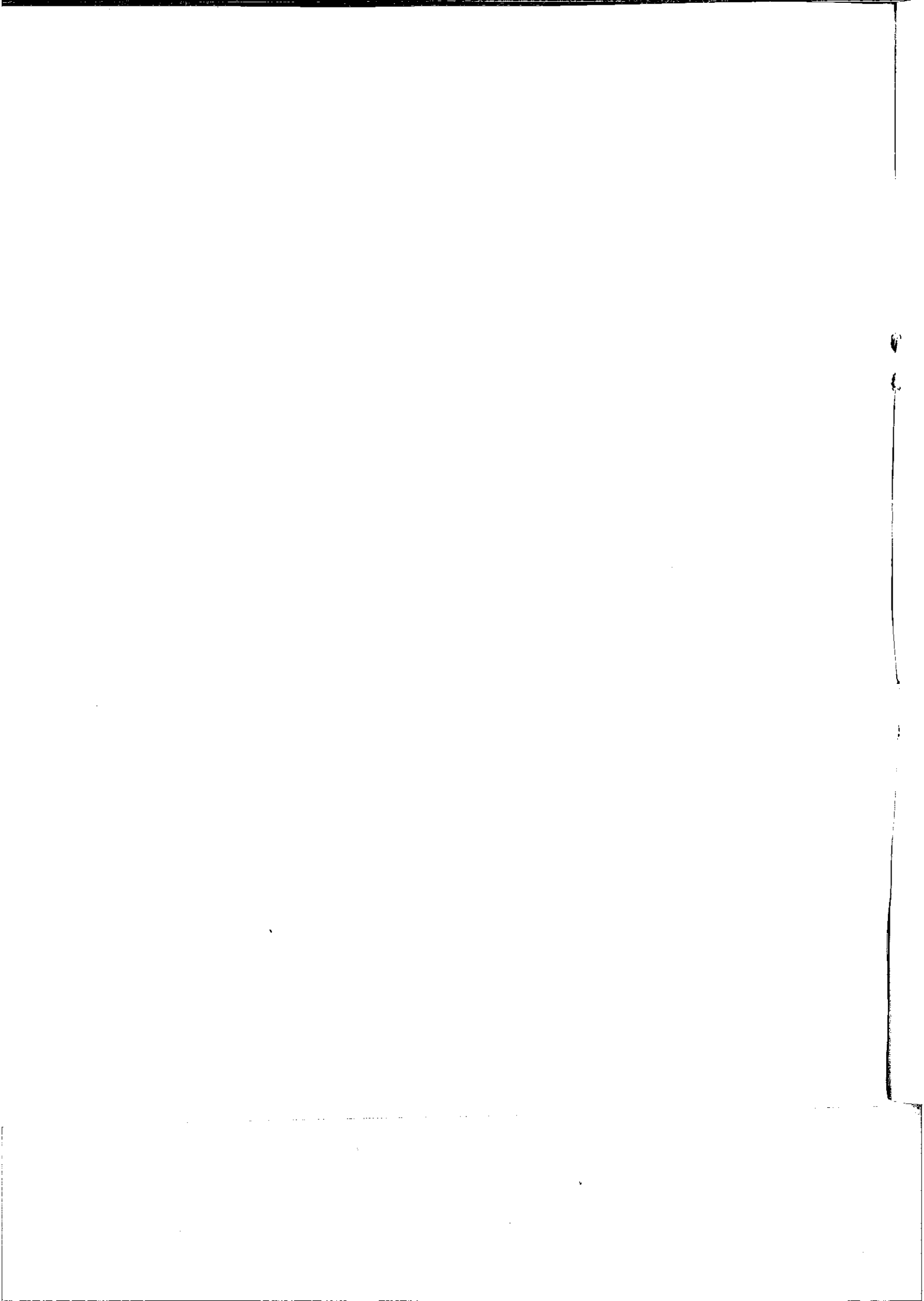


**Research Report 10**

**Published by the Department of the Attorney General & of Justice NSW Bureau of Crime Statistics & Research**

**THE SYDNEY DRINK-DRIVER REHABILITATION PROGRAMME:**

**An Evaluation of the Pilot Scheme 1976**





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## Preface

The issue of this report is a further step in a long standing involvement of the Bureau of Crime Statistics and Research in the problems associated with drinking and driving. From the beginning of the Breathalyser legislation the Bureau has continuously monitored convictions and penalties, publishing them annually in the Court Statistics report. A previous Deputy Director of the Bureau, Mr. Ross Homel, has used much of this material to develop an extensive analysis of the effect of penalties on Drinking and Driving. That work was published in a previous research report of the Bureau.<sup>1</sup>

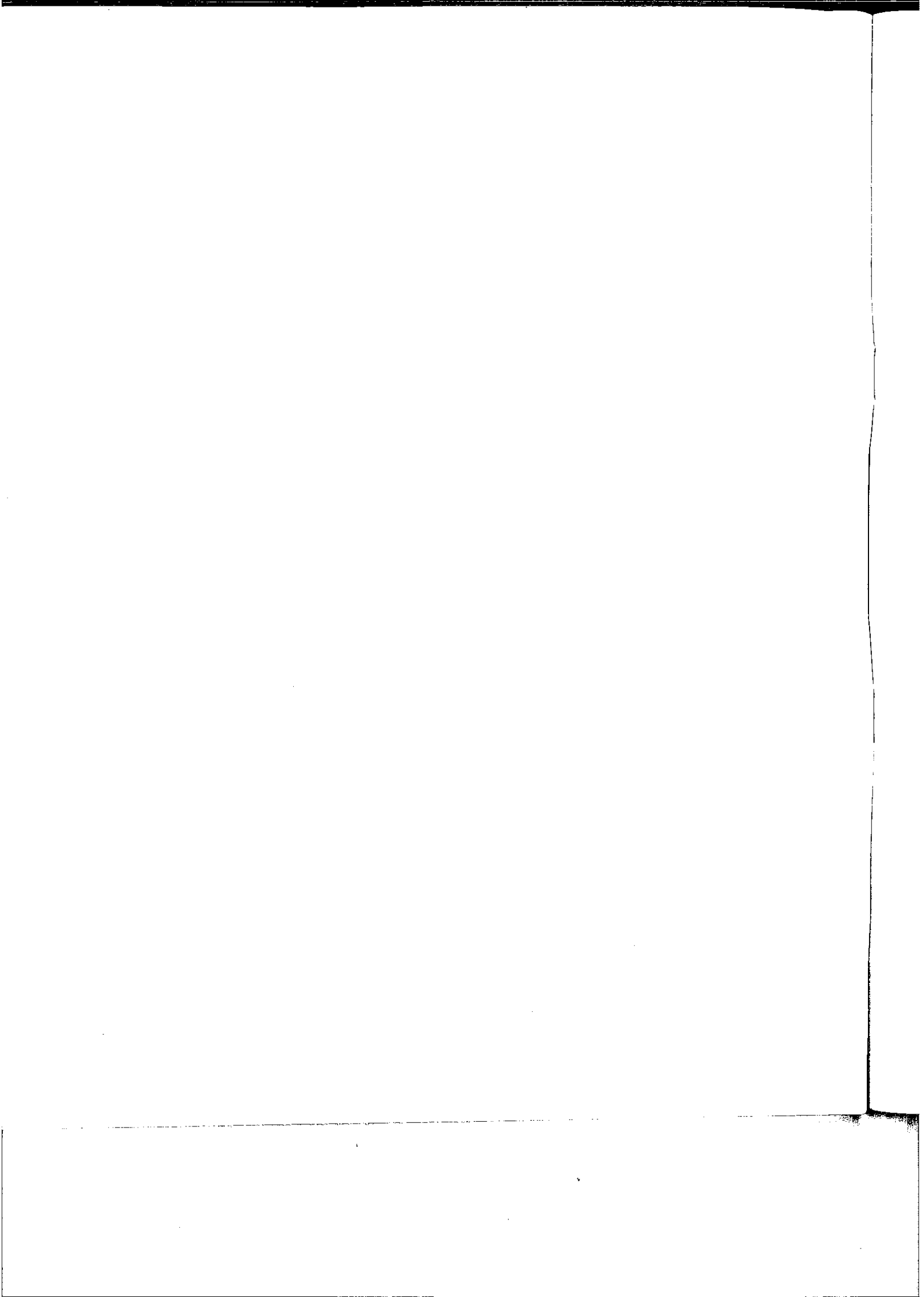
This report gives information on an evaluation of a pilot scheme commenced in 1976. The pilot scheme arose from the initiative of a number of people, most notably the former Chief Stipendiary Magistrate Mr. Murray Farquhar. Mr. Farquhar headed a Committee of representatives of various bodies concerned with the drink driving problem which initiated a series of educational and other treatment programmes for certain categories of persons arrested for drink/driving and appearing before Courts of Petty Sessions in N.S.W. Many centres in N.S.W. have since introduced rehabilitation programmes for such people. Some information from the current report has been released to groups concerned with the problem and it is now appropriate that it be gathered together in one place and reported publically so that the findings may be used to further develop rehabilitation schemes. The overall programme is now coordinated by the Drug and Alcohol Authority.

A number of researchers worked on this project. Ms. Elizabeth Walker working with Mr. Murray Farquhar initiated the evaluation. After two years of work the responsibility for its completion passed to the Bureau of Crime Statistics and Research. Dr. Robyn Seth continued the research, extending and developing the base data collection. Finally it was analysed and written up in its present form by Mr. Henry Pakula, of the Bureau of Crime Statistics and Research. The computer analysis was carried out by Trevor Milne, Research Statistician, in the Bureau, and other contributions have been made by the Deputy Director Dr. Sandra Egger, of the Bureau of Crime Statistics and Research and the Director Dr. Jeff Sutton. The report was typed by the word processing unit of the Department of Attorney General and of Justice, and prepared for publication by Margaret Buckland.

The research could never have commenced without the support of the Criminology Research Council. Subsequently, assistance was provided by the Drug and Alcohol Authority, and finally the work was completed as part of the on-going responsibility of the Bureau. Research material was supplied by the Road Safety Information Services, Victoria.

A. J. SUTTON  
Director

1. Homel R. Penalties and the Drink Driver Research Report 7, N.S.W. Bureau of Crime Statistics and Research, 1980.



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## ABSTRACT

The study evaluated the pilot phase of the Sydney Drink-Driver Rehabilitation Programme which commenced in 1976. Drink-drive offenders (a) with a blood-alcohol concentration of 0.15 or above or (b) with at least one prior drink-drive conviction, were given the option in the 4 "pilot" courts to attend an 8 week rehabilitation course prior to final sentencing.

The entrants had a higher drink-drive reconviction rate than control groups in a 2 year follow-up period. Data analysis indicated that this was due to the "high-risk" nature of the entrants compared with the control groups, rather than the failure of the programme. Also, given the voluntary nature of the scheme, there were probably subjective factors at work which had the effect of selecting the "worse risk" offenders for the programme. And to the extent that entrants saw the scheme primarily as a means of getting a lighter sentence, this would have been contrary to the sort of attitude required for effective treatment. Data on "time to first drink-drive reconviction" showed that reconvictions among the entrants were postponed the longest of all the groups, providing the strongest evidence that the scheme did have an effective deterrent impact on the entrants.

The conclusion is sceptical: the study established neither the failure, nor the success of the programme. Among the research implications were the need to join the treatment programme and the evaluation process together, so as to investigate the overriding issue of "what kind of treatment is most suited to what kind of person under which particular circumstances"; and the need to go beyond recorded convictions, and attempt to investigate other possible effects of the programme which could provide a basis for assessment, such as changes in attitudes or practices related to drink-driving.

In policy terms the study found that the question of the programme's future may have to be resolved on the basis of which side bears the onus of proof. But the scheme has provided a facility within the criminal justice system to help deal with the drink-driving problem, and continued efforts to attack the problem will require experimenting with combinations of all the available counter-measures.



PART I: BACKGROUND TO THE SYDNEY DRINK-DRIVE REHABILITATION PROGRAMME

CHAPTER 1: TRAFFIC FATALITIES AND THE DRINKING DRIVER

It is universally accepted by traffic safety authorities that alcohol is a major factor in the incidence of serious road crashes. The OECD Road Research Group stated in its Report of September, 1978:<sup>1</sup>

"The repeated appearance of the presence of alcohol in drivers involved in traffic accidents ... has led to the hypothesis that impairment is a major factor in predicting an individual's potential for being involved in a traffic accident."

The importance of alcohol-impairment as a factor in road crashes has been established by numerous studies. One series of studies has sought to determine the risk of crash-involvement at different blood alcohol concentrations (BAC's). In the "Grand Rapids Study", which was the prototype of this series of studies, Borkenstein et al (1964) compared the BAC's of drivers involved in accidents with those of drivers who were on the road at the same time and at the same places where accidents happened. They concluded that:<sup>2</sup>

"The probability of accident involvement increases rapidly at alcohol levels over 0.08%, and becomes extremely high at levels above 0.15%."

In the "Vermont Study" (1971), fatally injured drivers were compared with drivers stopped at the accident sites at the same time of day, and on the same day of the week. It was found that 54% of drivers killed had a positive BAC and 42% had a BAC of 0.1 or above, while the corresponding percentages in the control group were 14% and 2%.<sup>3</sup>

A Canadian study (Warren, 1976) found that the risk of fatal injury to the impaired driver, as compared with the driver unimpaired by alcohol was: 17 times greater for 30-34 year olds; 39 times greater for drivers over 50; and 165 times greater for 16 and 17 year olds.<sup>4</sup>

In the "Vermont Study" cited above, the relative probability of being responsible for a fatal crash was calculated as a function of BAC. Between BAC's of 0.05 and 0.1, this relative probability began to increase markedly - to the extent that a

driver with a BAC of 0.1 would be 7 times more likely to be responsible for a fatal crash than a driver whose BAC was zero. At levels above 0.15 the probability is 25 times, at 0.18 it is 60 times, and at 0.20 it is 100 times greater. A BAC of 0.20 is common among convicted drink-drivers and among fatally injured drivers who would have been liable to be convicted had they survived.<sup>5</sup>

In 1975, the year prior to the establishment of the Sydney Drink-Driver Rehabilitation Programme, 3,694 persons were killed on Australian roads and 89,499 were injured.<sup>6</sup> The cost to the community of these mortality and morbidity rates has been estimated at 3 million dollars per day (McDermott, 1977).<sup>7</sup> About one in every three persons killed in a road crash in Australia has a BAC of 0.05% or more. This total includes about 50% of drivers killed, 20% of passengers, 25% of motor cyclists and 25% of pedestrians killed (Johnston, 1976).<sup>8</sup>

It is with good reason, therefore, that Australia's road toll, and those of similar countries, are regarded with horror, and that governments are called upon to exert their utmost efforts to seek to deal with this terrible problem. But it is evident that in doing so, the highest priority must be given to reducing the incidence of drink-driving.

CHAPTER 2: LEGISLATION IN NEW SOUTH WALES.

2.1 The Drink-Drive Provisions.

The legislative provisions which deal specifically with driving under the influence of alcohol are sections 5(2) and 4E(1) of the Motor Traffic Act. Section 5(2) was introduced in 1915, and established the offence of driving under the influence of intoxicating liquor. Section 4E(1) was introduced in 1968, and created the offence of driving with the prescribed content of alcohol in the blood. These two provisions are the most directly relevant to the Diversion Programme, and will be discussed in this Chapter. But it is clear that alcohol may be involved in the whole range of driving offences, and some of the main ones are discussed in Appendix IA to place the "drink-drive" provisions in context.

The present terms of section 5(2) are:

"5.(2) Any person who whilst he is under the influence of intoxicating liquor or of a drug -  
(a) drives a motor vehicle; or  
(b) occupies the driving seat of a motor vehicle and attempts to put such motor vehicle in motion,  
shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding six months or to both such penalty and imprisonment."

In 1976, the maximum fine was \$400. This was raised to \$1,000 in December, 1978.

There is no requirement in the section, as in some other jurisdictions, that the driver be under the influence of intoxicating liquor to the extent that he was incapable of exercising effective control of his vehicle. It does not matter how much liquor may have been consumed by the driver; it all depends upon the effect of the consumption of even "one small glass of mild intoxicating liquor" upon him. "If such consumption places him... 'under the influence of intoxicating liquor'... then the offence is committed"; This must now be read in the light of section 4E(14) of the Motor Traffic Act (see page 11).

Among the facts which show that the defendant was in fact affected by the consumption of intoxicating liquor may be his appearance, whether he staggers or walks normally, whether his eyes are bloodshot, whether his breath smells of alcohol, whether his speech is clear or slurred, and whether his conduct could be regarded as normal. Evidence of conduct might or might not include any actual act of driving by the defendant. It was the practice for police officers to give evidence along these lines, and then express an opinion on the degree of sobriety of the defendant, as expert witnesses, based on their length of service in the force and the extent to which they had dealt with intoxicated persons.

Section 4E was introduced as an attempt to put the offence on an objective footing. The first sub-section provides:

"4E(1) Any person who whilst there is present in his blood the higher prescribed concentration of alcohol

(a) drives a motor vehicle; or

(b) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion,

shall be guilty of an offence under this Act and shall be liable to a penalty not exceeding \$1,000 or to imprisonment for a period not exceeding 6 months or to both such penalty and imprisonment."

As with section 5(2), the maximum penalty in 1976 was \$400, and was raised to \$1,000 in December, 1978.

By section 2(1) of the Act, the "prescribed concentration of alcohol" used to be "a concentration of 0.08 grammes or more of alcohol in 100 millilitres of blood", until amendments which came into force in December, 1980, redefined this as the "higher prescribed concentration of alcohol", and introduced a "lower prescribed concentration of alcohol" of "0.05 grammes or more, but less than 0.08 grammes, of alcohol in 100 millilitres of blood."

The amendments also introduced section 4E(1B), which makes it an offence to drive a motor vehicle or occupy the driving seat and attempt to put the motor vehicle in motion, with the lower prescribed concentration of alcohol in the blood. The maximum penalty is \$400 for a first offence, or \$1,000 for a second or subsequent offence within 5 years of being convicted of an offence referred to in section 10(3A).

Section 10 of the Act provides for cancellation of drivers' licences in addition to these penalties for any time which the Magistrate thinks fit: section 10(1)(b).

Sub-section (3A) of section 10 makes special provision for suspension of licences for the group of offences comprising: any provision of the Crimes Act, where the person was convicted in respect of another's death or bodily harm, caused by the person's driving a motor vehicle; and the offences under section 4 ("furious driving": see Appendix IA), section 4E(1), (1B) or (7), section 5(2) and section 8(1) ("failing to stop after an accident involving death or injury") of the Motor Traffic Act. Where a person is convicted of any of these offences, except the new one in section 4E(1B), but has had no convictions in this class in the five years preceding it, the sub-section provides that he shall be disqualified from holding a driver's licence for one year. For the new offence, the disqualification is for 6 months. If he has been convicted of any offences in this class in the preceding five years, the disqualification is for 3 years, except the new offence, for which the disqualification period is one year.

In 1976, the terms of the sub-section gave a discretion to the court to order a shorter or longer period of disqualification as it thought fit, but in December, 1979, amendments were introduced to provide that the period of disqualification was not to be shorter than 3 months for those without prior convictions in the class in the preceding 5 years, and not shorter than 6 months for those with such prior convictions.

For the new offence, no minimum mandatory disqualification period is set where there is no prior conviction in the class in the preceding 5 years, but 3 months is the minimum disqualification period where there is such a prior conviction.

The method of enforcing the section is set out in the following sub-sections. By sub-section (2), where a member of the police force has reasonable cause to believe that

- (a) a driver has breached any provision of the Act or the regulations;
  - (b) the person has alcohol in his body by the manner in which he drives a motor vehicle, or occupies the driving seat and attempts to put it into motion; or
  - (c) a driver was involved in an accident,
- the policeman may require that person to undergo a breath test.

By sub-section (3), where

- (a) the breath test indicates that there may be present in that person's blood a concentration of alcohol not less than 0.05 grammes in 100 millilitres of his blood; or
  - (b) the person refuses to undergo a breath test,
- the policeman may arrest him. He may then require the person to submit to a breath analysis: sub-section (4).

Sub-section (5) provides for exemptions from breath tests and breath analysis,

- (a) where the person is admitted to hospital for medical treatment, unless the medical practitioner in his charge does not object;
- (b) where the police officer thinks it would be dangerous in view of the person's injuries;
- (c) after the expiration of two hours from the occurrence of the event leading to arrest; or
- (d) at the person's usual place of abode.

Sub-section (6) makes it an offence to refuse a breath test, with a penalty of \$500 (\$200 in 1976); and sub-section (7) makes it an offence (a) to refuse to submit to a breath analysis or (b) to wilfully do anything to change the concentration of alcohol in the blood prior to completing the breath test or submitting to the breath analysis. The penalty is \$1,000 (\$400 in 1976) or imprisonment up to 6 months or both. A defence is provided to prosecutions for offences under sub-section (6) or (7)(a) that the person was unable to undergo the breath test or submit to a breath analysis on medical grounds: sub-section (8).

Sub-section (9) and (10) are procedural.

Under sub-section (11), the result of the breath analysis as determined by the instrument is deemed to be the concentration of alcohol in the blood of the person for purposes of evidence, unless the person can prove the concentration of alcohol in his blood was less than the prescribed amount. Sub-section (12) provides for the reception of the certified particulars of the test results and procedures as prima facie evidence.

Sub-section (13) is a special provision about contracts of insurance.



Finally, sub-section (14) provides that a person convicted under sub-section (7) cannot be convicted under section 5(2), and vice versa, and sub-section (15) provides that a person cannot be charged under section 5(2), once he has submitted to a breath analysis. The effect of these provisions is that, where the breath analysis instrument is available, and the analysis is performed, a person cannot be charged if his blood-alcohol concentration is below 0.05 mg. per 1,000 ml.

## 2.2 Rationale of the Breathalyser Provision.

The distinctive feature of the offence in section 4E is that it is based on a measurement by a machine, and this unique aspect has had ramifications in the courts. In general, the courts have framed their decisions to uphold the validity of the section.

It is a recognised medical fact that different people are affected by the consumption of alcohol in varying degrees. In introducing the legislation in Parliament, the Hon. Mr.A. Morris, then Minister for Transport, said that a considerable amount of time was spent on deciding the prescribed concentration of alcohol in the blood. The level of 0.08 was finally selected because at this level, "it has been scientifically demonstrated that all drivers suffer a reduction in the skills involved in driving a motor vehicle. Certainly, some drivers will be affected more than others, but the fact remains that at this level of concentration there is not one driver whose normal driving skill is not impaired to a significant degree..."<sup>2</sup>

Mr. Morris proceeded to quote the research findings of Dr.K.G.Jamieson of Queensland, that, in most instances, a driver having a blood-alcohol level of up to 0.04 per cent would not measurably increase his normal risk of having an accident, normal risk being the risk which would apply when he had no alcohol in his body at all. At a level of 0.05 per cent, however, the accident risk increases to twice that which would apply when normal; at 0.08 per cent the risk becomes three times normal, at 0.10 per cent six times normal, at 0.12 per cent twelve times normal, and at 0.16 forty-five times normal. It was on the basis of the sharp upward turn in degree of risk that the level of 0.08 was chosen.

Another issue is the accuracy of the Breathalyser instrument. A study of 23 cases comparing Breathalyser results with the exact value obtained by gas chromatography,<sup>3</sup> showed that while the Breathalyser under-estimated the true blood-alcohol content in most cases, there was still a risk of one in four that the true level would be 0.08 per cent or less at a reading of 0.087. Such an error might be made in 2.5% of cases at a reading of 0.094%; in 1% of cases at a reading of 0.0976%; and 0.3% of cases at a reading of 0.1%.

The courts, however, have upheld the efficacy of the legislation by holding, as Williams J. expressed it in *Bartlett v Harrison*; *Ex parte Bartlett*:<sup>4</sup>

"The court is not concerned with what the concentration may actually and exactly be but with what the authorised officer duly complying with the Act and Regulations properly records it to be. The whole scheme of the legislation is to accept the breath analysis instrument with all its shortcomings and to conclude that, whilst it is worked and is working in accordance with the Act and Regulations, it cannot be classed as defective".

Another important issue concerning the breathalyser test, is its implications for the "rule against self incrimination". An account of the way the courts have dealt with this issue is contained in Appendix IB.

CHAPTER 3: POLICE ENFORCEMENT.

3.1 Offence Statistics.

Since 1973, the N.S.W. Police Department has been compiling statistics on tests administered in connection with possible breathalyser offences. As well as recording the numbers of tests, the police statistics contain a breakdown according to whether each proved "positive" (i.e. it is indicated that the driver's blood may contain the prescribed content of alcohol), or "negative". These data are set out in Table 3.1. As can be seen, although the number of tests carried out has increased, the percentage proving positive has remained relatively constant.

Table 3.1: Alcotests and Breath Analyses carried out by NSW Police Force 1973-8.

<u>Year</u>	<u>Alcotests</u>		<u>Breath Analyses</u>	
	<u>Number</u>	<u>% positive</u>	<u>Number</u>	<u>% positive</u>
1973	27,601	89.3	23,654	79.2
1974	25,861	82.4	21,882	78.2
1975	25,723	79.9	20,883	79.9
1976	25,823	79.6	21,194	79.0
1977	27,183	79.3	22,300	79.9
1978	29,059	82.6	24,837	79.9

Alcotests are the "road-side" tests, which consist of blowing into a bag of crystals sensitive to alcohol; and the breath analysis is conducted on the breathalyser instrument if the alcotest is positive. The data presented here is drawn from the "Court Statistics" Reports published by the Bureau.

Table 3.2 shows the number of findings of guilt under s4E of the Motor Traffic Act, 1909, since its inception. The number increased until 1972, after which there were small fluctuations over the next five years. The increase in 1978 represented the largest increase since 1972. However, these figures do not necessarily reflect fluctuations in drink-driving behaviour in the State. Rather, the number of drinking drivers detected may be explained by increased police activity, and also by the greater numbers of class 1 licence holders.

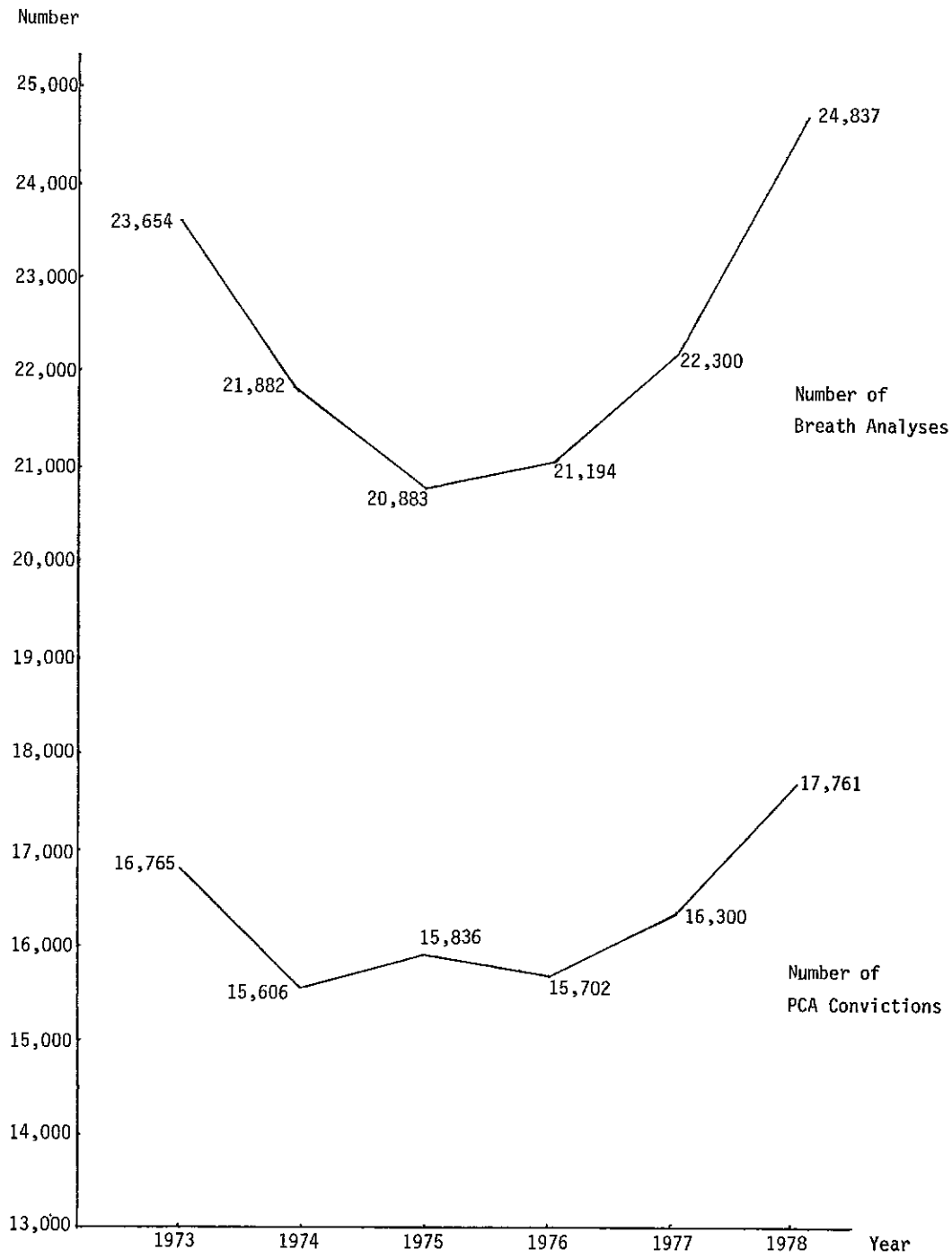
Table 3.2 Findings of guilt under the breathalyser legislation

<u>Year</u>	<u>No. of persons found guilty</u>	<u>% increase on previous year</u>
1969	7552	-
1970	9557	26.5
1971	12335	29.1
1972	15736	27.6
1973	16768	6.6
1974	15606	- 6.9 (decrease)
1975	15836	1.5
1976	15702	- 0.8 (decrease)
1977	16300	3.8
1978	17761	9.0

Figure 3.1 explores the extent to which convictions under the breathalyser legislation are a reflection of police enforcement activity. It illustrates the number of breath analyses carried out for the years 1973-78 compared to the number of findings of guilt under the breathalyser legislation for the same years and reveals parallels between the police and court figures. The fluctuations in each set of figures follow each other, the only discrepancy being for the 1975 figures. The facts that not all persons tested in one year appear in court in the same year, and that there was a slightly lower percentage of "positive" results in 1974 (see Table 3.1) go towards explaining this discrepancy.

The relationship between numbers tested and numbers convicted for P.C.A. offences suggests that rather than P.C.A. convictions reflecting drink-driving habits in the community, they better reflect the amount of police activity. In particular, the increases in 1977 and 1978 may be attributed to the introduction of new units in the Police Breathalyser Squad, particularly in country areas, where the increases were greatest. The real extent of drink-driving in the community and whether it is increasing or decreasing remains unknown.

Figure 3.1 Trends in Breath Analyses and P C.A. Convictions



The blood-alcohol levels for breathalyser offenders in the years 1974-1978 are shown in Table 3.3. The percentages in each group have remained almost unchanged over the past 5 years.

Table 3.3 Blood Alcohol Level for Breathalyser Offenders 1974-78

	1974		1975		1976		1977		1978	
	No.	%	No.	%	No.	%	No.	%	No.	%
Low (0.08-0.15)	8661	55.5	8504	53.7	8437	53.7	8825	54.2	9607	54.2
Medium (0.16-0.25)	5634	36.1	5859	37.0	5912	37.7	6038	37.0	6704	37.8
High (0.26 plus)	1311	8.4	1473	9.3	1353	8.6	1437	8.8	1429	8.0
Total	15606	100.0	15836	100.0	15702	100.0	16300	100.0	17740	100.0

The numbers and percentages of offenders with previous convictions for drink-drive offences, are shown in Table 4. Between 1970 and 1976, there was a steady increase in the percentage of offenders with previous convictions for similar offences, from 15.1% in 1970 to 27.7% in 1976. In 1977, the rate tapered off, and it fell to 20.8% in 1978. The probable explanation for this decrease is that the increase in police activity noted above (Table 3.1) has led to the detection of a greater percentage of "new" offenders who had not been caught previously.

Table 3.4 Breathalyser Offenders with previous convictions for drinking and driving.

<u>Year</u>	<u>No.</u>	<u>%</u>
1969	1,307	17.3
1970	1,443	15.1
1971	2,578	20.9
1972	3,572	22.7
1973	3,940	23.5
1974	3,902	25.0
1975	4,335	27.5
1976	4,350	27.7
1977	4,401	27.0
1978	3,694	20.8

### 3.2 Penalties

In 1978 the Motor Traffic Act was amended to increase the maximum fine for a drink-drive offence from \$400 to \$1,000. This came into force only on 21st December, so that only 20 offenders, representing 0.2% of drink-drive offenders, received fines in excess of \$400 before the end of the year. There is a clear trend evident in Table 3.5 for fewer offenders to receive fines of less than \$100 while an increasing number are receiving fines in excess of \$200 over the years 1973-1978. This suggests that magistrates may be taking a tougher approach to drink-drivers, although to a large extent, the increases in fines may be attributable to inflation.

Table 3.5 Fines for convicted drink-drive offenders 1973-78

	1973	1974	1975	1976	1977	1978
	%	%	%	%	%	%
\$1-100	22.5	20.4	16.5	13.2	10.1	7.5
\$101-200	54.6	56.5	56.8	57.2	55.5	53.2
\$201-300	8.3	8.5	11.2	13.9	17.2	20.1
\$301-400	1.1	1.5	2.0	3.2	4.3	6.0
\$401 plus	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
not relevant	13.5	13.1	13.5	12.5	12.5	13.0
Total	100.0	100.0	100.0	100.0	100.0	100.0

The other, and perhaps more significant aspect of penalties for drink-drive offenders is the licence disqualification period. This is shown in Table 3.6. The trends of a decline in the percentage of suspensions under 6 months, and the increases in the percentages of suspensions of 6 months up to 2 years in 1978, together with the data that fewer offenders in 1978 had previous convictions for drink-driving than in previous years, support the interpretation that magistrates are taking a sterner attitude to drink-drive offenders.

Table 3.6 Periods of Licence Disqualification

	1973	1974	1975	1976	1977	1978
	%	%	%	%	%	%
less than 6 months	58.1	54.0	54.2	53.1	56.1	51.9
6 months-1 year	8.7	9.5	10.3	10.6	9.6	10.9
1-2 years	21.3	23.3	21.8	22.1	21.0	23.9
2 years or more	11.9	13.2	13.7	14.2	13.3	13.3
Total	16,779	13,754	15,957	15,133	16,340	17,669

#### CHAPTER 4: FAILURE OF THE CRIMINAL JUSTICE SYSTEM TO CONTAIN THE PROBLEM

The central feature of efforts in developed countries to reduce the road toll due to alcohol impairment of driving, is legislation such as the N.S.W. provisions described above, which prohibits driving "whilst under the influence of alcohol," and driving "with a prescribed concentration of alcohol in the blood." The main approach, therefore, has been to attempt to deter drinking and driving by the use of criminal penalties.

It is extremely difficult to test the effectiveness of these legislative counter-measures either as "general deterrents" to drinking and driving among the public as a whole, or as "specific deterrents" in relation to convicted drink-drive offenders.

To measure "general deterrence" would require the determination of the extent to which people in the society would drive after drinking excessively, but for the existence of the offence and the apprehension of being prosecuted and punished. Measuring "specific deterrence" in this context would involve assessing the effect of penalties in preventing offenders from repeating their offence.

It is obviously impossible to make these measurements with any precision. At best, the available information can serve only as very rough guides to the two sorts of deterrence. Thus, the rates of vehicle accidents and the prevalence of alcohol impairment among crash victims and random samples of the driving public may be used as indicators of general deterrence, while recidivism rates for convicted drink-drivers could provide a crude measure of specific deterrence.

##### 4.1 General Deterrence: The Failure of Legislation

Vehicle accident rates are not used to indicate the general deterrent effect of just the drink-drive offences, of course, but relate to all the traffic offences collectively. Moreover, when making comparisons among countries, or within a country over long periods, the most significant factor determining the road accident rates is the country's degree of motorization. Borkenstein (1976) has compiled statistics based on road fatalities per 100 million vehicle-kilometres.<sup>1</sup>



In 1969, Australia had a fatality rate per million population of 260, which ranked fifth among 20 countries considered, after France (282) Belgium (278), Germany (270) and the USA (269). However, in terms of fatalities per 100 million vehicle-kilometres, Australia ranked 13th amongst the same 20 countries with a rate of 6.1. The highest rates were to be found in Kenya (75), Syria (49), and Turkey (31), while the lowest were in the USA (3.3), Great Britain (3.8) and Sweden (4).

These statistics highlight the necessity of evaluating the effectiveness of drink-drive legislation within the context of a complete traffic system. Traffic systems differ in the demands which they place upon the driving capacities of users, according to such factors as traffic volume, road design, the condition of the roads, average levels of driver education and types of vehicles. All these factors affect the accident rates apart from the extent of drink-driving.

The other context which must be considered in discussing the effectiveness of countermeasures against drink-driving, is the drinking customs of the society. The consumption of alcohol, mainly in the form of beer, is a well-entrenched feature of Australian social life. This was evident in the results of a survey of 1,196 men and women distributed at random throughout the Sydney metropolitan area, which was undertaken in the latter part of 1971. Ages ranged from 17 to 70 years.<sup>2</sup>

Respondents were asked whether they drank at all, and if so, how often. Over one-third of the men drank nearly every day or more often, whereas only 16% of the women did so; indeed, 77% of the men drank once or twice a week or more. The men generally drank a greater amount on each occasion: 15% stated that they drank five or more glasses (10 oz "middies" of beer, one nip of spirits or a 3 oz glass of wine), but less than 3% of the women drank that quantity.

When asked how often they had something to drink before driving, 12% of the males said "never", as did 51% of the females. Furthermore, 50% of the males, but only 11% of the females, admitted that they had driven on occasion when they felt they had had too much to drink.

Henderson (1972) has discussed some of the implications of the survey results:<sup>3</sup>

"A complex network of social attitudes governs how, when and where people drink, and the degree to which the law conflicts with these drinking norms will be an important factor in its success or otherwise as a deterrent. Social pressures can assist in influencing behaviour; ideally, social sanctions should reinforce the deterrent effects of legal sanctions. But social pressures acting to curb drinking and driving are weak; heavy drinking and drunkenness are accepted and even encouraged in some sections of the community, and ignorance of the importance of alcohol in severe traffic crashes will be inclined to perpetuate acceptance of a tolerance for driving under its influence. On the other hand, there are strong social pressures encouraging drinking before driving; the need to conform to group norms is a powerful motivating force, especially among young men, and where the law and social norms are in conflict, the threat of social sanctions will probably outweigh the threat of legal sanctions for many individuals".

Lack of standard methods for determining whether a road fatality may be attributed to alcohol-impaired driving, render it difficult to rank nations in terms of the impact of alcohol on their road tolls. In Finland and the U.S.A., 27% and 50% respectively of road fatalities are said to involve alcohol impairment. Current estimates for Australia suggest a rate in line with that of the U.S.A. (Johnston, 1976).<sup>4</sup> In N.S.W., the proportion of accidents involving alcohol-impaired drivers is currently considered to be within the range of 30 to 60%.

The prevalence of alcohol impairment in the driving population can be established by special surveys or by random breath testing. In Australia, two special surveys have been conducted, both in Canberra, in 1971 and 1972 (Duncan, 1976).<sup>5</sup> These surveys found that the percentage of drivers with BAC's of 0.08% or more fluctuated over days of the week and times of the day, but the overall average was 5%.

The other indication of alcohol impairment among drivers is the detection rate under random breath testing. Victoria has been the first State in Australia to implement this policy, and Lay (1978)<sup>6</sup> quoted a rate of approximately 2% since the inception of the scheme, while an NRMA assessment of random breath testing in Victoria cited a rate of 1.5%, falling to 0.5%.<sup>7</sup>

Taking into account the selective element in the enforcement of the "random" breath testing law, which arises from the fact that testing is concentrated in built-up areas during the periods of greatest risk (weekend evenings and holidays) to gain maximum impact, it would seem that the actual rate of offending might be lower than the levels cited above. While these figures may seem very low from the viewpoint, say, of the use of police resources, they nevertheless indicate that there are commonly a great many drivers on the roads with BAC's over the legal limit.

Britain seems to have accomplished an immediate reduction in the proportion of casualties during drinking hours with the introduction of its breathalyser legislation in 1967. This reduction was gradually eroded, presumably as the force of the accompanying propaganda died away (Sabey and Codling, 1974).<sup>8</sup>

No study has shown that the introduction of breathalyser legislation in Australia has been effective in reducing the prevalence of impaired driving, nor have any of the periodic increases in penalties for drink-driving offences in Australian States, been related to any reduction in the incidence of crashes involving alcohol. However, road safety experts in Victoria allege that since the introduction of new legislation in their State in 1978, which doubled all existing penalties and introduced mandatory licence disqualification for the first time in Australia, the total number of drivers admitted to hospital with BAC's exceeding Victoria's limit of 0.05% has been reduced, and the average BAC of those who did exceed the limit has decreased. In December, 1979, New South Wales also enacted mandatory licence disqualification for the most serious driving offences, including the drink-drive offences.

#### 4.2 Specific Deterrence: the Failure of Penalties.

As noted above, "specific deterrence" refers to the effect of penalties on offenders in preventing them from repeating their offence. The rationale of specific deterrence is a naive "utilitarian" theory of human psychology. Applying it to drink-driving, this theory may be expressed in the following terms: people drive after drinking excessively, because it is "pleasurable" for them. Society, however, regards this behaviour as being harmful to its other members, and along with other harmful acts, defines it as a "crime" or "offence". When a person is caught committing the offence, he is tried and a

penalty is imposed on him. According to the utilitarian calculus, the "pain" of the penalty is intended to outweigh the "pleasure" of the activity, and so prevent the person from repeating the behaviour.

For all its shortcomings, this "specific deterrence" theory is one of the fundamental principles underlying our whole criminal justice system, although admittedly, it is in the nature of an "official ideology of deterrence" rather than a set of beliefs supported by evidence.<sup>9</sup>

Reconviction rates are used most commonly as the measure of the effectiveness of "specific deterrence", for the simple reason that they are recorded. They are, however, a very imperfect measure for this purpose, as is emphasised in Chapter 8, "Evaluation of the Programme". In particular, and precisely because they omit the "dark figure" of undetected offences, they grossly understate the actual rate of recidivism. Even so, the recorded data on reconvictions indicates a substantial degree of failure of penalties as specific deterrents: between 20 and 30% of drink-drive offenders each year have prior drink-drive convictions.

In the present study, we are concerned, of course, with the additional element of treatment, as distinct from the imposition of penalties alone. While the mechanism of how treatment is supposed to work is somewhat different from criminal punishment, it may be incorporated into the theory of specific deterrence quite simply: rather than "hurting" the offenders directly, the idea of treatment may be seen as trying to change them, or, somehow, to manipulate their feelings, so that the behaviour sought to be suppressed will be less "pleasurable" or more "painful" for them in future. The desired end result remains the same, of deterring the person from repeating the behaviour.

No attempt is made here to summarize the body of research on specific deterrence. For an excellent succinct review of this literature, the reader is referred to Homel's Report on "Penalties and the Drink-Driver", published by the Bureau.<sup>10</sup> For present purposes, it is necessary to mention only a few major points which have particular relevance to this study.

The first point to emphasise is that there is very great variation in the reaction of individuals to different kinds of penalties and treatment. Most studies, like this one, consider

the impact of treatment on groups, and it is important to remember that the aggregate results tend to obscure these individual variations. The treatment might be very successful with some members of the group, but this might not emerge in the results for the group as a whole, because the failure of treatment with other group members might cancel out the successes.

Ideally, one would be able to investigate what kind of treatment was best for what kind of person under which particular circumstances. Such an approach would be consistent with the experience of psychologists and clinicians who have known for years that some people get better after treatment and some get worse - the trick is to know who and why (Herson and Barlow, 1977).<sup>11</sup>

The next major point follows from this: for if criminological research over the past 20 years has yielded any definite results at all, it is that no method of "treating" criminal offenders is better than any other in preventing reconvictions (Zimring and Hawkins, 1973; Clarke and Sinclair, 1974; Hood, 1971).<sup>12</sup>

The main finding of Homel's own study was in keeping with this: in general, neither type nor severity of penalty affected the probability that an offender will be convicted again for drinking and driving. But he did find a few exceptions: offenders put on a good behaviour bond under section 554 had a relatively low reconviction rate; there was an apparent deterrent effect of heavy fines on the group with a concurrent conviction for driving whilst disqualified; and for offenders classified as "good risk", in the sense that they were not reconvicted for drinking and driving or for a criminal offence in 3 years, long periods of licence disqualification appeared to be a more effective deterrent to committing motoring offences or infringements than short periods.<sup>13</sup>

As Homel himself stresses, however, the results of his study are unusual in showing that any types of penalties have any effect at all on reconviction rates, and if a general conclusion is to be drawn from the studies on specific deterrence, it is, regrettably, a pessimistic one that we cannot expect the courts to provide the solution to the drink-driver problem.

## CHAPTER 5: AN OVERVIEW OF ALTERNATIVE COUNTER-MEASURES.

The failure of the existing measures to sufficiently stem the road toll due to drink-driving, has elicited the call to adopt new approaches. One sort of response has been to advocate harsher enforcement, in the form of higher penalties, "random" breath tests and even mandatory prison sentences.

The other sort of response has been to attempt alternative counter-measures to the conventional forms of punishment embodied in our legislation. Broadly, these consist of "prevention" in the form of education programmes and "rehabilitation" in the form of treatment programmes.

### 5.1 Drink-drive Prevention in N.S.W. Prior to Introduction of the Sydney Drink-Drive Rehabilitation Programme.

#### (a) Police Lectures

Since the introduction of the "Breathalyser" provisions in December, 1968, members of the Breathalyser Squad have been giving lectures on the legislation and demonstrations of the operation of the testing equipment to community organisations and groups. These have included voluntary organizations such as Rotary, Lions and Apex, Masonic Lodges, Youth groups (such as Police Boys' Clubs), representatives of pharmaceutical companies, the N.R.M.A. and others.

Such lectures and demonstrations continue as a regular activity of members of the Squad, but by their nature, they are obviously limited as a measure of public education designed to prevent drink-driving, in terms of the numbers and the types of audiences reached.

#### (b) The TARU "Slob" Campaign.

In 1974, the Traffic Accident Research Unit of the Department of Motor Transport of New South Wales conducted an ambitious media propaganda campaign, which was designed to determine the efficacy of using traffic safety campaigns as a means of changing attitudes or simply as a means of communicating information.<sup>1</sup>

The campaign was conducted in two stages. The first stage was to be information-oriented, the aim having been to communicate certain facts on alcohol and driving and the

Breathalyser legislation. The second stage was to be a "persuasive" campaign, with the more ambitious aim of changing social attitudes to irresponsible drinking and driving.

The first stage consisted of a six-week press and radio campaign, with the advertisements containing several of the facts that: up to three-quarters of all serious crashes are alcohol related; it is an offence to drive a motor vehicle with a BAC of 0.08% or more; and it takes six middies of beer (five nips of spirit or five glasses of wine) to exceed the legal limit.

The evaluation consisted of two matching household surveys of about 1,000 randomly selected adults in Sydney, conducted respectively in the three weeks before, and the three weeks after the media campaign. It was found that there was a measurable increase in knowledge in the three areas defined by the objectives in the second survey in relation to the first. Many of the increases were small, however, and although they were statistically significant, none could be considered dramatic on its own.

The second stage of the campaign sought to attack attitudes which encouraged the practice of driving after drinking. It became known as the "slob" campaign, defining a slob as "a man who drinks six middies or more in an hour and then attempts to drive". The theme of the press, radio and television advertisements was "we have to stop the slobs driving". The secondary aim of this follow-up campaign was to further increase the level of public awareness on the effects of alcohol on driving. It was conducted in the Sydney area and was designed to reach people aged from 17 to 30 years. The total cost of the programme was in the order of \$350,000.

Again, the evaluation of the campaign was by two surveys, the first conducted in June, 1974, before the "Slob" campaign, and the other in September. As well as three "knowledge" issues, two attitude questions were surveyed: the first being the attitude to a person who drinks six middies in one hour and then drives; the second being the attitude to the person who tries to persuade his friend to stay for an extra drink.

The results showed increased knowledge levels on the three issues, and statistically significant changes on the two attitude questions. The greatest change was in "knowledge of the legal limit (i.e six middies)" which rose from 20.5% to 37.0%. The attitude changes, however, were relatively slight.

In 1974, there was a decline in the average BAC's of convicted drivers, and a fall of 6.9% in the total number of drink-drive convictions compared to 1973, and at first it was thought that the campaign might have contributed to this. In the longer term, however, it appears that the 1973 figures were inflated, and that the declines in 1974 were merely a return to "normal" levels.

The conclusion of those who evaluated the campaign was tentative:

"All in all, public education as a potential drink-driving counter-measure is still insufficiently understood, although important advances have been made recently. Further, although some beneficial effects have been documented, it remains to be shown that the benefits brought about are in any way commensurate with the very heavy costs of multi-media advertising".

They advocated that "similarly experimental approaches should be undertaken in other area of public communication", suggesting, as an example, that "in the long term it would be possible to bring about more substantial changes in public attitudes by concentrating on teenagers and children at school, who within a few years will in fact be the young drivers most at risk".<sup>2</sup>

#### 5.2 Random Breath Testing in Victoria.

One of the most controversial measures which has been advocated for introduction in New South Wales is random breath testing. It is a vexed issue because of the civil liberties issues involved. Victoria introduced it in 1976, the Northern Territory has introduced it, and South Australia has random breath testing under consideration.

In concept, random breath testing would permit police officers to stop cars at any time or place even in the absence of reasonable grounds for suspicion, but in practice it involves locating testing sites at times and in places where drinkers are most likely to be driving, so that a selective process of apprehension is adopted. The target of such legislation is the driver who thinks he can drive under the influence of alcohol without showing it.



Initially, random testing in Victoria was limited because of the small number of units in operation, but a major enforcement campaign, backed up with extensive publicity, was carried out for seven weeks during November-December, 1978. The Victorian Road Safety and Traffic Authority (ROSTA) conducted an evaluation study of the campaign.<sup>3</sup>

During normal operations random testing operated for about 10 hours per week, while during the intense enforcement period, testing stations operated for approximately 100 hours per week. They were located in the Melbourne Metropolitan area so as to give the public the impression that there were more stations in operation than in reality.

The ROSTA evaluation indicated a very significant deterrent effect. It found a substantial reduction in fatalities and injuries when compared to the same period of the year before, other days of the week and rural areas. For example, the ROSTA report showed a considerable reduction in fatalities from Thursday, Friday and Saturday nights, and throughout the week in the 6.00 p.m. to 4.00 a.m. time period (in both of which the "drinking" factor is relatively at its highest level), compared with the same period (the December quarter) of 1977.

However, an NRMA assessment of the results has highlighted possible sources for misinterpretation of these results.<sup>4</sup> Analysis of the previous 10 years' data reveals that fatalities in Victoria recorded on Thursday, Friday and Saturday nights, and in the 6 p.m. to 4 a.m. time period, for the 1977 December quarter, were particularly high. Further examination shows that this applied especially to the Saturday night figure in 1977, and that on a day by day basis, each day's figure in 1978 was on the lower side of the 10-year trend line. Therefore, the ROSTA analysis may only indicate a statistical low, rather than a substantive fall.

The perceived risk of detection was also measured using a household interview survey. It found an increase in "perceived risk" since 1976, from between "very unlikely" and "quite unlikely", to "quite unlikely". Whether any such change was due to the legislation or the publicity surrounding it at that time is not known.

The House of Representatives Standing Committee on Road Safety was sufficiently impressed with the results of the campaign (as described by ROSTA) to recommend that random breath testing legislation be introduced in all States, but even in doing so, expressed doubt whether continued low level enforcement of such legislation would be effective, or indeed, whether "short intense bursts" backed by extensive publicity, will continue to be effective.<sup>5</sup>

In its earlier consideration of the issue (1976), the Australian Law Reform Commission decided against recommending the introduction of random testing.<sup>6</sup> Part of its argument was that "totally random testing would be an inefficient use of police resources which could be more effectively used in the full application of the present more limited powers to test drivers. Selective testing, particularly if carried out near hotels, would no doubt lead to an increase in the apprehension of drinking drivers." It was put to the Commission that the police had power to conduct such "selective testing" within the terms of the existing legislation, though as the Commission observed, "to carry out such tests would require of police that they should brave public hostility...".

### 5.3 Mandatory prison sentences.

In keeping with the popular assumption that severe penalties are an effective deterrent, some people have advocated adoption of the "Scandinavian" approach to the drink-driver problem of mandatory prison sentences. In Denmark the penalty is 21 days' imprisonment. In Sweden, a person is liable to imprisonment for a minimum of one month and for up to a year if his BAC exceeds 0.15%. In Norway, a driver may be imprisoned for a minimum of three weeks and a maximum of one year, for driving with a BAC of 0.05%, and in Finland, the typical sentence is two to three months' imprisonment, but may be up to four years.<sup>7</sup>

The official response in N.S.W. has been to reject this proposal. For one thing, as the Australian Law Reform Commission pointed out, our goals are quite unlike those of Scandinavia, and are not geared to the holding of drink-drive offenders - they generally lack appropriate facilities for rehabilitation.<sup>8</sup>

Moreover, researchers have cast doubts on the effectiveness of the policy. Bø found, for instance, that the policy in Norway is "not at all effective against heavy drinking among accident-involved drivers".<sup>9</sup> Nor is there proof that alternatives to imprisonment would not have as great an inhibiting influence on those drivers who do appear to be deterred. Ross, an American sociologist, even questioned whether the assumption that the imprisonment policy did deter, was valid.<sup>10</sup> First he analysed the arguments used in Norway and Sweden to prove deterrent effectiveness, but found that none of them provided "scientifically acceptable evidence". He then used interrupted time series analysis to test whether the introduction of the various stages of the legislation in Sweden, Norway and Finland from the 1930's to the 1950's were related to changes in the accident statistics. Finding that his data provided no support for the belief that deterrence of drinking and driving was accomplished by the laws, he labelled this belief as "the Scandinavian myth". Before accepting Ross's conclusion, however, it should be noted that his research itself has been refuted, on the grounds that interrupted time series analysis was not the appropriate technique to use for the study.<sup>11</sup>

Another indication of the ineffectiveness of imprisonment as a deterrent against drink-driving has now come from Homel's recently-published study. One of its findings was that "imprisonment was no more effective than any other penalty (in reducing reconvictions), and there is strong evidence that long periods of imprisonment, especially beyond six months, encourage reoffending, especially for drinking and driving." This was based on the finding that drink-drivers who went to gaol for more than six months had worse reconviction records than any other group, including those imprisoned for a short period. This worse record persisted for drink-drive reconvictions even after some allowance was made for the "high risk" nature of this group. The implication drawn by Homel is that "prison periods longer than two or three months help to cause reoffending for drinking and driving," although, as Homel also emphasises, "we must be cautious in drawing this conclusion because of the small numbers involved".<sup>12</sup>

PART II: THE SYDNEY DRINK-DRIVE REHABILITATION PROGRAMME

CHAPTER 6: ORIGINS OF THE PROGRAMME.

6.1 Proposals of the Planning Committee.

The Sydney Drink-Driver Rehabilitation Programme (referred to in this study as the "DDP") was initiated pursuant to the recommendations of a Committee formed in 1975. The Committee's task was to study the consequences of drink-driving in the State and to examine appropriate counter-measures. In particular, it was to investigate the feasibility of introducing a rehabilitation programme for convicted drink-drive offenders.

The Committee included representatives from the Attorney General's Department, the Police, the Probation Service, the Health Commission and the Magistrates Courts, and the programme devised by it reflected the contrasting perspectives of the members of the Committee.

6.2 Derivation of the Rehabilitation Scheme.

As models for the sort of scheme which they could propose, the Committee was able to consider the various kinds of diversion programmes in the United States. The term was applied to a host of schemes which had been set up in the United States in the early 1970's, usually in such areas as drug offences, juvenile delinquency and drink-driving offences.

The essential feature of these schemes is that the offender is diverted from the normal criminal processes to some form of rehabilitative treatment. Diversion may take place at any stage of the process, whether it be charge, arrest, prosecution, trial, conviction or sentence.

There were several reasons for the establishment of diversion programmes in the United States. On the one hand, there was concern that the criminal courts were being swamped by the sheer growth in the number of criminal cases they had to deal with, and diversion programmes were advocated as a means of reducing the work-load of the courts. But there was also recognition that the criminal justice system was failing to deal with the problem of rising crime rates, and it was hoped that

substituting rehabilitative treatment for punitive sanctions would reform offenders and reduce recidivism rates more effectively. Other supporters of diversion put their main emphasis on the potential for a more humane disposition of cases through rehabilitation rather than punishment, but here also, the assumption was that penalties were failing to deter offenders.

Under the American models, diversion generally took place at the pre-trial stage, and successful participation in a scheme would typically occasion the dismissal of the criminal charge. Although inspired by these schemes, the Programme instituted in N.S.W. was not a diversion programme in this sense. Rather than a pre-trial scheme, it was in fact merely a pre-sentence scheme.

As noted above, this was brought about by the Committee's need to reconcile the conflicting viewpoints of its members. To have introduced treatment as a complete substitute for the normal criminal penalties would have required legislative change and might have been rejected by some of the bodies responsible for the scheme as being too lenient, or too radical in departing from the existing system. On the other hand, it would have been antithetical to the principles of some of the other bodies represented on the Committee, such as the Health Commission and the Probation Service, to have introduced rehabilitation courses on a compulsory basis.

The compromise plan which emerged was a modified version of the diversion programmes in the United States. Under the scheme, drink-drive offenders who met the selection criteria and who entered a plea of guilty (or who were found guilty, although trials on the issue of liability were exceptional) were given the option of referral by the Court to a rehabilitation course of approximately 8 weeks, prior to final sentencing.

The scheme was designed for offenders who had not been deterred from drink-driving by criminal penalties, so that the first selection criterion was "having at least one prior conviction for a drink-driving offence." But an alternative eligibility criterion was prescribed on the grounds that "the high BAC levels found in many drivers indicated that a small minority of drivers was responsible for a disproportionate number of deaths".<sup>1</sup> The second criterion for entry to the DDP, then, was "having a BAC of 0.15 or above".

It was intended to introduce the scheme on an experimental basis in a few courts, to allow for assessment and evaluation before the DDP was established more widely among the Courts of Petty Sessions. In any case, the limited availability of probation officers and of treatment staff prevented the setting-up of the scheme on a large scale. Four courts, Central, Bankstown, North Sydney and Hornsby, were thus chosen for the "pilot" scheme, and 11 new probation officers were appointed to enable the service to handle the additional burden created by the programme.

In 1977, the number of Courts at which the programme was offered was expanded from four to seven, all of which were still within the Metropolitan area. The total number of scheme entrants was 467. Some changes took place to the types of treatment being offered as some of the personnel and agencies originally involved in treatment programmes were replaced.

The N.S.W. Bureau of Crime Statistics and Research first collected information on the attendance of drink-drive offenders at rehabilitation programmes in 1978. For further details see Chapter 4, "Drink-Drive Statistics" in the Bureau's "Court Statistics, 1978".

### 6.3 Review of Evaluation Studies of Diversion Programmes for Drink-Drivers.

In Australia, the rehabilitation programme offered at the Department of Community Medicine at St. Vincent's Hospital in Melbourne is one of the few in respect of which the subsequent driving records of programme entrants have been compared with those of non-entrants intended to be comparable in other respects. The object of this programme, which has been running for 6 years, is to intercept potential problem drinkers at an early stage, and it is restricted to offenders under 26. The programme maintains only an informal connection with the Courts. When, as required in Victoria, a convicted drink-driver applies to the court at the expiration of his licence suspension period for his licence to be restored, some magistrates will refer young offenders to the course as a prerequisite for reinstatement of the driving licence. The course administrators do not give any information to the courts about any of the participants. In relation to two selected comparison groups, the programme participants are reported to be showing indications of a lower reconviction rate, pending the results of more detailed analysis (Raymond, 1979).<sup>2</sup>

The most intensive programmes to combat drink-driving are the Alcohol Safety Action Programmes (A.S.A.P.) in the United States. But despite the massive mobilisation of government funds and resources, and the combined efforts of law enforcement agencies and community welfare organizations, their results have not been encouraging.

A review of the A.S.A.P.'s by the OECD in 1978 reported that, of the 35 project sites, only 11 showed a statistically significant drop in night-time crashes below projected trends, and of 10 specially-selected comparison sites, half had more and half had fewer road crashes than their projected base-line levels.<sup>3</sup>

The Report reviewed 35 studies submitted by A.S.A.P. projects concerning the effectiveness of overall rehabilitation in reducing subsequent rearrests, but of these, less than a third (11) were considered methodologically sound. Only four of these relatively sound studies suggested that sending an offender to some form of rehabilitation treatment resulted in a lowering of recidivism, whereas nearly two-thirds of the 25 methodologically-poor studies reported favourable results.

There was one quite sophisticated study conducted in Los Angeles, California, which found that the use of disulfiram (chemotherapy) as a treatment component resulted in significantly fewer subsequent rearrests and/or crashes over at least a 6-month period than did the use of no rehabilitation at all (Ellingstad, 1975).<sup>4</sup>

By contrast, the findings of some other evaluation studies have suggested that scheme entrants have had worse subsequent records than comparison groups. Hagen et al (1978) reported on a rehabilitation scheme piloted in California in 1976 which was designed as an alternative to licence suspension or revocation. Instead of mandatory 12-month suspension for a second drink-drive charge in 5 years and mandatory 3-year revocation for 3 or more convictions within 7 years, a 12-month alcohol abuse programme was provided, with personal interviews for the offender at least once a fortnight and a variety of treatment services for problem drinkers, or referrals to outside agencies. When the programme results were analysed and compared with groups still receiving licence penalties, the programme participants were found to have the worst subsequent accident and conviction records. The principal reason for this was thought to be increased driving exposure in the treatment groups.<sup>5</sup>

Nichols et al (1978) concluded that there was "minimal evidence" for any impact of the ASAP education and treatment programmes which they studied. They suggested that "social drinkers" demonstrated some small positive effects, but that the programmes reviewed did not seem to have had any deterrent effect or "problem drinkers".<sup>6</sup> However, the OECD report also referred to analyses which suggested that "diagnosed problem drinkers exposed to interactive (rather than lecture) type schools and more personal yet intensive therapies have significantly fewer alcohol-related rearrests than those referred to lecture-oriented or shorter programmes."<sup>7</sup>

The Report's general conclusion was pessimistic. It stated: "Although there are suggestions that generalised rehabilitation and possibly educational programmes may be beneficial in terms of reducing subsequent violations, there is almost no hard evidence available to date to show that such programmes are having a measurable crash reduction impact."<sup>8</sup>



## CHAPTER 7: OPERATION OF THE PROGRAMME

### 7.1. General Outline of the Procedure.

Because there was no clear consensus about the appropriate treatment techniques to be adopted for the DDP, the planning committee resolved to offer several different treatment strands to the participants, and in view of the fact that no firm criteria were prescribed for directing the participants into any particular treatment strand, the selection process became quite complex. It is only possible, therefore, to give a general outline of the procedure of the DDP. The decision stages were:

- (1) determination of whether a drink-drive offender entered the programme;
- (2) referral to treatment alternatives; and
- (3) final sentencing.

Whether an offender entered the programme was determined on the basis of the following requirements:

- (a) the defendant is convicted of a drink-drive offence (usually upon entering a plea of guilty);
- (b) he meets the eligibility criteria of having either at least one previous conviction for drink-driving or a BAC of 0.15 or more;
- (c) the Magistrate offers the programme to the offender;
- (d) the Probation Officer does not advise against it (he may supply information to the Magistrate which will influence his decision to offer the programme to the defendant); and
- (e) the defendant volunteers to attend the programme.

If these requirements were met, then the Magistrate would adjourn the case for 8 weeks, and the defendant would be referred to a treatment alternative through the assessment centre serving the court at which his case was being heard. The treatment alternatives available varied among the courts. Assessment itself was left up to the centres and no standard procedure was adopted.

Some details of the aims and contents of the various programmes are set out in the following section of this chapter, and some further information is contained in the description of the "evaluation groups" in Chapter 8, which deals with "The Evaluation of the Programme".

Following completion of a rehabilitation course, the offender would return to Court for final sentence. In the "First Report", it was stated that: "In most cases, Magistrates have then found it possible to moderate what otherwise would have been the sentence".<sup>1</sup> Standards of sentencing do vary among Magistrates, but overall it appears that programme entrants have received lighter penalties than comparable non-entrant groups (see Tables 7 and 8 in Chapter 9, "Results").

The question of whether or not a reduced penalty was appropriate for the offender was just one of the questions of major interest that arose when he left the system. Among the others were:

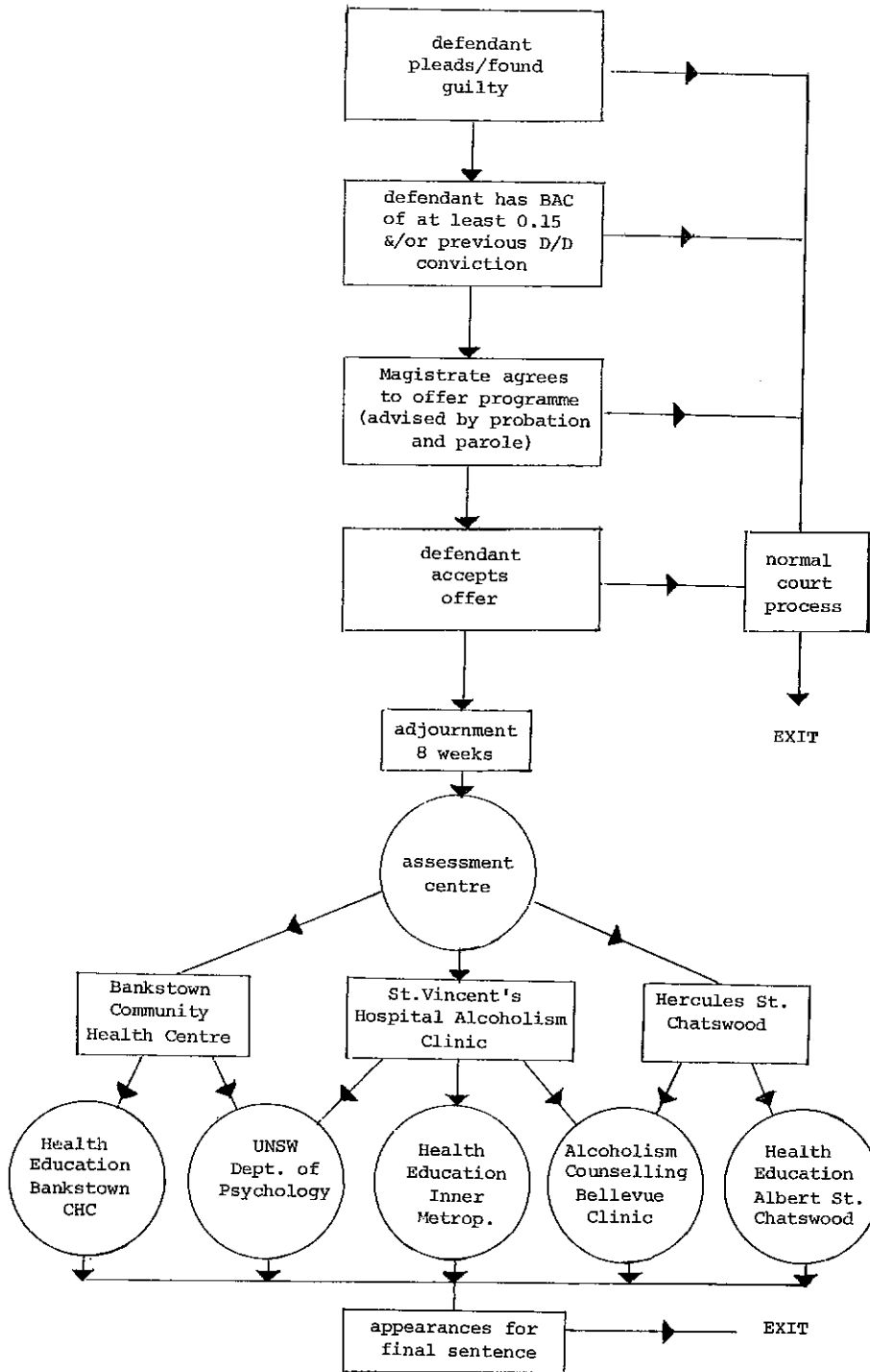
- (i) whether he had reduced the chance that he would reoffend;
- (ii) whether he had reduced his chance of being involved in a road crash; and
- (iii) whether he required further treatment at an appropriate agency, and if so, whether he was continuing to receive it?

The design of the overall programme and the information available from the various treatment agencies and the police, court and traffic records, placed severe limits on the extent to which these questions could be approached. This is discussed more fully in Chapter 8, on Evaluation.

The procedure of the DDP is represented in graphic form in the following flow chart.

FLOW CHART OF DRINK-DRIVE PROGRAMME

PILOT PHASE 1976



## 7.2 The Treatment Groups.

As noted, the treatment alternatives available during the pilot scheme varied among the Courts. The behaviour modification and health education programmes offered at the Department of Psychology at the University of N.S.W. were available to all four courts, but each court had its own alternative options: entrants from Central Court could be referred to alcoholism counselling at the Bellevue Clinic or health education at the Inner Metropolitan Region Health Centre; Bankstown Court entrants could go to health education at Bankstown Community Health Centre; and the alternative programme at North Sydney and Hornsby Courts was the drug and alcohol education programme at the Area Health Clinic, Chatswood.

Some idea of the contrasting approaches among these programmes may be gained from an account of their stated principles and objectives and the content of the programmes themselves.<sup>2</sup>

The essential aim of the programme at the University of N.S.W.'s Department of Psychology was to train the individual to drink in moderation, although total abstinence was the preferred goal for suitable cases. All treatment was conducted on a "one-to-one" basis, and the precise goal of training was agreed between the psychologist and the individual client.

The components of the treatment programme were:

(a) education relating to the short and long-term effects of alcohol, with special emphasis on the relationship between rate of alcohol intake, rate of breakdown of alcohol in the blood and resultant blood alcohol concentration;

(b) general advice and counselling in relation to drinking and other problems. Drinking was analysed behaviourally and the subject was trained in ways of dealing with influences seen as important in his alcohol consumption;

(c) using a specially evolved form of body awareness training, clients were trained to recognize their own bodily responses to alcohol at the chosen limit. In this way, the person was taught to monitor his own blood alcohol concentration;

(d) an apparatus was used to simulate a state which renders continued drinking beyond a given level (in this case .05%) less attractive;

(e) the client notes his drinking behaviour as it happens, thus developing the habit of planning and being alert to the quantity of alcohol consumed; and

(f) educational material concerning the effects of alcohol on driving performance was presented in printed material and films.

Clients referred to the Bellevue Clinic were assessed and assigned to one of two programmes, Group A for alcoholics and Group B for non-alcoholics. The Group A programme involved two initial interviews, attendance at an AA Meeting and at six group therapy sessions at the clinic, and a final interview. The topics discussed in the groups included: physical and mental effects of excessive alcohol intake; effects on life style; sociological aspects of alcohol use; alternatives to drinking; the A.A. Programme; "social responsibility"; "acceptance of problem"; "denial" and "games". At the final interview, the client reports on his progress to the Probation Officer in the presence of the Alcoholism Counsellor.

The objectives of the Inner Metropolitan Health Education Programme were:

- \* to encourage each participant to assess his own drinking and driving behaviour
- \* to increase knowledge of the effects of alcohol on the individual
- \* to encourage the development of responsible drinking attitudes and practice
- \* to enable those participants who need specialized treatment for their alcoholism to identify themselves.

The programme's contents comprised six sessions, consisting of lectures, films and discussions. The topics dealt with included: the effects of alcohol on traffic safety; personal drinking habits; legal aspects of drinking and driving (in a lecture by a member of the breathalyser squad); the physical effects of alcohol; the signs of developing alcoholism; and community services available, including those for alcohol problems. An "attitude and knowledge" questionnaire was administered at the first session and repeated at the sixth.

The Counsellors at the Bankstown Health Education programme saw its aims as being to reduce the incidence of drunken driving, specifically recidivism rates, and to identify problem drinkers among the participants.

The method by which these aims were sought to be achieved was described by one of the counsellors as comprising of two main components, "formal counselling in a crisis situation" and "informal counselling by providing information for a 'minimal change in direction' towards responsible choices and decisions." Some details about the Bankstown group-counselling course were: the involvement of a Probation Officer and a Constable from the Breathalyser Squad in some of the sessions; discussion about Australian attitudes toward drinking, family problems, cultural differences, percentages of road casualties and other statistical data; information about the physiological effects of short and long-term drinking; and a psychological description of predispositions toward alcoholism. The emphasis was on counselling, and hardly any use was made of educational adjuncts.

The Co-ordinator of the Alcohol Education Programme held at Chatswood described its aims as being:

1. To increase the level of knowledge about alcohol and its use.
2. To influence the nature of attitudes which relate to dangerous uses of alcohol.
3. To reduce the level of alcohol intake by individuals at risk.
4. To reduce the incidence of certain behaviours in conjunction with alcohol intake (e.g. drinking and driving)."

An educational model was chosen for the programme because "no treatment model has resulted in significant, uniform success rates" and because "significant levels of denial operate and most alcohol abusers tend to deny the existence of any problems, making treatment approaches very difficult." The sessions were conducted in a small closed group-setting of 8-12 people and comprised mainly discussion of attitudes, views and feelings. Some information was presented in an audio-visual format, with slides, tapes and films.

PART III: THE EVALUATION OF THE PROGRAMME

CHAPTER 8: THE EVALUATION STUDY

8.1 Formulating the Evaluation Task.

It was recognised that the evaluation process had to be an integral part of the DDP from the beginning. In keeping with the introduction of the Pilot Programme on an experimental basis in only a few courts, it was felt that its success in meeting its objectives should have been tested, before the scheme was expanded to the other Courts of Petty Sessions.

As stated in the "First Report", it was necessary at the outset to "define the aims and objects of the scheme in such a way as to render it susceptible to a reasonably scientific analysis".<sup>1</sup> Unfortunately, the "stated aims" of the scheme offered only limited guidance for this preliminary task. The aims specified by the Committee were:

- "(a) To identify the driver with a drinking problem.
- (b) To assess the degree of his drinking problem and the most effective method of treating it.
- (c) To minimize the likelihood of his subsequently driving after drinking excessively."

The "First Report" itself indicated that the first and second "aims" were not really objectives of the scheme which were capable of evaluation, but rather, desired incidents of the proposed treatment procedures.

The criteria for eligibility to enter the scheme were calculated to make the first "aim", in effect, self-fulfilling: the very fact of having had a previous drink-drive conviction or of having been apprehended driving with a BAC of 0.15% or more, was itself an indication that the driver had a "drinking problem". And as regards the second so-called aim, under the DDP, the degree of the driver's drinking problem was assessed before the course of treatment was begun, for the very purpose of determining which treatment group would be best suited to him, demonstrating that this was simply part of the procedure adopted for the programme. Rather than an objective upon which the DDP's success was to be evaluated, then, this second aim merely described the routine procedure at the Assessment Centres by which entrants were assigned to their treatment groups.

The third of the stated aims was thus the fundamental one, as far as the evaluation was concerned. Implicit in it, is the over-riding policy objective of reducing the number of alcohol-related crashes involving serious injury or death on the road, but testing this would require a much larger study. For our purposes, this must be seen as the long-term aim, rather than the subject for immediate evaluation.

In broad terms, then, the evaluation task was to assess the effectiveness of the DDP in "minimizing the likelihood" of the entrants' "subsequently driving after drinking excessively". But this formulation of the issue to be evaluated still fails to place the DDP in its context as a treatment option provided within the criminal justice system, by contrast with those "true" diversion schemes where the rehabilitation programme displaces the criminal processing of the case.

This serves to emphasize that the typical objectives of some other diversion programmes do not apply here. Thus, the aim of "reducing the workload of the Courts" is totally irrelevant, and the aim of "substituting a benevolent, rehabilitative mode of handling a case for the punitive criminal justice mode" is subordinated to the aim of deterring the offender from repeating his activity.

In this light, the precise evaluation task may be formulated as testing whether the DDP, operating in conjunction with the conventional criminal justice process, was more effective in deterring drink-drive offenders, than criminal penalties operating by themselves.

The specific meaning of "deterrence" in this context should be noted: it is used here to refer, not merely to the impact of penalties, but to the effect of all measures (including penalties) on those to whom they are applied, in preventing them from repeating an act. This, of course, can be accomplished in several ways, whether it be by fear, reform or cure, and different combinations of penalties, education and treatment may be employed to emphasize one or the other, as reflected in the operation of the DDP and the various treatment groups. But there remains the fundamental problem that deterrence is inherently unobservable, since we can never directly observe somebody refraining from some action through fear of further punishment, or through successful treatment or reform. The finding of such a deterrent effect can never be better than a reasonable inference.<sup>2</sup>



What can be observed is the actual repetition of the act, and it is on this basis that recidivism rates are used to judge the relative success of different measures as deterrents: in other words, while it is not possible to observe "deterrence" directly, we can observe instances of the failure of deterrence, and the lower the "failure rate" of a particular measure (i.e. the lower its rate of recidivism), the greater is the success we can ascribe to it.

Here again, however, we are confronted with the obvious problem that the sort of "recidivism" we want to record is the actual rate of reoffending. But in practice, only a small minority of drink-drive offences is detected. We are thus left with the reconviction rate, which is a most imperfect reflection of the actual "reoffending" rate, as the best available means to assess the effectiveness of different measures as deterrents.

Besides reconviction data, the other indication of the deterrent effect of a measure like the DDP, would be a positive change in attitude to drink-driving among the entrants. Such a change may reasonably be seen as a prelude to changes in actual behaviour. Achieving a reliable measure of attitudes, however, is notoriously difficult in a court context, and this was reflected all too clearly in the attempt that was made in this evaluation, to compare participants' attitudes before and after they went through the programme. Some more details of this are given in the following section.

## 8.2 The Evaluation Process.

To prove whether the DDP was successful, it was necessary to go beyond correlations, and show that it caused positive changes. The way in which causal connections in the social sciences can be established is through replicated experiments involving "randomization". For the present study, this would have required that the drink-drive offenders be allocated at random to the DDP treatment groups. If the offenders assigned to the DDP and those not assigned to it did not differ systematically, this would allow a correlation between participation in the DDP and subsequent behaviour to be interpreted as evidence of a causal effect of the programme. If the same correlation emerged in repetitions of the experiment, a causal connection could be regarded as proved.<sup>3</sup>

A number of serious defects with randomization in practice, however, precluded the adoption of this course. Besides basic ethical objections to sentencing people in a random way, it is generally impossible to keep the experiment "random" where the subjects are humans. This was shown in the attempt by Blumenthal and Ross (1973) to conduct a random study of the effect of penalties on drink-drive offenders. Once the offenders and their solicitors found out about the experiment, they sought the lightest penalty, regardless of the penalty prescribed by the experiment. The result was that the advantages of a randomized experiment were lost.<sup>4</sup>

Instead of a random study, then, the method of evaluation employed was to compare the characteristics of the DDP entrants with those of "control" groups, or, more accurately, "comparison" groups. There were four distinct groups which were considered:

- (1) the entrants to the scheme;
- (2) offenders in the pilot courts who were offered the DDP, but who declined to participate in it;
- (3) offenders from "control" courts who satisfied the DDP eligibility criteria; and
- (4) offenders from the pilot courts who did not meet either of the eligibility criteria.

The DDP was available at Central and Bankstown Courts of Petty Sessions from March, 1976, and at Hornsby and North Sydney Courts from June, 1976. The entrants, therefore, were drawn from drink-drive offenders who were tried in these "pilot" courts from the respective starting dates to the end of the year (i.e. December, 1976), and who met the eligibility criteria and agreed to undertake the programme. Only those who completed a programme of treatment, the criterion being attendance at 70% of the sessions, have been included as entrants.

The second group also consisted of drink-drive offenders who were tried in the pilot courts in 1976, during the periods when the DDP was available, and who were eligible to enter the programme, but these offenders declined to enter the scheme.

Because the fact of declining to enter the programme itself could have indicated significant differences in the second group from the first which would have reduced the validity of comparisons between them, an additional control group was devised. Fairfield, Redfern and Kogarah were chosen as the "control" Courts

on the basis of their social and demographic similarity to the pilot courts. The third group thus comprised all drink-drive offenders found guilty at these courts during two 3-month periods between March and December, 1976, who would have been eligible for entry to the DDP, if it had been available.

Finally, drink-drive offenders tried in the pilot courts during the evaluation period but who were not eligible to enter the programme, were considered, to show any contrast with the other three, "eligible" groups. This fourth group, then, comprised "first offenders" with BAC's less than 0.15%.

The court papers, CIB fingerprint records and Department of Motor Transport records (which contain Traffic Infringement Notices) of all these people were searched, and the data items drawn from them were programmed onto a computer. The results are shown in the Tables in Chapter 9.

A major omission which has limited the potential scope of the evaluation was the failure to keep systematic records at the assessment and treatment centres. Among the assessment centres, only St. Vincent's Medical Centre seems to have kept records concerning tests taken by the individuals referred to them. They tested these people before they went on to a treatment centre and followed up as many as they could upon completion of treatment - thus providing some useful information for the monitoring and evaluation of the programme.

The lack of records from the treatment centres rendered the task of tracing the referral path followed by individual entrants extremely difficult in many cases. This would have been facilitated by marking the D.M.T. and C.I.B. fingerprint records of programme participants.

On the whole, however, the absence of adequate data rendered it impossible to assess the distinct treatment strands in the DDP separately, and consider their impact on individuals. Whereas one would have hoped to be able to investigate what kind of treatment worked best for what kind of offender, the study was thus limited to the very general question of the impact of participation or non-participation in the DDP on four broadly-defined, heterogeneous groups.

There was an attempt in the early stages of the evaluation to test the effect of the DDP on knowledge and attitudes to drink-driving behaviour, by means of questionnaires, which were adapted from the Phoenix Alcohol Programme in the U.S.A. Samples of entrants were asked to complete the questionnaires before the first, and after the last session in their programmes, and a "control group" of offenders who did not participate in the scheme was also asked to fill in the questionnaire, after having been sentenced. However, as the "First Report" acknowledged (see Appendix IIA), it is doubtful whether any useful conclusions may be drawn from them, because of the low response rate, and because, as noted above, it is so difficult to achieve a reliable measure of attitudes in a court context. The basic problem was that the respondents had a vested interest in what they said; for instance, if offenders are asked about their attitudes at the time they are being sentenced, they tend to give the answers they think will reflect on them most favourably, rather than reveal what they actually think.

The "First Report" also contained a table of items of information taken from Probation Officers' "pre-sentence" reports to Magistrates (see Appendix IIB), but again, this was of limited use because too few reports were able to be sampled, and because the data in them was not recorded systematically - though this is inherent in the nature of pre-sentence reports, which are intended to provide the Magistrate with information having special relevance to the particular case.

The final part of the study which was attempted, was a subjective or process evaluation of the programme by the people concerned with its operation. For this purpose, a number of interviews were conducted with Magistrates, police, prosecutors, defendants' solicitors, probation and parole officers, administrators of the programme, and some of the counsellors and participants.

CHAPTER 9: RESULTS.

The four groups to be considered have been described in the Chapter on Evaluation. In the tables, the following abbreviations were used to identify each group:

- (1) offenders from the four Pilot Courts who undertook the programme: "Entrants";
- (2) eligible offenders from the four Pilot Courts who were offered the programme, but declined to enter it: "Eligibles";
- (3) drink-drive offenders tried at the three Control Courts who met the eligibility criteria: "Controls"; and
- (4) drink-drive offenders from the Pilot Courts who were not eligible to enter the programme: "Ineligibles".

Groups 1 to 3 thus comprised the "eligible" groups, groups 1, 2 and 4 comprised offenders tried at the Pilot Courts, and groups 2 to 4 all consisted of non-entrants to the DDP.

9.1 Characteristics of the Four Evaluation Groups.

Table 1 shows the total number in each of the four evaluation groups.

Table 9.1 Evaluation Group Totals.

<u>Number</u>	<u>Evaluation Groups.</u>			
	Entrants	Eligibles	Controls	Ineligibles
345	424	483	556	

In the following tables, the above numbers were not always duplicated, owing to the incompleteness of some records.

The tables deal with "characteristics of the four evaluation groups" up to Table 9.9, and Tables 9.10 to 9.14 deal with "characteristics of offenders subsequently reconvicted for drink-drive offences".

To facilitate interpretation of the tables, it may be noted that the most significant part of the data, is the comparison between the "entrants" on the one hand, and the "eligibles" and "controls" on the other. The data on the "ineligibles" is not directly relevant to the analysis, but is presented for completeness.

Table 9.2 Age by Evaluation Group.

<u>Age</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f*</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
16-19	13	3.8	20	4.7	26	5.4	76	13.7
20-24	58	16.8	60	14.2	89	18.4	158	28.4
25-29	61	17.7	69	16.3	79	16.4	90	16.2
30-39	99	28.7	119	28.1	124	25.7	110	19.8
40-49	63	18.3	76	17.9	89	18.4	60	10.8
50-59	43	12.5	58	13.7	60	12.4	44	7.9
60-69	4	1.2	16	3.8	15	3.1	11	2.0
70+older	0	0.0	1	0.2	0	0.0	6	1.1
<u>unknown</u>	<u>4</u>	<u>1.2</u>	<u>5</u>	<u>1.2</u>	<u>1</u>	<u>0.2</u>	<u>1</u>	<u>0.2</u>
<b>Total</b>	<b>345</b>	<b>100.0</b>	<b>424</b>	<b>100.0</b>	<b>483</b>	<b>100.0</b>	<b>556</b>	<b>100.0</b>

The age distribution of the three "eligible" groups was similar, but the fourth, "ineligible" group had higher percentages of young offenders (aged 16-19 and 20-24) and lower percentages of middle age-group offenders (aged 30-39, 40-49 and 50-59).

Table 9.3 Marital Status by Evaluation Group.

<u>Marital Status</u>	<u>Evaluation Group.</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
single	81	23.5	97	22.9	118	24.4	163	29.3
married	108	31.3	127	30.0	192	29.8	121	21.8
widowed	2	0.5	5	1.2	5	1.4	3	0.5
divorced	17	4.9	8	1.9	13	2.7	7	1.2
separated	8	2.3	13	3.1	23	4.8	14	2.5
de facto	1	0.2	7	1.7	7	1.4	5	0.9
<u>unknown</u>	<u>128</u>	<u>37.1</u>	<u>167</u>	<u>32.1</u>	<u>125</u>	<u>25.9</u>	<u>243</u>	<u>44.4</u>
<b>Total</b>	<b>345</b>	<b>100.0</b>	<b>424</b>	<b>100.0</b>	<b>483</b>	<b>100.0</b>	<b>556</b>	<b>100.0</b>

Unfortunately, the "unknown" category for each eligibility group was very large in Table 9.3, reducing the value of the data on marital status. The data which was available, however, indicated similar levels of marital stability among all four groups.

\*"f" is used in the tables to refer to "frequency" or "number".

Table 9.4 Occupational Ranking by Evaluation Group.

<u>Occupation</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
professional/ managerial	5	1.4	17	4.0	11	2.3	15	2.7
semi-professional/ middle management	38	11.0	66	15.6	37	7.7	73	13.3
sales/small business/ clerical/skilled	158	45.8	174	41.0	224	46.4	281	50.5
unskilled	124	35.9	134	31.6	169	34.9	129	23.2
student	3	0.8	2	0.5	2	0.4	19	3.4
pensioner	5	1.4	7	1.7	10	2.0	7	1.3
domestic	4	1.1	4	0.9	4	0.8	3	0.5
unemployed	5	1.4	11	2.6	9	1.9	13	2.3
<u>unknown</u>	<u>3</u>	<u>0.8</u>	<u>9</u>	<u>2.1</u>	<u>17</u>	<u>3.6</u>	<u>16</u>	<u>2.8</u>
Total	342	100.0	424	100.0	483	100.0	556	100.0

Table 9.4 showed a broad similarity in the occupational ranking of the four groups, and it is doubtful whether any difference was great enough to explain any variations in subsequent offence rates among the groups.

Table 9.5 BAC by Evaluation Group.

<u>BAC</u>	<u>Evaluation Group.</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
unknown	1	0.3	8	1.9	5	1.0	54	9.9
.08 to .09	16	4.7	21	5.0	15	3.1	57	10.4
.10 to .14	56	16.3	46	11.0	58	12.1	436	79.7
.15 to .24	247	72.0	322	76.0	378	78.6	-	-
.25 to .29	22	6.4	20	4.8	23	4.8	-	-
.30 to .40	1	0.3	2	0.5	2	0.4	-	-
Total	343	100.0	419	100.0	481	100.0	547	100.0

The distribution of BAC's shown in Table 9.5 was similar for the three "eligible" groups, but, by definition, the "ineligible" group had no cases over 0.15%. About three-quarters of each of the eligible groups fell in the range of "0.15 to 0.24" BAC.

Table 9.6      Previous Convictions by Evaluation Group.

<u>One or more</u> <u>Previous</u> <u>Convictions</u>	<u>Evaluation Group.</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	85	24.6	184	43.4	148	30.6	316	56.8
drink-drive	202	58.1	133	31.5	213	44.1	-	-
<u>non-drink-drive</u>	<u>51</u>	<u>14.8</u>	<u>87</u>	<u>20.5</u>	<u>120</u>	<u>24.8</u>	<u>195</u>	<u>35.0</u>
Total	338	97.5	404	95.4	481	99.5	511	91.8
Unknown	7	2.5	20	4.6	2	0.5	45	8.2

In Table 9.6, "drink-drive" included cases with one or more previous drink-drive convictions only, and cases in which the previous drink-drive conviction was combined with other types of convictions. The term "non-drink-drive" comprised previous traffic convictions and all previous adult and Children's Court summary and indictable convictions, or any combination of them, but excluded "traffic infringements".

There were significant differences among the evaluation groups in terms of previous convictions. The most striking result is that the "entrants" group had a much higher proportion with previous drink-drive offences than the other groups. This eligibility criterion was thus more significant than having a BAC reading of 0.15 or more, in terms of selecting which offenders participated in the programme. The other groups had higher proportions than the "entrants" with previous "non-drink-drive" convictions, but the figures for drink-drive convictions were the most significant ones for the purposes of this study. This was reflected in the data on subsequent convictions (see Tables 9.9-9.13).

Two aspects of the penalties imposed on the offenders in the four evaluation groups are recorded here: the periods of licence disqualification (Table 9.7) and the amount of fines (Table 9.8).



Table 9.7 Disqualification Periods by Evaluation Groups.

<u>Disqualification Period</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	45	13.0	66	15.6	75	15.5	74	13.0
less than 1 week	44	12.8	26	6.1	13	2.7	45	8.0
1 week-1 month	71	20.6	61	14.4	85	17.6	130	23.4
1-6 months	102	29.6	147	34.7	55	11.4	226	40.0
6 months-1 year	44	12.8	76	17.9	109	22.6	73	13.0
1-2 years	15	4.3	18	4.2	31	6.4	3	0.5
2 years or more	21	6.1	28	6.6	81	17.0	3	0.5
<u>unknown</u>	<u>3</u>	<u>0.9</u>	<u>2</u>	<u>0.5</u>	<u>33</u>	<u>6.8</u>	<u>1</u>	<u>0.2</u>
Total	345	100.0	424	100.0	483	100.0	555	100.0

Table 9.7 gives some support to the hypothesis that the entrants were treated more leniently than the other two "eligible" groups. Despite similar BAC readings (see Table 9.5) and a higher rate of previous drink-drive convictions (see Table 9.6), which indicate that they would have been liable to receive more severe penalties, there was a trend for a greater proportion of the entrants to have their licences disqualified for shorter periods. In cumulative terms, 46.4% of entrants, as against 31.1% of the "eligibles" and 35.8% of the "controls" were disqualified from driving for less than a month. The contrast between the entrants and the group from the control groups is the most striking: more than half the control courts group, as against a quarter of the entrants group, were disqualified from driving for more than 6 months.

Table 9.8 Amount of Fine by Evaluation Group.

<u>Fine</u>	<u>Evaluation Group.</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	93	27.0	61	14.4	83	17.2	56	10.1
\$1-50	1	0.3	3	0.7	20	4.1	8	1.4
\$51-100	28	8.1	37	8.7	25	5.2	105	18.9
\$101-200	132	38.3	240	56.6	164	34.0	365	65.8
\$201-300	66	19.1	67	15.8	152	31.5	15	2.7
\$301-400	22	6.4	10	2.4	31	6.4	3	0.5
<u>\$400</u>	<u>3</u>	<u>0.9</u>	<u>4</u>	<u>0.9</u>	<u>8</u>	<u>1.7</u>	<u>2</u>	<u>0.4</u>
Total	345	100.0	422	100.0	483	100.0	554	100.0

Table 9.8 follows Table 9.7 in showing a slight trend for the entrants to be dealt with more leniently than the other two eligible groups. Here, the clearest indication of this is that a higher percentage of the entrants received no fine (27.0%) than the "eligibles" (14.4%) or the "controls" (17.2%). Also, the control courts group had the highest percentages of offenders in the categories of heaviest penalties. Just under 40% of them were fined over \$200, compared to about 26% of the "entrants" and about 19% of the "eligibles".

In Table 9.9, the terms "drink-drive" and "non-drink-drive" corresponded to the same terms in Table 9.6, except of course, that here they applied to subsequent convictions rather than previous convictions.

The "follow-up" period for the study was two years, and this period was calculated from the date of final sentence. In the case of the "entrants" group, this date would have been somewhat more than eight weeks after the date of arrest. For the other three groups, most cases would have been heard, and sentence passed, within a few days of the date of arrest.

There are arguments in favour of each of these dates as the starting points for the "follow-up" period. The date of final sentence was chosen on the basis that it would yield a measure of the impact of the DDP after completion of the programme. In another sense, however, the date of arrest would have been a better starting point, because it could be said that the eight weeks of the DDP were part of its deterrent effect. On this argument, starting from the date of final sentence was prejudicial against the "entrants" groups in relation to the others: in effect, that group was being followed-up for 2 years and eight weeks, compared to 2 years only for the other groups. The actual number reconvicted in that final eight-week period was, in fact, significant (see Figure 9.1 and Table 9.14), and to that extent it could be argued that the results were biased against the "entrants" group.

Table 9.9 Subsequent Convictions within 2 years from the Date of Final Sentence by Evaluation Groups.

<u>Subsequent Convictions</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
drink-drive	54	15.7	46	10.7	43	9.0	30	5.4
non-drink-drive	27	7.9	47	11.0	60	12.4	80	14.4
Total	81	23.6	93	21.7	103	21.4	110	19.8

The results in Table 9.9 are, at first sight, pessimistic. The reconviction rate for drink-drive offences within two years from the date of final sentence was highest in the "entrants" group by a wide margin, being 15.7% as against 10.7% for the "eligibles", 9.0% for the "controls" and 5.4% for the "ineligibles". From the point of view of subsequent drink-drive offences, then, programme participants not only scored as badly as the comparison groups, but actually did worse. On the other hand, the results of subsequent "non-drink-drive" convictions were the reverse: the "entrants" had the lowest rate of 7.9%, followed by the "eligibles" with 11.0% and the control courts group with 12.4%, and the "ineligibles" had the worst reconviction rate of 14.4%.

This evened-out the results for the overall reconviction rates. The "entrants" still had the highest overall rate of 23.6%, but this was only slightly worse than the other two eligible groups, at 21.7% and 21.4% respectively, and the ineligible group was slightly lower again at 19.8%. This provides some consolation, but it must be stressed that the results for subsequent "drink-drive" convictions were the more pertinent ones.

Further analysis was undertaken to determine the impact of several variables on the subsequent conviction rates. The aim was to test whether the subsequent conviction results of the evaluation groups could be accounted for by their predispositions rather than their treatment by the courts.

9.2 Characteristics of Offenders Subsequently Reconvicted for Drink-Drive Offences.

Table 9.10 shows the percentage of each age sample within the evaluation groups (see Table 9.2) who were reconvicted of a drink-drive offence within 2 years from the date of final sentence.

Table 9.10 Subsequent Drink-Drive Convictions within 2 Years from Date of Final Sentence by Age by Evaluation Groups.

<u>Age</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
16-19	2	15.4	2	10.0	2	7.7	6	7.9
20-24	6	10.3	10	16.7	11	12.4	11	7.0
25-29	9	14.7	9	13.0	10	12.7	2	2.2
30-39	22	22.3	12	10.1	10	8.1	6	5.4
40-49	5	7.9	8	10.5	5	5.6	2	3.3
50-59	9	21.0	5	8.6	2	3.3	3	6.8
60-69	0	0.0	0	0.0	1	6.7	0	0.0
70 or older	0	0.0	0	0.0	0	0.0	0	0.0
<u>unknown</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>
Total no./%	53		46		43		30	
reconvicted		15.7		10.8		8.7		5.4

In general, younger offenders were reconvicted at higher rates in the three non-entrant groups, but not in the entrants group itself.

The control courts group and the "eligibles" had similar distributions of age as a whole (Table 9.2) and drink-drive reconvictions (Table 9.10), but the reconviction rates (i.e. the percentage figures in Table 9.10) were somewhat lower for the control courts group than for the "eligibles". This explains the rank order of overall drink-drive reconviction rates between these groups. The ineligible group generally had lower reconviction rates for drink-drive offences than the other groups at all age levels.

It can also be seen that the group of entrants had the highest drink-drive reconviction rate because of the high reconviction rates of its middle age-group members. The difference emerged most clearly in the 30-39 age bracket. These constituted a similar, and substantial proportion of each of the three "eligible" groups (28.7%, 28.1% and 25.7%: Table 9.2), but the percentage of these 30-39 year-olds who received subsequent drink-drive convictions was two to three times as great among the entrants as among the other two groups (22.3%, contrasted with 10.1% and 8.1%).

The relationship between marital status and subsequent convictions was not calculated because of the large "unknown" factor (see Table 9.3) and it was considered that the occupational rankings (see Table 9.4) would not have helped to explain the differences among the evaluation groups' reconviction rates. The relationship between BAC levels and subsequent convictions was calculated, and the results are set out in Table 9.11.

Table 9.11    Subsequent Drink-Drive Convictions within 2 Years from the Date of Final Sentence by BAC by Evaluation Groups.

<u>BAC</u>	Entrants		<u>Evaluation Group</u>					
	f	%	Eligibles		Controls		Ineligibles	
	f	%	f	%	f	%	f	%
unknown	0	0.0	0	0.0	0	0.0	1	1.8
.08-.09	3	18.7	1	4.8	0	0.0	3	5.3
.10-.14	12	21.4	10	21.7	6	10.3	26	6.0
.15-.24	33	13.4	34	10.6	36	9.5	-	-
.25-.29	4	18.2	1	5.0	0	0.0	-	-
<u>.30-.40</u>	<u>1</u>	<u>100.0</u>	<u>0</u>	<u>0.0</u>	<u>1</u>	<u>50.0</u>	<u>-</u>	<u>-</u>
Total no./%	53		46		43		30	
reconvicted		15.4		11.0		8.9		5.5

The results of Table 9.11 reveal a random pattern of subsequent drink-drive convictions by BAC. The hypothesis that offenders with higher levels of BAC were "worse risks", and so, more likely to be reconvicted, was only partially established. Table 9.5 demonstrated that more of the entrants were in the "very high" BAC range of "0.25-0.29" than the "eligibles" or "controls". The fact that 18.2% of the entrants with this reading were reconvicted, as against only 5.0% of the "eligibles" and none of the control courts

group, is consistent with the rank order of their overall reconviction rates, but accounts for this only to a minor extent, because the number of persons involved was small.

Rather, the most significant result in Table 9.5 was that about three-quarters of each of the three "eligible" groups fell in the BAC range of "0.15-0.24", and it was mostly the reconviction rates within these sub-groups which determined the end results. Thus, the main reason why the entrants had the highest reconviction rate was that 13.4% of those in the group with a BAC of "0.15 to 0.24" were reconvicted, whereas lesser percentages of those with this BAC in the other two eligible groups (10.6% and 9.5%) were given subsequent drink-drive convictions.

The low reconviction rates of the ineligible group apparently showed that the eligibility criteria themselves were selective in terms of proneness to reconviction, so that those who did not meet the eligibility criteria were in fact "low-risk" offenders regarding drink-drive convictions.

Tables 9.12A and 9.12B relate previous convictions to subsequent convictions. In general, previous convictions would be expected to be the strongest predictor of subsequent convictions. To the extent that Tables 9.12A and 9.12B showed a positive relationship between previous and subsequent convictions, it could be said that the performance of the evaluation groups was determined by their members' antecedent predispositions rather than their treatment pursuant to their trials.

Table 9.12A presents the subsequent drink-drive convictions of offenders by their previous convictions, while Table 9.12B presents the subsequent non-drink-drive convictions according to their previous convictions.

Table 9.12A Subsequent Drink-Drive Convictions within 2  
Years from Date of Final Sentence by Previous  
Convictions by Evaluation Groups.

<u>Previous</u> <u>Convictions</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	8	9.5	16	8.6	11	7.4	11	3.5
drink-drive	37	18.3	19	14.3	17	8.0	-	-
non-drink-drive	7	13.7	11	12.6	15	12.5	19	9.7
<u>unknown</u>	<u>2</u>	<u>28.7</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>	<u>0</u>	<u>0.0</u>
Total no. %	54		46		43		30	
reconvicted		15.7		10.7		9.0		5.4

Table 9.12B Subsequent Non-Drink-Drive Convictions within  
2 Years from Date of Final Sentence by Previous  
Convictions by Evaluation Groups.

<u>Previous</u> <u>Convictions</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	3	3.6	12	6.5	8	5.4	30	9.5
drink-drive	17	8.4	21	15.7	27	12.7	-	-
non-drink-drive	7	13.7	13	14.9	25	20.8	48	24.6
<u>unknown</u>	<u>0</u>	<u>0.0</u>	<u>1</u>	<u>5.0</u>	<u>0</u>	<u>0.0</u>	<u>2</u>	<u>4.4</u>
Total no. / %	27		47		60		80	
reconvicted		7.9		11.0		12.4		14.4

Perhaps the two main generalizations which may be drawn from Tables 9.12A and 9.12B are:

(a) offenders with previous convictions were reconvicted more often than those without previous convictions (i.e. in both tables, reconviction rates for offenders with no previous convictions, row 1, were lower than the reconviction rates for offenders with previous convictions, rows 2 and 3); and

(b) the tendency was for offenders with prior drink-drive convictions to be reconvicted for drink-drive offences (i.e. in Table 9.12A, the percentages in row 2 were greater than in row 3) and for those with prior non-drink-drive offences to be reconvicted for non-drink-drive offences (i.e. in Table 9.12B, the row 3 percentages exceeded those in row 2).

These tendencies help explain the reconviction rates of the evaluation groups. The "entrants" group had the most prior drink-drive convictions (58.1%: see Table 9.6), and it was these entrants who were reconvicted for drink-drive offences at the highest rate (18.3%: see Table 9.12A). This was the main reason why the group had the highest reconviction rate for drink-drive offences (15.7%: Table 9.12A, "Total % reconvicted").

On the other hand, the "entrants" group had the lowest proportions of offenders with no previous convictions and previous non-drink-drive convictions (see Table 9.6), and the drink-drive reconviction rates of these offenders were only slightly greater than their counterparts in the other two "eligible" groups (Table 9.12A, rows 1 and 3).

It was again apparent that the "ineligibles" comprised offenders with a low risk of being reconvicted for a drink-drive offence.

In certain respects, the pattern of subsequent non-drink-drive convictions was the opposite: the "entrants" had the lowest rates compared to the other groups (see Table 9.12B). This "balanced out" the figures for subsequent drink-drive convictions, resulting in much more even overall reconviction rates among the four groups (see Table 9.9) than the rates found in Table 9.12A alone would have indicated.

The following table, Table 9.13, shows the licence disqualification periods for offenders (see Table 9.7) by subsequent drink-drive convictions.



Table 9.13      Subsequent Drink-Drive Convictions within 2 Years  
from Date of Final Sentence by Licence  
Disqualification Periods by Evaluation Groups

<u>Disqualification</u> <u>Periods</u>	<u>Evaluation Group</u>							
	<u>Entrants</u>		<u>Eligibles</u>		<u>Controls</u>		<u>Ineligibles</u>	
	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>	<u>f</u>	<u>%</u>
none	1	2.2	8	12.1	6	8.0	5	6.8
less than 1 week	9	20.4	2	7.7	3	23.1	2	4.4
1 week-1 month	11	15.5	6	9.8	5	5.9	6	4.6
1-6 months	23	22.5	16	10.9	10	18.2	13	5.7
6 months-1 year	6	13.6	9	11.8	12	11.0	4	5.5
1-2 years	0	0.0	1	5.6	2	6.4	0	0.0
2 years or more	3	14.3	4	14.3	4	4.9	0	0.0
<u>unknown</u>	<u>1</u>	<u>33.3</u>	<u>0</u>	<u>0.0</u>	<u>1</u>	<u>3.0</u>	<u>0</u>	<u>0.0</u>
Total no./%	54		46		43		30	
reconvicted		15.6		10.8		8.9		5.4

Table 9.13 is consistent with the proposition that the deterrent effect of licence disqualification was less effectively applied to the entrants than to the other evaluation groups, resulting in higher reconviction rates.

Part of the evidence for this proposition is as follows: in Table 9.7, it was shown that approximately 6% of the "entrants" and the "eligibles", but 17% of the control courts group, were given licence disqualification periods of 2 years or more. Table 9.13, however, showed that 14.3% of each of the "entrants" and "eligibles" sub-groups who received this severe penalty, as against only 4.9% of the sub-group from the control courts, were reconvicted of a drink-drive offence. This suggests that if more of the "entrants" and "eligibles" had been disqualified from driving for 2 years or more, fewer of them might have been reconvicted.

Similarly, Table 9.7 showed that more of the "entrants" than the "eligibles" were given the low disqualification periods of "less than 1 week" and "1 week to 1 month", but the reconviction rates for these sub-groups in Table 9.13 were higher for the "entrants" (20.4%; 15.5%) than for the "eligibles" (7.7%; 9.8%). Again, this suggests that fewer entrants might have been reconvicted if they had received disqualification periods as severe as those given to the "eligibles".

Finally, Figure 9.1 and Table 9.14 analysed the periods which elapsed between the date of sentencing and the first drink-drive reconviction. Whereas the previous tables were concerned merely with the question of whether evaluation group members were reconvicted for drink-drive offences within 2 years, here, the more precise issue of when they were actually reconvicted was considered. The analysis yielded the most optimistic results regarding the DDP, for the data clearly indicated that the entrants' reconvictions were delayed the longest.

Figure 9.1 Time to First Drink-Drive Reconviction: Cumulative Percentages per Total Reconvicted of Drink-Drive Offences by Evaluation Group.

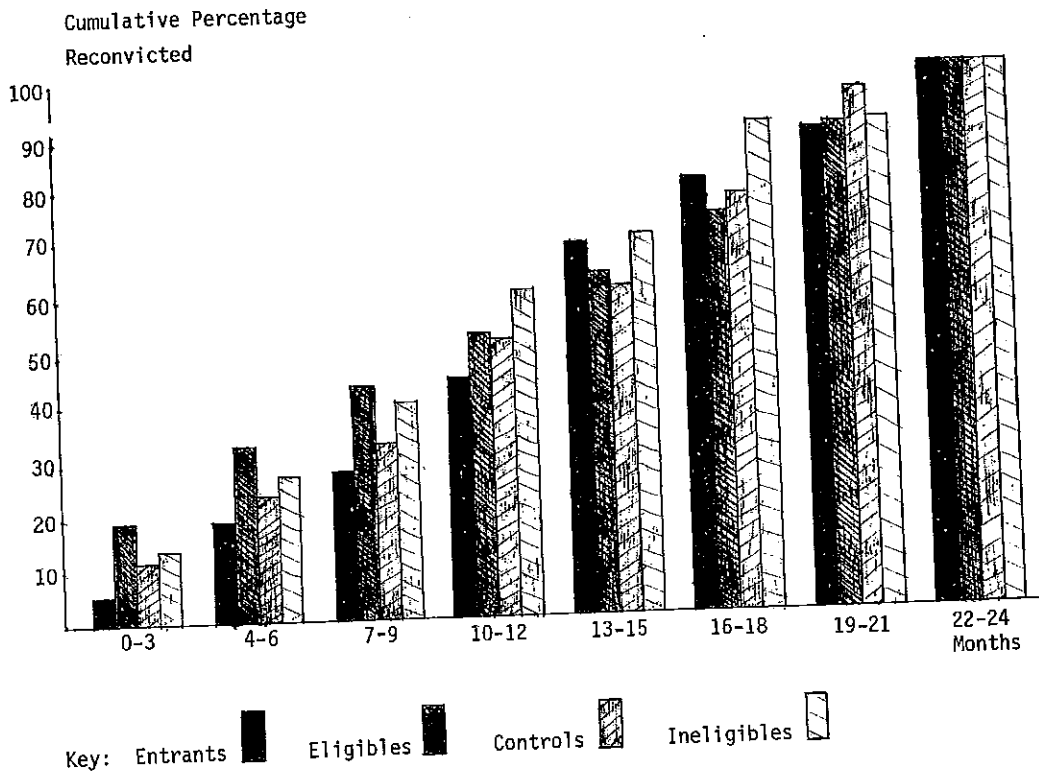


Table 9.14 Time to First Drink-Drive Reconviction: Cumulative Frequencies and Cumulative Percentages per Evaluation Group Totals

<u>Months to Reconviction</u>	<u>Evaluation Group</u>							
	Entrants		Eligibles		Controls		Ineligibles	
	cf	c%	cf	c%	cf	c%	cf	c%
0-3	3	0.9	9	2.1	5	1.0	4	0.7
4-6	10	2.9	15	3.5	10	2.1	8	1.4
7-9	15	4.3	20	4.7	14	2.9	12	2.2
10-12	24	7.0	24	5.7	22	4.5	18	3.2
13-15	37	10.7	29	6.8	26	5.4	21	3.8
16-18	43	12.5	34	8.0	33	6.8	24	4.3
19-21	48	13.9	41	9.7	41	8.5	27	4.9
<u>22-24</u>	<u>54</u>	<u>15.7</u>	<u>46</u>	<u>10.9</u>	<u>43</u>	<u>8.9</u>	<u>30</u>	<u>5.4</u>
(Group Total)	(345)		(424)		(483)		(556)	
% reconvicted		15.7		10.9		8.9		5.4

Figure 9.1 showed that the "percentage reconvicted" in the entrants group, as a proportion of the total reconvicted of drink-drive offences within the follow-up period, lagged behind the other three groups for the first year after sentencing. The 44.4% of entrants who had been reconvicted by the 12th month, was the lowest proportion of the four evaluation groups, and the entrants "overtook" the other two "eligible" groups only in the next 3-month period. In keeping with this, Table 9.14 demonstrated that the entrants' drink-drive reconviction rate expressed as a proportion of the total number of members in each group, became significantly worse than those of the other groups only after 12 months.

It would be naive to assume that deterrent measures operate on an absolute basis, so that they are judged to be effective only if the behaviour against which they are directed, ceases completely. Rather, such measures are to be regarded as having a deterrent "force" or "impact" which is at its greatest level when the measure is applied, but which becomes weaker with time. The longer the delay to reconviction, the greater is the "deterrent effect" we may ascribe to the measure.

Figure 9.1 and Table 9.14, then, may be interpreted as showing that most of the entrants were effectively deterred from being reconvicted for drink-driving for a year, but that this deterrent effect "wore off" for a few of them (numbering about 10 above the average) at that stage.

## CHAPTER 10: CONCLUSION

### 10.1 Interpretation of the Results.

The key table in the "Results" in the previous chapter was Table 9.9, on "subsequent convictions by evaluation groups". The comparison between the DDP entrants' reconviction rate for drink-drive offences and the other groups' reconviction rates within 2 years from the date of final sentence was the basic measurement used in this Evaluation to assess the effectiveness of the programme. As we have seen, the results in Table 9.9 were, at first sight, pessimistic. Rather than being reconvicted at a lower rate than the comparison groups, the participants actually had the worst reconviction rate for drink-drive offences by a substantial margin. At face value, then, Table 9.9 indicated that the DDP was a failure in its basic aim of reducing recidivism.

Further analysis of these results, however, enables them to be explained in ways which are much less unfavourable to the DDP:

- (i) in the first place, there is some evidence in the other tables that the entrants group comprised offenders who were in fact "worse risks" regarding their likelihood of being reconvicted for drink-drive offences;
- (ii) next, there may have been some "hidden" factors, which were not reflected in the data, which may help explain the worse performance of the entrants; and
- (iii) finally, to some extent, the results may have been merely the product of the methodological limitations inherent in the study.

#### (i) Evidence that the entrants were "worse risks".

The strongest evidence that the entrants were the "worst risks" for drink-drive reconvictions was that they had the most prior convictions for drink-driving offences. This was shown in Table 9.6, and Table 9.12 revealed that it was in fact those entrants with previous drink-drive convictions who were reconvicted for drink-drive offences most frequently. The combined effect of (a) having a higher proportion of offenders with previous drink-drive convictions and (b) the higher drink-drive reconviction rate of this sub-group, almost entirely accounts for the entrants group's higher overall drink-drive reconviction rate.

This suggests rather strongly that the entrants did worst in terms of drink-drive reconvictions because the group contained a disproportionate number of offenders with a very high propensity for getting convicted for drink-drive offences. Apart from this "highly prone" sub-group, the other entrants' drink-drive reconviction rates were only slightly higher than those of their counterparts in the other two eligible groups. (For its part, the "ineligibles" group had low overall drink-drive reconviction rates, indicating that the eligibility criteria themselves were selective in terms of the propensity to be convicted for drink-drive offences.)

The validity of this analysis is corroborated by the pattern of "non-drink-drive" conviction rates, which was essentially the reverse of the pattern of drink-drive conviction rates. For "non-drink-drive" offences, the entrants had the lowest previous and subsequent conviction rates, the "ineligibles" had the highest, and the "eligibles" and "controls" had intermediate rates for previous and subsequent convictions.

The positive association between previous and subsequent conviction rates for both types of offences ("drink-drive" and "non-drink-drive") tends to show that the performance of the evaluation groups was determined by the predispositions of their members, rather than by the treatment they received. This means that the entrants group's poor performance in terms of drink-drive reconvictions was due to their having been the "worst risks" in this respect, rather than to the failure of the DDP.

There were other indicators in the data that the entrants were "worse risks" regarding drink-drive convictions, but these did not imply this conclusion as clearly as the above evidence regarding previous convictions.

In Table 9.10, for instance, it was shown that only in the entrants group did the middle age-group offenders (specifically, those in their 30's and those in their 50's) have higher drink-drive reconviction rates than the younger offenders. This tends to support the proposition that there was a "high-risk" sub-group among the entrants, which seemed to have been absent from the other evaluation groups. It is possible, then, that the DDP was actually effective in reducing the chances of recidivism of many of the entrants in the programme, but that this was obscured by the presence within the group of a hard core of intractable drink-drive offenders.

Table 9.11, on BAC by subsequent drink-drive convictions, was also consistent with the theory that the entrants group included some "high-risk" drink-drive offenders, in that the group had the largest proportion in the "very-high" BAC category of "0.25 to 0.29", and these were also reconvicted for drink-drive offences at the highest rate. But the crucial fact about BAC was that approximately three-quarters of each of the three "eligible" groups fell in the BAC range of "0.15 to 0.24" and the entrants' highest overall drink-drive reconviction rate was attributable chiefly to the fact that a higher proportion of the entrants group in this category received subsequent drink-drive convictions. The implications of the BAC results, therefore, tended to be inconclusive.

A further clue to the results was provided in Table 9.13, which dealt with licence disqualification periods by subsequent drink-drive convictions. This showed a slight, though consistent trend for the entrants group to have been treated leniently in relation to the other groups, despite the indications that they were "worse risks". Assuming that this penalty does have a "marginal deterrent effect" for drink-drive offenders, which accords with the findings of Homel's study, then the consequence of the entrants' having received shorter disqualification periods than the comparison groups, was that this deterrent effect was applied to the group less effectively, resulting in higher reconviction rates. Indeed, the data in Table 9.13 did suggest that fewer entrants might have been reconvicted for drink-drive offences if they had been given disqualification periods as severe as those given to the "controls" and "eligibles".

(ii) "Hidden" factors: some subjective theories.

The above analysis was confined to data which could be obtained from the police and court records and tested by quantification techniques. It is obvious, however, that subjective factors may have been very important in determining the outcome of the pilot programme. This is inherent in any schemes involving individual decision-making. As noted above, there may have been some "hidden" factors, which were not reflected in this data because they were of a "subjective" nature, which may help explain the worse performance of the entrants in relation to the other groups.

Such a theory is suggested by the voluntary nature of the scheme. There were probably subjective factors at work in

deciding whether particular offenders would enter the DDP, which had the effect of tending to select the "worse risk" offenders for the programme.

It can be postulated that if an eligible drink-drive offender before the court had an obvious drinking problem, with a background, say, of work absenteeism, family conflict, or poor health related to his drinking, then the Magistrate or probation officer or the defendant's lawyer might well have regarded him as a prime candidate for treatment, and exerted pressure on him to enter the programme. Similarly, a self-selection process could have operated, by which those offenders who felt prone to reoffending or who felt they needed help with their drinking problem, were the ones who agreed to go on the scheme. On the other hand, where the offender declined to undertake the programme, his decision may be seen as an expression of confidence that he did not have a drinking problem requiring help, and that he was unlikely to reoffend. In other words, offenders who perceived themselves as "good risks" might have selected themselves "out" of the DDP.

An alternative subjective theory derives from the criminal trial setting of the DDP. Many of those who agreed to participate in the scheme probably saw it primarily as a means of getting a lighter sentence, rather than an opportunity to get help in reforming their drinking practices. Such a motivation to "manipulate the system" would have been completely incompatible with the sort of attitude required for effective treatment. If this theory is valid, then, it suggests that the DDP attracted offenders who were unlikely to respond to it in the way that was intended.

(iii) Methodological limitations inherent in the study.

Reference has already been made, in the discussions of measuring "specific deterrence" and in the chapter on "Evaluation", to the fundamental methodological problems inherent in such evaluation studies as this.

For one thing, reconviction rates had to be used as the basic measure to assess the effectiveness of the programme, because only these were recorded, and so, able to be quantified. What we really wanted to know, however, were the rates of reoffending, but regrettably, we lack the power of omniscience which would be necessary to detect every instance when a drink-driver recommitted the offence!

Conviction or reconviction rates are only a rough guide to actual rates of offending, because they introduce all the extraneous contingencies of enforcement, and omit the "dark figure" of the offence, which, given the low enforcement rate in relation to the actual level of drink-driving, is of crucial significance. Conviction rates, then, might merely be giving us measures of the tendency to "get caught again", rather than to reoffend. This might have completely accounted for the relatively high drink-drive reconviction rate of the entrants, which, therefore, did not necessarily entail a low level of actual effective deterrence compared to the other groups.

Another methodological limitation was that the analysis had to be based on comparisons between the evaluation groups' "total scores", so that individual differences within the groups were obscured. In view of the heterogeneous nature of the evaluation groups, it may well have been that most of the entrants did in fact benefit from the programme, and that the poor overall performance in terms of drink-drive reconvictions was attributable to the presence within the group of a small minority of "high risk" offenders. A sub-group of only 15 to 20 men, about 5% of the total number of entrants, would account for the difference between the group's scores and those of the other two "eligible" groups, and, as we have seen, there is evidence in the data that such a sub-group did exist.

Furthermore, it was not possible to assess the effectiveness of the various treatment strands within the DDP separately, and it may have been that some of these types of treatment were very successful, perhaps generally, or at least with particular kinds of offenders.

(iv) Grounds for optimism.

While reducing recidivism may have been its main aim, the DDP did have other related goals, such as increasing knowledge and awareness of drinking problems among programme participants, and changing their drinking practices. Perhaps the DDP did succeed in these terms. The most relevant data relating to these other goals were Figure 9.1 and Table 9.14 on "time to first drink-drive reconviction" and they, indeed, provided the strongest grounds for optimism regarding the programme, in showing that reconvictions among the entrants were postponed the longest of all the groups. This suggested that the DDP did have an effective deterrent impact on the entrants, but that with some of them, it wore off after a period.



(v) A Case for Scepticism

The combined weight of all these arguments establishes a strong case for scepticism regarding the data: the apparent demonstration of the DDP's failure cannot be taken at face value; but on the other hand, the indications of the programme's success are even less convincing!

Even if it was conceded, however, that the most pertinent evidence pointed to the programme's failure on this occasion, this would fall very far short of proof that treatment can never work. Given that it was the pilot programme, the treatment techniques might not have been developed to a high degree of efficiency. Perhaps they could have been improved.

One final point to emphasise, and this may be the most fundamental one, is the vast and intractable nature of the drink-driving problem. It involves an enormous number of people and is extremely difficult to attack, given the mighty forces of social convention which sustain it. We could hardly expect a programme consisting of about 8 weekly sessions to have much impact on a syndrome which is so thoroughly entrenched in our society.

10.2 Research Implications

One of the strongest themes to emerge from this study, is the need to join the treatment programme and the evaluation process together in a mutually reinforcing relationship. The data should be collected as a routine part of the treatment programmes, and the progress of each participant in the programme should be monitored on a session-by-session basis.

Provision would have to be made for central supervision of the study, involving co-ordinating the collection of the data, reviewing the research methodology, collating and interpreting the findings, and conveying the policy implications back to the treatment personnel.

Only by incorporating the research and evaluation function into the treatment process in this way, so that it becomes a truly integral and central part of the programme, will either function be able to fulfil its role, for each has an essential contribution to make to the other. This interdependence of research and treatment should be reflected in the programme structure.

This would render it possible to investigate the overriding issue, of "what kind of treatment is most suited to what kind of person under which particular circumstances". It is an indictment of the evaluation studies carried out to date, that so few of them have been able even to approach this most important of all questions, and that, consequently, so little is known about it.

One of the basic preliminary tasks is to identify those offenders who are most amenable to the available types of treatment, and distinguish them from those who need it most. Obviously, the treatment approaches required for each of these groups would be quite different.

There is also the need to go beyond recorded convictions, and attempt to investigate other possible effects of the programme which could provide a basis for assessment, such as changes in attitudes or practices related to drink-driving. This envisages an extensive follow-up procedure with respect to all the participants in the programme.

As knowledge is gained, the treatment programme could be adjusted in accordance with the new findings. The selection process by which the various categories of offenders are assigned to the particular treatment strands, and the treatment methods themselves, could be refined, so that with time, the DDP personnel would develop their expertise in providing offenders with the most effective course of treatment for their particular situations. In this way, research and evaluation could perform their crucial role in the continuous tasks of policy formation and review.

### 10.3 Policy Implications

As far as the actual pilot programme evaluated in this study is concerned, any policy implications suggested by the research can only be advanced tentatively. Neither the success nor failure of the programme as a whole has been demonstrated, and in the absence of conclusive evidence one way or the other, the question of the DDP's future may have to be resolved on the basis of which side bears the onus of proof.

Those who hold an implicit faith in the efficacy of penal sanctions as deterrents, and who are most sceptical about the prospects of rehabilitation, will argue that, in the absence of

proof that it has reduced recidivism, the programme should be abolished, and severer penalties should be imposed on drink-drivers instead. But this is the dogmatic authoritarian approach.

The opposing viewpoint would hold that, while the effectiveness of the DDP in reducing recidivism has not been established, this is not its sole justification. The point is that nothing has been shown to work in combatting drink-driving, least of all criminal sanctions, and on humanitarian principles, the presumption is that the least repressive measures should be adopted.

In a sense, the great merit of the DDP is that it has provided a treatment facility within the criminal justice system to help deal with the problem of drink-driving. The potential role of rehabilitation in combatting the problem has not been established, and a great deal of research remains to be done to determine how the effectiveness of treatment methods may be enhanced.

There is simply no single solution to the drink-driving problem, and we will have to continue to attack it by experimenting with combinations of all the counter-measures at our disposal. Given the enormity and urgency of the problem, perhaps such a course of vigorous and imaginative experimentation is the only proper one for us to take.

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APPENDICES

APPENDIX IA: NOTES ON OTHER OFFENCES INVOLVING DRINKING AND DRIVING.

Besides sections 4E and 5(2) of the Motor Traffic Act, there are other driving offences in which alcohol impairment may be involved. Some of the main ones are discussed in this Appendix. The relevant offences in the Crimes Act are:

- Section 24, manslaughter;
- Section 52A, "culpable driving";
- Section 53, "furious driving"; and
- Section 54, "causing grievous bodily harm".

The other provision discussed is section 4 of the Motor Traffic Act: "negligent, furious or reckless driving".

1. Manslaughter and "Causing Grievous Bodily Harm"

Manslaughter and "causing grievous bodily harm" through criminally negligent driving are, of course, merely species of broader crimes. "Homicide not amounting to murder may be punishable (as manslaughter) although the killing is involuntary, but the death is caused in doing an unlawful act, or doing a lawful act with gross negligence, or by the culpable neglect to discharge a legal duty": R v Woods (1921) 85 JP 272.

Thus, negligence in the driving of a motor vehicle, which is the breach of duty to take care, may amount to manslaughter. But not all negligent driving will amount to manslaughter. In *Andrews v Director of Public Prosecutions* (1937) AC 576 at p.583, *Ld. Atkin* said:

"The principle to be observed is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough: for purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."

This passage remains authoritative, although it has been criticised: see article by P. Brett, "Manslaughter and the Motorist, Part II", 27 ALJ 89, especially at p.94:

"It is submitted that, had Lord Atkin embarked on a careful analysis of the treatises and cases, he would have found that there is no general rule applicable to all charges of homicide. There are innumerable situations and behind those situations there lie different social policies."

Driving while intoxicated has been specifically recognized as an act which could lead to liability for manslaughter. In *R v Doyle* (1971) W.A.R. 110, for instance, it was held:

"Reasonable care in the use and management of a motor vehicle extends to all aspects of that use and management, so that it means and requires that a person does not enter upon the activity of driving a motor car when he knows that in the totality of things he is by intoxication unable to cope with what would otherwise be a common enough traffic situation, and if by reason of intoxication he doesn't in fact cope with such a situation and his failure to do so causes the death of another person, it is open to the jury to conclude that it was negligence which caused the death."

The penalty for manslaughter is expressed in section 24 of the Crimes Act as "penal servitude for life, or for any term not less than three years, or to imprisonment for any term, not exceeding three years." This is anachronistic in that the distinction between "penal servitude" and "imprisonment" has been abolished in practice.

Section 54 of the Crimes Act provides:

"Whosoever by any unlawful or negligent act or omission, causes grievous bodily harm to any person, shall be liable to imprisonment for two years."

It has been held that the standard of negligence required by the section is the same standard required for the common law crime of manslaughter by negligence: *R. v Leskinen* (1978) 23 ACTR 1. "Grievous bodily harm" is defined in Section 4 of the Crimes Act as including "any permanent or serious disfiguring of the person", but the bodily harm does not have to be permanent or dangerous: *R v Metharam* (1961) 2 ALLER 260.

## 2. "Culpable Driving" and "Furious Driving"

The other relevant sections of the Crimes Act apply specifically to driving offences. The offence of culpable driving is set out in Section 52A, and driving under the influence of intoxicating liquor is one of the grounds on which guilt may be established. The section provides as follows:

- "52A. (1) Where the death of, or grievous bodily harm to, any person is occasioned through -
- (a) the impact with any object of a motor vehicle in which that person was a passenger;
  - (b) a motor vehicle in which that person was a passenger overturning or leaving the highway;
  - (c) impact with a motor vehicle;
- or
- (d) the impact of a motor vehicle with any vehicle or other object in, on or near which that person was at the time of impact, or at the time of overturning or leaving the highway,
- being driven by another person
- (e) under the influence of intoxicating liquor or of a drug;
- or
- (f) at a speed or in a manner dangerous to the public, the person who was so driving the motor vehicle shall be guilty of the misdemeanour of culpable driving".

The penalties are set out in sub-section (2). If the death of any person was occasioned, the person convicted of the offence is liable to imprisonment for 5 years, and if grievous bodily harm was occasioned, the person convicted is liable to imprisonment for 3 years.

The significance of the statutory offence is that the maximum punishment on conviction is less than the maximum for manslaughter (of penal servitude for life). This entails the inconsistency that exactly the same facts may amount to two distinct offences which carry different penalties. The inconsistency, however, is deliberate: it arose from the reluctance of juries to bring in verdicts of guilty in motor manslaughter cases, so that the legislature felt it was necessary to provide an alternative offence with a lesser maximum penalty, for juries to convict defendants.

Sub-section (3) provides a defence to charges under the section that the death or grievous bodily harm occasioned was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or to the manner in which the vehicle was driven. The onus to establish no causal connection rests upon the accused, but only to the extent of the balance of probabilities, i.e., the civil onus: *Reg v F* (1956) 57 SR(NSW) 543; 74 WN 211.

In several cases involving the above offences in the early 1970's, the admissibility of evidence of the results of breathalyser tests (which is discussed in Chapter 2 of this Report, supra pp.10-13) was challenged by the defence: see *R v Barnsley* (1972) 2 NSWLR 220; but now, section 414A(2) of the Crimes Act provides that a certificate like one under section 4E(12)(a) or (b) of the Motor Traffic Act (see p.8 of this Report) shall be prima facie evidence of the particulars certified in it, inter alia, where a person is charged before a Stipendiary Magistrate with an indictable offence.

The other section of the Crimes Act to be mentioned is section 53, which provides (as far as is relevant) that "whosoever, being at the time...in charge of any...vehicle, by wanton or furious...driving or racing, or other misconduct or by wilful neglect, does or causes to be done to any person any bodily harm, shall be liable to imprisonment for 2 years."

The remarks about driving whilst intoxicated in *R v Doyle*, noted above, apply to this section as well.

"Bodily harm" means actual bodily harm and includes health or comfort of the prosecutor: it need not be any injury of a permanent character or amount to grievous bodily harm.

3. "Negligent, Furious or Reckless Driving"

Section 4(1) of the Motor Traffic Act provides:

"4.(1) Any person who drives a motor vehicle upon a public street, negligently, furiously or recklessly, or at a speed or in a manner dangerous to the public shall be guilty of an offence under this Act."

The maximum penalties are set out in subsection (3): \$500 for driving negligently and \$1,000 or imprisonment up to six months or both, for driving furiously or recklessly or at a speed or in a manner which is dangerous to the public.

It has been held that "the negligence which it is necessary to prove in order to constitute the offence of negligent driving within the meaning of section 4 of the Motor Traffic Act...is a different and lesser degree of negligence than that which it is necessary to prove in order to establish an offence under s.54 of the Crimes Act, 1900": per Street J. as he then was, in *Clout v Hutchinson* (1951) 51 SR(NSW). The judge was of the opinion that negligent driving under this section is "something less serious (qua proof) than reckless or furious driving".

APPENDIX 1B: THE BREATHALYSER TEST AND THE COURTS

In a series of cases concerning the breathalyser test, the defence counsel sought to challenge the provision on the basis that the tests were compulsory, and therefore breached the principle expressed in section 410 of the Crimes Act, that a person cannot be made to incriminate himself. The courts have rejected this argument, but some degree of ambiguity remains.

On the whole, the courts have held that the rule against self-incrimination does not apply to physical evidence like breath tests, fingerprints, blood samples or the like. In *R v McLellan* (1974) VR 774, the Full Bench of the Supreme Court of Victoria explained the rationale for applying different doctrines to physical and testamentary evidence. Their Honours said (at p.777):

"When the subject matter extends beyond interrogation and beyond statements, to other forms of conduct, the principle pursuant to which evidence as to such conduct may be excluded in the exercise of judicial discretion has a different history and a different source from the immunity against self-incrimination in civil proceedings expressed in the maxim ('nemo tenetur se ipsum accusare'). Such evidence is excluded on the basis of fairness and not because of the common law right of non-incrimination...The making of an incriminating statement brings into being adverse evidence which previously did not exist. If forced from a prisoner it requires him to create evidence against himself, possibly in circumstances where he makes a statement not in accordance with the facts. On the other hand, a fingerprint or some physical feature is already in existence; it exists as a physical fact, and is not susceptible of misrepresentation in any relevant sense".

The defendant in *R v Cotten* (1970) WN(NSW) 457 sought to have evidence of a breathalyser test rejected as unfair in exercise of the judge's discretion, on the ground (inter alia) that the test was taken under compulsion in that refusal was an offence under the Act. But the Supreme Court held that, as there was no evidence that the accused did in fact object, there was no compulsion in the sense contended for.

While the court did not affirmatively hold that the objection of the accused would have led to exclusion of the evidence, the implication of the Court's finding is that circumstances may arise in which evidence may be excluded, even in the context of compulsory legislation. The suggestion is that if a person actually refuses to submit to a test, while he would be liable under the Act for the refusal, he still may not be forced to submit to the test; and if he is, the evidence of the test may be excluded as "unfair".

These cases must now be read, however, in the light of the High Court decision in *Bunning v Cross* (1978) 52 ALJR 561 (see note at 52 ALJ 638-641). In that case, the police officer had not required Mr. Bunning to undergo a "preliminary" breath test, under the equivalent W.A. provision to section 4B, but had simply asked him to accompany him to the Road Patrol Section to undergo the full breathalyser test. The magistrate refused to convict, on the ground that the evidence had been illegally obtained, and was thus inadmissible. He acquitted the accused. On appeal, a single justice of the W.A. Supreme Court held that although the evidence had been illegally obtained, it was not thereby necessarily inadmissible, and he remitted the case to the magistrate for him to exercise his discretion. The magistrate did so, rejecting the evidence, and again acquitted the accused. Now the decision went before the W.A. Full Court, and the majority held (for differing reasons) that the Magistrate had erred in law in the exercise of his discretion, and remitted the matter to him "to be dealt with according to law". The case came before the High Court by way of an application for special leave to appeal from the W.A. Full Court.

In the leading judgment, Stephen and Aickin JJ. adopted the following passage from the judgment of Barwick CJ. in *R v Ireland* (1970) 126 CLR 321 at 335 as a proper statement of the law in Australia:

"Whenever such unlawfulness or unfairness appears, the judge has a discretion to reject the evidence. He must consider its exercise. In the exercise of it, the competing public requirements must be considered and weighed against each other. On the one hand, there is the public need to bring to conviction those who commit criminal offences. On the other hand is the public interest in the protection of the individual from unlawful and unfair treatment. Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price. Hence the judicial discretion."

Stephen and Aickin JJ. saw this as being in "marked contrast" to the "unfairness" principle, and they felt that the Ireland test would allow less illegally obtained evidence to be admitted than the "unfairness" test. In applying the Ireland test to the facts of the case, they considered a number of factors:

- (1) accepting that the evidence had been unlawfully obtained, in that the necessary preliminaries had not been observed, this was by inadvertence, and not by deliberate disregard of the law by the police;
- (2) the illegality did not affect the cogency of the evidence;
- (3) while it would have been easy to comply with the legal requirements, and this tends against admissibility, in this case, the "Alcotest" would have proved positive; thus ease of complying with the law was here "a wholly equivocal factor" (p.571);
- (4) although not one of the most serious offences, drink-driving could place innocent lives in jeopardy; and
- (5) the legislature's deliberately narrow restriction on the power of police to require a person to attend a police station to submit to a breath analysis would also normally operate against admissibility, but it was essentially the interference with personal liberty in being required to attend the police station, rather than the breath testing itself, which was to be considered in the exercise of discretion.

Their Honours then held that the evidence should have been admitted in the exercise of the Magistrate's discretion, and they remitted the case to the Magistrate with a direction to convict.

Barwick CJ. and Jacobs J. agreed with this order, but on different grounds. The Chief Justice said that he agreed "entirely" with Stephen and Aickin JJ. regarding the principles for exercise of the discretion, but expressed the test somewhat differently: "The question is whether the public interest in the enforcement of the law...is so outweighed by unfairness to the applicant in the manner in which the evidence came into the hands of the Crown that, notwithstanding its admissibility and cogency, it should be rejected" (p.565). His Honour, indeed, felt that the evidence had been lawfully obtained, on the ground that the accused had voluntarily submitted to the breathalyser test, and there was nothing in the legislation to preclude this, without



the preliminary "Alcotest". But because no appeal had been brought on this issue, he felt bound to proceed on the assumption that the evidence was illegally obtained. Nevertheless, he saw no grounds for exercising the discretion to exclude the evidence. Jacobs J. also took the view that the evidence had been legally obtained, but didn't feel bound to proceed on the assumption that it had been illegally obtained. He therefore did not find it necessary to consider the exercise of discretion.

Murphy J. dissented on 3 grounds, of which the second is of particular significance, because it relies on the principle against self-incrimination. His Honour stated that the evidence had been illegally obtained, and when a person is "unlawfully required to incriminate himself, the evidence should be rejected in other than exceptional cases" (p. 572). The evidence was illegal because it had been obtained by implied coercion: "A police officer acting, although unlawfully, in the name of the government, possesses a far greater capacity for overbearing a person than does an ordinary person exercising no authority other than his own."

APPENDIX IIA: EXTRACTS FROM THE "FIRST REPORT" RELATING TO THE  
QUESTIONNAIRES

7. Methodology

.....

7(4) A proportion of those who undertook a programme in the Scheme were invited to complete two questionnaires. The questionnaires were administered before entrance into the Scheme and on Scheme completion (whether successfully or otherwise). They documented knowledge of and attitude to drink driving behaviour and demographic characteristics, and the second questionnaire invited a subjective evaluation of the Scheme by its participants (see Table A).

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7(6) It is proper to make some observations about the questionnaire. Before it was issued a pilot questionnaire was handed to 47 people, to determine whether modification was required in terms of comprehensibility. Slight modification was necessary and the modified questionnaire was completed by 243 persons. It contained four test batteries namely, demographic, knowledge inventory, opinion survey, and an alcohol screening test. In order to determine attitude and knowledge changes, the questionnaire was handed to Scheme participants prior to entry into any treatment mode and after completion of the treatment. The same questionnaire was also distributed to a control group of drink-drivers with similar blood alcohol levels and drink-driver conviction histories. This they received after their final sentence which corresponded to the time those in the scheme were given their questionnaires. The usual procedure of testing questionnaires for reliability and consistency was not necessary for this study, as many well tested questionnaire schedules are available.

7(7) The alcohol inventory was used to ascertain to what degree aim 1 of the Scheme was being achieved (the identification of the driver with the drinking problem). The Michigan Alcohol Screening Test, itself devised for the identification of alcoholic road users, was employed. Scoring presented difficulty because in the U.S.A. "4" was taken to indicate such problems. This has been criticised and did not appear to meet Australian conditions. The recently published work by Goode and Hudson recommends that the adoption of a score of above "15" on the abridged M.A.S.T. is more apt in the local alcohol milieu. This recommendation, whilst subject to further investigation, was adopted, apparently for the first time.

7(8) The knowledge and attitude test batteries were adapted from the Phoenix Alcohol Programme in the U.S.A. which is the most frequently quoted of any evaluation programme in use by A.S.A.P. Modifications made by the Traffic Accident Research Unit of the N.S.W. Department of Motor Transport were incorporated. As was said above, 243 participants completed the questionnaire prior to entry into any treatment programme between 1st September, 1976 and 31st January, 1977. To gauge attitude and knowledge change these batteries were again administered at the completion of the programme and after sentence. Only 148 completed the second questionnaire and of these it was possible to match 123. This operation took place from 1st November, 1976 to 31st March, 1977. The number to whom each questionnaire was administered was the largest available. It was not possible to select a sample of participants during the first 12 months of operation. In the first 5 months the Scheme was developing and being subject to self-modification. The time within which the questionnaires might be administered was compressed on the one hand by the development of the scheme and on the other by the need to compute the results.

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#### 9. Discussion of Findings - Evaluation

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##### 9(6) Alcohol Screening Test

The questionnaires administered to Scheme participants in the first instance were able to be matched with second questionnaires in 123 cases. It has been possible to make a comparison with replies from 166 of the control group. Computation has been completed and cross tabulation is in progress. The alcohol screening test employed is an abridgment of that devised by Selzer et.al. in Michigan, U.S.A. known as M.A.S.T. with the modification that a score of "15" in the 25 item scale rather than one of "4" is taken to be appropriate to Australian conditions: see paragraph 7(7) above. Only 7.4% of respondents scored above the 15-point level. Obviously the Court environment in which the questionnaires were administered, notwithstanding precautions taken, has corrupted the result. Further investigations are necessary on this aspect. Additionally, the further research by Goode and Hudson may render the cut-off point of "15" not as appropriate as was originally thought.

9(7) Knowledge change

The following four paragraphs consist of matter culled from the questionnaires administered to participants and the control group and go to knowledge improvement.

This and the following tables afford some indication of the effect of the educational component in the treatment programmes.

(i) Statement The maximum blood alcohol level permitted in a motor vehicle driver is:

<u>Answer</u>	1st response %	2nd response %	Control %
0.05%	14.6	13.0	9.6
0.08%	73.2	82.9	77.1
0.10%	2.4	0.8	4.2
0.50%	1.6	-	1.8
Don't know	<u>8.2</u>	<u>3.3</u>	<u>7.3</u>
Number of respondents	123	123	166

(ii) Statement To what percentage of Australian road fatalities is alcohol related:

<u>Answer</u>	1st response %	2nd response %	Control %
10%	1.7	1.6	9.0
25%	15.5	10.6	18.7
40%	5.7	19.5	22.9
50%	24.4	48.8	22.9
Don't know	<u>52.7</u>	<u>19.5</u>	<u>26.5</u>
Number of respondents	123	123	166

The correct figure is approximately 50%.

(iii) Statement The most alcohol is contained in:

<u>Answer</u>	1st response %	2nd response %	Control %
a middy of beer	4.1	6.5	5.4
a glass of wine	8.1	7.3	4.2
a nip of Scotch	56.1	55.3	59.0
a glass of Sherry	4.1	5.7	4.8
all are the same	2.4	17.9	10.3
Don't know	<u>52.7</u>	<u>19.5</u>	<u>26.5</u>
number of respondents	123	123	166

There is interest in the persistence of the notion that whisky contains the most alcohol which probably emanates from what is perceived by the senses. Nonetheless there is palpable gain the number who came to understand that all the beverages listed contain approximately the same amount.

(iv) Statement You can sober up by:

<u>Answer</u>	1st response %	2nd response %	Control %
Vigorous exercise	11.4	4.9	20.5
drinking coffee	15.5	2.4	18.1
taking fructose	1.6	-	1.8
all of these	4.1	1.6	6.0
none of these	<u>59.4</u>	<u>88.4</u>	<u>47.6</u>
Number of respondents	123	123	166

The effect of knowledge of the impairment of driving by alcohol ingestion upon the disposition to anti-social drink-drive behaviour must be regarded as uncertain. Nonetheless it may fairly be supposed that awareness has some effect upon behaviour and to that extent these results afford some encouragement to suppose an attitude change has been effected in participants.

9(8) Attitude Change

Attitude testing with regard to drinking and driving was conducted with participants and with the control groups. Tables comprising the mean and standard error of responses to each variable appearing in the questionnaire have been compiled. A comparison of participants' attitudes before undergoing treatment courses and after sentence had been passed upon them, indicated no change which was statistically significant. Recourse was then had to a comparison between the attitudes of the control and attitudes of participants after sentence. Again no statistically significant change was discernible. The Research officer and the Senior Magistrates take the view that testing attitudes before sentence involves corruption in that respondents will tend to answer according to a norm they think they perceive. Immediately after the sentence their answers are likely to be coloured, first by the removal of uncertainty-generated tension existent during the previous two months and second by resentment at the punishment many received. An alternative to this procedure is therefore being considered.

APPENDIX IIB: DATA FROM PRE-SENTENCE REPORTS FROM THE 'FIRST REPORT'

7. Methodology

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7(15) Probation and Parole Officers prepared 448 pre-sentence reports on participants in the Scheme. These were presented to the Magistrates before final sentence was pronounced. These reports were located in the Court files and information from them has been tabulated and appears as Paragraph 9(9). This figure represents 83% of those who completed the Scheme for its first 12 months.

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9. Discussion of Findings - Evaluation

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9(9) The Probation Officers' Pre-Sentence Reports

The information in the following tables is taken from the reports to the Magistrates, after completion of the courses and before sentence.

A. Demographic and Drinker Characteristics

(i) <u>Social Problems</u>	No.	%
(a) family problems during childhood - Yes	48	10.7
- No	140	31.3
(b) family disruption - Yes	61	13.6
- No	138	30.8
(c) no statement	61	13.6
(ii) <u>Physical Condition</u>		
health - poor	16	3.6
- good	25	5.6
- excellent	5	1.1
no statement	402	87.9
(iii) <u>Drinking habits</u>		
(a) Defendant considers him/herself:		
a light social drinker	93	20.8
a heavy social drinker	87	19.4
an excessive drinker	26	5.8
having a problem with alcohol	39	8.7
an alcoholic	5	1.1
no statement	198	44.2
(b) Defendant's next of kin considers defendant:		
a light social drinker	101	22.6
a heavy social drinker	44	9.8
an excessive drinker	23	5.1
having a problem with alcohol	35	5.1
an alcoholic	-	-
no statement	245	54.7
TOTALS	448	100.0

<u>B. Indication of Alcohol Consumption</u>		
	No	%
<u>(i) Alcohol Consumption - Attitudes</u>		
(a) indication of positive attitude change	234	52.2
(b) negative attitude change	-	-
(c) no attitude change	74	16.5
(d) no statement	140	31.3
<u>(ii) Alcohol Consumption - Behaviour</u>		
(a) positive change - attempts to limit alcohol consumption	181	40.4
(b) negative change - increase alcohol consumption	-	-
(c) no behaviour change	30	6.7
(d) no statement	237	52.9
<u>(iii) Alcohol Consumption Prediction</u>		
(a) prediction positive attitude change develop or continue	170	37.9
(b) prediction negative attitude change	6	1.3
(c) prediction no attitude change	13	2.9
(d) prediction positive behaviour change	166	37.1
(e) prediction negative behaviour change	8	1.8
(f) prediction no behaviour change	14	3.1
(g) no statement	71	15.9
<u>C. Drinking-Driving: Attitudes and Behaviour Change</u>		
(a) positive attitudes change indicated	273	60.9
negative attitude change	-	-
no attitude change	26	5.8
no statement	149	33.3
(b) positive behaviour change indicated	145	32.4
negative behaviour change indicated	-	-
no behaviour change	32	7.1
no statement	271	60.5
(c) prediction positive attitude change	292	65.2
prediction negative attitude change	9	2.0
prediction no attitude change	25	5.6
no statement	122	27.2
(d) prediction positive behaviour change	289	64.5
prediction negative behaviour change	10	2.2
prediction no behaviour change	25	5.6
no statement	124	27.7
TOTALS	448	100.0



APPENDIX III: "TIME TO FIRST DRINK-DRIVE RECONVICTION" : TABLES

Table 1 of this Appendix shows the numbers of drink-drive offenders in the four evaluation groups who received a drink-drive reconviction in each 3 months of the 2-year follow-up period. The data relates to the time which elapsed between the date of final sentence and the first drink-drive reconviction. The frequencies shown in the table provided the basic data for Figure 9.1 and Table 9.14. Table 9.14 showed the cumulative frequencies of drink-drive recidivists (i.e. those who were reconvicted of a drink-drive offence within the 2-year follow-up period) of each evaluation group and the cumulative percentages expressed as a proportion of the total numbers in the evaluation groups, while Figure 9.1 showed, in the form of a graph, the cumulative percentages of those reconvicted for drink-drive offences expressed as a proportion of the total number of drink-drive recidivists in each evaluation group. Table 2 of this Appendix represents the same data as Figure 9.1, in table form.

Table 1      Time to First Drink-Drive Reconviction:Frequencies

<u>Months to</u> <u>Reconviction</u>	Evaluation Group			
	Entrants	Eligibles	Controls	Ineligibles
	f	f	f	f
0 - 3	3	9	5	4
4 - 6	7	6	5	4
7 - 9	5	5	4	4
10 - 12	9	4	8	6
13 - 15	13	5	4	3
16 - 18	6	5	7	3
19 - 21	5	7	8	3
<u>22 - 24</u>	<u>6</u>	<u>5</u>	<u>2</u>	<u>3</u>
Total	54	46	43	30

Table 2      Time to First Drink-Drive Reconviction: Cumulative  
Percentages per Total Reconvicted of Drink-Drive  
Offences

<u>Months to</u> <u>Reconviction</u>	Evaluation Group			
	Entrants	Eligibles	Controls	Ineligibles
	C%	C%	C%	C%
0 - 3	5.5	19.6	11.6	13.3
4 - 6	18.5	32.6	23.3	26.7
7 - 9	27.8	43.5	32.6	40.0
10 - 12	44.4	52.2	51.2	60.0
13 - 15	68.5	63.0	60.5	70.0
16 - 18	79.6	73.9	76.7	80.0
19 - 21	88.9	89.1	95.3	90.0
22 - 24	100.0	100.0	100.0	100.0



