

The Honourable Tom Bathurst AC KC
Chairperson
NSW Law Reform Commission
Selborne Chambers
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23rd March 2024

**RE: REVIEW of SERIOUS ROAD CRIME OFFENCES and OTHER RELEVANT MATTERS
(Supplementary Submission)**

Distracted Driving vs Drink Driving

This referenced TikTok bothers me. At first what seems funny becomes sinister.

A mother becomes flustered in a drive thru because her Alcohol Interlock alarm has gone off. FAILING To PROVIDE A BREATH SPECIMEN, she is at risk of the car's PANIC MODE - If you do not provide a breath sample in this time, the interlock will cause your lights to flash and your horn to sound. To stop the horn, you must retest successfully in the next 10 minutes. If you fail or miss this, the horn will sound until the engine is turned off. HER COST OF LIVING PANIC MODE This will be recorded in your data and you have to go to your provider for an extra service at your expense.

Her daughter laughs hysterically as the embarrassed mother engages with staff.

A staff member attempting to be empathetic, shares her own experiences

"We'll be going 100 down the Highway and it just starts Beeping."^{1 2 3}

¹ Distracted Driving vs Drink Driving
<https://vt.tiktok.com/ZSF9RQax6/>

² ROAD TRANSPORT ACT 2013 - SCHEDULE 3
http://www5.austlii.edu.au/au/legis/nsw/consol_act/rta2013187/sch3.html

³ NSW Alcohol Interlock Program Tips for completing the Alcohol Interlock Program
<https://www.nsw.gov.au/sites/default/files/2021-10/Tips-for-completing-the-Alcohol-Interlock-Program-top-tips-2018.pdf>

In 2019 The New York Times printed an article on Alcohol Interlock devices, The Unforeseen Dangers of a Device That Curbs Drunken Driving by Stacy Cowley & Jessica Silver-Greenberg. ⁴

While acknowledging interlocks have prevented thousands of crashes, the article also discusses interlock devices having caused them.

“In November 2017, Alexis Butler was backing out of a driveway in Arlington, Texas, when a speeding pickup slammed into her Toyota Camry. The driver, Blake Cowan, had been arrested twice the previous year for drunken driving, but he was sober at the time of the crash, according to police records.

To start his truck, Cowan had to prove his sobriety by blowing into an interlock device — a machine the size of a cellphone, wired to the car’s steering column. But to keep driving, he had to provide additional breath samples to show he hadn’t been drinking on the road.

Those checks, known in the industry as rolling retests, occur at random. They require the driver to lift a hand off the wheel, pick up the device and blow — hard — into its mouthpiece for several seconds. If the driver fails or doesn’t comply, the car goes into panic mode: Its headlights flash, and its horn honks until the driver turns off the engine.

Cowan had just passed a test but dropped his interlock on the floor. Wanting it in easy reach for his next one, he distractedly fumbled for it, he told a police detective — and hit Butler’s car. She died a week later.”

A review by The New York Times of accident reports and lawsuits turned up dozens of examples of collisions in which the devices played a role.

Dräger, a German company that is among the leading manufacturers of breathalyser machines, and involved in the recent COMMONWEALTH v. HALLINAN (2023) that forms part of the consolidated class action ANANIAS lawsuit, now makes twice as much money from interlocks in the United States as it does from its traditional breath-test business. Private equity firms looking to cash in have bought several interlock makers, including Smart Start, and are circling others.

When regulatory warnings about rolling tests have come up, Interlock companies have pushed back. A practice Dräger did when the Supreme Court had to order an independent audit of their breathalyser machine’s source code which resulted in scathing reviews. ⁵

The regulator backed down. In its final guidance, published in 2013, it wrote that it was “very concerned about distracted driving” but would not specify how retests should be conducted. The agency also said that was “more appropriately a function for States and local jurisdictions.”

⁴ The Unforeseen Dangers of a Device That Curbs Drunken Driving - The New York Times
By Stacy Cowley & Jessica Silver-Greenberg The New York Times Dec 23, 2019 at 11:44 am
<https://www.nytimes.com/2019/12/23/business/drunk-driving-interlock-crash.html>

⁵ Buggy breathalyzer code reflects importance of source review
<https://arstechnica.com/tech-policy/2009/05/buggy-breathalyzer-code-reflects-importance-of-source-review/>

Ten years later; a successful consolidated class action (ANANIAS) lawsuit later; gender research findings later, and a US Congress \$1.2T infrastructure Bill with 17 billion for road safety driving programs, including mandates for new alcohol monitoring detection systems in all new cars by 2026 at the earliest. It looks as if Breathalysers themselves will face structural discrimination in the future by a government that funds and favours new technologies for alcohol detection systems that will require no action from the driver. ^{6 7 8 9}

Breathalysers being out of favour in the massive US market is a concern for other unsuspecting Consumers of the Regimes. In GHO countries starting or continuing to implement Random breath testing, particularly poorer countries with limited funding, inferior human rights culture and less adequate legal advocacy standards, where will the Duty of Care that was failed to be shown to the powerful United States lie. ¹⁰

Who will be responsible for Informing drivers of AIP risks as vigorously done for Mobile Phone distracted driving? Will countries enact RBT gender legislation? And will Australia stop pretending Breathalyser issues don't exist?

Thanks for Your Time

Loretta Woolston

⁶ COMMONWEALTH EVANDO ANANIAS, CHRISTIAN FIGUEROA, AND OTHERS

<https://int.nyt.com/data/documenthelper/1924-2017-commonwealth-v-ananias-decision/213c49d9b3baeabfb77c/optimized/full.pdf>

⁷ Can all healthy adults use the current evidential breath alcohol analysers? An investigation using a large spirometry database - Galen Ives, Laura Scaffi, Peter A Bath, 2023

<https://journals.sagepub.com/doi/full/10.1177/00258172231178419>

⁸ Profile of women detected drink driving via Roadside Breath Testing (RBT) in Queensland, Australia, between 2000 and 2011 - PubMed

<https://pubmed.ncbi.nlm.nih.gov/24631978/>

⁹ Congress approves in the infrastructure bill alcohol monitors in ALL new cars to stop drunk driving | Daily Mail Online

<https://www.dailymail.co.uk/news/article-10183597/Congress-approves-infrastructure-bill-alcohol-monitors-new-cars-stop-drunk-driving.html>

¹⁰ GHO | By category | Random breath testing - by country

<https://apps.who.int/gho/data/view.main.54620>