

For Information

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

Introduction

At the meeting of the Bills Committee on 1 April 2008, the Administration was requested to provide information on overseas experience in the implementation of Random Breath Test (RBT) and legal challenges against RBT if available.

The Australian Experience

2. The Police have gathered information from the enforcement agency of Australia which has a relatively long history in conducting RBT¹. Australia's judicial system is also in close resemblance with that of Hong Kong.

Arrangements on RBT operations

3. According to the information obtained from the Australian Police, breath testing is rigorously conducted to increase public awareness on the danger of drink driving.

4. Key arrangements of the RBT operations in Australia include :-

- (a) The test is random without exclusions. For instance, drivers of emergency vehicles not in emergency situations will also be required to undergo a breath test;
- (b) RBT operations are conducted by trained officers under the direction of a Team Leader;
- (c) Roadblocks are set up specifically for RBT operation;

¹ RBT has been practiced in Victoria since 1976, and Australian Capital Territory since 1977.

- (d) RBT operations are conducted at selected locations, which include areas known or expected to have an incidence of drink-driving, accident 'black spots', and areas of high traffic volume. Locations are carefully chosen so that minimal interruption will be caused to normal traffic flow and where the safety of the public and the police is not at risk.
- (e) Safety is of paramount concern. No RBT operations will be conducted in poor weather conditions; and
- (f) A standard form is used to record details including date, time, location of the operation and the details of vehicles and drivers stopped. Periodic audits by the Police management are made to ensure compliance.

Legal Challenges

5. There have been a number of challenges to the RBT legislation in the Courts of Australia but information indicates that none were successful. Legal challenges against RBT in Australia are typically on the manner in which RBTs are conducted. Two examples are :-

- (a) In *DPP v BOLTON* (2007 NSWSC 1030), the Supreme Court of New South Wales, the Director of Public Prosecutions appealed against an acquittal made by a Magistrate in a case in which the police officer did not use 'proper words' in requiring the driver to undergo to a breath test. The Judge ordered a retrial and ruled that for the offence to be made out, it was unnecessary to use any particular form of words or to follow the words used in the relevant provision in the legislation.
- (b) In *ROZARIO v ROLLINSON* (2006 WASC 181), the Supreme Court of Western Australia, the Prosecution appealed against a dismissal in a case in which the Magistrate accepted the variables of the amount of air provided in the sample of breath, the temperature of the sample and the manner in which the sample was given, raised doubt on the accuracy of the result. The Judge ordered a retrial and ruled that there was insufficient evidence

before the Magistrate upon which he could make a finding that the alleged variables, namely the amount of breath sample, its temperature and the manner in which it was given, affected the correctness of the result of the analysis.

6. The Australian experience shows that the RBT legislation is robust, RBT operations have been implemented smoothly for over 30 years, and the objective of deterring drink driving has been met.

Transport and Housing Bureau
30 April 2008