who committed three or more offences during 2002.

As a proportion of the total number of the offenders during 2002, 6.7 per cent (n=1629) were detected committing a further drink driving offence during 2003, and 6.0 per cent (n=1473) were detected committing a subsequent drink driving offence during 2004. In the time available, it was not possible to identify if the same offenders continued to offend across all or only some of the following years.

2.4 Drink Driving Offences

Drink driving offences have been defined in this analysis as offences where there is a breach of sections 79(1), 79(2), 79(2A), 79(2B), 79(2D) or 79(2J) of the *TO(RUM) Act 1995.* For the purpose of this analysis, drink driving offences also include the offences of failing to supply a roadside test, breath specimen or blood specimen where required by a police officer (s80(5A), 80(11), *TO(RUM) Act 1995).* These offence descriptions are listed in Table 5 below.

Table 5: Drink driving offences in Queensland, 1 January 2002 – 30 June 2005

Code	Offence Description	No. Offences	Percentage
2381	DRIVE UNDER INFLUENCE OF LIQUOR (UNDER 0.15%)	61990	65.27%
2380	DRIVE UNDER INFLUENCE OF LIQUOR (OVER 0.15%)	20290	21.36%
2382	DRIVE UNDER INFLUENCE OF LIQUOR (NO READING)	2505	2.64%
2368	PCA UNDER .07 LESS THAN .09 WHILE HOLDER OF OPEN LICENCE	1614	1.70%
2367	PCA UNDER .05 LESS THAN .07 WHILE HOLDER OF OPEN LICENCE	1504	1.58%
2384	FAIL TO SUPPLY BREATH SPECIMEN	1445	1.52%
2369	PCA UNDER .09 LESS THAN .11 WHILE HOLDER OF OPEN LICENCE	1113	1.17%
2383	FAIL TO SUPPLY ROADSIDE TEST	936	0.99%
2370	PCA UNDER .11 LESS THAN .13 WHILE HOLDER OF OPEN LICENCE	844	0.89%
2371	PCA UNDER .13 LESS THAN .15 WHILE HOLDER OF OPEN LICENCE	720	0.76%
2419	DRIVE UNDER THE INFLUENCE OF LIQUOR OTHER THAN MOTOR VEHICLE	512	0.54%
2362	PCA .07 LESS THAN .09 WHILE HOLDER OF P, L OR UNLICENCED	315	0.33%
2361	PCA .05 LESS THAN .07 WHILE HOLDER OF P, L OR UNLICENCED	297	0.31%
2363	PCA .09 LESS THAN .11 WHILE HOLDER OF P, L OR UNLICENCED	215	0.23%
2385	FAIL TO SUPPLY BLOOD SPECIMEN	207	0.22%
2364	PCA .11 LESS THAN .13 WHILE HOLDER OF P, L OR UNLICENCED	169	0.18%
2365	PCA .13 LESS THAN .15 WHILE HOLDER OF P, L OR UNLICENCED	127	0.13%
2360	PCA UNDER .05WHILE HOLDER OF P, L OR UNLICENCED	120	0.13%
2366	PCA UNDER .05 WHILE HOLDER OF OPEN LICENCE	52	0.05%
2570	DRIVE UNDER INFLUENCE OF LIQUOR WITH RESTRICTED LICENCE	6	0.01%
	Total	94981	100%

Twenty-one percent (n=20290) of offenders were identified breaching the high alcohol limit (more than 0.15 per cent).

Seventy-five percent (n=61990) of offenders were identified exceeding the general alcohol limit, but not exceeding the high alcohol limit. The majority of these offenders (65 per cent) were charged with driving under the influence of liquor (under 0.15 per cent), and the remainder were charged with range-specific breaches of prescribed concentration of alcohol offences.

Just over one percent (n=1295, or 1.4 per cent) of offenders were identified breaching a zero alcohol limit (Codes 2360-2366), although it should be noted that unlicensed drivers are included with P and L drivers, which will bias the results.

Less than one percent (n=52, or 0.05 per cent) of drivers were detected breaching a zero alcohol condition on an open licence. This offence code would include drivers of vehicles including truck, bus, taxi, dangerous goods vehicle, tram, train, vessel or other vehicle as defined in sections 79(2C-2E) of the Act.

Less than one percent (n=6, or 0.01 per cent) of offenders were detected breaching the zero alcohol conditions of a restricted (work) licence. These will be discussed further in response to Questions 14 and 15 of the Travelsafe Issues Paper.

Less than two percent (n=1652, or 1.7 per cent) of offenders failed to comply with an instruction to provide a breath or blood sample when requested by a police officer. Failure to provide a breath or blood sample is an offence, and attracts a maximum penalty of 40 penalty units ($3000) or up to six months imprisonment (s80(5A), 80(11). In addition, failure to provide a specimen of breath or blood for analysis when required by an officer is deemed to an offence against section 79(1), driving under the influence of liquor or drugs, and equates to exceeding a BAC of 0.15.

Drug Driving and Driving under 24 hour licence suspension

Two impaired driving-related offences were considered separately for the purposes of this submission, and will be briefly discussed. These are *drug driving* and *driving while under a 24 hour licence suspension*, and represent a relatively small number of offences (in comparison to the number of drink driving offences).

Table 6: Drug driving and driving under 24 hour licence suspension offences, January 2002 - June 2005

Code	Offence description	offenders	offences	repeat offences
2386	DRIVE UNDER INFLUENCE OF DRUGS	576	581	10
2403	DRIVE WHILE UNDER 24 HR SUSPENSION	583	590	3

Drive under influence of drugs:

On average there have been approximately 166 drug driving offences recorded per annum in recent years. The number of drug driving offences detected is small in comparison to drink driving offences. Breath alcohol analysis can more quickly screen a large number of people and provides a fast and accurate result indicative of the driver's BAC, but similar technology and legislation is not available for use for drug enforcement in Queensland. If a driver is determined by the police officer to be impaired, but the BAC reading is inconsistent with the degree of impairment displayed (that is, low or zero BAC), the driver may be arrested and a blood sample taken (S80(8) *TO(RUM) Act*). If the blood analysis confirms the presence of an impairing drug, the driver may be charged under *Transport Operations (Road Use Management) Act 1995* Section 79 (1) - driving under the influence of liquor or drugs.

Table 7: Drug driving offences detected by year, January 2002 – June 2005

DRIVE UNDER INFLUENCE OF	2002	2003	2004	2005*	Total
DRUGS OFFENCES	141	187	176	77*	581

* incomplete year: 1 January – 30 June 2005

Drug driving is an important consideration in the development of ways to manage impaired driving offenders, and for this reason, drug driving (detection, enforcement and penalties) is included within the scope of the IDLR. Countermeasures being developed to manage drink drivers are also being considered for drug drivers, in particular, rehabilitation programs and vehicle sanctions. However, the scope of the Travelsafe Inquiry does not include drug drivers, so they will not be discussed further in this submission.

Drive while under 24 hour suspension:

Under section 80(22) of the *TO(RUM) Act 1995*, the driver licence of a person detected drink driving is suspended for 24 hours. The licence suspension occurs, regardless of whether the drink driver is arrested or not (s80(22B)). It is an offence to breach the licence suspension, with offenders being liable for a penalty not exceeding 14 penalty units ($1050) or imprisonment for a term not exceeding one year (s80(22D)). In addition, the offender may be disqualified for a period of six months in the absence of any other court order (S86(4)).

On average, approximately 169 drink drivers have been detected annually breaching the 24 hour licence suspension in recent years. Given the time period examined, it is not possible to state that these offences are increasing or decreasing, particularly since offence detections will be closely related to enforcement effort. It is recognised that many more drivers may breach the suspension, but are simply not detected.

Table 8: Driving under 24 hour licence suspension following a detection for drink driving, by year, January 2002 – June 2005

DRIVE WHILE UNDER 24 HR	2002	2003	2004	2005*	Total
SUSPENSION OFFENCES	192	141	166	91*	590

* incomplete year: 1 January – 30 June 2005

'Drive while under 24 hour suspension' offences have been excluded from the broader analysis of drink driving offences. Although the offence relates to a drink driving charge, the offence is technically not drink driving. If the offender's BAC exceeds their prescribed limit when they come to the attention of a police officer, the drink driver will also be charged with a drink driving offence.

2.5 Disqualified Drivers

A driver can only be disqualified from driving by order of the court. Drivers may be suspended administratively for other offences, including excessive speed, loss of demerit points, non-payment of traffic-related fines or for medical reasons, however, these suspensions are not imposed by a court of law. Administrative suspension falls outside of the scope of the Travelsafe Inquiry, so has not been considered further in the data analysis.

Disqualified driving offence data was extracted from the TRAILS system. The following analysis relates to drivers who were detected driving while disqualified, including a sub-set of drivers who were disqualified for drink driving offences. It must be noted that drivers can be disqualified for offences other than drink driving, including dangerous operation of a vehicle or careless driving. The offence code for disqualified driving is the same, regardless of the reason for the disqualification. This means that disqualified driving by a disqualified drink driver cannot easily be identified. However, it is important to examine all disqualified driving offences as these provide an indication of the deterrent impact of a disqualification order imposed by a court, whatever the reason for the disqualification.

For the period 1 January 2002 to 30 June 2005, there were 23,316 disqualified driving offences committed by 14,373 offenders, or an average of 6662 disqualified driving offences per annum.

Table 9: Disqualified driving offences and offenders, 1 January 2002 – 30 June 2005. Data shows repeat offenders during the period

Number of Offences	Total Offenders	% Offenders	Total Offences	% Offences
1	9348	65.0	9348	40.1
2	2995	20.8	5990	25.7
3	1112	7.7	3336	14.3
4	466	3.2	1864	8.0
5	230	1.6	1150	4.9
6	102	0.7	612	2.6
7	55	0.4	385	1.7
8	29	0.2	232	1.0
9	16	0.1	144	0.6
10 or more	20	0.1	255	1.1
	14373	**100.0**	**23316**	**100.0**

Almost two-thirds of offenders (9348, 65 per cent) were detected driving while disqualified on only one occasion.

More than one-third of offenders (5025, 35 per cent) were detected driving while disqualified on two or more occasions during the period examined. These offenders accounted for 13968 offences, or 60 per cent of all disqualified driving offences during the period.

These data indicate that the majority of drivers detected for the offence of driving while disqualified are only detected on a single occasion, but that there is a core group of recidivist disqualified drivers who continue to drive while disqualified on repeated occasions. There were twenty significant multiple offenders (10 or more offences) who accounted for 255 offences between them during the period examined.

It should be reiterated that these drivers were not necessarily disqualified for drink driving offences, but may have been disqualified for other reasons.

Recidivist Disqualified Drivers

Using Customer Reference Numbers (CRNs), the 2002 cohort of disqualified driving offenders were followed to identify repeat offences, in the same manner as previously described for drink driving offenders.

In 2002 there were 4305 offenders who were detected driving while disqualified on 5731 occasions. Most disqualified driving offenders (78.5 per cent) were detected on only one occasion during 2002 however, 924 (21.5 per cent) had more than more disqualified driving offence during the year.

During 2003, 844 (20 per cent) of the 2002 disqualified driving offenders had at least one repeat offence during that year.

In 2004, 669 (16 per cent) of 2002 disqualified driving offenders had a repeat offence, and in the first six months of 2005, 249 (6 per cent) of the 2002 disqualified offenders had a repeat offence. The proportion of re-offenders during 2005 is lower because only six months data is shown.

Table 10: Repeat offences by drivers detecting driving while disqualified during 2002. The table shows multiple offences in 2002, and repeat offences by the 2002 cohort of offenders during 2003-June 2005.

Number of Offences	Base 2002 disqualified drivers CRNs			
	2002	2003	2004	2005*
1	3381	602	497	202
2	627	152	121	34
3	184	54	33	9
4	63	18	10	3
5	24	13	4	1
6	18	2	3	0
7	4	0	0	0
8	2	1	1	0
9	1	2	0	0
11	1	0	0	0
Total	4305	844	669	249

* year to 30 June 2005

Over the period examined, there was a reduction in the number of disqualified driving offences committed by the 2002 cohort. However, unlike repeat drink driving offences which dropped away to a steady level of 6-7 per cent repeat offences, the disqualified driving re-offence rate continues to drop. There are some significant reasons to account for this, including:

- the disqualification period ends, so that repeat offenders are detected committing unlicensed driving offences instead (unlicensed driving is a separate code),
- disqualification period ends and offenders re-enter the licensing system,
- offenders are imprisoned, or
- offenders stop driving.

These possible explanations illustrate the complexity of trying to follow the offence history of all multiple offenders. While following the offence history of single offenders provides detail, it reveals information about the individual, and cannot be generalised to all offenders. It can also be an extremely complex and time consuming exercise and is beyond the scope of this submission.

2.6 Offences by Drivers Disqualified for Drink Driving.

The CRN of disqualified driving offenders identified during the period January 2002-June 2005 was used to identify those drivers who had a (prior) drink driving offence during the same period.

Table 11 shows the number of disqualified driving offences committed by drivers who had a drink driving offence, committed either on or before the date of the disqualified driving event.

Table 11: Disqualified driving offences and offenders where the disqualified driver had a drink driving offence on or before the disqualified driving offence (since 1 January 2002)

No Of Offences	No Of Offenders	Total Offences
1	5486	5486
2	1557	3114
3	483	1449
4	214	856
5	82	410
6	29	174
7	6	42
8	13	104
9	4	36
10	3	30
15	1	15
34	1	34
Total	7879	11750

This table indicates the number of drink drivers who engage in disqualified driving, or who drink drive while disqualified. During the three and a half year period that could be examined, 5486 (70 per cent) disqualified drivers were identified as having a prior or same-day drink driving offence, and were detected driving while disqualified on a single occasion.

The following table identifies disqualified drivers who committed two offences on the same day – drink driving and disqualified driving. These offenders are a subset of the offenders in the previous table. Between January 2002 and June 2005, 5080 offenders were detected for drink and disqualified driving on the same day. Just under 2 per cent (n=99) were detected on more than one occasion.

Table 12: Offenders detected drink and disqualified driving (both offences on the same day)

No of Offences	No of Offenders	Total Offences
1	4981	4981
2	95	190
3	3	9
4	1	4
Total	5080	5184

Subtracting the number of same-day drink and disqualified drivers (n=5080) from the number of offenders identified in the first table above (n=7879) indicates that 2799 or 35 per cent of disqualified driving offenders were not drink driving (their drink driving offence occurred on an earlier occasion). This brief analysis suggests that a substantial proportion of disqualified drivers (n=5080, or 65 per cent) are also drink driving at the time of the disqualified driving offence.

The 2002 cohort of disqualified drivers with a prior drink driving offence was examined to identify repeat disqualified offences over the subsequent two and a half years to June 2005.

Table 13: Disqualified drivers detected during 2002, who had a drink driving offence (prior to or on the date of the disqualified driving offence) – identification of subsequent disqualified driving offences.

	Jan 2002 - Jun 2005			
No of Offences	Base 2002 CRNs			
	2002	2003	2004	2005*
1	1566	270	207	95
2	229	62	47	8
3	59	18	14	3
4	21	3	2	0
5 or more	8	3	3	0
Total	1883	356	273	106

* year to June 2005

The table shows that:

- 83 per cent of offenders in 2002 were detected only once for disqualified driving during 2002,
- 17 per cent of offenders in 2002 had a repeat offence during that same year,
- 19 per cent of offenders in 2002 had a repeat disqualified driving offence during 2003, and
- 15 per cent of offenders in 2002 had a repeat disqualified driving offence during 2004.

The same data was examined to identify disqualified drivers from the 2002 cohort who were drink driving at the time of detection.

Table 14: Same-day drink and disqualified driving offences and offenders (2002) – identification of repeat same-day disqualified driving and drink driving offences in subsequent years

	Jan 2002 - Jun 2005			
No of Offences	Base 2002 CRNs			
	2002	2003	2004	2005
1	1408	143	109	31
2	24	2	0	0
Total	1432	145	109	31

The table indicates that among the disqualified driving offenders detected during 2002, a small but potentially significant number continue to drink and drive while disqualified during the subsequent two and a half years.

Longer term and more in-depth analysis of disqualified drivers' individual records would be required to identify if these drivers are imprisoned, complete their disqualification period so become unlicensed, complete the disqualification period and re-enter the licensing system, or stop driving.

2.7 Crash Data

This section analyses the characteristics of crashes over the five year period 2000-2004, using data from the Queensland Transport Crash Database. The behaviours of disqualified drivers involved in crashes are compared with non-disqualified drivers involved in crashes.

2.7.1 Crashes where a controller was disqualified or unlicensed

Drink drivers are defined as drivers of motor vehicles who had an illegal BAC. **Disqualified drivers** are defined as drivers of motor vehicles whose licence status was disqualified or cancelled at the time of the crash. Cancelled and disqualified drivers are recorded under the same licence category. The following analysis will include an unknown number of vehicle controllers with a cancelled licence status. Again, it was not possible to separately identify the drivers originally disqualified for a drink driving offence.

Table 15: Comparison of drivers involved in crashes* (2000-2004)

BAC Category	Disqualified drivers		Non-Disqualified drivers		All drivers	
	n	%	n	%	*n*	%
Drink driver	622	27.8	6736	3.6	7358	3.9
Not drink driver	1612	72.2	180328	96.4	181940	96.1
Total	**2234**	**100**	**187064**	**100**	**189298**	**100**

* All crash severities

2.7.2 Crashes where alcohol or drugs were a contributing factor

Almost twenty eight percent (27.8 per cent) of disqualified drivers involved in crashes had an illegal BAC. Disqualified drivers involved in crashes were almost eight times as likely to have an illegal BAC when compared with non-disqualified drivers. Disqualified drivers represented 8.5 per cent of drink drivers involved in crashes and 0.9 per cent of non-drink drivers involved in crashes.

Table 16: Drivers involved in crashes by year, by licence status and by BAC

Driver Groupings	BAC* Category	2000		2001		2002		2003		2004	
		n	%	n	%	n	%	n	%	n	%
Disqualified drivers	Over	75	27.8	96	25.9	151	34.8	150	29.1	150	23.3
	Under or zero	195	72.2	274	74.1	283	65.2	365	70.9	495	76.7
Non-disqualified drivers	Over	1160	3.4	1321	3.5	1391	3.7	1420	3.7	1444	3.6
	Under or zero	32532	96.6	36151	96.5	36504	96.3	36725	96.3	38416	96.4
All drivers	Over	1235	3.6	1417	3.7	1542	4.0	1570	4.1	1594	3.9
	Under or zero	32727	96.4	36425	96.3	36787	96	37090	95.9	38911	96.1

* Over = illegal BAC; Under = non-illegal BAC or zero BAC

The above table shows there has been a consistently high proportion of drink drivers among disqualified drivers involved in crashes.

3. Vehicle Sanctions

3.1 Vehicle Impoundment and Forfeiture

Issues for comment:
4. What are the costs and benefits of vehicle impoundment and forfeiture?

3.1.1 Introduction

Issues Paper Number 10 (the Paper) is investigating if vehicle sanctions may be effective in reducing drink driving recidivism. Specifically, the Paper identifies the following vehicle-based sanctions:

- vehicle immobilisation
- vehicle impoundment
- vehicle forfeiture
- registration cancellation
- plate impoundment
- registration plate actions, including identification stickers
- alcohol ignition interlocks

Vehicle sanctions are directed against the vehicle or vehicles that the offender is mostly likely to drive and serve to strengthen licence actions taken against the offender (DeYoung, 1999). Vehicle sanctions may be especially effective in cases where the driver is unlicensed and licence actions would otherwise have little punitive effect. Vehicle sanctions for impaired driving are generally introduced to:

- incapacitate impaired drivers;
- prevent impaired driving offenders from re-offending; and
- serve as a general deterrent for all drivers that may drink and drive (Stewart, 1995).

The sanctions may be applied at the point of apprehension of the impaired driver (that is, at the roadside prior to conviction) or they may be court imposed penalties following conviction. The more severe and lengthy vehicle sanctions may be designed to target persistent offenders and remove from the road those determined drink drivers who resist the more traditional sanctions such as licence disqualification, fines and/or imprisonment. The length and imposition of the sanction will vary depending on what point in time it is applied (pre versus post conviction) and there may be graduated penalties for repeat offences.

The Paper's Terms of Reference indicate that the Inquiry is specifically investigating if vehicle impoundment is a cost-effective deterrent to reduce drink driving recidivism, in light of the ability of Queensland Police to impound vehicles detected committing 'hooning' related offences. The context of the Inquiry indicates that repeat drink drivers would be the target for such a program. Hooning laws in Queensland presently provide for 48 hour vehicle impoundment for a first offence, three month impoundment for a second offence, and forfeiture for a third offence. The graduated penalty for repeat offences approach is mirrored in some of the vehicle sanction programs used internationally, for example, in New Zealand. The graduated penalties provide for increasingly severe sanctions in an effort to deter repeat offences.

In an effort to deal with the more serious traffic offenders, some countries have introduced vehicle forfeiture, or confiscation laws that allow for the appropriation of a vehicle by the State for the purpose of selling that vehicle at a public auction without compensation to the offender. The monies gained are then used to pay the costs of seizing that vehicle, any outstanding fines and, in some countries, used to pay any third parties (Sweedler, Stewart and Voas, 2004).

3.1.2 Vehicle Impoundment

Vehicle impoundment is practised in a number of jurisdictions in North America, Australia and in New Zealand, and may occur when a driver is detected or convicted for offences including:

- driving under the influence of alcohol or drugs (DUI)
- driving while suspended (DWS) or disqualified, or otherwise unlicensed
- 'racing' or other hooning related offences

Vehicle impoundment, or seizure, generally occurs following apprehension for one of these offences. It involves removal of the offender's vehicle from the roadside by a tow truck to a storage area nominated by the impounding authority. Under existing laws, such a vehicle will be held for a period of time at the offender's expense. In general the period of time that a vehicle will be held varies depending on the nature of the offence and the number of previous offences.

3.1.3 Impoundment Programs

Impoundment programs are active in New Zealand, a number of Canadian provinces and in parts of the United States. Impoundment is available as a sanction in the United Kingdom, Belgium and Sweden, although it is rarely used. A recent review of impoundment programs noted that "…Australia and Europe appear to be relatively uninterested in impoundment as a sanction for either unlicensed driving or impaired driving" (Sweedler, Stewart and Voas, 2004). This position may need to be updated for Australia with Victoria recently introducing laws to permit immediate vehicle impoundment for drink driving offences when detected. Although Australian States, including New South Wales, Tasmania and Victoria, have powers which permit immediate impoundment of vehicles upon detection of an impaired driving offence, the power appears to be used only when other options for immediately dealing with the drink driver and the vehicle are unsuitable. Western Australia has legislation allowing for court-ordered impoundment for racing or unlicensed driving offences. It is currently considering court-ordered impoundment as an option for drink drivers, as part of a comprehensive management system for repeat drink drivers. Further details of the Australian legislation will be referred to in greater detail later in this submission.

Many Australian states now have legislation to allow impoundment or even forfeiture of vehicles for hooning related offences. This legislation will be examined later in this submission.

As it is not possible to review all of the existing legislation relating to vehicle impoundment, immobilisation and forfeiture, the following review will examine the New Zealand program in detail as it has "the most comprehensive vehicle sanction program of any country" (Sweedler, Stewart and Voas, 2004), and briefly examine programs in the other jurisdictions noted above.

Many of the programs have not been formally evaluated for effectiveness, however, among the programs that have been evaluated and published, many have identified relative success in reducing the incidence of DUI, or 'driving while unlicensed or suspended'. The latter group must be considered in the following discussion as a problematic cohort of DUI offenders, as they are more likely to repeat the offence, and often while their licence is suspended or revoked.

It should be pointed out that vehicle impoundment can be used as a criminal sanction following a conviction for impaired driving, however it may also be used as an administrative sanction, enabling police officers to temporarily confiscate the vehicle of a drink drive offender detected at the roadside. This has the effect of reducing the risk for the impaired driver as well as other road users, and acts to deter further offences.

New Zealand

New Zealand is described as having "…the most comprehensive vehicle sanction program of any country surveyed" (Sweedler, Stewart and Voas, 2004). Vehicles are currently impounded immediately and automatically for 28 days for the following offences[1]:

- driving while disqualified
- driving while suspended
- driving without a licence or with an expired licence, if previously detected committing either of these offences.

Impoundment occurs at the time of the offence. Court penalties are imposed in addition to impoundment. A vehicle may also be impounded for hooning-related offences (racing or performing 'street car stunts').

The commencement on 16 January 2006 of the "three strikes and you're out" legislation introduced via the *Land Transport Amendment Bill 2005*, saw a graduated penalties regime for drink drivers[2]. Penalties for the first offence remain unchanged (current court-imposed penalties) while a second offence will now incur immediate licence suspension for 28 days (in addition to court penalties). **A third drink driving offence within four years, where the blood alcohol content exceeds 80mg/100ml (0.08 per cent), will incur immediate and automatic vehicle impoundment for 28 days.** This new penalty is in addition to the current extended licence disqualification for 'more than one year'.

Other new amendments targeting drink drivers

It is interesting to note that the legislation will also reduce the BAC threshold incurring an immediate and automatic 28-day licence suspension for high BAC offenders, decreasing it from 160mg/100ml blood (0.16 per cent) to a lower limit of 130mg/100ml blood (0.13 per cent). However, repeat offenders (second offence within four years) will be subject to a 28-day licence suspension if their BAC exceeds the lower limits of 800mg/100ml blood (0.08 per cent). It was noted that the tighter restrictions for repeat drink drivers target a small number of hard core offenders. These restrictions take them off the road and require them to attend an approved course to address alcohol consumption issues (LTNZ, 2005).

Process

New Zealand Police are responsible for calling for a tow truck to remove the vehicle to a secure storage facility for 28 days, with the vehicle owner responsible for towage and storage fees. These fees must be paid before the vehicle will be released. Note that these fees are in addition to any other penalty the court might impose on the unlicensed or disqualified driver. If the vehicle's owner was not the driver responsible for impoundment, an appeal may be made to the Commissioner of Police, or failing that, the District Court. The owner may appeal on one or more of the following grounds:

[1] Sections 96-98, *Land Transport Act 1998.*
[2] *Land Transport Amendment Act 2005* Questions and Answers, http://www.ltsa.govt.nz/legislation/land-transport-amdt-act/q-and-a.html accessed 14/12/05.

- the vehicle was stolen
- the owner took all reasonable steps to prevent the unlicensed/disqualified driver from driving
- the owner did not know the driver was unlicensed/disqualified, or could not reasonably have know this
- the police did not have reasonable grounds to impound the vehicle, or did not follow correct procedure
- the driver drove in a serious medical emergency (LTNZ Factsheet 63, 2005)

It is notable that undue hardship is not an acceptable ground for appeal. These limited appeal provisions reinforce the obligation for vehicle owners to ensure that only licensed drivers use their vehicles. If the vehicle belongs to a rental company, the company is responsible for checking licence status. Employers are also responsible for ensuring employees have a valid licence if driving company vehicles. The vehicle owner is responsible for the impoundment fee, so recovery of the fee from the driver is a matter between the vehicle owner and the driver (LTNZ 2005).

Prior to 16 January 2006, failure to pay the fees and pick up the vehicle within 28 days after the impoundment period ends meant the storage provider was able to dispose of the vehicle (with police approval). After this date, the period was shortened, so that the storage provider may seek to dispose of vehicles if not claimed within ten days after the end of the impoundment period. Disposal methods are similar to those used for abandoned vehicles. Land Transport NZ partially reimburses the service provider for towing and storage costs if the vehicle is not claimed (LTNZ 2005).

Canada

A number of provinces in Canada have existing impoundment and/or forfeiture programs: British Columbia, Manitoba, Ontario, Quebec, Saskatchewan and the Yukon Territory (Sweedler, Stewart & Voas, 2004). Very few program evaluations have been conducted, although where they have occurred, they tend to show a reduction in recidivism. Unfortunately the effects may be confounded by the concurrent introduction of administrative licence suspension laws. Disposal of unclaimed vehicles is cited as a problem in some provinces. The following summaries of Canadian programs are drawn from Sweedler, Stewart and Voas (2004) unless otherwise cited.

- In **British Columbia** a vehicle may be impounded for up to 30 days if the driver is found to driving without a valid licence. Although not specifically targeting drink drivers, a drink driving offence is the most common reason for licence suspension. The impoundment program was introduced as the same time as a 90 day administrative licence suspension for impaired drivers (Wilson and Chen, 1997). In 2001, 9314 vehicles were impounded, with an appeal success rate of less than five per cent. A large proportion of these drivers were detected driving under the influence. The program is considered popular with the police, however the cost of storage and disposal of unclaimed vehicles tends to exceed the value of the vehicle.

- In **Manitoba** the law allows for the seizure and impoundment of the vehicle where a driver is found to have a BAC greater than 0.08 per cent or refuses to give a sample. The law also applies to those drivers caught driving while suspended, prohibited or disqualified, many of which will have resulted from DUI charges. The law was introduced in 1989 at the same time as administrative licence suspension for drink drivers. The seizure is immediate for drink drivers with the impoundment period dependent on the BAC level at the time of the incident. For example, a BAC of 0.16 per cent or less results in impoundment for 30 days, but increases to 60 days if the BAC is greater than 0.16 per cent. Impoundment periods are increased with each additional impoundment period and there is no upper limit. The offender is responsible for all costs associated with towing, storage and administration fees. In the period during March 2001 to March 2002, 3636 vehicles were seized and impounded. The program appears to have no administrative problems. While a decrease in fatal crashes and night-time injury crashes of single vehicles was observed in association with the new laws, the effect of impoundment was confounded by administrative licence suspension, and it was not possible to separate the two effects (Voas and DeYoung, 2002).
- In **Ontario** vehicle impoundment for a minimum of 45 days will apply if a driver is found to be driving while suspended for a DUI or a criminal code driving charge. The owner of the vehicle is responsible for all costs associated with the towing and storage of the vehicle. Between 1999 and 2004, 5100 vehicles were impounded under this law.
- Impoundment legislation in **Quebec** allows for the impounding of a vehicle for 30 days when a driver is found to be driving without a current licence or while disqualified from driving for DUI or any other offence. A total of 20,820 vehicles were impounded in 2002, however about 1600 of the suspended drivers were originally suspended for an alcohol or drug-related offence.
- **Saskatchewan** impoundment laws distinguish between first and subsequent offence drivers. As a first offence of driving without a valid licence a vehicle will be impounded for up to 30 days. As a second offence a two year impoundment period applies. Evaluation of the program has shown a 50 per cent reduction in driving while disqualified.
- In the **Yukon Territory** the impoundment period is doubled if the driver's BAC is twice the legal limit. Vehicles are also impounded for unlicensed driving and for driving without insurance.

United States

In 1998, the Transportation Equity Act for the 21st Century (TEA-21) introduced a federal requirement that all states of the USA enact legislation setting minimum penalties for repeat DWS (drinking while suspended) or DUI (drinking under the influence) offenders. These minimum penalties include:

- licence suspension for not less than one year
- impoundment or immobilization of the offender's motor vehicle, or installation of an alcohol ignition interlock device
- assessment of the offender's degree of abuse of alcohol and appropriate treatment

A recent count indicates that thirteen states have laws permitting long term impoundments for impaired driving offences, including California, Ohio and Oregon (NHTSA, 2005). In addition, it appears that some city jurisdictions use the sanction. For example, New York City was noted as having a city ordinance which allowed for vehicle forfeiture for even for a first impaired driving offence (Moulden, 2000).

California

In 1995 California introduced two laws that provided for the impoundment and forfeiture of vehicles of those drivers that have continued to drive with a suspended or revoked licence (Helander, 2002). Under the impoundment laws once a police officer has determined that a driver is a suspended, revoked or is unlicensed driver, he is able to arrest a driver for DUI or DWS and arrange for the immediate towing and impoundment of the offenders vehicle (DeYoung, 1999). After the impoundment period (normally 30 days) the owner of the vehicle may claim it upon presentation of a valid driver licence. They must also pay all towing and impoundment costs. An administrative fee is also charged by the impounding agency, which the owner must also pay. Any unclaimed vehicles are auctioned (DeYoung, 1999). It was noted that California's laws were the first to impose impoundment and forfeiture laws on such a wide scale.

An evaluation of the Californian impoundment program compared the subsequent driving records of drivers that have had their vehicle impounded, against those who did not have their vehicle impounded. The results showed that first time offenders that had their vehicle impounded had significantly less subsequent convictions than those that did not receive the sanction (De Young, 1999). Specifically, they had 24 per cent less DWS/DUI convictions, 18 per cent less moving violation convictions and 25 per cent less crashes. This research also revealed that impoundment had a more significant impact on repeat offenders. Repeat offenders were found to have fewer one year conviction rates for DWS/DUI (34 per cent), moving violations (22 per cent) and crashes (38 per cent). More recent research into subsequent crash involvement rates among suspended or revoked drivers revealed that when the impoundment law was enforced there was a 13.6 per cent decline in crash involvement among such drivers (Young, 2000).

These results are strongly suggestive of a specific deterrence effect resulting from impoundment. It should be noted that the analysis was based on only the 12 months following the DWS/DUI offence triggering impoundment (or that would trigger impoundment had it occurred in 1995). It would be useful to know how long the effect was sustained for. In addition, DeYoung (1999) observed that during the first year of operation of the impoundment law, enforcement officers applied the law selectively. DeYoung controlled for this difference by including only drivers where the vehicle had been impounded. This may have introduced some selection biases (for example, if officers only applied impoundment to offenders with certain characteristics), although DeYoung attempted to control for pre-existing group biases when matching the impoundment group to the control (pre-impoundment) group. Despite these limitations, DeYoung believed the study provided strong support for vehicle impoundment for DWS and DUI drivers. While he noted there seemed to be a stronger effect on repeat offenders, an alternative explanation not discussed in the paper might be that repeat offenders were less likely to own a vehicle (because of high insurance costs for offenders) or less likely to be able to access a vehicle (reluctance of vehicle owners to let a repeat offender use their vehicle). Regardless of the explanation, it appeared that repeat offenders subject to impoundment were less likely to have further DWS/DUI or other traffic offences, or be involved in crashes.

General deterrence

DeYoung (1999) observed that the state-wide rate of DWS/DUI convictions dropped significantly between 1994 and 1995, and the decline (22 per cent) was substantially larger than in previous years (8.0 per cent from 1992-1993; 1.7 per cent from 1993-1994). He attributed the decline, at least in part, to a general deterrence effect of the laws, although did recognise that a change in enforcement practices for DWS/DUI offences might have contributed.

A subsequent study (DeYoung, 2000) attempted to identify if a general deterrence effect was observed in crash rates among suspended or revoked drivers for the period 1992-1996, comparing it to a sample of all Californian drivers. It was noted that crashes among suspended or licence revoked drivers were declining over this period. Although there was a short-lived downwards spike (-13.6 per cent) at the time the laws commenced, this was not sustained, and crash rates resumed the same rate as before. In contrast, the sample of all Californian licensed drivers demonstrated a relatively flat crash trend over time, and a slightly smaller downwards spike (-8.3 per cent) at the time the laws commenced. These drivers would not be subject to the impoundment laws, and a general deterrent effect would not be expected among licensed drivers. DeYoung conceded that the study did not demonstrate compelling evidence of a general deterrence effect among suspended or revoked drivers, one of the groups targeted by the new laws. Although there may have been a slight effect to reduce crash rates when the laws commenced, "..more than three-quarters of the effect had dissipated after about four months (which) means it is of little practical significance" DeYoung, 2002). Unfortunately this study only examined crash rates, and did not follow up on the possible general deterrence observed on DWS/DUI offences in DeYoung (1999) described above.

More recent research into subsequent crash involvement rates among suspended or revoked drivers revealed that when the impoundment law was enforced there was a 13.6 per cent decline in crash involvement among such drivers (DeYoung, 2000).

DeYoung (2000) noted that media coverage of the new laws was not extensive, proposing that general deterrence could not operate because suspended and revoked drivers were not aware of the impoundment laws. It is only after being detected for DWS or DUI that drivers become aware of the laws. DeYoung (2000) believed that with consistent and wide application of the laws over time, awareness would be increased and would be sufficient to generate a stronger general deterrence effect.

Ohio

The Ohio Vehicle Action Laws were enacted in 1993 to target multiple drink drivers and drink drivers detected driving while suspended (Voas, Tippets & Taylor, 1998). The Ohio law permits the courts to impose vehicle immobilisation on drivers detected for these offences. The immobilisation period is imposed as a graduated penalty and depends on the number of prior DUI convictions, specifically:

- immobilisation for 30 days for the first DWS offence
- immobilisation for 60 days for the second DWS offence
- immobilisation for 90 days for the second DUI offence
- immobilisation for 180 days for the third DUI offence
- vehicle forfeiture for third DWS offence or fourth DUI offence

At the same time, laws were enacted to provide for immediate administrative licence suspension for DU offenders, for six months (first offenders) and one to three years (multiple offenders) (Voas, Tippetts & Taylor, 2000). The Vehicle Action Laws also provided for licence plate impoundment (in addition to the immobilisation period).

All costs associated with the towing and storing are the responsibility of the offender. If the offender is not the owner of the vehicle, the vehicle is still able to be seized and impounded, however, Ohio State law acknowledged that the owner may not be the offender and provided an avenue for appeal by the owner to retrieve their vehicle from impoundment, with strict criterion for approving retrieval (Voas, Tippetts & Taylor, 2000).

The impact of immobilisation will be examined further in Section 3 of this submission, however a study undertaken in Hamilton County, Ohio, to assess the impact where vehicles were not immobilised, but remained impounded for the duration of the sanction. Impoundment usually preceded the period leading up to immobilisation, and in the case of this study, the effect of impoundment-only was assessed (Voas, Tippetta and Taylor, 1998). The application of the Vehicle Action laws varied among prosecutors and judges to some extent (Voas, Tippetts and Taylor, 2000), which meant it was possible to compare recidivism between eligible offenders who received the sanction, and those who were eligible but did not receive it. This included cases where the vehicle belonged to someone other than the offender, so was not impounded. Driver records were matched with court records for offenders who committed the DWS or DUI offences outlined above, and the average period of exposure following the end of the sanction was 12 months (Voas et al, 1998).

Cox regression analysis of recidivism rates showed that DWS offences were reduced by 42 per cent during impoundment, and DUI offences were reduced by 38 per cent. In the 12 months following the end of impoundment, DWS and DUI offences were reduced by around 25 per cent each. All results were statistically significant (Voas et al, 1998).

3.1.4 Impoundment Deterrence and Safety Value

Evaluation of the effectiveness of impoundment laws in New Zealand, Canada and California would suggest that impoundment serves as a considerable deterrent to DUI and DWS as a result of a DUI charge. The seizure and impounding of a vehicle is an immediate sanction that incapacitates a DUI offender without having to await the outcome of a court appearance (Sweedler, Stewart & Voas, 2004). The immediacy of this form of impoundment not only increases the deterrence value of the sanction, but it also reduces the risk of an impaired driver continuing to drive, endangering himself or herself, and other road users. Consequently, impoundment has a significant value from the safety point of view. Depending on the impaired driver population targeted by the roadside sanction – all drink drivers, high BAC drink drivers, repeat offenders, or only used as an option of last resort when no other options will prevent the impaired driver from driving – the sanction can have a high degree of certainty. The severity of the sanction increases with the length of the impoundment period, so deterrence value can be increased. The severity of the sanction is based on the inconvenience associated with loss of use of the vehicle for a period of time, as well as the financial penalty associated with reclaiming the vehicle. Vehicle loss is immediate, but the financial penalty comes at the end of the sanction period. The swiftness, certainty and severity of impoundment practised at the roadside is in keeping with effective deterrence theory.

Most programs examined impounded vehicles at the roadside. Vehicle impoundment continued for a limited period of time (28 days in New Zealand, 30 days in California, 30-180 days in Ohio). The New Zealand and Californian programs are administrative, and do not rely on a court conviction, and so are immediate. However, an alternative model is to order impoundment as a post-conviction penalty. If the vehicle has not been seized prior to court appearance, the onus is on the offender to deliver up the vehicle for impoundment, otherwise the offender commits a further offence (breach of the court order). However, using this approach the sanction is not immediate, nor is it certain (as courts may choose not to order it). There is potential for increased severity, although this depends on the impoundment period ordered, and some courts may be reluctant to apply for a longer period of time. Vehicle impoundment as a post-conviction penalty may not have the same deterrence value as impoundment delivered at the roadside.

Additionally as can be seen in the evaluations of impoundment, some officials also argue that impoundment itself results in the forfeiture of vehicles in many cases as a number of vehicles fail to be reclaimed after the impoundment period. This can increase the incapacitation of offenders, although they may replace one low-value vehicle with another.

Evidence from New Zealand, including reductions of one-third in fatalities and casualties attributed to an unlicensed driver, indicates that impounding the vehicles of drivers who are detected driving while disqualified or driving while unlicensed had a positive effect on road safety.

New Zealand LTSA (now Land Transport NZ) believes the simple, clear-cut and immediate nature of the program increases the deterrence value, removing these drivers from the road and reducing crashes (Sweedler et al, 2004).

3.1.5 Impoundment Operational Costs

All of the impoundment programs in use dictate that the offender and/or owner are responsible for the costs associated with the towing and storage of an impounded vehicle. If an offender fails to retrieve the vehicle following the period of impoundment, all costs associated with the towing, storage and auction of that vehicle become the responsibility of the State. However, these costs are often in excess of the sales value of the unclaimed vehicle, which may contribute to the vehicle not being reclaimed.

DeYoung (1999) described the Californian impoundment programs as "self-supporting or close to self-supporting" because owners were liable for towing, storage and administrative costs. Costs incurred for the program were largely met when vehicles were reclaimed by the registered owner.

Impoundment fees in New Zealand depend on the vehicle weight, time of day and distance towed. The standard fee is NZ$52.50 for the tow and about NZ$300 for the impoundment ($12 per day after the first three days). Fees are higher if the vehicle weight exceeds 3.5 tonnes, if it is towed more than ten kilometres, or towed outside normal working hours (7am – 6pm, Monday to Friday). The standard fee is set in regulations[5], and pays for towing, secure storage for 28 days, as well as administrative and other costs associated with storage. The tow truck operator or company is responsible for damage to vehicles.

In addition, Land Transport NZ is required by regulation to partially reimburse the storage provider for the cost of towing and storage if the vehicle is not claimed. The 2005 Annual Report for LTNZ indicated that the reimbursement costs were NZ$256,000 for the 12 months to June 30, 2005 (actual). It suggests that a significant number of impounded vehicles are left unclaimed.

As an indication of likely impoundment costs in Australia, the average cost of impoundment for a first hooning offence in Queensland (48 hours) is estimated to be $200 (Section 5.2.11, issue 8), and under current legislation, the QPS is responsible for this cost. While daily storage costs were not able to be identified in Queensland, it appears that the daily cost in Sydney may be $15 per day which can be a significant additional monetary penalty for longer term impoundments, on top of the inconvenience of losing access to the vehicle. The storage cost would be reduced if government-owned storage facilities were available for use instead of commercial storage.

[5] Sections 3-4, *Land Transport (Storage and Towage Feeds for Impounded Vehicles) Regulations 1999*

3.1.6 Impoundment Benefits

Studies examined by Queensland Transport suggest that vehicle impoundment provides a positive deterrent to drink drivers. A recent report indicated that in New Zealand, more than 25,000 vehicles driven by disqualified or unlicensed drivers were impounded at the roadside in a two year period between 1999 and 2001 (approximately 0.9 per cent of registered vehicles) (Sweedler et al, 2004). It was noted that disqualified driving offences decreased by approximately one-third and there were few appeals against the impoundment orders, although this may be due to fairly restricted grounds for appeal. The same report also indicated a decrease in the proportion of fatalities attributed to unlicensed drivers (10 per cent of all fatalities in 1998 reduced to 6.9 per cent in 2000), and a similar reduction in casualties attributed to unlicensed drivers. It would be interesting to see if this trend continued in the longer term.

DeYoung (1999) observed a decrease in DWS and DUI offences, other traffic offences and crashes involving suspended/revoked or unlicensed drivers, for drivers subject to vehicle impoundment, compared to those that had not been subject to the law. This indicates that the law had a specific deterrent effect on suspended and unlicensed drivers. Although many of these drivers would have originally been suspended due to impaired driving offences, it is not possible to categorically state that the same effect would have been seen among impaired driving offenders. The evaluation of Ohio's Vehicle Action laws (Voas, Tippetts, and Taylor, 1998:2000) demonstrated that there was a significant reduction in recidivism among DWI and DUI offenders subject to vehicle impoundment, and that this effect persisted for up to a year after the sanction period finished.

In New Zealand around 40 to 50 per cent of vehicles were left unclaimed, leaving the government to underwrite the cost to storage providers for towing and storage fees. A large percentage of vehicles are left unclaimed in other jurisdictions, and as these are often low value vehicles, it has the supplementary benefit of helping permanently remove a large number of old and non-roadworthy vehicles from the road (Sweedler et al, 2004).

A key announcement of the 2006 Road Safety Summit was that legislation will be introduced to enable to impoundment of vehicles of repeat drink drivers and disqualified drink drivers. Queensland Transport believes that this will provider greater protection to the motoring public from recidivist drink drivers who are less likely to re-offend whilst their vehicle is impounded. The department also considers that these more severe penalties will provide greater deterrence value to recidivist drink drivers who have proved to be complacent of existing penalties and sanctions.

3.1.7 Impoundment Issues

There are a number of issues that should be taken into consideration to ensure the success of an impoundment program. These issues vary in importance, depending on the use of impoundment as a pre- or post-conviction sanction.

Cost may be an issue when vehicles are not reclaimed and the enforcing agency is left liable for towing and storage costs. At present, Queensland's anti-hooning legislation provides that the cost of the first tow and storage is met by the QPS (not the owner). However, in all international impoundment programs examined, the common feature is owner liability for towing and storage costs, and an administration fee of at least US$100 is cited as helping to defray the costs of delivering the program (Peck and Voas, 2002) . Generally a non-offender owner is responsible for recovering these costs from the offender. Despite this, some budget allocation could be expected to be necessary to cover the costs already incurred, especially if many vehicles do not realise a high value when sold. The number of unclaimed vehicles in New Zealand and government budget allocation required to cover service provider losses suggest a budget allocation may be required for a Queensland program if it was implemented against the broader group of drink drivers.

The storage facilities required largely depend on the number of drink drivers that may be targeted by the sanction. If the vehicle of every drink driver must be impounded, then contracted service providers (similar to those used by the London Metropolitan Police to deal with parking offenders), may be required to deal with a potentially large number vehicles, at least in the more densely populated areas of south east Queensland. Consideration may need to be given to where vehicles can be stored, particularly if all drink drivers are targeted by the sanction. These needs will vary depending on the way impoundment would be implemented (at apprehension or post-conviction), or impoundment periods typically employed (days, weeks or months).

There are issues associated with taking and holding personal property, particularly if it is a high value vehicle. Damage to vehicles during towing and storage is often cited as a problem. Potter (1993) identified damage concerns associated with parking related impoundment, but described accountability procedures that could reduce the risk of damage being incorrectly attributed to either the towing or storage provider. In relation to longer term impoundments, there may be concerns about damage to engines associated with being idle for a period of many months.

Impoundment periods for impaired driving offences will be discussed further in Section 5.2.11 in relation to current impoundment provisions under the *Police Powers and Responsibilities Act 2000,* however, lengthy impoundment periods (in particular) have potential to impact the offender's family and dependents, creating some social justice issues. It incapacitates the offender, but in doing so, may incapacitate other people dependent on that vehicle. This may restrict access to health services, education or social activities. As a result, magistrates may be reluctant to order vehicle impoundment. Consideration of making vehicle impoundment an administrative rather than judicial process may do much to address these issues.

Vehicle ownership has the potential to limit use of impoundment as a sanction, particularly longer-term impoundments. Most programs recognise that non-offending owners might not be aware of the licence status of the offending driver, and so allow for the registered owner to reclaim the vehicle. Voas and DeYoung (2002) noted that in the United States at least half of the vehicles driven by an offender were owned, or part-owned, by someone other than the offender. The situation in Australia has not been researched. However if a similar scenario is found, this has the potential to undermine the effectiveness of the sanction. Strategies involved to avoid ownership (to avoid vehicle sanctions or high insurance costs) are discussed further as part of the issues associated with vehicle forfeiture and registration cancellation.

One of the purposes of impoundment, particularly post-conviction impoundment, is to incapacitate the offender. This begs the question of whether the impoundment period should match the disqualification period, to prevent the offender from having access to his or her vehicle. Mandatory disqualification periods for drink driving offences under section 86 of the *To(RUM) Act 1995* range from one month to two years, although the court may impose a longer disqualification period. Returning the vehicle to the offender before the disqualification ends may be received as an invitation to return to driving, despite the disqualification. However, in cases where the disqualification period is 12 months or more, the cost of storing the vehicle will be a large additional financial impost on the offender. This is more likely to lead to abandonment, especially for low value vehicles worth much less than the cost of impoundment. This may be a situation where forfeiture is more appropriate.

3.1.7 Impoundment for Parking Offences

Vehicle removal and impoundment may be used as a sanction for parking offences in some jurisdictions, in particular to ensure that traffic is able to flow freely on busy roads during peak traffic times. Removal of a vehicle from clearways ensures maximal traffic flow. The reasons for impoundment for parking offences are different to drink driving offences (expediency and punishment, versus safety and punishment) however it is useful to briefly examine the issues arising from parking-related vehicle impoundments. Vehicle immobilisation (clamping) is also used for parking offences, and immobilisation as a vehicle sanction will be discussed in a later section.

The clamping and impoundment system used to enforce parking in inner London is described in a paper by Potter (1993). At the time, the operation was a large-scale operation, removing a significant number of vehicles (over 128,000 vehicles in 1992). The Metropolitan Police Service (MPS) engaged three removal contractors to provide the removal services. In addition, the system required computer and communications systems, car pounds, and three different contractors to manage or provide and manage car pounds. Contracts were allocated based on defined geographic regions. No one contractor was able to undertake the entire service. Contractors were paid on a per transaction basis, while the MPS was responsible for the costs of car pounds and payment centres. The removal contractor was responsible for conducting a detailed check of the vehicle, recording all scratches, dents, stains and so on. The check was repeated by the car pound operator, and any differences to the first report suggested damage en route to the pound. Potter (1993) indicates that allegations of damage were the greatest single problem, with around 0.6 per cent of removals resulting in claims. These claims were forwarded to the removals contractor for resolution. Another problem identified was disposal of unclaimed vehicles, with around 4000 vehicles scrapped each year, and around 200 sold at auction. Potter (1993) describes this as a major administrative burden to the MPS. Vehicles with valid excise licences (registration) cannot be scrapped, and enquiries must be undertaken before scrapping vehicles without valid excise licences. In addition, Potter indicates that significant monitoring and audit activities are undertaken by the MPS to ensure that contractors are meeting service obligations and acting correctly.

In comparison to the number of Queensland's drink drivers, the operation described in London is a larger scale operation. It is analogous to impoundment of drink driver vehicles at the roadside (at point of apprehension), because it requires an immediate response and the impoundment period is relatively short (compared to typical post-conviction impoundment periods). Although the density of offenders in this operation is higher, the procedures, costs and issues may be relevant to Queensland, especially in South-East Queensland, if impoundment was used as an immediate sanction against all drink drivers.

3.1.8 Vehicle Forfeiture

Vehicle forfeiture or confiscation refers to the seizure and permanent removal of a vehicle from an offender. Forfeiture can serve a number of purposes:

- it is a financial penalty as it permanently removes that vehicle from the possession of the offender
- it is an inconvenience as the offender is without a vehicle, or must spend time and money replacing the vehicle
- it can help to underwrite the costs of the forfeiture program if the vehicle is sold, including the cost of towing the vehicle and storing it until disposed of
- it removes the object allowing the offender to commit the offence, so prevents further offences using that vehicle (Eilers, 1994)

Forfeiture is generally used as a sanction of 'last resort' (Sweedler et al, 2004), and is more often reserved for multiple offenders. It is used by some jurisdictions as a sanction for drink driving offences as well as unlicensed driving, or driving while suspended or revoked (Peck and Voas, 2002; Voas and DeYoung, 2002; LTNZ, 2005).

The prevalence of forfeiture legislation is highest in the United States where twenty-seven states, including California, New York and Oregon have laws providing for vehicle forfeiture (NHTSA, 2005). While forfeiture is not mandatory in any of these states' legislation, two cities, New York City and Portland (Oregon) have introduced mandatory programs under local ordinances (described in Voas and DeYoung, 2002). Vehicle forfeiture is practiced in New Zealand. The United Kingdom and Sweden both have legislation allowing for vehicle forfeiture through the judicial system, however, procedural problems mean it is rarely imposed in either jurisdiction (Sweedler et al, 2004).

Vehicle forfeiture provisions also exist in some Australian states in relation to 'hooning' offences. As these provisions are not specific to drink drivers or disqualified drivers, forfeiture under 'hooning' provisions will be discussed more fully in relation to the response to Issues 12 and 13 of the Paper.

Legislation providing for vehicle impoundment or forfeiture for 'prescribed driving offences' is enacted within the Northern Territory (Traffic Act, s29AB-29AO, inserted 2004). Prescribed driving offences are described under NT regulation and currently refer to "hooning" related offences, but exclude impaired driving. The legislation applies to repeat offenders guilty of a prescribed offence, allowing for vehicles to be forfeited to the Territory following four or more prescribed driving offences within a two year period. It should be noted that the legislation states that the court must not make an impounding or forfeiture order if the action will cause severe financial or physical hardship to the owner or usual driver of the vehicle (s29AG(2)).

Victoria recently passed legislation, the *Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Bill*, to commence in 2006, providing for vehicle forfeiture for disqualified driving, dangerous driving and other offences that are broadly similar to 'hooning' related offences. Drink driving-related offences are not identified as a 'relevant offence' in the Victorian legislation.

Western Australia is considering forfeiture as part of a comprehensive range of options for dealing with repeat drink drivers and high BAC first time offenders, as appropriate to the severity of the offence.

Queensland has legislation which provides for forfeiture upon application to the court following a third hooning offence, and this will be discussed more fully in relation to the response to Questions 12 and 13 of the Paper. Forfeiture is a relatively new sanction in Australia, and as it has only been applied to hooning offences, its implications as a sanction against drink or disqualified drivers, in the Australian context, cannot be calculated. The deterrence value of Victoria's legislation targeting disqualified drivers and possible changes in Western Australia targeting drink drivers should be monitored.

3.1.9 Forfeiture Programs

The limited use of vehicle forfeiture programs means that very few are described in the research literature. Even fewer have been evaluated, thus "...the state of knowledge regarding the usefulness of forfeiture remains sketchy" (Voas and DeYoung, 2002). A 1992 survey (Voas, 1992, described in Voas and DeYoung, 2002) found forfeiture to be a rarely used sanction as it generally applied to multiple offenders through the judicial system and many courts appear reluctant to use it.

Three forfeiture programs – Portland (Oregon), New York City, and California – have implemented administrative forfeiture laws which operate separate to the criminal prosecution for the driving offence. Several issues have been identified through these programs, particularly the California program, which may provide an indication of the likely costs, benefits and problems with such a program, if it was considered to be an appropriate sanction for Queensland.

Portland, Oregon

The City of Portland enacted a civil forfeiture program in 1989 which focussed on the unlawful use of the vehicle in the commission of a driving offence, rather than on the behaviour of the driver. Vehicles driven by drivers convicted of driving while impaired or identified as a 'habitual traffic offender' convicted of three or more serious traffic offences including at least one DWI are seized for being a "public nuisance" (Voas and DeYoung, 2002). The program permits vehicle release if the vehicle is owned by someone other than the offender (Peck and Voas, 2002).

The specific deterrence effect of the program was evaluated in a quasi-experimental study by Crosby (1995, cited in Voas and DeYoung, 2002). The driving records of offenders subject to vehicle forfeiture during 1990 – 1995 were compared to offenders arrested for the same offence but not subject to forfeiture. The re-arrest rate for the forfeiture group was about 50 per cent lower than for the group who did not have a vehicle seized. Offenders subject to forfeiture also had a significantly longer time to re-arrest. The study also compared the effect of forfeiture and impoundment, finding a similar re-arrest rate between the two groups. This suggests that forfeiture is no more effective than impoundment as a vehicle sanction (Voas and DeYoung, 2002).

This study is regarded as 'fairly strong' and 'well-executed' through its use of statistical controls, however, inclusion of state-wide data (outside of Portland) in the follow-up could have strengthened the conclusions (Voas and DeYoung, 2002).

New York City

Forfeiture laws exist for New York State, however New York City has forfeiture laws based on the administrative code where the vehicle is an instrumentality of the crime of drink driving (Safir, Grasso and Messner, 2000). Arguments used in support of this legislation included the vehicle being a "3000 pound weapon that can kill" (reported in Sweedler and Stewart, 2000), and "…the core of the crime of Driving While Impaired" (Safir et al, 2000). The law commenced in February 1999 and allows for the seizure and forfeiture of vehicles driven by first-time and multiple drink driving offenders. The laws apply to:

- a vehicle owned by the offender
- a vehicle where the offender is the 'beneficial owner'
- if the non-offending owner knew, or should have known about the criminal use of the vehicle

Like in Portland, forfeiture is a separate action to the drink driving offence. The law was challenged as being unconstitutional, but was constitutionally upheld in the New York State Supreme Court Grinberg v Safir, 698 NYS 2d 218 (1st Dept. 1999), aff'g 694 NYS 2d 316 (Sup. Ct. NY Co. 1999), 9 November, 1999 (Voas and DeYoung, 2002).

A settlement policy was piloted (Safir et al, 2000), which allowed for the vehicle to be returned if the offender completed an authorized alcohol treatment program and paid a fee of $1000 (covering administrative and litigation costs). To be eligible for settlement the BAC of the offender could not exceed 0.20 per cent nor could the offender have any prior DWI offences.

A report of the first months of the program (Safir et al, 2000) shows that the New York Police Department seized 1458 vehicles between February and December 1999, commencing 827 forfeiture actions. Early evaluation indicates reduced alcohol related crashes, alcohol related fatalities and alcohol impaired and intoxicated driving arrests (compared to the same period in the previous year) (Safir et al, 2000), however the research design was not reported and the data represents a relatively short period of time (Sweedler and Stewart, 2000). The prevalence of first offenders within the statistics appears to justify use of the forfeiture law against this group of offenders, with only 14 per cent of alcohol-related fatalities involving repeat offenders (Safir et al, 2000).

California

At the same time as California implemented its 30 day impoundment law in 1995 for driving while suspended or unlicensed, it introduced vehicle forfeiture laws for multiple DWS/DUI offenders (Peck and Voas, 2002). However the forfeiture legislation is discretionary, unlike the mandatory impoundment legislation. Other key features of the legislation include:

- it only applies to offenders who have a prior conviction for driving unlicensed or driving while suspended or revoked.
- it only applies if the offender is the registered owner of the vehicle.
- it provides for vehicle release if the offender can obtain a valid licence within three days, paying a release fee plus towing and storage costs.
- a vehicle owned by someone other than the offender can be released following payment of the fee, towing and storage costs, showing proof of interest in the vehicle, a valid driver licence and registration status, and signing a Stipulated Vehicle Release Agreement (SVRA). The SVRA authorises forfeiture of all vehicles owned by that person if driven by an unlicensed or suspended/revoked driver. There are no processing charges if the legal owner redeems the vehicle within 15 days.

Unlike the impoundment law, forfeiture was taken up in only a few communities, most notably Santa Barbara and San Diego. The low level of usage restricts any statistical examination of the effectiveness of vehicle forfeiture, however Peck and Voas (2002) surveyed those Californian communities using forfeiture to identify barriers preventing other communities from making use of the forfeiture laws. Reasons for non-use included:

- *lack of support for forfeiture from the District Attorney's office* – there was an expectation that prosecution would take significant time, often the police department was expected to fund it, and local resistance was identified in some courts.

- *perceptions that forfeiture would be cumbersome and time-consuming* – for example, through additional paperwork, however one police department did not think the lower number of forfeitures (compared to impoundments) warranted establishing an additional procedure.
- *high cost-benefit ratio* – cost recovery from sale of the vehicles did not offset the costs of enforcement, administration and prosecution, particularly as many vehicles were low value.
- *impoundment often achieved the same objective* – there was a high rate of vehicles impounded for 30 days that were not claimed at the end of this time – ranging from 26 per cent to 65 per cent – which acted as a de facto forfeiture. The cost to recover impounded vehicles was around $700.
- *issues with third-party owners* – a high number of vehicles were owned by someone other than the offender, or co-owned by the spouse of the offender, which generally discouraged forfeiture implementation. Where the non-offending registered owner was the previous owner (and the offender simply had not transferred registration), the vehicle became eligible for forfeiture.

The Survey found that the Santa Barbara District Attorney (DA) had developed an efficient process for handling forfeiture petitions which resulted in short, perfunctory hearings (ten minutes) with little work for the DA. Consequently 95 per cent of forfeitures were non-judicial, and the laws were well supported (536 forfeiture cases were completed in the first five years, only 16 required hearings, and the DA prevailed in 15 of these). In San Diego, only 13 per cent of forfeiture cases went to court, with the DA prevailing in 71 out of 78 of forfeitures (Peck and Voas, 2002).

Cost recovery was found to be a significant barrier to using forfeiture. The low value of many vehicles led to one community considering forfeiture only for vehicles valued at $2000 or higher. While it was considered discriminatory, one community did use it selectively.

The low level and selective use of forfeiture laws in some Californian communities limits the ability to conduct any objective evaluation of the effect of forfeiture. In addition most communities implemented the impoundment law, applying it to a much larger number of offenders, which would make it difficult to disentangle the effects of forfeiture and impoundment laws. Even so it is a significant finding that the impoundment laws were used in preference to forfeiture (Peck and Voas, 2002).

New Zealand

Forfeiture laws were introduced in 1996 in New Zealand, specifically to deal with recidivist DUI and DWS offenders and other serious traffic offenders. This law allows for the confiscation and sale at public auction of an offender's vehicle following conviction and court order. The monies received are used to pay seizure costs, monies owed to any third party and any outstanding fines. In addition the court is able to issue an order to prevent the offender from owning another vehicle for 12 months. One report indicated that around one in every ten eligible vehicles was confiscated, with around 4400 court orders made for confiscation between 1996 and 2001. Almost half were for an alcohol related offences (Sweedler, Stewart & Voas, 2004).

3.1.10 Forfeiture Costs

Unlike impoundment, forfeiture legislation punishes the offender by confiscating the vehicle and not returning it, so there is no ability to recover the significant costs of towing and vehicle storage from the offending owner. In Santa Barbara for example, the average time from arrest to forfeiture was six to seven weeks, illustrating the extent of non-recoverable storage costs. This time delay occurred despite court hearings being expedited. Obviously the extent of costs will vary depending on the target offender group and if it is used as a first resort for all offenders including first time offenders (as in New York City), or as a very last resort when options such as impoundment have not been effective and the offender continues to offend. The city of Portland intended to develop a city impoundment, in order to avoid high commercial storage costs (Voas,1993). As an indication of the cost of the program to Portland, the program was subsidised (approximately $70,000 in 1991-1992 – while 197 vehicles were seized in 1990). However, as Voas (1993) points out, it was considerably less than the cost if these offenders were subject to imprisonment.

It was also observed in Oregon, New York and California that the vehicle was quite often owned by someone other than the offender. Storage costs would not be an issue as the majority of vehicles would be reclaimed quickly, however towing costs would probably still be incurred. This cost generally must be met by the vehicle owner as a condition of releasing the vehicle.

Additional costs may be incurred by enforcement, prosecution or motor vehicle authorities where forfeiture occurs through the court system because of the rigour required to prove that the conditions for forfeiture are met. As noted earlier, the Santa Barbara program had a high success rate if forfeiture was challenged through the court system. The success rate was due to the evidence supporting the four conditions – that the offender was the driver at the time of the offence, that the vehicle was owned by the offender, that the offender had a prior relevant offence and had been convicted of that offence. This information was sourced from the Department of Motor Vehicles, the police and the court system (Peck and Voas, 2002), suggesting that administrative processes and time would need to be considered to extract the relevant information, search driving histories and court records. This would especially need to be considered if forfeiture was used on a larger scale, for example, if it was to be applied to first time offenders as it is in New York City.

3.1.11 Forfeiture Benefits

In California, many offenders elected to reclaim the vehicle by obtaining a valid licence within three days. This often had a positive impact, as many drivers were required to clear accumulated traffic fines before becoming eligible to re-license (Peck and Voas, 2002). Forfeiture also has the benefit of removing many old, non-roadworthy vehicles from the road, which benefits the broader driving community.

3.1.12 Forfeiture Issues

Vehicles driven by repeat offenders tend to be older and low in value. Consequently the value of the vehicle is often lower than the cost of towing and storing the vehicle. The inconvenience and financial loss associated with losing the vehicle may not have the same impact as it would on the owner of a more expensive vehicle, especially if the offender simply chooses to buy another low-value vehicle. The fact that offenders are driving a low value vehicle may genuinely reflect their financial status, so replacing the vehicle may be difficult deferring their return to obtaining a vehicle and driving again. Ross, Stewart & Stein (1995) suggest that if confiscation "yield[s] significant incapacitation" it may be worth the cost to the authority underwriting the program. In addition permanently removing old, low-value (and often non-roadworthy) vehicles from the road has positive road safety benefits generally (Sweedler et al, 2004).

However it has been claimed that losing an expensive high value vehicle is unfair compared to a driver whose vehicle is worth very little. The New York Police Department has argued thatn an expensive vehicle driven by a drink driver can cause a fatality just has easily as a vehicle of low monetary value (Safir et al, 2000).

It has been observed that offenders are often driving a vehicle that is registered to someone else, such as the previous owner or a family member (Ross, Simon and Cleary, 1996). It may be a strategy to avoid the higher insurance premiums incurred by offenders or to insulate the vehicle from vehicle sanctions. These actions undermine the effectiveness of the sanction in many respects, as most forfeiture laws also recognise the financial interest other parties may have in the vehicle, including the vehicle's owner and finance companies. There is a risk that offender-owners may attempt to circumvent loss of the vehicle by transferring the vehicle's registration or selling it prior to the forfeiture taking effect. This suggests that laws would be required to prevent transfer or sale of a vehicle subject to these proceedings, as was provided for in Ohio (Voas and DeYoung, 2002).

It should also be noted that successful programs generally provide for rapid hearings and forfeiture actions to reduce the cost associated with storing the vehicle (Voas 1992, Peck & Voas, 2002), meaning that if implemented through a judicial process, procedures for dealing with drink drivers in Queensland would need to ensure the shortest possible time between arrest and forfeiture to limit storage costs.

Queensland's forfeiture law in relation to hooning is effected via application to the court. Although the initial seizure of the vehicle is enabled by an administrative power, the subsequent forfeiture must be court ordered. Administrative forfeiture, as used in California, is unlikely to be an option supported by Queensland's legislative principles.

3.1.13 Forfeiture Deterrence

Forfeiture as a sanction is rarely applied, even in the case of repeat offenders. However, where it has been actively applied it appears to serve as a reasonable deterrent to repeat DUI offences. It meets the deterrence criteria of severity, as the permanent loss of the vehicle is a significant financial cost and inconvenience. Vehicles are usually impounded prior to administrative or court-ordered forfeiture, so while the forfeiture only applies some time after the offence, the impoundment of the vehicle is immediate and once an appeals process has been conducted, it is certain. The low appeals rate (and lower success of appeals) in Santa Rosa and San Diego (California) suggest that forfeiture can be made more certain provided effective procedures are put in place for dealing with offenders (Peck and Voas, 2002).

3.1.14 Forfeiture Conclusions

Evidence for vehicle forfeiture is not compelling because very few studies have been undertaken, primarily because very few jurisdictions are actively using this sanction. Often forfeiture is used for multiple offenders, and impoundment for less frequent offenders, which makes it difficult, if not impossible to separate the effects of each of these initiatives. If progression to the more severe sanction of forfeiture could increase the deterrence value of the two vehicle sanctions, it is impossible to capture the effect if the forfeiture law is not enforced (Peck and Voas, 2002).

The Portland and New York studies suggest there may be some specific deterrence value in vehicle forfeiture, but the general deterrence value of forfeiture has not been studied (Voas and DeYoung, 2002). It is impossible to draw conclusions about the likely value of vehicle forfeiture to deter first offences for either drink driving or disqualified driving. It should be noted that DeYoung (2000) found no evidence that Californian impoundment laws provided general deterrence.

In summary, forfeiture is a costly vehicle sanction which cannot be regarded as self-funding due to the low value realised from many of the confiscated vehicles, which generally does not cover towing, storage or prosecution costs. The benefits of forfeiture do not appear to significantly outweigh the benefits of vehicle impoundment, although to be fair, this comparison appears to have been made in only one study. Moreover some of the benefits of forfeiture may be achieved through longer-term impoundment as a significant percentage of impounded vehicles remain unclaimed at the end of the impoundment period. Forfeiture may be considered as a very last resort option for drink drivers or drivers detecting driving while disqualified, but it is likely that lesser sanctions will achieve the same effect for the majority of offenders.

3.1.15 Impoundment and Forfeiture Conclusions

Vehicle impoundment shows significant promise as a sanction that incapacitates offenders by removing a readily available tool which allows them to re-offend. Studies undertaken in California and Ohio indicate that impoundment can reduce recidivism rates for DUI and DWS offenders, at least in the shorter term. The changes appears to be brought about by specific deterrence and by the loss of access to a vehicle, however, no general deterrent effect was identified (DeYoung, 1999, 2000; Voas et al, 1998, 2000). Further analysis of the impact of New Zealand's impoundment laws on unlicensed driving offences may provide more useful information on the benefits of impoundment, in a legislative environment more similar to Queensland.

Evidence for vehicle forfeiture is less compelling. Very few studies have been undertaken, primarily because very few jurisdictions are actively using this sanction. Often forfeiture is used for recidivist offenders, and impoundment for less frequent offenders, which makes it difficult, if not impossible to separate the two effects. If progression to the more severe sanction of forfeiture increases the deterrence value of the two vehicle sanctions, it is impossible to capture the effect if the forfeiture law is not enforced (Peck and Voas, 2002).

The Portland and New York studies suggest there may be some specific deterrence value in vehicle forfeiture, but the general deterrence value of forfeiture has not been studied (Voas and DeYoung, 2002). It is impossible to draw conclusions about the likely value of vehicle forfeiture to deter first offences for either drink driving or disqualified driving. It should be noted that DeYoung (2000) found no evidence that Californian impoundment laws provided any general deterrence value.

Impoundment has recently been introduced in some Australian jurisdictions as a sanction against hooning behaviour. Although the power to impound the vehicles of drink drivers has been available in some states, it appears to have been only rarely used. In either case the sanction is used administratively, at least at initial detection, however, longer impoundment periods may require a court order. Forfeiture laws have not been used in Australia against drink drivers or disqualified drivers, so it is difficult to estimate the likely impacts, both positive and negative.

Impoundment might be largely self-supporting, with offenders and non-offender owners required to pay for towing and storage costs before the vehicle is returned, however the proportion of vehicles left unclaimed may increase the cost of the program. It would be necessary to identify the size of the likely target group(s) for vehicle impoundment of forfeiture in order to fully cost the sanctions. Forfeiture is unlikely to be self-supporting If impoundment is used as a short-term administrative sanction as a response to prevent further use of the vehicle by the offender while under the influence, cost should not be a significant issue, and vehicle abandonment rates could be much lower.

In summary, impoundment shows significant potential for use as a vehicle sanction against drink drivers. Following the 2006 Road Safety Summit it was announced that legislation will be introduced to impound the vehicles of repeat drink drivers and disqualified drivers. Further research will be required before a definitive position can be stated on how it should be implemented. Forfeiture is a costly vehicle sanction which cannot be regarded as self-funding due to the low value realised from many of the confiscated vehicles, which generally does not cover towing, storage or prosecution costs, however, this may not be a significant issue if forfeiture is applied as the ultimate sanction in a series of a graduated sanctions. The benefits of forfeiture do not appear to significantly outweigh the benefits of vehicle impoundment, although to be fair, this comparison appears to have only been made in one study. Moreover, studies suggest that some of the benefits of forfeiture may be achieved through longer-term impoundment since a significant percentage of impounded vehicles remain unclaimed at the end of the impoundment period. Forfeiture may be considered as a very last resort option for drink drivers or drivers detecting driving while disqualified, but preliminary assessment indicates that lesser sanctions will achieve the same effect for the majority of offenders.

3.2 Confiscating Ignition Keys

Issues for comment:

5. What are the costs and benefits of ignition key confiscation?
6. Should vehicle impoundment or key confiscation be used in Queensland to prevent drink drivers from repeating or continuing the offence?

3.2.1 Introduction

Key confiscation occurs when the ignition key to a vehicle is taken from an offender and detained in someone else's care for a period of time. Police officers in New South Wales, Victoria and Tasmania currently have the power to require a driver to hand over ignition and all other vehicle keys in the drivers possession, if the officer believes the driver to be physically or mentally incapable of proper control of the vehicle. Keys are confiscated so as to prevent further driving in the first instance and in the second instance to deter persons categorised by any of these prescribed offences.

The principal safety aspect of confiscating keys is to prevent persons from impaired driving and prevent potential crashes. It is a short-term sanction, acting principally while the offender is impaired, or likely to be impaired. Deterrence focuses not only on the safety aspect but additionally on discouraging persons about to or likely to engage in a prohibited behaviour. Therefore the act of taking away a driver's ability to start the vehicle could be a promising sanction to use on illegal drivers as a preventative and deterrent measure, as well as enforcing short term prohibitions on driving.

For the purposes of this review key confiscation, imposed on at the point of apprehension will be focussed on, rather than as a post-conviction sanction. As noted earlier, the ability to confiscate the vehicle keys of drink drivers in Queensland at the point of apprehension is under investigation as part of the IDLR. Although the review is focused principally on the post-conviction sentencing options and countermeasures to prevent recidivism among convicted drink and drug drivers, key confiscation at the time of apprehension has been included within the scope of the review. Some preliminary investigations have commenced, in line with the research timetable and contact have been made with appropriate officers interstate. Key confiscation is one of a number of countermeasures due to be reported to the IDLR Steering Committee as part of the next research report due in the first quarter of 2006.

In Queensland, legislation currently allows police officers to issue a notice to suspend an impaired driver's licence for a period of 24 hours from the time of taking of evidential breath test or blood specimen, if the driver has been detected exceeding the prescribed alcohol concentration level. The power for police to enforce this is granted through s80(22A) of the *Transport Operations (Road Use Management) Act 1995*. On the occasions where offenders are detained in police custody (generally following a high BAC offence), offenders are generally released within three to four hours. Some may elect to return to their vehicle and continue to drive. Police generally have no way of identifying a driver under 24 hour suspension. Even if a licence check is conducted, the officer can only be alerted to the suspension if the information is quickly entered into electronic data systems accessed at the roadside. This information may not be immediately available. The offence is mostly likely to be identified following apprehension for a second drink driving offence or another traffic offence. Otherwise, drivers flouting the 24 hour suspension are most likely to be detected if the same officer deals with the driver again within a 24 hour period, or if an officer sees the driver return to his or her vehicle.

If the driver is detected while under suspension police are able to detain the person in the watch-house to appear for the next court hearing which is usually the following day. The other option available is to direct the person not to drive pursuant to the *Police Powers and Responsibilities Act 2002*. This power is rarely used.

3.2.2 Key Confiscation Programs

New South Wales, Victoria and Tasmania have enacted legislation whereby drink drivers, unlicensed drivers or suspended drivers may be dealt with by confiscating the keys to the vehicle in order to prevent them from illegal driving. Western Australia may have key confiscation legislation introduced by March 2006[6].

The power for **New South Wales** police officers to confiscate ignition keys came into force on 14 April 1998[7]. Section 189 of the *Law Enforcement (Powers and Responsibilities) Act 2002* provides a police officer with the authority to confiscate vehicle keys from a drink or drug driver and retain them for as long as "necessary in the circumstances and in the interest of the person driving (or about to drive) or of any other person or of the public". Keys may be retained until return is requested, and there are provisions for application to a Local Court to return the keys (if not returned within 24 hours of the request to return the keys).

While the New South Wales Police have the discretion to seize keys, it is rare for keys to be retained by police. It is more common that the officers will use one of the following actions afforded to them:

- leave the vehicle at the roadside
- have a family member or friend pick up the drink driver
- have a sober and capable passenger drive the vehicle

[6] Personal Communication with the Office of Road Safety, 24 December 2005. The *Road Traffic Amendment (Drug Impaired Driving) Bill 2005* is due to be debated in Parliament in March 2006.
[7] *s26A, Traffic Act,* later as s30 *Road Transport (Safety and Traffic Management) Act 1999*; repealed in 2002 and transferred to the *Law Enforcement (Powers and Responsibilities) Act 2002.*

Police may also require the driver to hand keys to another person, for example a passenger, who is assessed as being responsible and capable of exercising proper control of the vehicle (s189(1)(b)(ii)). Police also have the power to detain (impound) the vehicle as an alternative to key confiscation, under s31 of the *Road Transport (Safety and Traffic Management) Act 1999.* Key confiscation is part of the process for dealing with drink drivers if it is considered necessary to prevent the drink driver from re-offending[8].

In **Victoria**, section 62 of the *Road Safety Act 1986* allows officers to confiscate keys if, in their opinion, the driver is not capable of controlling a vehicle. The legislation specifically identifies that mental or physical incapacity includes detection of an illegal BAC or an illegal drug (methamphetamine or cannabis). It appears to be normal practice for police officers to resort to other means of dealing with a drink driving situation. Similar to NSW operations, key confiscation is used when the alternative options are inappropriate. The authority for police to seize keys when necessary is a valuable tool to reduce the risk of harm being caused by impaired drivers[9]. These powers were introduced in 1986 and although it is regularly used[10], Victorian police do not maintain statistics such as the number of keys or who keys are confiscated from. In managing a drink driving offender at the roadside, the officer performs the following:

- direct the driver to remove all valuables from the vehicle and secure it
- organise a taxi for the driver
- organise to have a relative (spouse, family member) collect them
- if there is a passenger, the police usually prefer to have them drive after they have satisfied the officer they are not over the prescribed concentration with a breath test. If the nominated passenger has an illegal BAC, they cannot be charged as it is just a safety precaution

However, if the officer does decide to confiscate the keys because these other options are exhausted the officer must perform the following:

- direct the driver to remove all valuables from the vehicle and secure it in its location
- hand keys into the nearest police station

Details such as name of driver, location of vehicle and description of the keys are recorded in a property book and placed in a safe under the responsibility of the watch-house keeper (receptionist). The cost of managing this procedure is minimal but not easily quantified. If any element could be costed, it would be the time required for an officer to deal with the matter. S26A of the Act provides for appeal to a Magistrates court against a police decision made under s62.

[8] Personal communication, A/Commander Traffic Policy Section, Traffic Services Branch, NSW Police, 21 December 2005.
[9] Personal communication, Traffic Alcohol Section, Victoria Police, 21 December 2005.
[10] Personal communication, Traffic Alcohol Section, Victoria Police, 6 December 2005

In **Western Australia**, police are able to confiscate keys from a driver whose vehicle has been impounded for unlicensed driving and for drivers detect racing[11]. No powers currently exist for police to confiscate keys in relation to drink driving, however legislation is before parliament to endorse the matter through the *Road Traffic Amendment (Drug Impaired Driving) Bill 2005*. It is proposed that Western Australia's policy and procedures will correspond to the current New South Wales scheme. Section 71A of the Bill proposes to provide that keys may be confiscated by officers from persons suspected of being under the influence of alcohol and/or drugs. It will not occur routinely but remain an option of last resort. Similar to New South Wales and Victoria, officers would have attempted all alternative options before confiscating keys. It is intended that this option would be pursued only when these other options are exhausted and the officer believes that the driver will continue to drive while over the legal limit.

WAPOL (Western Australia Police) has devised policies to ensure the safety and security of confiscated keys, and therefore, no problems are envisaged at this stage. It is understood that details of the keys and relevant information will be recorded in a log book and the keys secured in a safe place, as is the process in New South Wales[12].

Tasmanian legislation permits a police officer to confiscate keys if in the opinion of the police officer, the person is incapable (through mental or physical condition) of having proper control of the motor vehicle. It does not explicitly identify impaired drivers as incapable, so it is not immediately clear if the legislation would be used for drink drivers. Section 41A of the *Traffic Act 1925* provides for the police officer to direct the person to hand over all vehicle keys to the officer. The power appears to have been available to officers for many years as Section 41A was inserted in 1957. Section 41A also provides for the officer to forbid the person to drive the motor vehicle. The officer is to retain the keys and cause the vehicle to be kept immobile or in a place of safety, until the driver is capable of having proper control. Contact has not yet been initiated with Tasmania Police to identify how often the legislation is used, if it is used for drink drivers, and if there are any particular issues associated with its use.

New Zealand's *Land Transport Act 1998* provides that an enforcement officer may confiscate vehicle keys on the grounds of a mental or physical condition. 'Mental or physical condition' could reasonably include a drink driver, although again it is not stated explicitly.

Under Section 121 of the Act, if the officer has reasonable grounds for believing that a person in charge of a motor vehicle is incapable of having proper control of the vehicle, the officer may take possession of all ignition or other vehicle keys, and require that all vehicle keys be handed over. The same power is available if the officer believes that the driver has not complied with enactments concerning driving hours (for example, fatigue).

Other powers are available to an enforcement officer under Section 21, including forbidding the person from driving for a period specified by the officer, immobilizing the vehicle, or directing the person to drive to a specified place where they may obtain rest (following non-compliance with driving hours' regulations). In addition, if the driver has a BAC exceeding the legal limit (determined by evidential breath test or blood test) the length of the prohibition on driving must be twelve hours, unless the officer is satisfied there are grounds for imposing a shorter prohibition. Failure to comply with any direction given under Section 21 may result in arrest.

[11] s78C(3) and (4) *Road Traffic Act 1974*
[12] Personal communication, Office of Road Safety, 6 December 2005

Further analysis of New Zealand's use of key confiscation was not possible within the time available for the preparation of this submission. It was not possible, for example, to determine how often key confiscation is used for drink driving offences, or if the deterrence or safely value has been evaluated. It is likely that the provisions of the *Land Transport Amendment Act 2005* concerning immediate 28-day licence suspension for high BAC drivers or repeat drink drivers, as well as immediate and automatic vehicle impoundment for third-time drink drivers, have captured a large proportion of the drink drivers who ordinarily could be subject to key confiscation. These new provisions commenced on 16 January 2006.

The time available did not permit a thorough search of overseas jurisdictions to identify if key confiscation is utilised elsewhere, to examine legislation or determine levels of usage. However, its use was not been identified among the research literature concerning vehicle sanctions (for example, Voas and DeYoung, 2002). This suggests that if it is used in any other jurisdiction, it is not used widely enough to draw attention.

3.2.3 Key Confiscation Usage

Based on 2002-2004 data provided by NSW Police, key confiscation is used rarely in NSW, with only one confiscation recorded each in 2002 and 2004, and four confiscations recorded in 2003[13]

The principle reason for such low usage over these years could be directly related to the fact that key confiscation is a last resort action. As mentioned earlier, officers prefer to order the driver to leave the car at the roadside, have someone come to pick them up or have another sober and capable passenger drive the vehicle as mentioned above.

Victorian Police do not account for confiscated keys in a registry or database. Therefore, although it has been indicated that the key confiscation power is used, no records are kept so as to identify its level of usage or operational effectiveness. It is been advised that Victorian Police are reluctant to seize keys and more inclined to have a family member pick drivers up or organise a taxi so that the driver takes the keys with them. On occasions where these options are not available, the keys are taken to the nearest police station by the officer.

3.2.4 Key Confiscation Deterrence value

The practice of key confiscation carries with it the classical elements of deterrence including swift, certain and severe punishment. In its immediate effect, key confiscation is a swift punishment but the certainty and severity level are limited. It is swift because it happens at the point of apprehension and once the driver is charged that person will, at the discretion of the officer, be required to hand over all ignition and other vehicle keys in their possession. There is an element of certainty in this sanction in that keys could be confiscated if a driver is caught under the influence of alcohol or drugs. However, the certainty value is limited in New South Wales and Victoria because those states use key confiscation as a last resort action. The severity value for confiscating keys is also significantly limited and reduced when the punishment only lasts anywhere from one to twenty-four hours. In this situation the negative impact on the offender from the punishment is reduced because a friend or relative is likely to collect the keys from the station. In addition, there is also the possibility that the driver has access to a spare set of keys, returning the vehicle continuing to drive while still impaired.

[13] Extracted from NSW COPS system, personal communication with the A/Commander Traffic Policy Section, Traffic Services Branch, NSW Police, 21 September 2005.

3.2.5 Key Confiscation Costs and Benefits

There would be minimal costs associated with a key confiscation scheme, such as is used in Victoria and New South Wales, and prospectively in Western Australia. At the present time, the administrative systems for recording confiscated keys are paper based, which seems appropriate given the current low level of usage. More frequent use of the power involving a larger number of drivers may require a potentially costly electronic system to replace the current process. Programs in use in Victoria and NSW do not appear to require payment of an administrative fee for holding the keys before they are returned to the owner or nominated person.

Operational costs for key confiscation as it operates in Victoria or New South Wales are likely to be negligible, especially in comparison to programs such as vehicle impoundment, or even immobilisation. Key confiscation procedure appears to be used on a very small scale interstate, however, if a larger scale key confiscation program was implemented in Queensland, it would require a more accountable system and consequently become a more costly operation, unless it could utilise existing systems for tracking property within the Queensland Police Service. Reference in this regard is made to Queensland statistics on the number of drink drivers, repeat offenders and disqualified drivers. For example, a more definite and comprehensive system would be required for the following scenarios:

- if keys of all drink drivers were confiscated (on average between 2002 and 2004, there were 26,834 drink driving offences committed per annum by 24,878 offenders)
- if keys of all repeat drink drivers were confiscated (over 3500 offences in 2004) or
- if keys of all high BAC drink drivers were confiscated (over 5000 in 2004)

Managing high volumes of keys in locally maintained and implemented systems would be a more costly program. Additional costs would be accrued if a precautionary breath test is required every time a person requests keys to be returned, which would entail a time component for an officer authorised to conduct a breath test. Both administrative and personnel costs need to be taken into consideration if key confiscation was to be used as a regular sanction.

The largest and most significant benefit that key confiscation addresses is safety. New South Wales first considered the idea because the safety of drivers seemed to be overlooked[14]. In an effort to complement the effectiveness of Random Breath Testing in New South Wales and to overcome the safety issues associated with drink drivers who continue to drive, key confiscation was submitted as a simple and suitable option[15]. However, it is difficult to assess if this objective has been met, considering the low level of usage.

Victorian police were assigned the power of key confiscation to keep impaired drivers off the road. Due to the low number of keys confiscated in New South Wales and Victoria, it is difficult to ascertain the impact it has had on road injuries since its introduction. The general consensus would believe that confiscating keys is a punishment which discourages impaired driving and is expected to prevent future road injuries caused by drink drivers.

[14] New South Wales Legislative Assembly Hansard, 2 April 1998.
[15] New South Wales Legislative Assembly Hansard, 2 April 1998.

3.2.6 Key Confiscation Issues

In Western Australia, the move to implement key confiscation unveiled some legal questions regarding liability and litigation issues. For example, where would liability lie if an officer did not take the keys off the driver after being charged and the driver went on to injure themselves or others on the road. It was advised that although potential litigation could ensue, the road safety benefits derived from providing police with the ability to confiscate keys from drivers thought to be at risk overrode the risk of potential litigation[16].

It is unsure whether NSW has previously explored legal issues of insurance and liability before enacting provisions for police to confiscate keys. The legislation provides that the officer will not be liable for any loss or damage incurred as a result of carrying out their duty to protect the safety of drivers and other road users, and presumably this would includes misplaced or lost keys. According to the officer in charge of the Traffic Services Branch there have been no reports or complaints made in relation to instances where keys have been lost or misplaced. In Victoria, the general consensus is that the officers are to carry out their duty and if complications occur the onus is on the offender for initially drink driving. In instances where keys are lost or misplaced, police follow up where keys have been placed. The officer is charge of the Traffic Alcohol Section has indicated that there have not been any issues arising from this action. In the extreme cases where keys are confiscated and the vehicle is damaged after being left parked on the side of the road by the officer, a complaint is made to police. It is believed that no compensation claims have arisen as a result of damage to vehicles in this circumstance[17].

The risk remains that following key confiscation, an offender may disregard the 24 hour suspension and the intent of key confiscation, and obtain a spare key or another vehicle and continue to drive. These actions by a determined offender would limit the effectiveness of the sanction, however, it is difficult to determine how often this problem would arise.

Finally, any suggestion that key confiscation contravenes principles of natural justice may be overcome by focusing on the use of the sanction together with the s80(22A) 24 hour driver licence suspension. The driver is deemed to be impaired for the 24 hours following the offence, and short-term key confiscation for safety purposes could enhance the effect of this sanction.

3.2.7 Key Confiscation Conclusion

Key confiscation is available as an option to deal with drink drivers in some Australian jurisdictions. It appears that police officers only occasionally seize and retain the keys, preferring to focus on other practical options available at the time, and tend to use key confiscation when all other options are impractical and/or the offender is determined to drive again. Police officers may confiscate keys but then provide them to a sober passenger to take control of the vehicle, but it would be difficult to quantify how often this happens or how effective it is.

[16] Personal communication, Office of Road Safety, 6 December 2005

[17] Personal communication Officer in Charge, Traffic Alcohol section, Victoria Police, 6 December 2005.

The ability to confiscate ignition keys may be a convenient power for police officers to have for those occasions where they believe or observe that a drink driver is determined to continue to drive. Key confiscation may be a viable option in instances where impoundment is practical, for example where the vehicle can be parked safely out of the way of harm. It addresses the immediate safety issue in that confiscation can prevent the offender from driving that vehicle while impaired, and could be used to reinforce the 24 hour driving suspension. However, a determined offender may obtain spare keys to use the vehicle again, or drive a different vehicle.

On balance, the sanction is unlikely to be a useful option for dealing with a large number of offenders, because the larger numbers will present significant administration difficulties, and may lead to some significant liability and litigation issues. It would be wholly impractical to require key confiscation for all drink drivers detected in Queensland, when for example, between 2002 and 2004, there were 26,834 drink driving offences committed per annum by 24,878 offenders. It may be reasonable to confiscate keys belonging to repeat offenders as they have demonstrated their disregard for the law, or even high BAC offenders as the level of impairment presents safety risks should they continue to drive. However, considering there are several thousand repeat or high BAC offenders detected annually in Queensland, formal administrative systems and processes will be required to transfer keys to a safe and accessible storage place, and account for receipt of keys and return to the driver once sober.

As noted earlier, Queensland Transport will be investigating key confiscation as a sanction for impaired drivers in more detail as part of the IDLR. It looks forward to hearing the opinions of other agencies and researchers on the use of this sanction. However, at this stage, the department is unable to provide a position either in favour or against key confiscation.

3.3 Other vehicle sanctions

Issues for Comment:

7. Would other vehicle sanctions help reduce the amount of repeat drink driving?
8. Would these vehicle sanctions work in conjunction with vehicle impoundment and key confiscation?

3.3.1 Introduction

Following the 2006 Road Safety Summit it was announced that legislation will be introduced which required repeat drink drivers (two or more offences) to fit an alcohol ignition interlock to their vehicle in order to reinstate their driver's licence. Further research and investigation will be required to determine the best way to implement this requirement and whether such a sanction should be based on an administrative or judicial process. Other vehicle sanctions cited in Travelsafe Issues Paper Number 10 (the Paper) are being investigated as part of the IDLR, for potential value as sanctions to reduce repeat drink driving in Queensland. As noted earlier, the IDLR is currently assessing the research evidence for these sanctions, and consequently, Queensland Transport is not yet in a position to favour one sanction over another, or any particular combination of sanctions. It cannot indicate which, if any, of these sanctions would be effective at reducing drink driving, if used in conjunction with impoundment or key confiscation. Evidence from studies undertaken overseas suggests that there may be some benefits, although some of these programs have been directed as unlicensed or suspended drivers. Applicability to drink drinkers should be treated with caution, although it is realised that there may be considerable overlap between the populations of drink drivers, unlicensed drivers and suspended/disqualified drivers.

Based on observations of programs in overseas jurisdictions such as Canada and the United States, vehicle impoundment can be, and has been combined with immobilisation, number plate sanctions and alcohol ignition interlocks. The use of key confiscation in association with the other vehicle sanctions was not identified. The relative value of the vehicle sanctions, other than impoundment or forfeiture, evidence of effectiveness for reducing offences, and associated costs and benefits are briefly discussed in the following sections. A more detailed analysis of the research is being prepared for submission to the IDLR Steering Committee.

3.3.2 Immobilisation

The immobilisation of a vehicle involves the fitting of a device that renders the vehicle inoperable immediately following detection. The vehicle is usually immobilised on the owner's property, and has been adopted as a sanction by some States in America, in order to reduce the costs associated with vehicle impoundment. The immobilisation is achieved by clamping the steering wheel with a club or locking a wheel with a boot (NHTSA, 2005). Shorter term immobilisations could also be used effectively at the roadside, and have the potential to be used as a substitute for key confiscation. Although higher in cost to manage than key confiscation, it would ensure than the vehicle is incapacitated for the duration of the offender's impairment, avoiding problems associated with determined offenders accessing spare keys.

Immobilisation is also commonly associated with parking offences, with the 'clamping' of an illegally parked vehicle which cannot be released until the associated penalty is paid. However, in some parts of the United States, in particular, Ohio and Nevada, immobilisation is used as a sanction against impaired driving offenders. The *Transportation Equity Act for the 21st Century* (TEA-21) also promoted the use of immobilisation as one of three significant vehicle-based sanctions for impaired driving offences (NTSB, 2000), and although while thirteen states are identified as having immobilisation laws (Sweedler et al, 2004), to date only two states have immobilisation laws for DWI offences (NHTSA, 2005). Moser (1997) described the immobilisation programs that were used in Ohio, New Mexico, Michigan and Wisconsin from 1989, although the current status of these programs and the target offender groups were not identified. The programs used anti-theft steering wheel locks which were bulk purchased and keyed alike. This was regarded as a relatively inexpensive immobilisation measure. Moser noted that the device could be removed by cutting through the steering wheel, so was not a foolproof immobilisation solution. In contrast, the tyre boot immobilising device is less easy to remove, costs less to purchase, but takes longer to install. It has also been noted that the steering wheel locks may be bypassed by removed the steering wheel (plus lock) and using a spare wheel (sourced from a wrecker's yard).

3.3.3 Ohio Impoundment and Immobilisation Program

Prior to 1993, Ohio had a poorly used immobilisation law for suspended driving by drivers originally detected driving impaired. In 1993, the law was extended to second and third offenders, and a project was funded to provide support for immobilisation in Franklin County, a sizeable county with a population of around one million. The amendments to the law introduced graduated penalties for multiple offences:

- immobilisation for 30 days for the first DWS offence
- immobilisation for 60 days for the second DWS offence
- immobilisation for 90 days for the second DUI offence
- immobilisation for 180 days for the third DUI offence
- vehicle forfeiture for third DWS offence or fourth DUI offence.

The amendments also introduced vehicle seizure at arrest and impoundment until at least the initial hearing (within a maximum mandatory five days). Further amendments prohibited registration of another vehicle for two years if the vehicle used at the time of the offence was sold or transferred without court approval prior to immobilisation. This was intended to stop circumvention of the immobilisation law (Voas, Tippets and Taylor, 1997). Non-offender owners were only allowed to reclaim their vehicle if they did not know the offender was using it, or they did not know the offender's licence was suspended, although in 1995 the law was changed to prevent immobilisation of vehicles not owned by the offender. Immobilisation under these laws was a court based sanction. Vehicles were impounded pending a court hearing to determine if the vehicle was seized legally. At this point, the judge could order either continued impoundment until trial, or immobilisation on or near the offender's property. Immobilisation/impoundment periods were credited towards the court-ordered period (Voas et al, 1997). Vehicle plates were removed during the immobilisation period.

3.3.4 Immobilisation Effectiveness

Limitations regarding ownership and variations in the application of the law resulted in approximately 25 per cent of DWS offenders and 40 per cent of second DUI offenders being subjected to the vehicle sanction (Voas, Tippetts and Taylor, 1997). In general, it was not possible to separate the effects of impoundment and immobilisation, as one sanction generally followed another. It might be implied that immobilisation was the dominant influence because it was generally of longer duration than impoundment, but this could not be stated with any certainty.

Both DUI and DWS offences were significantly reduced following impoundment/immobilisation, compared to the offenders not subjected to these sanctions. The DWS recidivism rate for the group receiving the vehicle sanction was half that of the comparison group. In addition, the difference in recidivism rates between the two groups persisted after the sanction ended, for a period of nearly 600 days, suggesting some sort of deterrent or habituation effect was occurring (Voas et al, 1997). The authors noted that sanctions rarely produce specific deterrence beyond the term of the sanction, suggesting there may not be longer term value from this program. Alternative explanations could include failure to reclaim impounded vehicles, or being denied access to a vehicle owned by someone else, following its earlier impoundment.

3.3.5 Immobilisation Deterrence Value

An immobilisation sanction that is applied after conviction does not remove the offender from the driving environment, but rather prevents the offender from driving for a period of time after conviction. Often this may be weeks or months following the actual offence. Therefore, immobilisation as a sanction appears to lack the key components of effective deterrent theory. While it is a severe sanction, it can lack immediacy and swiftness and possibly the certainty of receiving the sanction (if immobilisation is not a mandatory sanction).

Ohio implemented immobilisation laws, using impoundment as the intermediate step prior to court-ordered immobilisation, with an evaluation finding reduced recidivism both during the immobilisation period and following its completion (Voas, Tippetts and Taylor, 2000). The authors admitted it was not clear if the result was achieved via a deterrent effect (due to a cost and inconvenience associated with vehicle loss), or was due to the incapacitation effect (being unable to access a vehicle during and after the sanction).

In contrast, immobilisation of the vehicle of a drink driver at the point of detection is swift and immediate. There is some certainty if it is applied to all drink drivers, or specific classes such as high BAC or repeat offenders, however, if it is used as a last resort option, there is negligible certainty. The perceived severity is decreased if immobilisation is used as a short term sanction to support 24 hour driver licence suspension[18].

However, a further option is to use immobilisation in a similar manner to impoundment for hooning offences[19], where the (pre-conviction) penalty for a second offence is three months impoundment. This would meet the deterrence criteria of swiftness and severity, and depending on the target group of offenders, it could provide certainty.

As was noted above, the Franklin County impoundment/immobilisation program demonstrated a reduced recidivism rate following removal of the vehicle sanction (compared to offenders not receiving the sanction). This suggests that immobilisation is worthy of further investigation.

3.3.6 Immobilisation Costs and Benefits

The most significant cost for an immobilisation program is generally the initial cost of the devices, which, depending on the size of the impoundment program and the offender sub-groups targeted, may add up to a large initial outlay. Costs provided by a local retailer indicated that steering wheel locks range between $13 and $61, although models in the $50-$61 range are more robust. Even so, there is a risk that a determined offender will bypass the device. The 'Denver Boot' has been developed in 'standard' and 'four x four ' models (to suit larger vehicles)[20], although costs were not able to be sourced in time for this submission. Bulk purchase discounts may be negotiable. In addition, there are costs associated with maintenance, and time costs associated with the personnel fitting the devices (law enforcement officers, or a third-party service provider). Franklin County (Ohio) required payment of a fee for installation and removal of the device, which could offset some costs (Stewart, Voas and Taylor, 1995).

There may be towing costs associated with removing the vehicle from the roadside to the offender's property which would be the responsibility of the offender. In addition, where immobilisation is court-ordered, it may follow a period of impoundment, and again the vehicle's owner is liable for towing and impoundment costs. The extent of costs ultimately depends on how the sanction is implemented.

Immobilisation appears to be relatively cost effective, in particular as a longer term sanction, because it can prevent the vehicle from being used, but without incurring the high costs normally associated with impoundment or vehicle forfeiture. Concerns about responsibility for the vehicle or liability for damage are eliminated, because the vehicle is usually immobilised at the offender's home. The vehicle can be maintained and the engine run occasionally, which is generally not an option for impounded vehicles.

3.3.7 Immobilisation Issues

It may be possible to remove the immobilising device (particularly steering wheel locks) which reduces the certainty of the sanction. For this reason, immobilisation value could possibly be enhanced if used in association with registration cancellation and plate impoundment (discussed in the following section). Even so, it is not a foolproof solution if the offender exchanges the plates with those from another properly registered vehicle.

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[18] s80(22A) *TO(RUM) Act 1995*
[19] *Police Powers and Responsibilities Act 2000*
[20] http://www.denverboot.com/ accessed 04/01/06

Hardship issues associated with immobilisation are similar to the arguments against impoundment. Family members are denied access to the vehicle which may severely restrict travel options and access to health services, education and other everyday activities. This is more likely to be an issue for longer-term immobilisation. Access to longer-term parking may be an issue for inner city or apartment dwellers where parking is limited and sometimes costly.

Short-term immobilisation at the roadside when a drink driver is apprehended may be an inconvenience, but only for a relatively short time, and the safety value of incapacitation may outweigh most arguments about inconvenience.

There is a risk that offenders may transfer ownership or sell the vehicle to avoid the sanction (this was discussed earlier in relation to forfeiture). Another threat to the efficacy of immobilisation as a post-conviction sanction, similar to post-conviction impoundment, is that it relies on the vehicle being located so that it can be immobilised. If the vehicle is not located, it cannot be immobilised. Immediate impoundment for the period leading up to conviction, followed by the immobilisation, could ensure that vehicles are easily located. However this could negate some of the cost benefits of immobilisation over impoundment. As was noted earlier in relation to impoundment, the onus is on the offender to deliver up the vehicle for impoundment, otherwise the offender commits a further offence (breach of the court order).

3.3.8 Immobilisation Conclusions

Immobilisation represents a relatively low cost option that could be used to reduce repeat drink driving following apprehension and provide greater surety than key confiscation. It could incapacitate offenders' vehicles if used for longer periods of time and prevent future drink driving events (while the devices are fitted), and may have some carry over effect once the sanction period is completed. This analysis has only briefly touched on a few of the issues surrounding immobilisation. There are undoubtedly several other issues that need to be identified and examined for their relevance to Queensland's legislative framework and social justice implications. This detailed further analysis will be undertaken as part of the IDLR.

3.3.9 Registration Cancellation and Plate Impoundment

A number of US jurisdictions have implemented variations on vehicle sanctions, directed at the registration plate of the vehicle. Also known as licence plate actions in the USA, these can be used in two different ways – to prohibit the offender’s vehicle from being used on the road by cancelling the registration and impounding the licence plate, or by placing an identifying mark on the licence plate, to identify the vehicle as belonging to an offender. In either case, the vehicle is identifiable to enforcement officers, which provides cause for the vehicle to be stopped for a driver licence check. Licence plate actions, like immobilisation or impoundment, may be taken against drink drivers, or suspended or disqualified drivers.

The registration cancellation sanction refers to the practice of cancelling the registration of vehicles driven by, or owned by an offending driver, and physically removing the registration plate from the vehicle. The vehicle cannot be legally driven until it is re-registered. The absence of plates makes it readily identifiable to police officers who then have reason to stop the vehicle and conduct a licence check.

There are around 20 jurisdictions in the United States with laws enabling cancellation of vehicle registration for a drink driving offence (NHTSA, 2005). The sanction appears to be used at the point of apprehension and arrest as an adjunct to administrative licence suspension, and in general, the cancellation period is for the same period as the driver licence suspension (Voas et al 2002). One of the reasons for registration suspension was for insurance purposes, considering that the driver/owner is not able to drive legally if their driver licence is suspended or revoked (Voas et al 2002). A study undertaken in 1992 indicated that although the legislation was active in twelve states, it was rarely enforced because the administrative suspension relied on enforcement by other authorities. For example, the motor vehicle department had to depend on local enforcement agencies to apprehend drivers of vehicles where the registration was cancelled. In addition, drivers were able to avoid the penalty by paying a fee and demonstrating 'financial responsibility' via a letter from their insurance company (Voas et al, 1992, cited in Voas et al 2002). Offenders are able to apply for 'family plates' in at least three states (Ohio, Iowa and Minnesota) which allows non-offending family members to use the vehicle. The family plate is readily identifiable to police by the distinctive pattern of characters, but generally not recognisable to the general public (Jones and Lacey, 2000). The family plate provides cause to stop the vehicle and conduct a licence check (Voas et al, 2002; NHTSA, 2005). This is also referred to as a Limited Licence in Minnesota (Ross, Simon and Cleary, 1996). A recent report indicated that although some states now have enforcement departments responsible for investigators who locate and retrieve vehicle plates, the laws are still poorly enforced (NHTSA, 2005).

3.3.10 Minnesota Registration Cancellation Program

Minnesota provides the most detailed evaluations for effectiveness of this sanction. The state legislation requires registration cancellation and licence plate impoundment for third-time drink drivers (for criminal conviction or administrative revocation). The law was enforced through the judicial system prior to 1991, however it was rarely used with less than 19 orders made per month (Ross et al, 1996). In 1991 legislation was passed providing police officers with the power to immediately cancel the registration and impound the licence plates of repeat drink drivers (three offences in four years, or four offences in fifteen years). The arresting officer would issue a temporary vehicle permit to the driver, allowing use of the vehicle for seven days if the offender was the owner, or forty-five days if the owner was not the driver (Simon, 1995). This allowed the vehicle to be removed from the street, and provided sufficient time for the non-offending owner to obtain new plates for the vehicle. Typically, the vehicle would be towed to an impounding yard (Ross et al, 1996), and the plates removed by the tow operator at the direction of the police officer. All impounded plates were destroyed. In addition, the law prevented sale of a vehicle with impounded plates without permission from the Department of Public Safety (DPS).

In cases where the owner was not the offender, the legislation allowed for release of the vehicle to the owner following proof of ownership, insurance and a valid driver licence. There was no cost to the non-offending owner for the new plates, provided certain information was supplied. In addition, the owner could not have been a passenger in the vehicle at the time of offence, or know the offender was going to drive while impaired, and would not allow the offender to drive the vehicle again without a valid licence (Simon, 1995).

The effect of the 1991 amendment was a ten-fold increase in the number of registration and impoundment orders, increasing to 219 per month (Ross, Simon and Cleary, 1995). However, this still only represented around one-third of eligible offenders. In at least some cases, officers had difficulty identifying eligible repeat offenders at the roadside (Ross, Simon and Cleary, 1996), reflecting data access limitations. This would not be expected to be a significant problem in Queensland given current data systems and practices at the roadside for police officers where driver failing the preliminary breath test are held for at least 15 minutes before undergoing the evidentiary breath test. Many of the offenders in Minnesota would be followed up by the DPS, at which time vehicle registration would be cancelled and an order mailed to the offender to return the vehicle plates to the DPS. This happened in about one-third of the cases (Ross et al, 1996). The DPS also cancelled the registration of all vehicles registered to the offender (not only the vehicle driven at the time of offence) once notice of administrative licence revocation was received from the police, and issued supplemental orders for return of the vehicle plates. In practice, compliance with these orders was low, and was probably not enhanced by the absence of penalties for non-compliance (Ross et al, 1996). In the remaining one-third of cases, the offender was driving a vehicle owned by someone else, and did not have any vehicle registered under their own name. Two separate studies of the Minnesota laws revealed that 32 to 36 per cent of vehicles were being driven by someone other than the owner (Ross, Simon and Cleary, 1996; Rodgers, 1994, cited in Ross et al, 1996).

3.3.11 Registration Cancellation Deterrence and Safety Value

Registration cancellation and plate impoundment, as provided for in Minnesota, is an immediate punishment which complements the administrative licence suspension placed on the driver. Removal of plates makes the vehicle readily identifiable to enforcement officers, and provides cause for the vehicle to be stopped again. Registration is cancelled for the same duration as the offender's administrative licence suspension, so acts as a relatively severe punishment. If another family member wishes to use the vehicle and applies for family plates, the vehicle is readily identifiable to enforcement officers and provides cause to stop the vehicle for a licence check. Consequently, registration cancellation and plate impoundment has the potential to meet the deterrence criteria of being swift, certain and severe.

In some cases the vehicle will be towed to an impounding yard, which would act to prevent the impaired driver from using that vehicle until it is released. However, the safety value for registration cancellation and plate impoundment is less than for vehicle impoundment or immobilisation, because the vehicle is still available to be used, it has simply become more easily identifiable to enforcement officers.

3.3.12 Registration Cancellation Costs and benefits

Registration cancellation and plate impoundment is a comparatively low cost sanction for drink drivers. Once the plates are seized the onus falls on the owner of the vehicle to arrange for it to be towed away, at their expense, unless (as in Minnesota) a temporary permit is issued. If implemented properly and the plates are seized at the time of arrest, then vehicles used on the road are readily identifiable to enforcement agencies. With the technology currently available to the Queensland Police Service, it is possible to identify repeat offenders at the roadside. If plates are not seized, effective enforcement relies on the cancellation order being flagged against the vehicle's registration and being later identified during licence checks or other enforcement actions. Technologies used in Queensland such as MINDA provide the right type of data matching, identifying 'vehicles of interest' at the roadside. An issue that plate impoundment is not able to address is one where a small portion of offenders may utilise stolen plates to become less easily detectable.

Plate impoundment and destruction means there is no need to provide storage facilities. Immediate plate destruction limits opportunities for plates to be re-used illegally. The legislation used in Minnesota provided for new vehicle plates for the non-offending owner at no cost, which provides an element of fairness to owners who genuinely did not know that the driver was impaired by alcohol. However, Simon (1995) noted that there was a cost to the DPS for reissuing vehicle plates to the non-offending owner. This could be significant considering that in Minnesota, 32 to 36 per cent of vehicles were being driven by someone other than the owner at the time of the offence (Ross, Simon and Cleary, 1996). In addition, one evaluation indicated that it was typical practice to tow the vehicle to an impounding yard before the plates were removed (Ross et al, 1996), which would increase the cost of this sanction. It was not indicated if the cost was the responsibility of the driver, owner or enforcement agency.

3.3.13 Registration Cancellation Effectiveness

The Minnesota program has been evaluated in two separate studies. Rodgers (1994) examined recidivism rates for four categories of impoundment. Table 17 shows the results.

Table 17: Recidivism rates by plate impoundment method (from Rodgers, 1994; cited in Ross, Simon and Cleary, 1996).

Impoundment method	% recidivism
Police – impounded at roadside	13%
Department of Public Safety – order mailed to offender	19%
No impoundment	26%

Police impoundment was shown to be more effective at reducing recidivism with 50 per cent less recidivism after two years (Rodgers, 1994, cited in Voas et al, 2002 and NHTSA, 2005). Police impoundment was significantly more effective than other methods including court-ordered impoundment (data not provided). However, Rodgers (1994) also found no significant difference in time to re-offence for offenders with four or more offences who had vehicle plates impounded by police or by notice received in the mail (cited in Ross, Simon and Cleary, 1995; and Jones and Lacey, 2000), although recidivism was still lower than for the 'no impoundment' group. The study also noted that many of the offenders were not aware of the plate impoundment laws at the time of detection, indicating that there was little general deterrence value in the cancellation/impoundment laws as practiced in Minnesota at the time. The level of public education was not described, but probably was not very high.

3.3.14 Registration Cancellation Issues

Registration plate impoundment presents fewer difficulties than seizure of vehicles because the registration plate is the property of the issuing authority. However, once the registration is cancelled and the vehicle cannot legally be driven on the road, there will be insurance implications.

The Minnesota program allows for non-offending family members to obtain 'family plates' for the vehicle, so the sanction does not restrict ability to use the vehicle. It may be seen as a form of unfair targeting because the family plate identifies the vehicle as belonging to a family with a drink driver, although the family plates used in the Minnesota program are issued with the letters “WX” or “WY” in the first two positions of the number plate (Scopatz, Hatch, DeLucia and Tays, 2003). Even if the plates are not readily identifiable to the general public, a form of unfair targeting occurs because properly licensed drivers using the vehicle are subject to being stopped for licence checks more regularly. Whilst this process allows the family or dependents of the offender to continue to use the vehicle and provides a substantial deterrent to a person who is prohibited from driving, it is not considered to be a sanction that would easily operate within Queensland.

In Queensland there is a growing trend for motorists and companies to purchase Personalised Plates from PPQ. The personalised plates currently being sold by PPQ come in a wide range of styles, colours and designs. This is likely to preclude the use of a coloured plate to indicate an offender, as the diversity of plates and colours would make it difficult for police to readily identify a vehicle with vehicle plates marked to identify it as having been used by an impaired driver.

In the case of Personalised Plates, the person purchases and owns the number series (that is, the particular vehicle registration number). The actual plates remain the property of the Chief Executive. In the case of seizure and destruction of a personalised number plate after the interception of an impaired driver, the owner of the number series would just be liable for the cost of replacement of the plates, which would be the same as the cost to replace standard plates.

The high level of drink driving by non-owners was noted as an issue. It was noted that there was a common practice to leave vehicle registration in the vendor name, possibly to avoid the requirement of the new owner to pay sales tax on vehicle transfers, or to register vehicles in the name of a family member or relative, to avoid the high cost of vehicle insurance for drivers with a previous drink driving offence. It is also noted that plate-stealing could become a practice to avoid detection (Ross, Simon and Cleary, 1996). While none of these strategies appear to have been employed deliberately in Minnesota, many offenders were not aware of the laws, and so avoidance tactics may be used more widely as awareness increased.

Finally, very few studies have been undertaken to assess the effectiveness of cancellation/ impoundment laws, Minnesota being the exception, where a study indicates that recidivism may be reduced by half (Scopatz, Hatch, DeLuca and Tays, 2003). There are few, if any, publications concerning the use of this sanction in more recent years. This is a concern, considering that the need for replication of the Minnesota study has been noted, as well as the need to examine the potential impact on second-offenders, or even drink drivers at first detection (Voas et al, 2002).

3.3.15 Registration Plate Actions - stickers

Another form of vehicle sanction practiced in the USA is to use a sticker or other marking placed on vehicles to identify and stigmatize serious repeat drink drivers. The “Scarlett letter approach” has been used by some individual judges, but has generally been rejected at the legislative level (Sweedler et al, 2004). ‘Family plates’ (described above) are used in a number of states to discourage driving by licence suspended drink drivers (DWS). The best known study was sponsored by the National Highway Traffic Safety Administration (NHTSA) in Washington and Oregon to assess the effectiveness of marking the registration plate of a vehicle operated by a driver without a valid licence with a striped “zebra sticker” (Moser, 1997; Voas, Tippetts and Lange, 1997), especially drivers suspended for impaired driving offences. The enforcement officer would take the vehicle’s registration and provide a temporary registration certificate, placing the zebra sticker over the annual sticker on the vehicle’s registration plate. If the vehicle’s registration was not cleared within 60 days by an owner with a valid licence, the registration would be cancelled. The zebra sticker gave ‘probable cause’ for a police officer to stop the vehicle and conduct a licence check.

The introduction of the laws in Oregon immediately increased the number of DWS offences detected, however, this effect appeared to fade somewhat in the months following. Without more information about the levels of enforcement and public education, it is difficult to identify if the increase in detections was seen because police officers were more aware of the new laws so focussed more attention on DWS offenders, or because the stickers were actually effective at identifying offenders. In contrast, the number of DWS offences detected in Washington before the registration plate sticker laws commenced was low, and no increase was seen after commencement. In addition, Washington's law authorised use of zebra stickers only on a vehicle owned by the offender, whereas the Oregon law applied to all vehicles, regardless of if the offender was the owner. Nearly 31,000 vehicles were 'stickered' in Oregon in the first year of the law, compared to less than 7000 in Washington (Voas et al, 1997).

As far as can be determined, only Oregon and Washington implemented sticker laws. It is interesting to note that both states allowed the laws to 'sunset' in 1994 (Voas et al, 1997, Ross, Simon and Cleary, 1996). There appears to have been no further interest in this approach.

3.3.16 Registration Sticker Deterrence value

The zebra tag laws were predicted to have effects on both general and specific deterrence.

Drivers convicted of driving while suspended and who have the sticker placed on their vehicle were expected to be deterred from further driving occasions while still suspended because they were more likely to be detected (specific deterrence). It was also recognised that the stickers would draw police attention and possibly result in more offences being detected.

The laws were also predicted to have further effects on the population of suspended drivers, deterring them from driving in order to avoid having the sticker placed on their vehicle and their registration suspended. It should be noted that these deterrence effects only applied to the vehicle or vehicles owned by the suspended driver.

Subsequent analysis of offence records showed a significant general deterrence effect in Oregon on DWS offences, moving traffic violations and crashes among drivers suspended for impaired driving offences. There was no effect in Washington, possibly due to differences in the laws and enforcement regimes (Voas et al, 1997; Voas and DeYoung, 2002).

The specific deterrent value of the zebra tag laws was assessed in Oregon, finding statistically significant decreases in impaired driving, DWS and moving violations for the group of 'stickered' drivers, compared to 'non-stickered' drivers (Voas et al, 1997; Voas and DeYoung, 2002). There was no significant decrease in crashes.

3.3.17 Registration Sticker Issues

It was noted that two-thirds of the offender-owners in Oregon cleared the zebra sticker by transferring ownership of the vehicle to another person (Voas et al, 1997), increasing the probability of continued driving by the offender. Reducing the ease of registration transfer (or increasing the cost) might help to discourage this form of punishment avoidance.

An identifying sticker or marking that is obvious to the general public may be seen as unfairly stigmatizing other users of the vehicle such as family members. While a fair objective may be to 'shame' the driver in the community, family members are also shamed. In addition, there is an inconvenience for non-offender users of the vehicle as police officers are more likely to stop the vehicle to conduct a licence check.

The reports examined in this research indicate stigmatization of family members as an issue with the zebra tag laws, but other than that, no specific reason is given for why the laws were allowed to expire and were not taken up in any other US jurisdictions.

The common practice within the USA is to have the current registration label shown on the number plate rather than as a label on the window of the vehicle. This practice, having the label attached to the plate, also allows for the use of coloured identifiers indicating a driving offender. While this process allows the family or dependents of the offender to continue to use the vehicle and provides a substantial deterrent to a person who is prohibited from driving, it is not considered to be a sanction that would easily operate in Queensland.

As noted in relation to plate impoundment and family plates, personalised plates are available in Queensland in a wide range of styles, colours and designs. It may be difficult to identify a sticker placed on a number plate, against the variety of plates colours and designs, which limits the usefulness of these methods to identify a re-offender. The mounting of registration labels on the windows of vehicles rather than the number plate as in the case in the USA also precludes the use of this type of identifier.

3.3.18 Alcohol Ignition Interlocks

Breath alcohol ignition interlock devices, sometimes called alcolocks, interlocks or BAIIDS, are devices which require the user of a motor vehicle to provide a breath sample with a breath alcohol concentration below the pre-set limit, before the vehicle can be started. Alcohol ignition interlock programs can have an overall controlling effect on drink driving recidivism, by reducing opportunities for drink drivers to operate their own vehicle when they have been drinking. A secondary objective of interlocks is that they let offenders continue to drive, maintaining mobility, employment and other social functions, while reducing the danger to the public (Voas, Marques, Tippetts and Beirness, 1999).

Alcohol ignition interlock development has largely been driven by an offender management focus. The devices are principally used for sanctioning purposes for drivers convicted of repeat alcohol offences, or drivers recording a high BAC first offence (typically 0.15 per cent or above).

Interlocks may be fitted to most vehicles, although it can be more complicated for older vehicles. The Victorian interlock program has also fitted devices to a few motorbikes and some trucks (Lyttle, 2005). Increasingly, the devices are also being used for prevention, risk management and quality assurance purposes. In North America, alcohol interlock devices are being promoted to parents of teenage drivers as a means of preventing drinking and driving. Interlocks can also be used in vehicle fleets to prevent employees from driving after drinking alcohol, and two such trials are currently underway in Sweden and the European Union (Bjerre, 2005; Vanlaar, Drevet, Silverans, Alvarez, Assum, Evers, and Mathijssen, 2004).

3.3.19 Interlock Technology

The device consists of a breath alcohol sampling unit, a vehicle immobiliser and a data logger unit which records times of vehicle start-up and stop, breath test results, and tampering attempts. Earlier interlock generations used semiconductor technology for the breath test. Advantages were accuracy, relatively low cost, and durability. However, this detection method is not specific to ethanol (risking false positives), and requires frequent calibration (more frequent servicing). In comparison, the electrochemical detection devices now used in interlocks are more expensive, but are ethanol specific, and calibration is more stable. The greater specificity eliminates the potential for false positives and the frustration and loss of confidence in the system that could follow a lock-out caused by other organic hydrocarbons on the breath.

Both detection methods are regarded as accurate, however, for interlocks, accuracy is secondary to the ability of the device to distinguish between a driver who is above or below his or her pre-set BAC threshold. Interlock accuracy, reliability and ease of circumvention have historically (and legitimately) been regarded as concerns.

"…the legacy of scepticism has lingered. Many of the stories of tampering with and/or misuse of alcohol interlocks have become sensationalized and are little more than "urban myths" (Beirness, 2001).

Technological innovations have largely addressed most of the problems, and those that haven't completely been prevented (such as tampering) are managed by ensuring that signs of tampering are clearly evident so that they can be dealt with through the interlock program. Interlock technology is maturing (fourth generation) and is regarded as reliable and accurate.

Attempts to circumvent the breath test by providing a non-human, stored or filtered sample have led to the incorporation of temperature and pressure sensors (the sample must be from an adult human lung) and driver recognition systems. These require the driver to be trained to use the interlock to deliver the correct "hum tone" or breath-pulse codes. This virtually prevents the driver from using another person to start the vehicle, but in cases where it does not, the requirement for rolling retests does this. Repeated breath tests at random intervals while the vehicle is running prevent:

- a bystander from supplying the sample (the driver cannot go far before the retest is called)
- leaving the vehicle idling while the driver drinks, and
- a driver from continuing to drive because it identifies and provides a warning if the driver's BAC rises above the threshold while driving.

The rolling retest generally requires the driver to pull over and provide a breath sample within the programmed time limit, for example, the Draeger Interlock XT approved for use in Victoria allows five minutes for the driver to pull over and supply the sample[22]. If the driver does not provide the sample in time, alarm systems may be activated (horns, emergency lights) bringing attention to the vehicle or audible/visual alarms inside the vehicle (depending on the interlock specifications) until the ignition is turned off. Failure to supply a sample is recorded on the data logger as a violation and depending on the program's specifications generally requires the driver to report to the interlock service provider within a certain number of days. Failure to report to the service provider can results in a permanent lock-out. The rolling retest is not designed to bring the vehicle to a stop, but rather to provide evidence of failure to supply the test sample or exceeding the BAC threshold.

While most of the problems have been countered through technological innovations, for example, the pressure & temperature sensors and rolling retests described above, some drivers may still attempt to bypass or disable the device and drive the vehicle. For these cases, it makes more sense to ensure that evidence of tampering can easily be seen. For example, the data logger records disconnections, and sealed wiring and circuits means that evidence of disturbance is left behind. Backup systems ensure that disconnection does not lead to data loss.

Penalties for circumvention can also help to reduce the incidence. Victoria, for example, cites circumvention as a serious offence, with fines of up to $3000, up to four months possible imprisonment, and/or immobilization of the vehicle for up to twelve months. 'Suspect events' such as those which may be identified by the service provider can be investigated by Victoria Police. The Victorian program has also introduced an incentive, where if there is no evidence of circumvention or misuse in the first three months of use, the period between services may be extended to two or three months (instead of the usual one month), reducing costs and inconvenience for the user.

3.3.20 Alcohol Interlock Programs

Alcohol ignition interlock programs are used as a sanction for drink drivers in many states and provinces within the United States, Canada and Australia, as well as Sweden. Interlocks were developed in North America and it now holds the vast majority of interlock users with 1.6 million drivers charged with a DWI offence in North America annually and an estimated 70,000 interlocks in use (Beirness and Marques, 2004). The reasons cited for lack of take-up, even in those states that have had interlock legislation for some years include:

- interlock programs have not been developed to give effect to the legislation
- programs are available in only some counties or court jurisdictions
- participation may be voluntary on the part of the offender or the sentencing court
- some judges will not order participation in program, even when mandated by law
- there are different incentives to participate (interlock as a condition of probation or a condition of re-licensing)
- there are costs to the offender for use of the interlock including installation, leasing, regular services and de-installation.

Problems with poor offender participation have more to do with the interlock program structure, than current interlock technology per se, although problems with earlier generations of interlocks may have contributed to some of the court system's reluctance to order interlock usage more widely.

[22] Draeger Safety Pacific Pty Ltd Users Guide Interlock XT (brochure #120503VC)

In the **United States**, the earliest legislated use of interlocks for offenders commenced in California in 1987, although participation rates in that state (and in the USA generally) are still very low (DeYoung, 2002). Use is expected to increase in response to Federal legislation – the *Transportation Equity Act for the 21st Century (TEA-21)*. The Act requires all states to enact legislation setting mandatory minimum sanctions for repeat DWI or DUI offenders including impoundment, immobilisation (mentioned earlier) and alcohol ignition interlocks (NTSB, 2000). Forty-two US states have ignition interlock laws for repeat and chronic impaired driving offenders (22 discretionary, 20 mandatory in some situations) (NHTSA, 2005). While legislation may be in place, it seems unlikely that all states have developed an interlock program to support the legislation.

In **Canada**, seven out of the eight provinces have legislation requiring interlocks for offenders, although not all of these provinces have developed programs. Even among the provinces with programs, different approaches have been taken. In some provinces, interlocks are mandatory, in others they are voluntary. Some are judicially administered, while others are managed by the licensing authority. Programs also vary depending on if the interlock is required for a set period of time, or if the offender is required to demonstrate a sustained period of good behaviour before it can be removed (performance based). The interlock programs for offenders in Alberta and Quebec are often cited as examples of best practice because they have a strong focus on rehabilitation with education programs and use the interlock data to feed back into each offender's interlock program.

Interlocks have been widely discussed in **Australia**, and while most states have looked at or considered interlocks as part of drink driving offender management systems, actual use of interlocks relatively recent. So far South Australia (in 2001), Victoria (2002) and New South Wales (2003) have enacted interlock legislation and developed programs to support the legislation. Western Australia is in the process of developing legislation and an interlock program (Hands, 2005). Although Queensland does not have legislation, interlocks have been trialled on a small scale via the use of probationary orders within the court system.

The three legislated programs in Australia have many similarities. All have a near zero BAC limit (zero or 0.02 per cent), and are monitored by the transport authority in each state. All programs are provided on a user-pays basis, but provide some form of low income financial assistance. In Victoria for example, approximately 25 per cent of participants are subsidised (Lyttle, 2005). Each program requires participation in either an educational program or medical assessment. The number of interlocks in use in each state is indicated in Table 18. Although the South Australian program commenced first, very few interlocks have been fitted. This is largely due to the program being voluntary, unlike Victoria where participation is mandatory for at least some categories of drink drivers.

Table 18: Alcohol ignition interlock use in Australia, 2005

* at March/April 2005.

South Australia	Victoria	New South Wales
commenced July 2001	*commenced May 2002*	*commenced September 2003*
114*	1108*	130*
voluntary	*mandatory*	*voluntary*

South Australia

The South Australian interlock program is voluntary, with offenders being able to enter the program from the half-way point in their licence disqualification. The incentive to enter is the reduction in the hard suspension period. The offender must participate in the interlock program for twice the remaining suspension period. So for example, a person with a twelve month disqualification can apply to enter the program after six months, and then remains in the program for twelve months. At the end of this period, the interlock is automatically removed. Offenders are not eligible to enter the program if they are learner drivers or motorbike riders, if they are found to be alcohol or drug dependent, or if the drink driving offence was a high BAC or repeat offence. Participants must be assessed for alcohol and drug dependence and are ineligible for the program if found to be dependent. Participants are counselled on entry, and again on exit. South Australia is unique in Australia in that it charges participants a $30 monthly administrative fee. The South Australian program has recently been reviewed, so some aspects of the program may change.

As Table 18 (above) showed, participation rates are extremely low in South Australia, suggesting that the voluntary approach is not effective, and that the incentive of early return to driving is insufficient to encourage participation. As the first jurisdiction in Australia to implement an interlock program, it is likely that a softer initial approach was preferred.

New South Wales

The New South Wales program is also voluntary, and only available to lower risk offenders. 'Habitual traffic offenders'[23] are ineligible. Offenders are also not eligible if they have defaulted on a fine, if seeking licence reinstatement for a heavy vehicle or motorbike licence, or a learner driver. Low range BAC (that is, 0.05g/100ml – 0.08g/100ml) first offenders are also not eligible to enter the program. The offender requests an interlock at sentencing, then serves a shorter hard suspension period (the Disqualification Compliance Period, DCP). The Interlock Participation Period (IPP) is typically four-times the length of the DCP, so a three month DCP is followed by twelve months IPP, and twelve months DCP is followed by 48 months IPP. There is also a legislative requirement for service providers to notify the RTA on the same day if tampering is identified.

Victoria

Victorian Legislation for interlock programs commenced in May 2002. The program is mandatory for both high BAC first offenders and repeat offenders, and the interlock period is added onto the disqualification period. There is no reduction in the hard suspension period. The program is currently offered on a discretionary basis for some offenders who were convicted prior to May 2002 who wish to re-enter the licensing system. Mandatory minimum disqualification periods range from 12 months (offences less than 0.07 per cent) to 48 months (0.24 per cent and over, DUI and breath test refusal). To enter the interlock program, an offender must:

- serve the disqualification period
- undergo the first clinical assessment (12 months prior to end of disqualification)
- complete an eight hour drink drive education course
- undergo a second clinical assessment, then
- apply to the court for a Licence Restoration Order (LRO).

[23] 'Habitual traffic offender' if the offender had 2 or more previous offences (before current offence) in last 5 years (*Road Transport (General) Act*, s28)

All recidivist or high BAC offenders must go back to Court before VicRoads will re-licence the driver, a feature that is described as significant and unique in Australia (Lyttle, 2005). A Licence Restoration Order allows the offender to apply to VicRoads for an Interlock licence which is only valid while driving an interlock equipped vehicle. Restrictions placed on the legislators meant that the interlock period had to be built onto the existing rehabilitation program, with no reduction of the disqualification period or fines. Minimum interlock periods are specified (Table 19), but there is no automatic completion time as offenders must obtain an Interlock Condition Removal Order (ICRO) showing that he or she is 'fit and proper to have the interlock removed' before the "I" condition is removed.

Table 19: Minimum duration of interlock condition

Number of Offences	Period for which condition "I" is imposed
2 offences, last offence ≤0.15 per cent	Minimum 6 months "I" condition
3+ offences, or 2 with last offence ≥ or a non BAC offence	Minimum 3 years "I" condition

Removal of the ICRO requires:

- Compliance Assessment Report (CAR) – based on summary reports from each interlock service
- ICRO Assessment Report – prepared by clinical assessor, based on interlock service report summaries and CAR, assessment of alcohol use since interlock installed
- last licence restoration report (when driver last re-licensed)
- police evidence.

At April 2005, magistrates had refused 40 ICRO applications (Lyttle, 2005).

3.3.21 Interlock Program Costs

Some resistance to ignition interlocks has been regarding cost. In virtually all programs, interlocks are supplied on a user-pays basis. The judicial system in the United States (in particular) has been reluctant to order interlocks without clear evidence of efficacy. Current costs to users are touted as being as little as US$1-$2 per day in North America, 'equivalent to a single drink'. Costs for interlocks will vary between manufacturers, and depend on factors such as:

- responsibility for funding the low income subsidy (manufacturer or government)
- service intervals (may vary by jurisdiction and stage of program),
- number of suppliers in the market (monopoly, duopoly or wider competition)
- size of the market.

Research conducted for the purposes of the IDLR indicates that the costs for supply and maintenance of an interlock in Australian programs are in the order of AU$1870 - $1970 (Table 20). For the purpose of calculating costs, it is assumed that the interlock is installed for a period of 12 months, with services required at monthly intervals. In practice, fewer services are likely to be required where programs offer longer service intervals for good behaviour, so the actual cost will be lower than that identified in Table 20. The average daily cost for the interlock is around AU$5 (exclusive of other program costs such as rehabilitation courses). There are additional costs (generally not subsidised) for early service recall following lockout caused by tampering, use of emergency over-ride, misuse or an excessive number of failed tests.

Table 20: Costs for supply and maintenance of an interlock in Australian programs
(Assuming an interlock is installed for a period of 12 months)

	NSW	**SA**	**VIC**
Install/De-install	$165/$55	$315/$95	$120/$120
Rental and Service per month	$137.50	$130	$140
Total (12 months)	**$1,870**	**$1,970**	**$1,920**
Daily Cost	**$5.12**	**$5.40**	**$5.26**

Subsidies for low income earners are available in all three legislated programs. In South Australia the low income subsidy applies to monthly rental/service costs and the administration fee. The maximum subsidy is 25 per cent (no dependents) and 50 per cent (one or more dependents). It does not cover installation, removal or early service recall. Victoria simply provides a low income subsidy of $50 per month, whereas in NSW, the subsidy applies to installation, services and removal ($50 each)

The alcohol ignition interlock trial conducted in Queensland (Freeman, Schonfeld and Sheehan, 2003) was conducted through the court system in association with the Under the Limit trial (UTL). Participation in the trial was voluntary in that the offender had to agree to participate before the court order would be made. No subsidy was available for the program, however in some cases court fines were reduced or waived in lieu of participation in UTL.

3.3.22 Interlock Benefits

Evaluations of North American programs have generally found that interlocks are effective at reducing re-offence rates while fitted to the offender's vehicle however, re-offence rates increase again once the interlock is removed. Reductions of 40 to 95 per cent in repeat DWI offences have been observed among convicted drink drivers required to use an interlock-fitted vehicle, in comparison to offenders who were simply suspended from driving (Marques, Bjerre, Dussault, Voas, Beirness, Marples and Rauch, 2001). The consistently positive effect of interlocks has been demonstrated in at least different studies during the 1990s (Marques et al, 2001, also reviewed by Coben and Larkin, 1999). These studies included interlock periods between six and eighteen months, and a mix of first and multiple offenders. All but one of these studies showed that once the interlock was removed, re-offence rates among the interlock participants returned to the level of the comparison non-interlock group (Marques et al, 2001). This indicates that these 1990s programs interlocks are effective at stopping drink driving while fitted, but do not lead to sustained changes in drink driving behaviour.

Beirness and Marques (2004) note in their review of interlock programs that "…to some extent, the measured impact may be related to specific operational aspects of the program, the types of offenders who participate in the program, as well as the research design used to evaluate the program". Some reservations have been expressed about the value of the interlock studies, largely because many of the interlock programs evaluated to date were voluntary (participants could opt out) or judicial discretion may have created selection bias (Coben and Larkin, 1999). This has the potential to bias the results, favouring those with a lower likelihood of recidivism. However, a recent study found that mandatory participation in an interlock program was no more likely to predict recidivism than voluntary participation (Beirness, Marques, Voas and Tippetts, 2003).

Further investigation of the research literature needs to be completed in order to identify whether factors such as length of the interlock period, monitoring of interlock data and performance feedback, and fixed or extendable interlock periods are more or less beneficial to reducing re-offence rates while the interlock is fitted. This investigation will be undertaken as part of the IDLR.

3.3.23 Interlock Issues

There are some issues surrounding the effective use of interlocks as a drink driving sanction. More interlock issues are identified in this document than for the vehicle sanctions described earlier. In many respects this simply indicates that the research on interlocks as part of the IDLR has progressed further than for the other vehicle sanctions. It also reflects a much wider discussion of interlocks in the research literature, based on a broader presence of interlock laws. For example, in the United States, 42 states have ignition interlock laws for the DWI offences, but only 13 states have vehicle impoundment laws and 27 have confiscation laws (NHTSA, 2005). It is recognised that the laws may not yet be translated into active programs.

One of the most significant issues holding back wider use of interlocks has been the cost of buying/leasing the devices, installing, servicing and later removing the devices from the vehicle. As many offenders can be categorised as being on lower incomes, the cost becomes a significant barrier to accessing the potential benefits of an interlock, and may be a barrier to re-entering the licensing system. Cost may be a barrier to judicial use of interlocks (DeYoung, 2002). However, Australian programs currently cost around $5 per day which should be compared to the cost of other sanctions such as impoundment which is estimated at $15 per day ($15 per day cited in Brown, M. (2005) 'Hoons face loss of car at first offence", February 9, Sydney Morning Herald).

It was announced at the conclusion of the 2006 Road Safety Summit that legislation will be introduced requiring that repeat drink drivers (second or more offence) must have an alcohol ignition interlock fitted as a perquisite to licensing. Consideration of implementing this requirement as part of an administrative rather than judicial process may do much to address some perceived reluctance of the judiciary to require fitting of an alcohol ignition interlock.

The risk in using interlock participation as condition for re-licensing is that many offenders will simply choose not re-enter the licensing system. For example, a Californian study found that only 16.4 per cent of second offenders applied for reinstatement within three years of becoming eligible, following 18 months of suspension (Tashima and Helander, 1999, cited in Voas et al, 1999). Culver (1996, cited in Voas et al 1999) cited participation rates of 80 to 90 per cent for first and second offenders, after offering the less attractive option of electronically monitored house arrest. This is offered as part of a court probation process, which would not be available for a program administered solely through the licensing authority. California and Texas have each introduced interlocks as a condition of probation. Failure to comply may result in incarceration (Voas et al 1999). Other jurisdictions have introduced other vehicle sanctions such as confiscation, immobilization or impoundment (particularly targeting driving while suspended). Quebec introduced vehicle sanctions (impoundment) at the same time as interlocks and this may have had some impact on interlock installation rates. One report (Dussault and Gendreau 2000) indicated that Quebecois participation rates were 20 per cent, a relatively remarkable result considering that it is a voluntary program. This suggests that impoundment and interlocks may be relatively complementary sanctions.

Some programs are delivered through administrative means by the licensing authority, whilst other jurisdictions impose interlock conditions through the judicial system. It has been observed in North America in particular, that even when an interlock is a mandatory penalty, the judiciary can be reluctant to use it. In California, the law required judges to order an interlock for all drivers convicted of driving on a DUI-suspended driver licence (DWS-DUI) (DeYoung, 2002). An evaluation of court records showed that less than ten per cent received an order to install an interlock device, and only two per cent actually installed the device. Reasons why interlocks were not ordered by judges more often included the offenders' inability to pay for the device, that the offender did not own a vehicle, or in some cases, the judges simply did not believe the devices were effective (DeYoung, 2002). The discrepancy between court orders made and devices installed pointed to the need for greater monitoring of compliance with court orders. In contrast, disadvantages with administratively operated interlock programs are that there may be reduced flexibility, and depending on how the program is implemented, sometimes a lesser ability to monitor participants' progress. This may limit use of the performance-based approach (discussed below).

Concerns are often cited that offenders will choose to bypass the interlock by driving another vehicle. Jurisdictions using interlocks as a sanction generally have, as a condition of issuing the offender with a restricted driver licence, a requirement that the offender only drive a vehicle fitted with an interlock. Failure to comply with this can result in revocation of the interlock licence and associated driving privileges, meaning a return to disqualified status. There may be additional penalties, for example, in Victoria, a driver who breaches interlock licence conditions (including driving a non-interlock equipped vehicle, or with the interlock disengaged or circumvented) can be liable for a fine of 30 penalty units, four months imprisonment or the vehicle may be immobilized for up to twelve months (regardless of the ownership of the vehicle) *s50AAD Road Safety Act 1986*.

There is an inconvenience to family members if the family car is fitted with an interlock. All people driving the vehicle must pass the interlock test before being able to use the vehicle, which means that training must be provided to everyone who regularly uses it. In addition, the interlock may be deemed to unfairly target non-offending family members. Current technology is such that any person driving the interlock fitted vehicle must have a zero percent BAC as well – whether or not this is a court ordered requirement for a particular family member. Although interlocks can be fitted with an over-ride switch for emergencies, this is not practical for everyday use and can limit effectiveness of enforcement. The development of driver identification technologies, for example, providing a personal identification number (PIN), might improve this situation. However, it should be remembered that the advantage of an interlock is that it provides mobility, it prevents a drink driver from using that vehicle and endangering family members, and may be less socially stigmatizing than having the family vehicle immobilized or impounded.

Another key issue in developing an interlock program is the period for which an interlock is required. In Australia, two programs (SA and NSW) impose the interlock for a restricted period of time, and the interlock is removed once the time is completed. It is a punishment based on serving a required period of time, and is essentially, a one size fits all approach. However, the Alberta program is based on performance while on the interlock program, and the interlock is only removed once the offender demonstrates that he or she can operate the vehicle over a period of several months without triggering a lock-out. This performance-based approach is generating interest because it presents an incentive for offenders to change their behaviour. A sanction that leads to drivers separating drinking and driving behaviours in the longer term would be an ideal solution. As the performance-based approach is relatively new, the effectiveness is still being evaluated. Victoria's interlock program also uses the performance-based approach, with the interlock condition only removed and full licence status returned when interlock data reports and alcohol assessment reports are satisfactory.

One of the most important considerations for Queensland, considering the geographical distribution of the population, is ensuring access to interlock service providers. Services are generally required on a monthly or bi-monthly basis, and in the case of a lock-out caused by tampering or too many failed start-up attempts, the vehicle remains immobilized until a service provider can access the vehicle. Interlock service providers would need to cover a vast area. The alternative is that interlocks are restricted to offenders based in the more populous areas, however, it may be deemed discriminatory to offer a vehicle sanction to one sector of the population, but not to be able to offer it to another. Several Canadian provinces have well developed interlock programs and these may provide useful direction for providing equal access, considering Canada also has significant distances between population centres. Victoria (Australia) addressed the accessibility issue by requiring that authorized service providers must be able to provide interlock servicing within 150 kilometres of an offender's home. Unfortunately distances between population centres in Queensland are not comparable.

3.3.24 Conclusions – Other Vehicle Sanctions

Immobilisation represents a relatively low cost option, compared to forfeiture or impoundment that could be used to reduce repeat drink driving following apprehension, and provides greater surety than key confiscation. It could incapacitate offenders' vehicles if used for longer periods of time, preventing future drink driving events (while the devices are fitted), and may have some carry over effect once the sanction period is completed. Immobilisation has been shown to work in conjunction with impoundment in Ohio, but could be used as an alternative to key confiscation at the point where drink drivers are detected, with fewer risks that the offender will use the vehicle while under the sanction period.

Registration cancellation and plate impoundment appears to be an attractive sanction because it is a relatively low-cost option. If implemented well, the sanction appears to reduce recidivism as it increases the probability of a re-offender being detected while using the same vehicle, although further studies should be undertaken to confirm this. Plate impoundment appears to be a less contentious option than vehicle impoundment as vehicle plates are usually the property of the state, not the individual. However, the advent of Personalised Plates and prestige plates in Queensland may limit the usefulness of this argument as it would entail seizure of personal property. It is unlikely that this sanction would work usefully with key confiscation, however, impoundment and/or forfeiture may be an effective sanction to use if an offender breaches the cancellation and plate impoundment order.

Identification via **stickers** placed on the vehicle plats showed some promise in Oregon where it was trialed, and it is certainly a lower cost option than impoundment, immobilization or forfeiture. However, it is telling that the legislation was allowed to sunset in both Washington and Oregon, and it does not appear to have been taken up in any other jurisdiction since. Again, the use of personalized plates could limit usefulness unless a sticker design could be developed that would stand out against the range of colours and designs available for personalized plates. Likewise, impoundment could be useful to enforce compliance with the conditions of the sticker laws, however, it appears unlikely that the sanction could be usefully combined with key confiscation.

Alcohol ignition interlocks are shown to reduce the incidence of drink driving by offenders, at least for the period the interlock is fitted to the vehicle. Interlocks can incapacitate drink drivers, in that the offender can only operate the vehicle while sober. The major advantage is that mobility can be retained, which means that employment is not put at risk, and dependents of the offender are not disadvantaged. Cost borne by the individual is a significant disadvantage, but should be compared to the cost of other vehicle sanctions such as impoundment or forfeiture, remembering that the interlock provides mobility which can be important for employment, while preventing operation of the vehicle by alcohol-impaired drivers. Impoundment can be complementary to ignition interlocks, as a penalty to be used if the offender does not comply with interlock licence conditions. Impoundment or key confiscation could be used as a pre-conviction sanction, prior to installation of an interlock. Pre-conviction impoundment has the potential to be used to ensure compliance with an order to install an interlock, by refusing the release of the vehicle until the interlock is installed. However, the practicalities of these options need to be explored further.

This analysis has only briefly touched on a few of the issues surrounding these other vehicle sanctions. There are undoubtedly many other issues that need to be identified and examined for their relevance to Queensland's legislative framework and social justice implications. Further and more detailed analysis will be undertaken as part of the IDLR.

4. Other Recidivist Drink Driving Countermeasures

Issues for comment:
9. Can other recidivist drink driving countermeasures be used to improve the effectiveness of vehicle sanctions? How?

4.1 Rehabilitation Programs

4.1.1 Introduction

Issues Paper 10 (the Paper) notes that other drink driving countermeasures directed towards recidivists may be less invasive than vehicle sanctions. The first of these measures which Queensland Transport has considered under the IDLR is Rehabilitation. The Paper suggests that rehabilitation may target the underlying drinking behaviour of offenders. Research suggests an association between problem drinking and drink driving recidivism. In the U.S. studies found that 23 per cent of drink drivers are considered problem drinkers.

Legal sanctions that are applied to drink drivers can include both a period of licence disqualification and a monetary fine depending on the severity and sentencing options for drink driving offenders in Australia. Legal sanctions (particularly licence disqualification periods) are imparted upon drink driving offenders to prevent them from re-offending.

Licence disqualification is the most common form of punishment for drink driving offenders in Australia and is regarded as the most appropriate penalty for drink driving. The problem with licence disqualification is that it may not prevent an offender from driving. Unlicensed driving has the potential to undermine any benefits that may be gained through the use of licence sanctions as a drink driving countermeasure.

An efficient system in imposing and enforcing licence sanctions requires:

- immediate and certain suspension of licence
- current traffic records to provide an up-to-date offender history to the magistrate prior to sentencing
- identifying and publicising that driving while disqualified is a serious offence
- some form of treatment (such as alcohol rehabilitation) in conjunction with licence sanctions.

In terms of enforcement, Queensland Transport argues that compulsory licence carriage would help to address unlicensed driving as disqualified drivers would be required to provide their licence immediately upon request with no provision for providing it at a later date (and possibly falsifying their identity)

Drink driving as a result of alcohol abuse and alcohol related problems is still a major public health concern. Road trauma, unlicensed driving and recidivist offenders contribute to an increase in financial and legal responsibilities on the community.

Ferguson, Sheehan, Davey and Watson (1999) have identified that drink driving has consistently been shown to be associated with a range of risk factors:

- young male from a low socio-economic backgrounds
- alcohol consumption problems and high levels of alcohol use
- poor understanding and a deviant attitude toward drink driving
- a history of criminal and traffic convictions

Drink driving rehabilitation programs are specific intervention strategies that are proposed alternatives for expensive and counterproductive jail terms. There are many different types of rehabilitation programs that include education-based programs, psychotherapy/counselling based programs or combination programs that include both educational and counselling elements.

There has generally been a positive evaluation of drink driving rehabilitation programs. For example:

- meta-analysis suggests that rehabilitation programs can have a seven to nine percent reduction in recidivism *in addition* to the benefits shown in licence sanctions (Ferguson, Sheehan, Davey,Watson,1999).
- drink driving rehabilitation programs can impact on knowledge and attitudes toward drink driving, psychosocial functioning and improvement in lifestyle.
- rehabilitation programs which include a combination of counselling, education, probation, and/ or licence suspension are more likely to result in a positive outcome than a single or dual mode of interventional approach.

4.1.2 Types of Rehabilitation Programs

Ferguson, Sheehan, Davey and Watson (1999) classify drink driving rehabilitation program into three types:

- education programs
- therapeutic programs
- combination programs

Educational programs aim to deliver knowledge to an offender about their drinking behaviour and how this affects their driving behaviour. The aim is for this information to allow the drink driver to choose behaviours that prevent future drink driving, either by choosing to drink less, planning alternative transport or choosing not to drive when intoxicated.

Therapeutic programs focus more on the drinking behaviour, its effect on all areas of life, and how changes can be made to reduce alcohol consumption.

Combination programs using both of these approaches (therapeutic and educational) are becoming increasingly popular. Combination programs are often expanded to include group work to impart drinking/driving knowledge and individual sessions for therapeutic measures.

4.1.3 Rehabilitation Programs in Queensland

4.1.3.1 Legislation

The Transport Operations (Road Use Management) Act 1995 s82 states "*that the court may order the offender to attend and complete a training program while the offender is disqualified from holding or obtaining a Queensland drivers licence".*

As a condition of probation a drink driver is ordered to attend a program, and a written notice is given to the offender stating the time, day and place of the training program. Attendance at a rehabilitation program is a specific condition of the probation order and failure to attend this recommended program may result in the offender being returned to court and dealt with for the breach of the order.

There is very limited information and research regarding the number of court issued notices which require offenders to attend a training program. Information in relation to the type of programs being administered is also very limited. Information regarding course attendance requirements for low range blood alcohol penalties in Australian jurisdictions is provided in the table below.

Table 21: Alcohol-related driving penalties for low range blood alcohol content

State	First Offence	Second and subsequent Offences
Queensland	Maximum $1050 fine average $800) and between 1-9 months licence disqualification. Infringement notice available. Option of "Under the Limit" drink driving rehabilitation program with reduction of fine.	2nd offence - $500-$2250 fine or 6 months jail between 6-18 months licence disqualification. 3rd offence - $2100-$4500 or 9 months jail and 6 months – 3 years licence disqualification. Option of "Under the Limit" drink driving rehabilitation program with reduction of fine.
New South Wales	Maximum $1100 fine and 3-6 months licence disqualification.	Up to $2200 fine and 6-12 months licence disqualification Voluntary pre-sentence diversionary "Traffic Offender Program" and discretionary post sentence "Sober Driver Program" and probation supervision available.
Victoria	$300 fine and 10 demerit points. Can be via infringement notice or on the spot fine. "Drink Driver Education program" available and compulsory in some instances depending on age and BAC level.	Court appearance required. Minimum fine $420. Magistrates can vary fine up to $2500 and/or up to 3 months jail and 12-14 months licence disqualification. Interlock condition for at least 6 months. "Drink Driver Education Program" available and compulsory in some instances depending on age and BAC level.
South Australia	$700 fine	2nd offence - $700 fine and licence disqualification for a minimum of 3 months. 3rd offence-$700 fine and minimum licence disqualification for 6mths and if a 4th offence disqualification is for 12 months. Alcohol interlock condition available on application if disqualification period >6 months
Northern Territory	$100-$500 fine can be via infringement notice, and/or up to 3 months jail and licence disqualification may be imposed.	Up to $750 fine and/or up to 6 months jail and may impose licence disqualification. "Drink Driver Education Program" or treatment prior to re-licensing.
Western Australia	$100-$200 fine. An infringement notice of $100 may be issued.	$250-$500 fine and disqualification minimum of 3months.
Australian Capital Territory	Maximum $500 fine and 2-6 months disqualification. Optional 'Drink Driver Program" available at offender's expense that will reduce penalty.	Maximum $1000 fine and 3-12 months disqualification. Optional "Drink Driver Program" available at offender's expense that will reduce penalty.
Tasmania	$200-$1000 fine and/or 3 months jail and 3-12 months licence disqualification	$400-$2000 fine and/or 6 months jail and 6-24 months licence disqualification

In Qld, SA, TAS and VIC a further drink driving offence is regarded as a second or subsequent offence if it has occurred within five years, three years, ten years and tens years respectively of the previous drink driving conviction. In WA, NT, ACT, NSW there appears to be no time span available between the most current conviction and a previous conviction for it to be considered a subsequent conviction.

Alcohol-related driving penalties in Qld for low range BAC is >0.05mg/100ml to <0.15g/100ml

Alcohol-related driving penalties in Tasmania for low range BAC is >0.05g/100ml to <0.1g/100ml

Alcohol-related driving penalties in Victoria for low range BAC is >0.05g/100ml to <0.07g/100ml. Specific penalties for each BAC level above 0.07g/100ml also apply

Alcohol-related driving penalties for low range BAC in all other states and Territories are between >0.05 g/100ml to <0.08g/100ml

4.1.3.2 Under the Limit

The Under the Limit (UTL) drink driving rehabilitation program was developed by the Queensland University of Technology's Centre for Accident Research and Road Safety – Queensland (CARRS-Q) as psycho-educational therapy for drink drivers. The intention is to provide participants with three alternatives to drink driving:

If drinking – don't drive

If driving – don't drink

stay under the legal limit for your licence

(Ferguson, Schonfeld, Sheehan & Siskind, 2001)

Under the Limit is administered by CARRS-Q and provided at 50 TAFE Institutes throughout Queensland on a fee for service basis. The program is offered to drink driving offenders by magistrates as part of sentencing, with provision for magistrates to defer payment of fines to permit course attendance.

The UTL drink driving rehabilitation program targets three levels of offenders (with programs tailored to meet the needs of the following three categories):

- first time offenders with a BAC reading of 0.15 per cent or more
- first time offenders with a BAC reading of less than 0.15 per cent
- repeat offenders

If referred for rehabilitation, participants enter a probation order to attend all sessions, to not to drive to sessions and to not consume alcohol prior to sessions. Successful completion of the program requires these conditions to be met before participants are issued with a Statement of Attainment by the program provider.

The UTL drink driving rehabilitation program is delivered over eleven, one-and-a-half hour small group therapy sessions. These sessions cover:

- consequences of drink driving
- standard drinks
- driving safely
- blood alcohol content and driving
- good reasons to cut back
- alternatives to drink driving
- avoiding/coping with high risk situation
- ways to "Stay Under the Limit"
- stressors and strains
- coping strategies
- review

4.1.4 Rehabilitation Programs in Other Jurisdictions

4.1.4.1 New South Wales

The NSW Sober Driver Program was developed as a whole of government initiative to target repeat drink drivers.

The Program targets adult offenders (18+) who are convicted of more than one drink driving offence within a five year period. It consists of a 16 hour (8 x 2 hour sessions) educational and therapeutic program, that addresses issues such as the consequence of drink driving, effects of alcohol on driving, managing drinking situations, alternatives to drinking and driving and relapse prevention and stress management. The Program is jointly funded by the Road Transport Authority of NSW (RTA) and Motor Accidents Authority of NSW (MAA), and is managed and delivered by the Probation and Parole Service.

The NSW Sober Driver Program provides a positive counterpart to existing sanctions such as fines and/or licence disqualification imposed by the court and can be set as a condition of a court order.

4.1.4.2 Victoria

The Victorian Drink Driver Education Program (VDDEP) is a range of procedures that drivers who have been convicted of drink driving offences must undergo as a pre-requisite for regaining their Victorian driving licence. The VVDEP comprises of a variety of requirements including attendance at an eight hour education course and one or more assessments for alcohol problems including dependency. Not all offenders are required to undertake all components.

Victoria's drink driver rehabilitation program was independent of the sentencing system but is an administrative requirement for re-licensing. The Victorian program is managed through the courts and is compulsory for the subgroup of offenders who wish to have their drivers' licences re-instated. It was not compulsory for the majority of drink drivers who had their licences disqualified to attend a drink driver education program as a part of the re-licensing. Alcohol interlock legislation came into effect in May 2002 in Victoria and completion of an interlock period is required before re-licensing for repeat offenders and some serious first time offenders who commit an offence on or after this date.

4.1.4.3 South Australia

There are no specific drink driving rehabilitation/education programs in South Australia. Under section 47IA of the *South Australian Road Traffic Act 1961* the court can order a person to attend a lecture, which is in accordance with regulations, within six months. The Court may also make an order enabling the drink driver to participate in the "Alcohol Interlock Scheme" following an application made to the Registrar of Motor Vehicles (South Australian Traffic Act 1961, section 50,51). Once the offender has completed half of their disqualification period they can apply to the Registrar of Motor Vehicles to have their licence reinstated if they are prepared to participate in the "Alcohol Interlock Scheme" for a period of twice the number of days remaining on their disqualification.

4.1.4.4 Western Australia

The Western Australian government is currently reviewing a comprehensive drink driver program for all drink driving offenders to be established across government and non-government agencies and the private sector.

The proposed drink driving rehabilitation program's main focus is to:

- establish a state-wide program for drink driving offenders across all government agencies and private sector agencies
- substantiate legislation and supporting policies
- monitor and evaluate the effectiveness of the drink driving program
- run the program as voluntary wherever possible
- be accessible in regional and remote areas
- operate on a non discriminatory basis and take into consideration of the specific needs that relate to the socially or economically disadvantaged
- aim at keeping offenders operating within the formal controls where possible and reduce the number who choose to drive without a valid licence

4.1.4.5 Tasmania

Under the Tasmanian *Road Safety (Alcohol and Drugs) Act 1970* s18 a convicted drink driver may be ordered to undertake a prescribed course if the person has never held an Australian/foreign/international driver's licence, is a learners permit holder or has held a provisional licence for a continuous period of less than 12 months.

Tasmania currently has no specific or identified rehabilitation program in place for recidivist drink drivers. There is a program for learner, provision and unlicensed drivers aged up to 25 years however it is only required for young offenders on the recommendation of Magistrates and very few actually recommend the program.

4.1.5 Effectiveness of Rehabilitation

The fundamental models of rehabilitation currently available to drink driving offenders for the treatment of alcohol problems are:

- psychotherapy/counselling based programs
- education based programs
- licence suspension

The psychotherapy/counselling-based programs assume that a drink driving conviction results from a drinking problem that encompasses most areas of the individual's life, and effectiveness of this type of program, is measured by changes to alcohol consumption.

Education based programs focus on the assumption that drink drivers drink and drive because they lack knowledge, resulting in poor decisions being made. The programs assume that drivers need to become more aware of alcohol and its influence on driving as well as being educated on alternatives to drink driving.

Combination programs which include education, psychotherapy/counselling and follow up contact have consistently shown to be more effective than other evaluated models for reducing drink driving recidivism and are currently regarded as best practice. Current evidence suggests that when rehabilitation programs are combined with licence disqualification periods the result is a reduction in recidivism.

Effective rehabilitation programs must consider:

- selection of participants;
- program content and duration;
- delivery mechanisms;
- monitoring of offenders;
- quality control; and
- cost effectiveness.

4.1.5.1 Selection of participants

Court mandate or legal coercion of enrolment into a rehabilitation program can be ineffective and counterproductive as participants are often not motivated to change or defend their actions, adversely affecting any therapeutic benefit. Offenders that are legally coerced into rehabilitation are more likely to be consistent offenders and would not have the personal desire or motivation to rehabilitate themselves, including identifying that they do have an alcohol problem. Individuals who are self-referred to substance abuse treatment will often display lower drop out rates and can achieve improved outcomes than those referred by government agencies.

4.1.5.2 Program content and duration

Incorporating a combination of intervention models rather than one single approach will provide an effective rehabilitation program. The combination of approaches, for example education, psychotherapy/counselling, and licence restriction/suspension/cancellation increases the likelihood that at least one of the components will have an effect on the participants.

McGuire el al (1995) suggests that successful rehabilitation programs need to:

- target high-risk offenders
- target the needs, attitudes and behaviours associated with the offence
- be community based and not based within a single institution
- consider a cognitive and behaviour focus
- be structured with clear objectives and content
- provide a directive approach rather than a non-directive approach
- have high intervention or treatment integrity to ensure that the program is effectively delivered exactly as it is designed as compared to programs that have delivery problems (Sheehan, Watson, Wallace & Schonfeld, 2003)

4.1.5.3 Delivery mechanisms

Delivery of rehabilitation programs needs to consider equity and access as well as funding issues. All offenders whether they live in metropolitan, rural or remote areas should have access to effective rehabilitation programs. Client literacy and cultural appropriateness in both content and language should also be considered in the development and availability of rehabilitation programs.

Trained facilitators and program coordinators need to be aware of factors that influence adult learning to maximise learning outcomes for the participants. Evaluation of whether offenders should self-fund their participation in drink driving rehabilitation programs is still in progress (Sheehan, Watson, Schonfeld, Wallace 2003).

4.1.5.4 Monitoring of offenders

Committing the drink driver to a period of probation combined with other corrective sanctions such as fines and licence suspension is generally accepted in the wider community. A drink driving offender is required to comply with a number of conditions including refraining from breach of the law and undertaking counselling and rehabilitation programs as directed.

Research has shown that the fundamental components of best practice for rehabilitation programs include a sound conceptual model, using a cognitive-behavioural approach. Multi-faceted programming with a specific focus on criminogenic needs is often found to be more effective than ordinary probation, leading to a reduction in recidivism by 21 to 29 per cent (Sheehan, Watson, Schonfeld, Wallace 2003).

4.1.5.5 Quality control

The effectiveness of any drink driving rehabilitation program relies on consistency in teaching standards, specialist staff training, and awareness by magistrates of the rehabilitation programs available to offenders. Evaluation to determine whether the program is value for money and facilitated in the most effective manner possible to achieve optimal outcomes is required. Some form of quality audit process should be undertaken to examine the wide range of quality aspects of agency performance and effectiveness of the program.

There has been some concern over the quality of services provided within the health sector however there appears to be no specific guidelines or assessment programs available to evaluate the quality control in rehabilitation programs (Sheehan, Watson, Schonfeld, Wallace 2003).

4.1.5.6 Cost effectiveness

Very little research has been undertaken in regard to the overall cost effectiveness of drink driving rehabilitation programs. Cost analysis and effectiveness of rehabilitation programs needs to include the suitability of the methods and complexity of the program as well as the political factors that influence the availability and endorsement of rehabilitation programs for drink drivers. Cost analysis also needs to include the estimated cost of productivity loss due to injury or death, property damage, medical, legal, employer, prison, funeral costs as well as police and emergency services. The economic impact on the family and community need to be considered as well as the social and economic benefits in reducing road crashes.

The cost of treatment delivery has not received much research attention as most of the research has been focussed on the effectiveness of the programs. Drink driving rehabilitation may assist in reducing recidivism and alcohol related crashes, however the cost effectiveness of these programs is not clear. As mentioned earlier in this paper, the IDLR will be conducting an in-depth review of rehabilitation programs, as well as other innovative (non-traditional) countermeasures to address recidivist drink driving behaviour, with results anticipated in late 2006. The following table presents the schedule of items and recommended fees of drink driving rehabilitation programs.

Table 22: Schedule of rehabilitation fees

Fees

Schedule of Items and Recommended Fees (GST Inclusive) as at January 2004

It must be noted that these fees are indicative only and that agencies are free to vary these fees by whatever amount they choose. Clients must contact individual agencies directly to discuss fees.

Item AI 1	First Assessment Interview	$165
Item EP	Education Program	$185
Item AI 2	Second Assessment Interview	$175
Item IROA *	Interlock Removal Order Assessment (inc. Licence Restoration Report)	$220
Item OAI	Other Assessment Interview	$135
Item DAI	Discontinued Assessment Interview	$ 50
Item TRR	Court Report for Time Reduction	$ 75
Item DC	Duplicate Course Certificate	
	Course completed in last 3 months	$ 30
	Course completed in last four to 12 months	$ 40
	Course completed one to three years ago.	$ 55

NOTES:
Item OAI is applicable where the client attends an additional assessment interview within a short time of a previous interview. Eg; a second assessment where there was a failure to comply with the 28 day requirement.

* Item IROA This recommended fee is for a straight forward, simple report. Should referrals and/or follow up be required agencies should take this into consideration when determining the appropriate fee.

4.1.6 Rehabilitation and Other Sanctions

4.1.6.1 Vehicle based sanctions - alcohol ignition interlocks

There has been increasing interest in alcohol ignition interlocks in Australia to reduce the repeat offending among recidivist drink drivers with many states adjusting legislation and preparing for the implementation of interlocks. Latest research indicates that interlocks work better when they are combined with probation or some type of rehabilitation treatment such as counselling or medical monitoring.

4.1.7 Rehabilitation Summary

Changing offender's drink driving behaviours, enhancing road safety, and assistance in identification of alcoholic problems to high risk people in society, are all elements of a successful rehabilitation program. Combination programs (education, psychotherapy/counselling and follow up contact/probation) have been identified as more effective than other evaluated methods for reducing drink driving recidivism.

Effective rehabilitation programs need to include:

- combining licence disqualification periods and rehabilitation programs to ensure the most effective way to assist in the reduction of recidivism
- a psychosocial functioning component which will also assist in increasing the effectiveness of the rehabilitation program
- a combination of intervention models including education/information life style changes, strategies and probationary contact as well as supervision
- an optimal class sizes enabling the effective engagement of participants
- Cognitive Behavioural Therapy techniques and strategies to provide the most effective modes of treatment for alcohol related problems
- brief interventions that are both inexpensive and can be incorporated into rehabilitation programs to assist in the reduction of alcohol consumption in heavy drinkers

4.2 Compulsory licence carriage

4.2.1 Introduction

Travelsafe has noted that the argument for the compulsory carriage of driver's licences is aimed at reducing the incidence of unlicensed or disqualified driving. Queensland Transport considers that compulsory carriage could be beneficial for the verification of driver identity and policing of road use legislation including lower BAC (Blood Alcohol Concentration) limits for drivers with restricted work licences. Already there is an Australia wide compulsory requirement for learner, provisional, heavy vehicle and commercial drivers to carry their licence. In addition, New South Wales, Tasmania and New Zealand require all drivers (in addition to those groups previously listed) to immediately produce their licence when requested by police. Given the community acceptance of the existing requirements for compulsory carriage, and the success of its implementation in other states and New Zealand, Queensland Transport could consider compulsory carriage of licences for all drivers in Queensland.

4.2.2 Confirmation of Driver Identity

As outlined above, confirming identify of drivers is an essential requirement of enforcement of BAC restrictions, and identification of drivers who are under suspension or who are unlicensed. While police have a current legal entitlement to view a person's drivers licence in order to determine their identity, section 49 of the *Police Powers and Responsibilities Act 2000* provides that a driver must provide their licence within 48 hours of the police request (if it can not be produced immediately). This provides an opportunity for a proportion of drivers to falsify identify, thereby avoiding detection if driving disqualified, unlicensed or exceeding the prescribed BAC limit for a restricted work licence or to avoid detection as a (recidivist) drink driver. This potentially undermines the impact of vehicle sanctions and road safety legislation for these drivers.

Accurate identification of a driver is already a primary element of the national driver licensing scheme, in order to avoid fraud, evasion of detection for prior driving offences, and so on. Photographic licences have further reduced the opportunity for drivers to assume a false identity. Compulsory carriage of licence would enable police to immediately check photographic identification and other personal details against all drivers intercepted (using for example the MINDA system), thereby greatly reducing the potential for evasion of enforcement. Such a move would strengthen the road safety impact of legislation pertaining to disqualified and unlicensed drivers as well as drivers with a restricted work licence. In turn this would provide a greater deterrent to the driving public in general. A possible method to enhance the effectiveness of sanctions would be the introduction of compulsory carriage of licence. This would result in drivers being aware that they would be likely to be asked to produce a photographic driver's licence on the spot, with no option to delay production until a later time.

4.2.3 Proposed Smartcard Driver Licence

Should the introduction of the proposed new smartcard driver licence proceed, there would be a number of additional benefits from compulsory carriage of licence. Firstly, it would provide the functionality to immediately detect fraudulent licences through a secure validation mechanism contained on the licence microchip. Secondly, compulsory carriage of a smartcard licence would automate the process to detect a suspended or cancelled licence. The police officer would be able to utilise a smartcard reader to detect a suspended or disqualified driver. Road safety would also be improved, as the smartcard licence would contain emergency contact information which police could use in the event of an incident.

4.2.4 Compulsory Carriage of Licence Summary

In summary, Queensland Transport could consider the introduction of compulsory carriage of licence as a countermeasure to improve the deterrence value of vehicle sanctions, while also tightening any loop holes which exist to avoid enforcement of sanctions. When considering the argument for the implementation for compulsory licence carriage, it is supported firstly by added benefits to current road safety, and secondly, by the anticipated further benefits should the smartcard licence system be introduced.

5. Legislation and Sentencing

5.1 Transport Operations (Road Use Management) Act 1995

Issues for comment:
10. How effective are the existing penalties under the Transport Operations (Road Use Management) Act 1995 in reducing repeat drink driving?

5.1.1 Introduction

A review of the current *Transport Operations (Road Use Management) Act 1995 (TO(RUM) Act)* has been undertaken, considering the current provisions. Further consideration has been given to potential changes pending the IDLR findings.

5.1.2 Background

Under s79 of the *Transport Operations (Road Use Management) Act 1995* there are provisions for dealing with driving while under the influence of liquor or drugs or with a prescribed concentration of alcohol in blood or breath. The provisions set out certain penalties for first time offences and recidivist (repeat) drink driving offences.

Current Queensland legislation prescribes that a person is considered to be a repeat offender if they have had a previous offence within five years. In this section, legislation is seen to be effective if drink driving offenders are deterred from re-offending in subsequent years following an initial offence.

The analysis of recidivist drink drivers in question 1, 2 and 3 of this submission for offenders detected during 2002 illustrates the trend for repeat offenders over the period January 2002 to June 2005 where 2002 was used as the base year (where the initial offence was recorded).

5.1.3 Effectiveness of Legislation

The existing penalties under the *Transport Operations (Road Use Management) Act 1995* are sufficient when looking at the data included in questions 1, 2 and 3 of this submission as below.

Table 23: Drink driving offences and offenders, January 2002 – June 2005

No of Offences	No Of Offenders	% offenders	Total Offences	% offences
1	70736	86.6	70736	74.5
2	9142	11.2	18284	19.3
3	1405	1.7	4215	4.4
4	291	0.4	1164	1.2
5 or more	106	0.1	582	0.6
	81680	100	94981	100

Table 23 (Drink driving offences and offenders, January 2002 – June 2005) identifies that nearly 87 per cent of drivers were detected drink driving on only one occasion during the time period examined. Just over 13 per cent of drink drivers were identified as repeat offenders.

Further analysis was undertaken to identify the incidence of repeat offences following an initial offence. In this analysis, 'initial' offence means a drink driving offence committed during 2002. It is recognised that the offender's first offence may have occurred prior to 2002, but this data could not be obtained due to data access limitations in the time available for the preparation of this submission.

The cohort of drink drivers detected committing an offence during 2002 had subsequent drink driving offences identified via the driver CRN.

Table 24: Repeat drink driving offences.

The analysis used the CRNs of all drink drivers detected during 2002, to identify repeat offences during 2002, 2003, 2004 and to June 2005.

Number of Offences	Base 2002 DD CRN's			
	2002	2003	2004	2005
1	22560	1449	1313	708
2	1634	155	132	31
3	179	22	25	4
4	24	2	3	1
5	8	1	0	1
6	3	0	0	0
7	1	0	0	0
Total	24409	1629	1473	745

The significant majority of drink driving offenders detected during 2002 did not commit a second drink driving offence during the subsequent 2.5 years examined (that is, they were not identified committing an offence).

Ninety-two per cent of offenders committed only one offence during 2002, and 6.7 per cent committed two offences, although an unknown proportion of these may include two offences committed as part of the same drink driving event. There were 215 offenders (0.88%) who committed three or more offences during 2002.

As a proportion of the total number of the offenders during 2002, 6.7 per cent were detected committing a further drink driving offence during 2003, and 6.0 per cent were detected committing a drink driving offence during 2004. In the time available, it was not possible to identify if these were the same offenders who continued to offend in 2002, 2003 and 2004, or if the repeat offenders identified during 2003 also offended in 2004.

Although the above analysis does present some trends that repeat offenders do continue to offend over a span of years, it demonstrates that they offend less frequently within those years.

5.1.4 Conclusion

With reference to the above analysis, it could be argued that the legislation is effective in deterring repeat drink driving. Conversely, it may also indicate that the repeat offenders are becoming more aware of Random Breath Testing (RBT) sites and other police enforcement measures.

As noted earlier, following the 2006 Road Safety Summit two of the key announcements made were that legislation will be introduced to enable the impoundment of vehicles of repeat drink drivers and disqualified drivers; and, that for second and subsequent drink driving offences an alcohol ignition interlock will be required to be fitted as a perquisite to licensing. In addition Queensland Transport is undertaking a review of impaired driving legislation through the IDLR. This review may provide a catalyst for further changes to the current legislation; changes to the penalties and sanctions available for courts to deal with offenders post-conviction; and the ability for certain restrictions to be imposed on specific offenders pre-conviction. Recommendations resulting from the IDLR will establish whether there is a need to have the relevant penalties and legislation amended to further reduce the incidence of repeat drink driving offences.

Issues for comment:
11. Are the powers provided to police to manage drink driving under the Transport Operations (Road Use Management) Act 1995 enough?

5.1.5 Police Powers under the TO(RUM)

5.1.5.1 Current Provisions

The provisions of section (79) of the *TO(RUM) Act* create the offence provisions for impaired driving. Section (79A) prescribes the alcohol limits, the no alcohol limit, the general alcohol limit and the high alcohol limit, relevant to the drivers of motor vehicles, trams, trains and vessels within Queensland. These limits relate to the various offences created under section (79).

Section (80) of the *TO(RUM) Act* provides the Queensland Police Service with various powers necessary to detect and prosecute impaired drivers. The section is procedural in that it describes the actions the police are required to undertake to ensure that a suspected offender is correctly dealt with when an offence against any of the provisions of section (79) is suspected.

It is considered that the current powers are adequate for the Queensland Police Service (QPS) to deal with suspect offenders in line with the current legislative requirements and the sanctions and restrictions currently provided to courts to deal with the offenders.

5.1.5.2 Impaired driving legislation review (IDLR)

As noted earlier, the IDLR is looking at the impaired driving legislation in the *TO(RUM) Act*. This review may provide a catalyst for changes to the current legislation, changes to the penalties and sanctions available for courts to deal with offenders post-conviction and the ability for certain restrictions to be imposed on specific offenders pre-conviction.

Development of these recommendations from the IDLR will include consideration of the need to enhance the powers available to the Queensland Police Service for dealing with impaired drivers, and whether there is a necessity to have the relevant legislation amended.

5.1.5.3 Summary

Having reviewed the current provisions of the current *TO(RUM) Act* , Queensland Transport has concluded that the powers provided to the QPS to detain and lawfully prosecute those drivers detected with an alcohol concentration in their breath or blood are sufficient. Attachment (1) provides an overview of the powers currently available to the police within section (80) of the *TO(RUM)` Act 1995.*

5.2 Police Powers and Responsibilities Act 2000

5.2.1 Introduction

In November 2002, legislation designed to specifically address hooning behaviour was introduced through amendments to the *Police Powers and Responsibilities Act 2000* (PPRA).

This legislation concerns those motor vehicle operators who engage in (hooning) behaviour, described as a "prescribed offence", and defined in Schedule 4, (Dictionary) of the PPRA as being;

> ***Prescribed offence,*** for chapter 2, part 6, division 2 means any of the following offences committed in circumstances that involve a speed trial, a race between vehicles, or a burn out –
>
> (a) an offence against the Criminal Code, section 328A committed on a road or in a public place; or
>
> (b) an offence against the Road Use Management Act, section 83; or
>
> (c) an offence against the Road Use Management Act, section 85; or
>
> (d) an offence against the Road Use Management Act involving wilfully starting a vehicle, or driving a vehicle, in a way that makes unnecessary noise or smoke.
>
> *Note –*
>
> At enactment of this definition, a relevant offence for paragraph (d) was an offence against the *Transport Operations (Road Use Management-Road Rules) regulation 1999*, section 291(1) (b).

To clarify:

- section 328A of the Criminal Code is the offence of Dangerous operation of a vehicle,
- section 83 of the Road Use Management Act (*Transport Operations (Road Use Management) Act 1995*) is the offence of Careless driving of a motor vehicle,
- section 85 of the Road Use Management Act (*Transport Operations (Road Use Management) Act 1995*) is the offence of Racing and speed trials on roads.

During the period 4 November 2002 until 30 September 2005, there were a total of 2191 vehicles impounded for a period of 48 hours by police for prescribed offences. Of those offenders detected whose vehicles have been impounded, 46 who had been detected were second time offenders. This entitles the Court, on an application made by the police, to impound the offenders' vehicle for a period of three months. A further three offenders have been detected committing a third prescribed offence within the relevant period (three years from the first offence), and it is understood that applications for forfeiture of these offenders vehicles have been made to the relevant courts.[24]

[24] Data supplied by State Traffic Support Branch, Queensland Police Service

Issues for comment:

12. How effective is the Police Powers and Responsibilities Act 2000 in reducing the number of individuals driving carelessly, dangerously, in racing or speed trials or in a way that makes unnecessary noise or smoke?

5.2.2 Effectiveness of the Legislation

Prior to the enactment of the anti-hooning legislation, each of the offences now described as 'prescribed offences' did not have any impounding sanctions attached. Those offences were most often dealt with in isolation when detected, for example a traffic infringement notice with a monetary fine was issued for the offence of Creating undue noise by manner of operation (unnecessary noise and smoke as a prescribed offence). The offence of racing and speed trial was one that required the offender to appear in court either through an arrest process or by issue of Complaint and Summons. It should be noted that the offences of dangerous operation of a vehicle or careless driving of a motor vehicle are committed by a wide range of offenders, and cover a range of behaviours in addition to hooning behaviour.

As a result it is now difficult, if not impossible, to accurately evaluate the deterrence effect of the PPRA amendment in comparison to the deterrence effect of previous (isolated) measures that could be taken against hooning behaviour. It may also not be possible to establish whether there has been a decline in the number of offences being committed, due to variation in the level of enforcement activity. Variance in the enforcement regime and recording of enforcement activities prior to the enactment of the PPRA offences, mean that it is doubtful that a suitable comparison could be made.

Certainly, since the enactment of the amendments, there has been an identifiable and measurable level of enforcement and detection aimed specifically at the anti-social hooning offences. This enforcement has resulted in the impoundment of vehicles and the associated appearance in a court by the driver of the vehicle.

The number of vehicles impounded since the commencement of the hoon legislation can largely be attributed to the high probability that members of the QPS have been actively targeting the hooning offences. The increased targeted enforcement of the offences by the QPS and the subsequent elevated level of media coverage of both the offences and the enforcement practices of the police, have contributed to the offences gaining a higher profile than was previously the case.

It is difficult to quantify whether there has been a decrease in the amount of behaviour offences since the introduction of the legislation. However, it is possible to infer that the legislation has been effective due to the small number of offenders apprehended a second or third time after the initial impounding of their vehicle. It is also possible to infer that the impoundment of offenders' vehicles has a substantial deterrent effect on them recommitting the prescribed offences. Again this inference is as a result of the small number of repeat offenders detected in the time since the legislation has been enacted. Over time further evaluation of the long term trend will need to be undertaken.

5.2.3 Deterrent Effect of Impounding Vehicles

When reviewing the effectiveness of the anti-hooning legislation, it must be considered that the target group for this legislation is a relatively small group. The group consists of, amongst others, vehicle enthusiasts who generally place a high value on their vehicles, spend a considerable amount of money on vehicle modification and enjoy "showing off" their vehicles to their peers.

The desire to "show off" often leads to large gatherings of the enthusiasts and spectators, usually in areas that are away from the general public such as industrial estates. It is within these areas that the offences are committed, for example burn-outs and similar behaviour. While there appears to be some deterrent effect attributable to impounding vehicles, it does not appear to be sufficient to prevent a large number of the groups from congregating and engaging in hooning behaviour.

As mentioned previously, it is not possible to measure the effectiveness of impoundment of a vehicle as a deterrent to committing the prescribed offences, as prior to the enactment of the legislation the size of the groups undertaking the hooning offences was not known.

Anecdotal evidence, obtained by personal conversations with police and vehicle enthusiasts, indicates that the impounding of an enthusiasts vehicle is considered by that group of people to be an extremely onerous sanction and certainly one to be avoided at all cost. However, the use of this sanction by the police against specific individuals does not necessarily deter others from hooning behaviour.

5.2.4 Summary

It is not possible to quantify the effectiveness of PPRA hooning legislation. Lack of suitable data from periods prior to the inception of the legislation makes it virtually impossible to undertake analysis from a known base. The size of the group involved in the activity, both prior to the introduction of the legislation and subsequent to the introduction is also unknown.

While it is not possible to quantify the effectiveness of the legislation, Queensland Transport has observed that there appears to be a low rate of recidivism within the target group. That is, of the total of 2191 vehicles impounded between 4 November 2002 and 30 September 2005, there were only 46 second offenders and three offenders with three or more detections.

Based on these figures it may well be argued that the legislation is effective and that it does provide a strong deterrent to the motoring population likely to be involved in hooning activities. Conversely, it may also indicate that the likely offenders are becoming more cautious, with hooning behaviour being undertaken in areas that are less likely to attract police attention and public complaint.

In conclusion, due to the unavailability of suitable pre and post implementation data, it is not possible to undertake an effective analysis of the deterrent effect impoundment of vehicles for prescribed offences has had. Therefore it is not possible to definitively state that this legislation is effective.

Issues for Comment:

13. Should the Police Powers and Responsibilities Act 2000 be amended to include drink driving as a "prescribed offence" enabling police officers to impound drink drivers' vehicles?

5.2.5 Introduction

At the conclusion of the 2006 Road Safety Summit, the Premier announced that…"We will impound the vehicles of repeat drink drivers, disqualified and unlicensed drivers and those driving unregistered vehicles…The clear message out of the Road Safety Summit is that Queenslanders want unlicensed and disqualified drivers to be prevented from getting behind the wheel". There will be a requirement for legislative changes to enable enactment of these commitments. While the "anti-hooning" legislation (referred to earlier in this submission) is contained in the Police Powers and Responsibilities Act 2000, consideration is being given to best way to enable impoundment of drink drivers' vehicles. One option under consideration is amending the Police Powers and Responsibilities Act 2000 to include drink driving as a "prescribed offence" enabling police officers to impound drink drivers' vehicles.

In addition to the above commitment made by the Premier, and as described in the introduction to this submission, Queensland Transport is currently undertaking a review of the impaired driving legislation, the Impaired Driving Legislation Review (IDLR). This review may provide a catalyst for changes to the current legislation, changes to the penalties and sanctions available for courts to deal with offenders post-conviction and the ability for certain restrictions to be imposed on specific offenders pre-conviction.

It is anticipated that the IDLR final recommendations will establish whether there is a need to have the powers available to the QPS, when dealing with impaired drivers, enhanced and whether there is a necessity to have the relevant legislation amended.

The IDLR will be conducting research in to pre-conviction and post-conviction sanctions which will include issues such as the impoundment of the vehicles of detected impaired drivers and as a result recommendations will be made regarding sanctions and the identified need to make amendments to relevant legislation.

In this response the term 'impaired driver' means a person detected of an offence under s.79 of the *Transport Operations (Road Use Management) Act 1995* and includes a driver effected by either alcohol or drugs or both alcohol and drugs.

The issue of vehicle impoundment of impaired driver's is addressed in detail within the response to Issue 4 of this document.

Whilst the Issue for Comment relating to this section specifically addresses the impoundment of impaired drivers' vehicles as a result of an amendment to the *Police Powers and Responsibilities Act 2000*, 'prescribed offences', it is intended to also include comment on the inclusion of offences relating to disqualified and unlicensed drivers and to those driving unregistered vehicles. As previously mentioned, these issues were raised and considered at the Road Safety Summit conducted on 21 and 22 February 2006.

5.2.6 What is a 'prescribed offence' within Schedule 4 of the *Police Powers and Responsibilities Act 2000* (PPRA)

Presently the 'prescribed offence' as defined within Schedule 4 of the *Police Powers and Responsibilities Act 2000* relates to the following;

> ***Prescribed offence,*** for chapter 2, part 6, division 2, means any of the following offences committed in circumstances that involve a speed trial, a race between vehicles, or a burn out –
>
> (a) an offence against the Criminal Code, section 328A committed on a road or in a public place; or
>
> (b) an offence against the Road Use Management Act, section 83; or
>
> (c) an offence against the Road Use Management Act, section 85; or
>
> (d) an offence against the Road Use Management Act involving wilfully starting a vehicle, or driving a vehicle, in a way that makes unnecessary noise or smoke.
>
> *Note –*
>
> At enactment of this definition, a relevant offence for paragraph (d) was an offence against the *Transport Operations (Road Use Management-Road Rules) regulation 1999*, section 291(1) (b).

By way of explanation;

5.2.7 Section 328A of the Criminal Code is the offence of Dangerous operation of a vehicle,

section 83 of the Road Use Management Act (*Transport Operations (Road Use Management) Act 1995*) is the offence of Careless driving of a motor vehicle,

section 85 of the Road Use Management Act (*Transport Operations (Road Use Management) Act 1995*) is the offence of Racing and speed trials on roads.

These offences are commonly known as 'hooning offences' and have been the subject of targeted police enforcement since the commencement in November 2002.

5.2.8 Current police impoundment powers for other than prescribed offences

There currently exists no legislative power for a member of the Queensland Police Service to impound the vehicle of a detected impaired driver.

However, when the vehicle is involved in vehicle crash (*relevant vehicle incident* PPRA) resulting in injury to or the death of a person or property damage, vehicles involved in this type of incident may be impounded by the police for the purpose of a mechanical inspection, sections 60, 61(c) and 113 of the *Police Powers and Responsibilities Act 2000*. At the conclusion of the inspection the vehicle is then released to the owner or insurance company for repairs.

5.2.9 Impounding of vehicles in other jurisdictions for impaired drivers

The following table provides a summary of other jurisdictions within Australia which have legislation enabling the impoundment of vehicles of impaired drivers.

Table 25: Vehicle impoundment legislation in other states

State	Legislation	Details of when impoundment permissible	Party liable for impoundment and associated fees	Frequency of Implementation
NSW	Section 31 of the *Road Transport (Safety and Traffic Management) Act 1999*	Whenever police ascertain that a drink/drug driving offence has occurred	The court hearing the offence matter can rule that the offender is responsible for costs	Anecdotal reports from NSW police officers are that this is used rarely – as a last resort option
Victoria	Section 62 of the *Road Safety Act 1986*	Whenever police have reasonable ground for believing that a person is driving or about to drive a vehicle while impaired	The legislation does not identify which party is responsible for impoundment fees & associated costs (for example, towing)	No data is currently available on the frequency of use of these powers by the Victorian police
Tasmania	Section 5 of the *Road Safety (Alcohol and Drugs) Act 1970* Section 41A of the *Traffic Act 1925*	The Tasmanian police service can impound a vehicle driven by a person with a BAC above the prescribed limit This section provides police with the power to impound of a vehicle when a person is incapable of properly controlling a vehicle due to a physical or mental condition	The court may order the cost of impoundment and storage to be met by the offender	No data is currently available on the frequency of use of these powers
Western Australia	Section 78A of the *Road Traffic Act 1974*	Impoundment can only occur through a court order which deals with the traffic violation	This information is not currently available	No data is currently available on the frequency of thee court orders being made

New Zealand

New Zealand is described as having "…the most comprehensive vehicle sanction program of any country surveyed" (Sweedler, Stewart and Voas, 2004).

Vehicles are currently impounded immediately and automatically for 28 days for the following offences Sections 96-98, *Land Transport Act 1998* (NZ);

- Driving while disqualified
- Driving while suspended
- Driving without a licence or with an expired licence, if previously detected committing either of these offences.

Impoundment occurs at the time of the offence. Court penalties are imposed in addition to impoundment. A vehicle may also be impounded for hooning-related offences (racing or performing 'street car stunts').

The commencement on 16 January 2006 of the "three strikes and you're out" legislation introduced via the *Land Transport Amendment Bill 2005*, will see a graduated penalties regime for drink drivers *Land Transport Amendment Act 2005* Questions and Answers, http://www.ltsa.govt.nz/legislation/land-transport-amdt-act/q-and-a.html accessed 14/12/05.

Penalties for the first offence remain unchanged (current court-imposed penalties) while a second offence will now incur immediate licence suspension for 28 days (in addition to court penalties).

A third drink driving offence within four years, where the blood alcohol content exceeds 80mg/100ml (0.08 per cent), will incur immediate and automatic vehicle impoundment for 28 days. This new penalty is in addition to the current extended licence disqualification for 'more than one year' (.08 per cent is the prescribed limit for drink driving in New Zealand).

Other new amendments targeting drink drivers

It is interesting to note that the legislation will also reduce the BAC threshold for automatic 28-day licence suspension for high BAC offenders, from 160mg/100ml blood (0.16 per cent) to a lower limit of 130mg/100ml blood (0.13 per cent).

Repeat drink drivers, as well as reducing the high BAC limit for the general population (800mg/100ml breath; 160mg/100ml blood) to 650mg/100ml breath; 130mg/100ml blood for repeat drink driving offenders. It was noted that the tighter restrictions for repeat drink drivers targets a small number of hard core offenders, by taking them off the road and through an approved course, to address alcohol consumption issues.

Process

New Zealand Police are responsible for calling for a tow truck to remove the vehicle to a secure storage facility for 28 days, with the vehicle owner responsible for towage and storage fees. These fees must be paid before the vehicle will be released. Note that these fees are in addition to any other penalty the court might impose on the unlicensed or disqualified driver. If the vehicle's owner was not the driver responsible for impoundment, an appeal may be made to the Commissioner of Police, or failing that, the District Court. The owner may appeal on the grounds that:

- the vehicle was stolen,
- the owner took all reasonable steps to prevent the unlicensed/disqualified driver from driving,
- the owner did not know the driver was unlicensed/disqualified, or could not reasonably have know this,
- the police did not have reasonable grounds to impound the vehicle, or did not follow correct procedure, or
- the driver drove in a serious medical emergency.

(LTNZ Factsheet 63, 2005).

It should be noted that undue hardship is not an acceptable ground for appeal. These limited appeal provisions reinforce the obligation for vehicle owners to ensure that only licensed drivers use their vehicles. If the vehicle belongs to a rental company, the company is responsible for checking licence status. Employers are also responsible for ensuring employees have a valid licence if driving company vehicles. The vehicle owner is responsible for the impoundment fee, so recovery of the fee from the driver is a matter between the vehicle owner and the driver (LTNZ 2005).

Failure to pay the fees and pick up the vehicle within 28 days after the impoundment period ends means the storage provider is able to dispose of the vehicle (with police approval). This period will be shortened from 16 January 2006, so that the storage provider may seek to dispose of vehicles if not claimed within 10 days after the end of the impoundment period. Disposal methods are similar to those used for abandoned vehicles. Land Transport NZ partially reimburses the service provider for towing and storage costs if the vehicle is not claimed (LTNZ 2005)

Forfeiture laws were introduced in 1996 in New Zealand, specifically to deal with recidivist impaired driving offenders and other serious traffic offenders. This law allows for the confiscation and sale at public auction of an offenders vehicle following conviction and court order. The monies received are used to pay seizure costs, monies owed to any third party and any outstanding fines. However, this regulation is rarely exercised (Sweedler, Stewart & Voas, 2004). There are no known current vehicle immobilisation laws in New Zealand.

Impoundment fees in New Zealand depend on the vehicle weight, time of day and distance towed. The standard fee is NZ$52.50 for the tow and about NZ$300 for the impoundment ($12 per day after the first three days). Fees are higher if the vehicle weight exceeds 3.5 tonnes, if it is towed more than 10 km, or towed outside normal working hours (7am – 6pm, Monday to Friday).

The standard fee is set in regulations Sections 3-4, *Land Transport (Storage and Towage Feeds for Impounded Vehicles) Regulations 1999*, and pays for towing, secure storage for 28 days, as well as administrative and other costs associated with storage. The tow truck operator or company is responsible for damage to vehicles.

In addition, Land Transport NZ is required by regulation to partially reimburse the storage provider for the cost of towing and storage if the vehicle is not claimed. The 2005 Annual Report for LTNZ indicated that the reimbursement costs were NZ$256,000 for the 12 months to June 30 2005 (actual). It suggests that a significant number of impounded vehicles are left unclaimed.

5.2.10 Benefits

A recent report indicated that in New Zealand, more than 25,000 vehicles driven by disqualified or unlicensed drivers were impounded at the roadside in a two year period between 1999 and 2001 (approximately 0.9 per cent of registered vehicles) (Sweedler et al, 2004).

The same conference paper also reports a decrease in the proportion of fatalities attributed to unlicensed drivers (10 per cent of all fatalities in 1998 reduced to 6.9 per cent in 2000) and a similar fall in casualties attributed to unlicensed drivers. It was noted that disqualified driving offences decreased by approximately one-third, and there were few appeals against the impoundment orders, possibly due to fairly restricted grounds for appeal.

While around 40-50 per cent of vehicles were left unclaimed, leaving the government to underwrite the cost to storage providers for towing and storage fees, it helped to permanently remove a large number of old and non-roadworthy vehicles from the road (Sweedler et al, 2004).

5.2.11 Amendment of PPRA to include a s.79, and other sections of the *Transport Operations (Road Use Management) Act 1995* as ~~a~~ 'prescribed offences'

The inclusion of offences relating to various provisions of the *Transport Operations (Road Use Management) Act 1995* (TO(RUM)) and the *Transport Operations (Road Use Management –Vehicle Registration) Regulation 1999* (Registration Regs) within the definition of a 'prescribed offence' as it appears within Schedule 4 of the *Police Powers and Responsibilities Act 2000* (PPRA) requires consideration of whether the current impounding scheme, as operating under the PPRA, is a suitable model for the types offences being considered in this comment.

The sections being considered as appropriate for inclusion as 'prescribed offences' are as follow;

- section 78 (Driving a motor vehicle without a driver licence prohibited) of the *Transport Operations (Road Use Management) Act 1995*, (IS THIS TO INCLUDE SUSPENDED DRIVERS?)
- section 79 (Driving whilst under the influence of liquor or drugs or with a prescribed concentration of alcohol in blood or breath),
- section 80(11) (Fail to supply specimen of breath or blood for analysis),
- section 80(22D) (Drive whilst under 24 hour suspension), NOT SURE IF THIS SHOULD BE INCLUDED
- section 10 (Vehicles used on roads must be registered) of the *Transport Operations (Road use Management – Vehicle Registration) Regulation 1999*.

Current PPRA impounding model

The impounding of vehicles for 'prescribed offences' (see section 5.2.1 for what a 'prescribed offence' is) as currently occurs under the provisions of the 'anti-hooning' legislation within the PPRA has been addressed in some detail in section 5.2 of this paper.

The model to be used in the inclusion of s79 and the other sections as 'prescribed offences' requires consideration.

Currently s59C(4) of the PPRA allows that for a 'prescribed offence' that is a first offence, the vehicle may be impounded by the police for a period of 48 hours. Section 59P(4) requires that the State meet the costs of the first impoundment, including the towing of the vehicle.

Considering this model, the question of the cost to the State, or more likely the Queensland Police Service, for the first impounding of a vehicle, including the towing of the vehicle, becomes an issue of great importance for the following reason, this does not take into account those vehicles driven by unlicensed and disqualified drivers, nor does it take into account those unregistered vehicles detected and intercepted by police.

> *In the calendar year, 2004, there were 24,661 persons charged with impaired driving offences within Queensland. (Leal, Lewis, King 2005)*

If the vehicle of each of those persons had been impounded by police at the time of detection and based on the current model of impoundment provided within the Police Powers and Responsibilities Act 2000*, the cost to the Queensland Police Service would be in the order of $4,932,200, (taken that the average cost per 48 hours impoundment, including the towing of the vehicle, for first hoon offences is $200). This would impose a huge cost to the Queensland Police Service as with the current model, the QPS is responsible for payment of the towing of the vehicle for the first offence.*

Given that the number of recidivist impaired drivers detected in that calendar year was less than the total number of impaired drivers, the number of vehicles that would be subject to impoundment as a result of the inclusion within the PPRA model of the other identified offences would in all likelihood be in the order of the 24,661 impaired drivers detected in 2004.

Current PPRA model

This raises the question of whether the current PPRA impoundment model for 'hooning offences' is suitable for offences such as recidivist impaired drivers, disqualified and unlicensed drivers and unregistered vehicles.

Consideration is therefore required as to the period of impoundment relating to a vehicle for offences of impairment, or the operation of an unregistered vehicle or the operation of a vehicle by a disqualified or unlicensed driver and to whether the current PPRA impoundment periods of 48 hours for a first offence, three months for a second offence and forfeiture for a third or subsequent offence is suitable.

The PPRA allows that for a first 'hooning offence' a police officer may impound a vehicle for 48 hours. This is achieved by the officer commencing a proceeding against the person for a 'prescribed offence', authorising the towing of the vehicle and issuing the driver of the vehicle with a notice of impounding. At the expiration of 48 hours the driver/owner of the vehicle may retrieve the vehicle from the storage area. As has been previously stated the QPS pay the outstanding towing and storage fees for this offence.

Second or subsequent offences require the police officer to bring an application for impounding or forfeiture, depending on whether it is a second or subsequent offence, before a court for an order to be made.

Court ordered impoundment for a second offence is three months from the time the order is made and third or subsequent offences can result in the vehicle being forfeited and disposed of by the State.

If the current PPRA model is followed for offences under sections 79, 80(11), 78 of the TO(RUM) or section 10 of the Registration Regs, it is likely to see vehicles returned, after the first offence, to unlicensed or disqualified drivers and unregistered motor vehicles again being used on roads.

Suggested impounding scheme for offences other than current 'prescribed offences'.

Section 80(22AA) of the TO(RUM) allows the suspension of a person's driver licence for a period of 24 hours after the provision of s specimen of breath or blood for an analysis, or if the person refuses to provide a specimen of breath or blood for analysis. The holder of a valid driver licence is then able to continue to drive a motor vehicle until the matter, the impairment, is heard and determined by a court.

It has been identified that a considerable number of impaired drivers re-offend within a short period of the initial offence, that is, the drivers return to their vehicles after providing a specimen of breath/blood for analysis and continue to drive, even though those offenders have been served with the 24 hour driver licence suspension.

To address this, the impounding of the offenders vehicle for a prescribed period, be it 24 hours, as currently applies to their driver licence suspension, or 48 hours as currently applies to the 'prescribed offence' provision would serve to remove the possibility of the offender driving their vehicle.

To include the identified offences as 'prescribed offences' within the provisions of the PPRA would require amendment to that Act. It is also necessary to consider amending the provisions of the PPRA to enable the costs of impounding and towing of the vehicles to be the responsibility of the offender.

Currently New South Wales legislates that the costs of towing and impounding of vehicles is the responsibility of the offender and a court is able to order that the offender pays those costs. New Zealand legislation currently sets a prescribed fee, calculated on the weight of the vehicle, the time of day the impounding is undertaken and the distance the vehicle is to be towed. These costs are to be met by the offender prior to the vehicle being released from the holding yard.

A towing and impounding scheme does operate currently within Queensland. This scheme currently relates to vehicles that are towed as a result of illegal parking in clearways, driveways and on private property. The scheme allows, for a clearway offence, the vehicle to be towed and stored after the issue of an infringement notice. The owner of the vehicle is required to pay a fee to the towing company prior to the release of the vehicle.

Amendment to the PPRA providing that the costs associated with any towing and impounding of a vehicle is to be met by the offender or owner of the vehicle prior to the release of the vehicle after the expiration of the prescribed impoundment period would provide a considerable deterrent to offenders from driving. This amendment could also encompass the current first offence impoundment for the current 'prescribed offences' which address hooning offences thereby reducing the cost to the QPS on enforcement of those offences.

Second and subsequent offences

To ensure that recidivist offenders are prevented from driving, the current hoon offence scheme dealing with second and subsequent offences, the requirement to obtain an order of the court to impound the vehicle for a period of three months or to have the vehicle forfeited, could be enlarged to accommodate the offences proposed to be included within the 'prescribed offence' provisions of the PPRA.

The current PPRA impoundment scheme is established in such a manner as to allow for the calculation of offences to be made, to allow for appeals against the impoundment of vehicles due to hardship and has been proven to be effective in operation. Amendment to the provisions of the current legislation dealing with second and subsequent offences that would allow for the inclusion of the additional 'prescribed offences' would be minimal.

Possible drawbacks to scheme

New Zealand, which has had impounding legislation for a number of years, has identified that the largest single drawback to the scheme is the number of vehicles left unclaimed at the expiration of the impoundment period. This has resulted in the New Zealand Government underwriting the costs of towing and storage of the vehicle to the towing and storage providers. It has been estimated that between 40 and 50 per cent of vehicles impounded in that country are not claimed.

Even though this has been identified as a drawback to the scheme in terms of costs to the Government, it has been identified that as a result of the impounding process, a large number of old, non-roadworthy and unregistered vehicles have been removed from the road. This has provided a decided benefit to the overall safety of vehicles accessing the road network.

Progression of amendments to the *Police Powers and Responsibilities Act 2000*

As the Queensland Police Service administers the PPRA, it will be necessary for that Department to progress amendments to that Act allowing for the inclusion of the additional offences as 'prescribed offences', if it is considered that that would be the most suitable avenue for amending legislation to enable the impoundment of impaired drivers' vehicles.

5.2.12 Conclusion

Many of the issues highlighted above are addressed in detail in the response to "Issue for comment 4 & 6" of this paper. More detailed understanding of the steps taken in New Zealand and the United States to overcome these issues would assist in the development of a Queensland impoundment program. Contact with at least some of these jurisdictions will be initiated during the IDLR so that the risks can be fully identified and mitigated against.

Impoundment of vehicles driven by disqualified and unlicensed drivers has proven an effective sanction in New Zealand where that scheme has operated for a number of years. New Zealand has now implemented the impounding of vehicles for recidivist impaired drivers. This commenced on 16 January 2006 and to date no data is available on the effectiveness of the amendment.

The impounding of vehicles for hooning offences within Queensland has also proved to be an effective deterrent to committing those offences currently defined as 'prescribed offences' under the provisions of the *Police Powers and Responsibilities Act 2000.*

The inclusion of offences relating to impaired driving, disqualified driving, unlicensed driving and the driving of unregistered vehicles within the 'prescribed offence' provisions of the PPRA are likely to provide an effective and efficient deterrent to the commission of those offences.

Together with the inclusion of the offences within the 'prescribed offences' of the PPRA, an added benefit of effectively removing vehicles that are old, non-roadworthy and have been unregistered for long periods from the road network will be achieved. The effect of this would be the additional benefit of having a safer and more compliant vehicle fleet operating on the road network.

To date, the IDLR has not identified a preferred position in relation to use of impoundment or forfeiture, however, impoundment appears to show promise, both for its incapacitation effect and possible specific deterrence value.

In addition, detailed consideration is required to establish if impoundment is appropriate for all impaired driving offenders, considering that first offenders are currently subject to impoundment for hooning offences under the PPRA. It may be preferable to retain impoundment for repeat offenders as a higher order sanction, but possibly for periods other than provided for in the PPRA. It may be considered more appropriate to impose this as a post-conviction sanction. Short term impoundment for 24 or 48 hours may be a viable pre-conviction option for all offenders, from a safety point of view, however, immobilisation at the roadside may achieve the same objective and at a lower cost.

5.3 Sentencing and Appeals

Issues for comment:

14. What effect, if any, do successful appeals against licence suspension or disqualification have on drink driving behaviour and existing penalties for drink driving?

15. Should the appeals process for drink driving be tightened to reduce the incidence of successful appeals in Queensland?

5.3.1 Introduction

Issues Paper Number 10 (the Paper) considers the effect of restricted licence availability. It briefly outlines an argument that successful appeals may reduce the deterrence value of licence sanctions on drink driving. To qualify the responses that will follow, it should be noted that after consultation with the Travelsafe Committee A/Research Director this response will focus on the issue of restricted (work) licences in Queensland.

Disqualified drivers are unable to appeal against the disqualification (unless appealing the conviction/sentence generally), however eligible drink- or drug-driving offenders may apply to the court for a Section 87 restricted licence, also commonly known as a 'work licence' in Queensland. This application can only be made during a narrow window of opportunity, at the time that the drink driver offender pleads guilty, or alternatively is found guilty by the court. To be considered for a restricted licence, the person must be applying for a restricted licence after their first offence. As a result of these strict requirements only a small proportion of convicted drink drivers are eligible to apply for a restricted licence.

Licence suspension is in the main an administrative process due to circumstances such as the non-payment of traffic fines, accumulation of demerit points or a medical condition. Licence disqualification is a process which is only imposed by a court of law. Due to these differences, licence suspension is not pertinent when considering the implications for work licences and whether these have a negative effect upon the deterrence value of disqualification and other penalties for drink driving.

5.3.2 Restricted ('work') licences in Queensland

As noted previously, drink drivers are disqualified from driving a motor vehicle, whereas other offences such as speeding, excessive demerit point loss or non-payment of fines may result in an administrative licence suspension. The Paper identifies that speeding and hooning offenders may appeal against administrative licence suspensions. Appeals may also be lodged for demerit point suspensions as well as SPER[25] suspensions.

In contrast, disqualified drivers are unable to appeal against the disqualification (unless appealing the conviction/sentence generally), however, eligible drink- or drug-driving offenders may apply to the court for a Section 87 restricted licence, also commonly known as a 'work licence' in Queensland.

[25] Under the State Penalties Enforcement Act 1999 (SPER), a fine defaulter may have his or her driver licence suspended.

Not all drink drivers are eligible for a restricted licence. Section 87 of the *TO(RUM) Act* defines the circumstances which make an offender ineligible for a work licence. The applicant must satisfy the Court that they are a fit and proper person in relation to the safety of other road users and the general public, and that without holding a driver licence, the applicant and/or their dependents would suffer extreme hardship due to the applicant being unable to earn a living (Section 87(5)(a)). Drink drivers who have had a licence suspension, cancellation or disqualification within five years prior to the application are ineligible (S87(5)(b)), so repeat offenders (within a five year period) are ineligible. A drink driving offender is also ineligible if at the time of the offence he or she:

- had a BAC (Blood Alcohol Concentration) equal to or greater than the high BAC limit (0.15 per cent)
- was unlicensed
- was not holding a valid Queensland provisional or open licence
- was under 25 years and holding a provisional licence
- was driving a vehicle he or she was not licensed to drive
- was holding a restricted licence
- was convicted of failing to supply a breath sample within the past five years
- was convicted of a drink driving offence anywhere in Australia within the past five years.

The offender is also ineligible if the offence relates to a conviction under Sections 79(1) [driving under the influence of liquor or a drug] because the BAC is unspecified, or Section 79(2A, 2B, 2D or 2J) [exceeding a zero alcohol limit].

In effect this means that the only drink driving offenders eligible for a work licence are those who recorded a blood alcohol concentration less than 0.15 per cent, were licensed, and have had no drink driving offences within the five years prior to the offence (or subsequent to the offence).

If the application to the court is successful, the court issues a Section 87 Restricted Licence Order. Variations to the order may be requested and granted under Section 88 of the Act 1995.

5.3.3 Driving with a Restricted Licence

The restricted licence order must be registered with Queensland Transport. The offender's current licence is cancelled at that point, and the offender is issued with a Restricted Provisional Licence (identified by the condition **X1**). The licence condition signifies that the holder may only drive while carrying a copy of the order in accordance with Section 87 or Section 88 of the *TO(RUM) Act 1995*. The holder must also carry the Provisional Licence for its duration. Regardless of the period of the restricted licence order, the provisional licence must be held for a minimum of 12 months after disqualification, and the driver is subject to a zero BAC condition. In some cases, magistrates have required that offenders maintain a logbook, as an additional condition of the court order. The order restricts the holder to driving in specified circumstances directly connected with the restricted licence holder's means of earning a livelihood, and may include conditions such as:

- the class of vehicle which he or she may drive,
- the purpose for which a vehicle may be driven,
- the times at which or the period of time during which a vehicle may be driven, or
- any other condition specified.

Failure to comply with the conditions of the order (or any variance to the conditions as allowed under Section 88), is an offence, and the restricted licence holder is liable to a maximum penalty of 20 penalty units ($1,500) (S87(10)). In addition, the restricted licence is automatically cancelled, and the person is disqualified for a further three months from the end of the original disqualification period (S87(10A)).

5.3.4 Restricted Licence Statistics

5.3.4.1 Restricted Licences Issued

As of 22 November 2005, there were 1193 restricted provisional (X1) licences registered with Queensland Transport. In the years 2001 – 2004, data from the Magistrates Court Information System – Queensland Wide Interlinked Courts (QWIC) system indicates registration of 12,158 restricted licence orders, an average of 3040 per year. There were 3249 restricted licence orders registered with Queensland Transport between 1 January and 22 November 2005.

As a comparison, the number of drivers disqualified for impaired driving offences in each of these years is presented in Table 26. On average, 12 per cent of first offence drink driving offenders obtained a restricted licence during 2001 - 2004. As a proportion of all drink drivers, this is lower than the percentage cited in 1995 which was 17 per cent (Issues Paper Number 10, Section 8.3, Watson et al, 1996). The absolute number of restricted licence orders (average 3040 per annum) shows only a slight increase from the 3066 restricted licences granted in 1995 (Watson et al, 1996), despite the increase in drink driving convictions and licensed drivers in Queensland over this period of time.

Table 26: Restricted licences issued in Queensland 1995-2004

Year	1995*	2002	2003	2004
# restricted licences	3066*	2907†	3125†	3391
# drink drivers	17844*	24,409††	25,123††	25,101††
Restricted licences as % of all drink drivers		11.9%	12.4%	13.5%

* Data from Watson et al, 1996

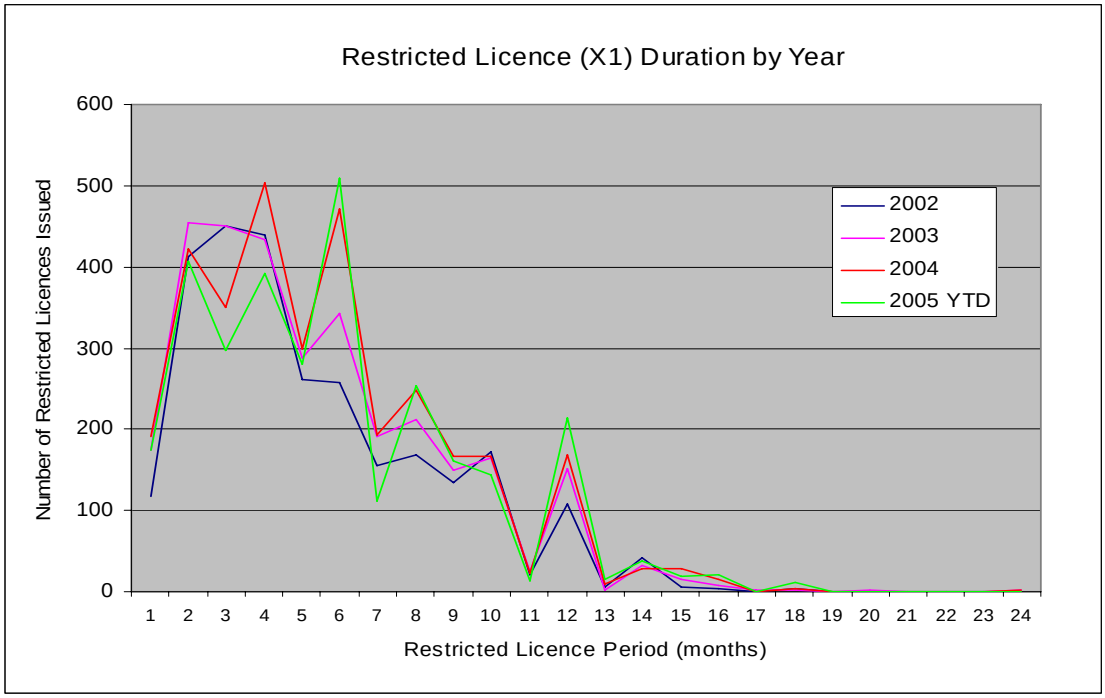
† Data from Queensland Wide Interlinked Courts system (QWIC), Department of Justice and Attorney-General, extracted 31/3/05

†† Data from TRAILS, Queensland Transport, extracted 11/05

5.3.4.2 Duration of X1 condition

Typically, nearly two-thirds of restricted licences are issued for six months or less (Table 27). Ninety-two per cent are issued for periods of 12 months or less. In one case, the restricted licence was issued for 32 months, and in another it was issued for 54 months, however, a restricted licence is rarely issued for more than 20 months. The holder must comply with all conditions of the restricted licence during this period.

Table 27: Duration of restricted licence issued by Queensland Transport*



* Data extracted from TRAILS, 22 November 2005. Figure excludes restricted licences issued for 32 months (1 instance) and 54 months (1 instance).

5.3.4.3 Restricted Licence Application Success Rates

Information regarding success rates for restricted licence applications (licences approved, compared to the number of applications lodged) is limited. All Section 87 orders must be registered in the Magistrates Court Information System (QWIC) once made, in order to produce the necessary documentation required by Queensland Transport. However, it is not compulsory to record all applications made to the Court. A sub-set of data where applications were recorded, representing around 20 per cent of all restricted licence orders made, indicates that on average during 2001 – 2004, 77 per cent of work licence applications were successful. Closer examination of the individual years indicates that success rates have increased from 72 per cent in 2001 to 84 per cent in 2004.

It is possible that application success rates are increasing, due to greater knowledge in the legal fraternity about the eligibility criteria for restricted licences, so that more potentially unsuccessful applicants are screened out of the process before facing court. The figures in Table 28 indicate that although a similar number of work licence orders have been granted in recent years, compared to a decade earlier, work licences are being granted to a smaller proportion of drink drivers. In addition, in the 1990s an amendment was introduced requiring the applicant's employer to provide an affidavit, confirming the applicant would be unable to work without the restricted licence (Section 87(5A)). This may have reduced the number of applications made to the court.

5.3.4.4 Breach of X1 licence conditions

Data provided by the Department of Justice and Attorney-General (Magistrates Court Information System, QWIC) indicates that 183 restricted licence holders were convicted of breaching the conditions of the work licence between July 2003 and October 2005.

Table 28: Section 87(10) convictions for breach of work licence conditions

Year	2003	2004	2005	Total
Convictions for breach of work licence conditions	25*	62	96*	183
Alcohol reported	1	6	4	11
% breaches of "no alcohol condition"	4%	10%	4%	6%

Data from Department of Justice and Attorney-General, 'Queensland Wide Inter-linked Courts (QWIC)' system, 11/2005.

* Incomplete year

† Where alcohol reading recorded in QWIC.

It is unclear in this preliminary analysis if restricted licence holders breaching the no-alcohol condition of the licence are included in this court data, or appear separately due to being charged with a drink driving offence (as only the higher charge is generally recorded). As a consequence, the numbers shown in Table 28 provide a minimum estimate of the number of detected breaches of no-alcohol and other restricted licence conditions.

5.3.4 Restricted Licences and Deterrence Theory

Classical deterrence theory states that for punishment to be effective, it must be swift, severe and certain to occur (Willis, 1994). Numerous studies comparing licence suspension with jail, educational and treatment alternatives concluded that licence suspension is the most effective specific deterrent for impaired driving due to the perceived certainty and swiftness of the penalty (Nichols and Ross, 1990; NHTSA, 1996, Voas et al, 1997). Concern has been expressed that restricted licences weaken the specific deterrence effect (on the offender) and general deterrence effect (on the wider community) of licence suspension as the perceived certainty and severity may diminish (Watson, Siskind and King, 2000). However, Watson et al (2000) concluded that restricted licences perform no differently as a specific deterrent than full licence suspension. Siskind (1996) reported that during the restricted licence period, the disqualified drivers possessed better vehicular behaviour such as driving less frequently or more cautiously, and this becomes more evident with longer disqualification periods. However, there is limited research on the long-term specific deterrence effect of restricted licences (Siskind, 1996, Watson et al 2000).

It is recognised that many suspended or disqualified drivers will continue to drive, on at least some occasions, while unlicensed. Studies vary, with findings ranging to up to 75 per cent of disqualified drivers continuing to drive (on some occasions) while suspended or while disqualified, believing that the risk of detection is low (Hagen, McConnell and Williams, 1980; Kaestner and Speight, 1974; Ross and Gonzales, 1988; Staplin, 1989; as cited in Willis, Lybrand and Bellamy, 2004, Voas and DeYoung, 2002). A restricted licence provides an alternative means of regulating disqualified drivers' driving behaviour, while encouraging driving within the licensing system. (Queensland Transport believes that the introduction of compulsory licence carriage could strengthen the deterrence value of licence disqualification. If drivers believe that they are likely to be required to produce their licence on the spot, with no option to do so later, there is less likelihood of giving a false identity in order to avoid detection by the police).

One of the factors contributing to unlicensed driving is the need to drive for work purposes. Research undertaken by CARRS- Q has been discussed as part of the IDLR (Watson, 2003; pers comm. to IDLR, September 2005). In particular, a study undertaken by Watson (2003) of unlicensed drivers found that 26 per cent cited 'driving for work reasons' as the reason for driving when they were detected. This reason ranked second behind driving for social-recreational reasons (54 per cent). Among disqualified drivers (the subset of all unlicensed drivers, predominantly drink drivers), the same relative rankings applied. Disqualified drivers were detected driving for social-recreational reasons for 54 per cent of the study's participants, 23 per cent were driving for work related reasons, and 21 per cent were driving for family reasons. Watson hypothesised that a primary motivation for those drivers detected while driving for work purposes was to retain employment. This aspect was explored further by asking participants if they were driving unlicensed as part of their work. There was a significant association between the need to drive for work, and detection for unlicensed driving while driving for work purposes. The 'need to drive for work while unlicensed' was a significant predictor of frequency of unlicensed driving ($p<.001$), and a predictor of continued unlicensed driving after detection ($p<.05$) (Watson, 2003; pers comm. to Impaired Driving Legislation Review, September 2005).

Consequently, Watson (2003) identifies a need to target work related unlicensed driving as a means of addressing all unlicensed driving, for example, by using technologies such as alcohol ignition interlocks, and requiring participation in a program as a condition of the restricted licence (with interlocks programmed to restrict hours of vehicle use). Watson also proposes targeting unlicensed driving through the workplace, encouraging employers to regularly check the licence status of employees who drive as part of their work, possibly as part of a fleet safety program or in meeting workplace health and safety requirements. This proposal could have some impact on unlicensed driving, particularly by disqualified drink drivers.

5.3.5 Potential for Tightened Access to Restricted Licences

It is recognised that some drink drivers may expect to be able to get a 'work licence' and do not see loss of a driver licence as a serious threat. As the previous sections have described, a restricted licence may be made available to only the small proportion of drink drivers who meet the eligibility criteria.

Access to Section 87 restricted licences is being considered as part of the IDLR. Queensland Transport is considering additional measures and requirements that could be placed on restricted licences in order to tighten eligibility, making restricted licences available to offenders at the lowest risk of re-offending. In addition, the IDLR is examining countermeasures that could be applied to enforce the conditions of the restricted licence and reduce the risk of recidivism. These additional countermeasures have the advantage of being an added imposition on restricted licence holders, so reducing perceptions of restricted licences as being a 'soft option'.

5.3.6 Summary

In summary, restricted (work) licences do not result from an appeal, but from a separate application made after licence disqualification. The criteria for application mean that only a relatively small percentage of drink drivers are able to apply.

The percentage of restricted licences being issued has decreased. For instance, in 1995, 3066 restricted licences were granted representing 17 per cent of drink driving offenders (Issues Paper Number 10, Section 8.3, Watson et al, 1996). In contrast during the period 2001-2004 on average 3040 restricted licences were granted per annum, representing 12 per cent of the total number of convicted drink drivers.

Licence suspension has consistently been found to be the most effective, specific deterrent for impaired driving when compared with imprisonment, educational and treatment alternatives (Nichols & Ross, 1990; NHTSA, 1996; Voas et al, 1997). Further studies (Watson et al, 2000) have found that restricted licences perform no less effectively as a specific deterrent than full licence suspension.

While licence disqualification has been found to be an effective deterrent to impaired driving with members of the general community, employment requirements in particular (and lack of alternative transport) have contributed to a significant number of disqualified drivers continuing to drive (on some occasions) while disqualified (Hagen, McConnell & Williams, 1980; Kaestner & Speight, 1974; Ross & Gonzales, 1988; Staplin, 1989; as cited in Willis, Lybrand & Bellamy, 2004; Voas & De Young, 2002). Should compulsory licence carriage be implemented, Queensland Transport considers that it is likely that the incidents of driving while disqualified and/or unlicensed would decrease. In light of these findings Queensland Transport would advocate for the continued availability of restricted licences as these provide an alternative means of regulating disqualified drivers' driving behaviour, while encouraging driving within the licensing system.

5.4 Legislation in other Australian jurisdictions

Issues for comment:

16. Is vehicle impoundment and key confiscation legislation successful in reducing the number of recidivist drink drivers in other Australian jurisdictions and overseas?

Evaluations of impoundment programs operating in the United States indicate that vehicle impoundment for periods of 30 to 180 days, commencing at the time the impaired driver is apprehended, can be effective at reducing repeat drink driving or unlicensed/ suspended driving offences. It is not clear if the effect is due to specific deterrence, meaning the offenders are actually deterred from repeating the offence, or if it is due to incapacitation because the vehicle is removed from easy access. For example, accessibility is reduced while the vehicle is impounded, while many offenders fail to reclaim low value vehicles at the end of impoundment, or cannot easily access vehicles belonging to someone else because of their earlier offence. Regardless of the mechanism, impoundment appears to be effective at reducing repeat offences. The evidence for the effectiveness of vehicle forfeiture is less compelling, because very few jurisdictions use the sanction, and those that do, often use it as part of a graduated sanctioning process. Consequently only a relatively small proportion of vehicles are forfeited.

As discussed earlier in this paper, there has been some research regarding the anti-hooning legislation provisions which allow for the impoundment of vehicles of repeat offenders. However, given that there are no base line figures to accurately compare actual offending rates pre and post anti-hooning legislation, a quantitative analysis is not possible. Further differences in the demographics of repeat hooning drivers compared with recidivist drink drivers means that it is not possible to draw a definitive comparison between the two target groups.

Key confiscation is used as a sanction is some Australian states, however no evidence of success (or otherwise) was identified during this review. It appears that the sanction is used only when other ways of dealing with a drink driver are inappropriate or impractical. No evidence was identified in any international jurisdiction during the preparation of this submission to either indicate that key confiscation is used as a countermeasure, or that it is an effective countermeasure.

The IDLR initiated by Queensland Transport in July 2004 includes a review of vehicle confiscation and impoundment and key confiscation, as raised in the Travelsafe Paper. Given the complex nature of the issues concerning recidivist drink drivers, including the socio-economic factors involved, social justice considerations and several distinct sub-groups with distinct motivations and requirements (including alcoholics, indigenous communities and so on), the IDLR report with its corresponding in-depth research, evaluations and recommendations is an on-going work program.

Queensland Transport looks forward to sharing the opinions of other agencies and researchers on the usefulness and effectiveness of key confiscation to reduce repeat offenders. However at this stage it is unable to provide a position in either favour or against key confiscation. Following the announcement made at the end of the 2006 Road Safety Summit, legislation will be introduced enabling the impoundment of vehicles of repeat drink drivers and disqualified drivers. Further research and investigation will be undertaken in determining the best way to implement this sanction.

Issues for comment:

17. Should Queensland introduce legislation that is consistent with the legislation in other Australian jurisdictions?

Most Australian jurisdictions have legislation permitting vehicle impoundment or even forfeiture for hooning related offences. New South Wales, Victoria and Tasmania have legislation permitting vehicle impoundment. These same states have legislation providing for confiscation of vehicle keys from an impaired driver. Although enforcement officers are provided with the power, it appears that key confiscation and impoundment are used when no other suitable alternative can be identified.

Queensland will be introducing legislation enabling the impoundment of vehicles of repeat drink drivers and disqualified drivers, which was announced at the conclusion of the 2006 Road Safety Summit. It is possible that forfeiture or key confiscation may also provide a useful adjunct to current police powers and reduce the likelihood that an offender will repeat the offence while still impaired. If the powers are used in a manner similar to the way they are employed in other Australian jurisdictions, that is, on an as needs basis, a small number of repeat offences may be prevented.

The department considers that legislation should be introduced because it is expected to be effective. Consistency with other states, although important, is a secondary concern. Under the IDLR, Queensland Transport, with the assistance of representatives from the Queensland Police Service, Queensland Health, the Department of Justice and the Attorney General, Department of Corrective Services and the QUT Centre for Accident Research and Road Safety – Queensland, is identifying best practice, evidence-based countermeasures that have proven effective at reducing impaired driving in other jurisdictions, or innovative measures that have a high probability of reducing drink or drug driving. As a result it may identify legislative measures which go beyond those currently being used in other Australian jurisdictions. Until the IDLR is completed, Queensland Transport can not evaluate whether it would be appropriate to recommend the introduction of legislation consistent with other states.

Attachment 1 – Overview of QPS Powers

Overview of powers currently available to QPS to deal with impaired driving under s.(80) *Transport Operations (Road use Management) Act 1995.*

Current legislative powers (road-side breath test & arrest)

At present, the power for a member of the Queensland Police Service to intercept the driver of a motor vehicle, tram, train or vessel for the purpose of a random breath test is found within section (51)(3)(c) of the *Police Powers and Responsibilities Act 2000,* (PPRA).

Section (198) of the PPRA, provides a general power of arrest to members of the QPS. This power encompasses a person who is suspected of having committed an offence against the provisions of section (79) of the *Transport Operations (Road Use Management) Act 1995*. This section provides the arrest without warrant power (general arrest power) for all offences dealt with by the QPS.

Current offences relating to suspect drink/drug driver

The offence of driving, is in charge of, or attempts to put into motion, a motor vehicle, tram train or vessel with a breath or blood alcohol concentration equal to or in excess of the general alcohol limit (includes the high alcohol limit) is found within the provisions of section (79)(1) and (2) of the *TO(RUM).*

The offence of driving a motor vehicle whilst a person's breath or blood alcohol concentration is in excess of the no alcohol limit, but less than the general alcohol limit, is found in the provisions of section (79)(2A), (2B) and (2C) of the *TO(RUM).*

The offence for those persons required to comply with the no alcohol limit whilst they are driving, in charge of or attempting to put into motion a tram, train or vessel is created within sections (79)(2D) and (2E).

Section (80)(5A) creates an offence for a person who fails to provide a specimen of breath for a road-side breath test and section (80)(11) creates an offence for a person who fails to provide a specimen of breath for analysis (evidential instrument) or a specimen of blood for analysis. These persons are deemed to have committed an offence against section (79)(1) of the *TO(RUM)* for the purpose of punishment in all respects and includes the period of driver licence disqualification.

Current powers available under section (80) of the TO(RUM)

Various sub-sections under section (80) provide the QPS with the power to require a person to provide a specimen of breath for a road-side breath test, the power to require a person to provide a specimen of breath for analysis (evidential instrument) and the power to require a person to provide a specimen of blood for laboratory test.

There are also powers provided for the QPS to detain a person and to make use of such force as is necessary to take a person to a place to conduct the evidential test or to obtain a specimen of blood for laboratory test and also to sign and deliver a notice suspending a person's driver licence for a period of 24 hours from the time of the analysis or blood test.

Current power to require a road-side breath test

The following are all sub-sections within section (80) of the *TO(RUM)* and relate to the power of the QPS to require a specimen of breath for a road-side breath test;

ss.(2) Require a person to provide a specimen for a road-side breath test when stopped for a random breath test (s.(51)(3)(c) PPRA) or when a traffic breach including a s.(79) offence is detected.

ss.(2A) Require a person to provide a specimen of breath for a road-side breath test when involved in a vehicle crash involving death or injury to any person or property damage.

ss.(2C) Power to require a person to undertake as many road-side breath tests as is considered reasonably necessary to carry out the road-side test.

ss.(22)(c) Power to require a person to provide a specimen of breath for a road-side breath test after the person has provided a specimen of blood for analysis, (other than a specimen of blood taken when a person is at a hospital for treatment following a vehicle crash). This power enables the imposition of a 24 hour driver licence suspension.

Current power to require a specimen of breath for analysis (evidential instrument)

The following are all sub-sections within section (80) and relate to the power available to a member of the QPS to require a person to provide a specimen of breath for analysis on an evidential instrument;

ss.(8) Require the person to provide a specimen of breath for analysis (evidential instrument).

ss.(8C) Require a person who is at a hospital for treatment (following a vehicle crash) and an evidential instrument is available for use of undertaking the analysis (subject to approval of a doctor).

ss.(8M) Require a person to provide a specimen of breath for analysis, ss (8) or (8C) to provide as many specimens of breath as is considered reasonably necessary to carry out the analysis.

ss.(15) Issue a certificate at the completion of the analysis.

Current power to require a specimen of blood to be taken

The following are all sub-sections within section (80) and relate to the power available to the QPS to require a specimen of blood to be taken from a person for the purpose of a laboratory test;

ss.(8) Require a person to provide a specimen of blood for analysis.

ss.(8C) Require a person who is at a hospital for treatment (following a vehicle crash) to provide a specimen of blood for analysis (subject to approval of a doctor).

ss.(8M) Require a person to provide a specimen of blood for analysis, ss.(8) or (8C) to provide as many specimens of blood as is considered reasonably necessary to carry out the analysis.

ss.(9) If a person has been arrested under (8) and is detained at a police station, vehicle, or vessel or taken to a hospital under (8) or (8L) and required to supply a specimen of breath for analysis on an evidential instrument and the reading obtained from that analysis is inconsistent with the indicia exhibited, require the person to provide a specimen of blood for a laboratory test. The inconsistency creates a suspicion of drug impairment and also allows for the requirement to be made for the person to provide a specimen of urine for analysis. There is no offence created for a person to fail to provide a specimen of urine.

ss. (10) When a person is at a hospital for treatment (from a vehicle crash) and the person is unconscious or otherwise unable to communicate, the police officer can require a health care professional (doctor or nurse) to take a specimen of blood for a laboratory test. The consent of the person the specimen is to be taken from is not required.

Current power of arrest without warrant

These are sub-sections within section (80) and relate to offences for which the person may be arrested by a member of the QPS, (this is separate to the detention powers available);

ss.(5A) The person may be arrested for failing to provide a road-side breath test when required. (In most circumstances the person will be detained and taken, using such force as is necessary rather than being arrested).

ss.(8) The person is arrested for an offence against section (79) or (83), [Careless driving], *TO(RUM)* or for an indictable offence arising out of the driving of a motor vehicle, includes an offence under the provisions of 328A of the Criminal Code.

Power to use such force as is necessary

These are sub-sections within section (80) and relate to a member of the QPS using such force as is necessary to take a person to a place for either a road-side breath test, analysis by an evidential instrument or to have a specimen of blood for a laboratory test taken:

ss.(5) If a person is required to provide a specimen of breath for a road-side breath test at a police station or other place, and that person fails to go with the police officer voluntarily, then the police officer may use such force as is necessary to take the person to the police station or other place for the purpose of the test.

ss.(6)(c), (ca), (d) and (e)

If as a result of the road-side breath test, the person is over the general alcohol limit, the no alcohol limit (if applicable), fails to provide a specimen (either fails [refuses to provide], fails to provide in the manner directed or declines to wait until the test is carried out) or is suspected to be affected by liquor or a drug after producing a medical certificate mentioned in (5B)(a), the police officer may use such force as is necessary to take the person to the police station or other place for the purpose of the analysis.

Current power to detain and take a person for analysis

The following sub-sections within section (80) relate to the power of the QPS to detain and take a person as a result of a road-side breath test or arrest and to also detain and take a person to another place subsequent to the road-side breath test in order to undertake breath analysis (evidential instrument) or to provide a specimen of blood for laboratory test.

After the person has provided a specimen of breath for a road-side breath test, failed to provide [refuses to provide the specimen], failed to provide in the manner directed or declined to wait until the road-side test can be undertaken, the police officer may, using such force as is necessary;

ss.(6)(c) take the person to a police station, hospital or other authorised place,

ss.(6)(ca) take the person to a vehicle or vessel where a breath analysing instrument (evidential instrument) is available,

ss. (6)(d) if the person is already at a police station, detain the person there or take the person to another police station, vehicle or vessel where a breath analysing instrument (evidential instrument) is available,

ss.(6)(e) if the person is already at a vehicle or vessel, detain the person there or take the person to another vehicle or vessel or to a police station where a breath analysing instrument (evidential instrument) is available.

ss.(8) This section applies to any person arrested for an offence against s.(79) or (83) of the *TO(RUM)* or arrested for an offence arising out of the driving of a motor vehicle and includes an offence under 328A of the Criminal Code (Dangerous Operation of a motor vehicle)

ss.(8)(c) When a person is detained at or taken to a police station or detained at or taken to a vehicle or vessel or taken to a hospital or other authorised place where a breath analysing instrument is available, the police officer may require the person to provide a specimen if breath for analysis on the breath analysing instrument, or to provide a specimen of blood for a laboratory test, as the case maybe.

General comment about ss.(8)(c)

In circumstances other than where the person is at a hospital for treatment and is unconscious or otherwise unable to communicate, the police officer has the ability to require either a specimen of breath for analysis or a specimen of blood for laboratory test. In most circumstances, the specimen of breath will be obtained and a blood specimen will only be sought if the person is at a hospital or drugs are suspected or the offence is detected within a region of the State in which a breath analysing instrument is not available.

ss. (8A) Provides a power for the QPS to detain the person at a police station, vehicle, vessel, hospital or other authorised place for the purpose of a breath analysis or blood test.

ss.(8B) Provides a power for the police to take the person to more than one place for the purposes of either a breath analysis or blood test if the analysis or test cannot be carried out at the first place.

ss. (9A) A police officer may detain a person at a police station, vehicle, vessel, hospital or other authorised place for a reasonable period of time in the circumstance to enable a doctor to attend in order to obtain a specimen of the person's blood for a laboratory test.

Current power for member of QPS to issue a 24 hour driver licence suspension notice

Sub-section (22A) provides the power for the police officer who makes the requirement for the provision of a specimen of breath for analysis on a breath analysing instrument (evidential instrument) or for the person to provide a specimen of blood for a laboratory test, to sign and deliver a notice to the person required to provide the specimen that the person's driver licence shall be suspended for a period of 24 hours from the time of the provision of the specimen.

This section does not differentiate between persons who provide a specimen for analysis or laboratory test and those who refuse to provide the specimen for analysis or laboratory test, those person's driver licence is also subject to a 24 hour suspension.

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