



**OMBUDSMAN**  
Western Australia

**The Falsification of Random Breath Testing Statistics in the  
Western Australia Police Service**

21 November 2001

## **EXECUTIVE SUMMARY**

This report deals with the falsification of random breath testing statistics in the Western Australia Police Service. The falsification of statistics at a suburban police station and a suburban traffic office highlighted that, until recently, the system for compiling random breath testing statistics was open to abuse. Officers motivated to falsify records had ample opportunity to do so and were not likely to get caught.

Between 17 September 2000 and 30 March 2001, random breath testing statistics were systematically falsified by 13 of the 19 staff permanently or temporarily posted to a suburban police station. The available evidence indicates that 93.5% of recorded random breath tests during that period were falsified.

In June 2001, two police officers at a suburban traffic office falsified their random breath testing activities in relation to between 400 and 450 random breath tests. There is no evidence of systematic falsification of statistics at the traffic office - it appears to have been limited to the two officers in question.

An audit of all police districts revealed that the problem is widespread at the police district level - at least 35% of reported random breath tests were false. However, random breath testing statistics compiled by booze buses, which accounted for 38% and 41% of the reported 1,078,217 and 1,080,755 random breath tests in the 2000/2001 and 1999/2000 respective financial years, are reliable.

The Police Service ultimately dealt with this problem in a transparent and accountable way and has implemented a number of strategies to deal with it. These include changes to policy and procedure and the inclusion of random breath testing statistics in the Police Service Business Area Management Review Program (BAMR), an internal audit process. I support those strategies. My only recommendation is that the inclusion of random breath testing statistics in BAMR be supported by periodic surveys, conducted with advice from the Office

of the Auditor General, of all police districts to test the overall reliability of random breath testing statistics on a Service-wide basis.

## **ABOUT THIS REPORT**

This report has been compiled pursuant to section 25 of the *Parliamentary Commissioner Act 1971* (the Act). It follows an investigation conducted under section 19(1) of the Act. Pursuant to section 19(4) of the Act a draft version of the report was set to the Commissioner of Police for comment. The Commissioner's comments resulted in a number of changes to the draft.

Neither specific police stations nor individual police officers are named in this report, nor does it express opinions about the conduct of individual police officers. The report records the overall outcomes of two police internal investigations into the conduct of individual officers, including proposed disciplinary action. In the course of those internal investigations the officers involved were interviewed and gave accounts of their actions. In the circumstances, it is my opinion that the report does not contain comments which are defamatory or adverse to any individual police officer. For that reason draft versions of the report were not forwarded to any of the individual police officers involved.

## **INTRODUCTION**

Drink driving is a major cause of traffic crashes in Western Australia. To combat this problem the Police Service conducts random breath tests. Its breath testing activities are supported by an extensive media campaign. From time to time the media campaign includes details of the number of drivers stopped for random breath tests. The campaign emphasises the proposition that the level of random breath testing is such that people who drink and drive will get caught.

There is enormous public interest in random breath testing. Given this interest and the extent of the media campaign the public is entitled to expect both that the information published about the level of random breath testing is reliable and that the Police Service is as serious about conducting random breath tests as the media campaign indicates.

In December 2000 a probationary constable was posted to a suburban police station. The officer had only two months experience since graduating from the Police Academy. After the posting he/she raised a number of concerns about work practices at the police station with a senior confidant. Among them was that random breath testing statistics were systematically falsified.

All of the officer's allegations turned out to be true. Unfortunately the initial internal investigation into the allegations, which was conducted by the local district office, did not adequately deal with them. We reviewed the internal investigation and decided to conduct a formal investigation into the matter.

Before conducting substantive inquiries, the then Acting Assistant Commissioner (Professional Standards) approached us and requested that the Police Service be given a second opportunity to investigate the matter. The *Parliamentary Commissioner Act 1971* allows the Ombudsman to conduct investigations in whatever ways he thinks fit. In discussions with the Acting Assistant Commissioner it became clear that the Police Service was eager to address deficiencies in the first internal investigation. On that basis we agreed to conduct our investigation by closely monitoring the second internal investigation and reporting its outcomes.

The second police internal investigation, which was conducted by the Internal Investigations Unit, was a significant improvement on the first. It:

- Addressed all of the allegations made by the probationary constable.
- Identified that random breath testing statistics were also falsified at a suburban traffic office.
- Made a series of recommendations to rectify the unreliable system of compiling random breath testing statistics.
- Made a series of recommendations to take disciplinary action against the officers involved.

It is disappointing that the significance of this matter was overlooked in the first internal investigation. However, once they became aware of the problem, senior Police Service managers moved quickly and effectively to rectify the situation. This resulted in the Police Service ultimately dealing with the matter in a transparent and accountable way.

## **WHAT IS A RANDOM BREATH TEST?**

The notion of random breath testing is not complex. The message of the media campaigns is that it involves stopping drivers at random and then requiring them to blow into machines that

determine their blood alcohol level. The legislative power to conduct random breath tests is found at sub-sections 66(1) and 66(1aa) of the *Road Traffic Act 1974*.

Sub-section 66(1) says:

*"A member of the Police Force may require the driver or person in charge of a motor vehicle, or any person he has reasonable grounds to believe was the driver or person in charge of a motor vehicle, to provide a sample of his breath for a preliminary test in accordance with the directions of the member of the Police Force, and for the purposes of this subsection may require that person to wait at the place at which the first-mentioned requirement was made."*

Sub-section 66(1aa) says:

*"A member of the Police Force may-*

- (a) call upon the driver of a motor vehicle to stop the vehicle;*
- (b) direct the driver of a motor vehicle to wait at a place indicated by the member of the Police Force,*

*in order that a requirement may be made under subsection (1)."*

Section 65 is also relevant. It defines a "preliminary test" as:

*"a test of a sample of person's breath by means of an apparatus of a type approved by the Minister for the purpose of providing an indication of the percentage of alcohol in the blood of the person or an indication as to whether or not the percentage of alcohol in the blood of a person equals or exceeds a predetermined percentage or an indication of whether or not alcohol is present in the blood of a person"*

These sections of the *Road Traffic Act 1974* clearly anticipate that random breath tests involve two important steps:

1. the driver's sobriety is ascertained with a **breath** test, not by some other means; and
2. the driver's breath is tested by using an approved apparatus - a preliminary breath testing machine.

Clearly these sections empower police to stop drivers at *random* in order test their *breath*. Sub-section 66(1aa) does not appear to empower police to stop drivers for any other purpose. Of course, police are also empowered to breath test drivers on a non-random basis. Quite independently of sub-sections 66(1) and 66(1a) police can breath test a driver whom they reasonably suspect may be over the legal limit. Such a suspicion might be formed on the basis of the driver's manner of driving or on the basis of physical observations (eg. slurred speech or poor coordination). Importantly, however, breath tests conducted on this basis are not *random* breath tests.

This report proceeds on the basis that a random breath test involves a random stop followed by a breath test using a machine. Although this definition is reflected in Police Service policy and procedural documents, there appears to be some confusion among police officers:

- Some so-called random breath tests are actually random stops accompanied by physical observations, without the requirement to blow into a machine. (ie. assessing the driver's sobriety on the basis of whether he/she looks like or smells like he/she has been drinking).
- Some so-called random breath tests are actually not random. These involve stopping motorists who have committed offences. As well as dealing with the offence, police then either require the driver to blow into a machine or make physical observations about the driver's sobriety.

It is important not to overstate the position in relation to these two practices. Since they do not constitute random breath tests, statistics that include these two practices as random breath tests are false. However, the two practices do involve stopping and assessing the sobriety of drivers. Therefore, and putting to one side the question of the lawful power of police to stop drivers at random in order to test their sobriety on the basis of physical observations, to the extent that these practices are incorrectly included in *random* breath testing statistics, they do not overstate the number of drivers stopped and their sobriety tested in some way.

## **HOW ARE RANDOM BREATH TESTING STATISTICS COMPILED?**

Until recently, statistics about random breath testing were not gathered at the roadside, utilising standard forms. Forms for roadside use were devised locally, with the result that recording practices varied from simply recording numbers to recording times, places and car registration numbers.

Whatever the way random breath testing numbers are recorded at the roadside, daily totals are compiled for all police stations. These totals are entered into the police computer system at the station level utilising a form called the “Daily Traffic Net Mail”. Once compiled, this form is e-mailed to a central location and then utilised to update a database known as the “Traffic Enforcement And Crash Execution Information System” (TEACIS). Roadside recording, compilation and e-mailing of the daily “Daily Traffic Net Mail” constitute random breath testing returns. These returns are the foundation of the system of compiling random breath testing statistics.

### **WHAT HAPPENED AT THE SUBURBAN POLICE STATION?**

Events at the police station can be usefully divided into what happened at the operational, supervisory and audit levels.

#### ***Operational***

Operational police officers working at the police station systematically falsified random breath testing returns in the following ways:

- Copying information from previous returns and then submitting that information as a current return.
- Recording the registration details of parked cars and then submitting these details as random breath tests.
- Recording the registration details of cars being driven, but which were not stopped by police, and then submitting these details as random breath tests.
- Inventing registration numbers and then submitting them as random breath tests.
- Including non-random breath tests in random breath testing returns.
- Including random stops with physical observations in random breath testing returns.

Some random breath testing machines contain micro-processors that record how many and at what time breath tests are administered. These machines were used exclusively at the police station between 17 September 2000 and 30 March 2001. Micro-processors and other records make it possible to determine the number of actual random breath tests conducted:

- 2,015 random breath tests were reported to TEACIS.
- Machines were used to conduct 329 breath tests - ie. 16.33% of reported random breath tests.
- However, 198 of these breath tests followed non-random stops.
- Therefore, 131 (329 - 198) actual random breath tests were conducted - ie. 6.5% of reported random breath tests.
- Therefore, 93.5% (100% - 6.5%) of reported random breath tests were false.

An audit of 10% of the returns submitted yielded the following results:

- 50.3% of the forms filled out at the roadside involved invented records (eg. from parked cars) - this equates to 35.9% of reported random breath tests.
- 28.6% of purported random breath tests involved traffic stops that were not random (eg. drivers stopped for speeding etc and breath tested or physically observed).
- 29% of purported random breath tests involved random traffic stops but were limited to physical observations.
- Of the 19 staff permanently or temporarily posted to Police station between 17 September 2000 and 30 March 2001, 13 submitted false returns.

As noted earlier, it is important not to overstate what these statistics mean. Notwithstanding the extent to which statistics were falsified, the fact that 35.9% of reported random breath tests involved entirely invented records means that 64.1% of reported random breath tests did involve stopping drivers and testing their sobriety in some way.

### ***Supervision***

The officer who was second in charge of the police station was responsible for completing the “Daily Traffic Net Mail” and submitting it to TEACIS. This Officer denied participating in the falsification of returns. As it turned out, however, the officer was responsible for adding the 28.6% of non-random traffic stops to the reported random breath tests.

The officer in charge said that the systematic falsification of random breath testing occurred without his/her knowledge or consent. There is no evidence to counter this proposition. I simply note that whatever accountability and control mechanisms he/she employed, they did not work insofar as compiling random breath testing statistics is concerned.

### ***Audit***

The Police Service operates an internal audit system known as “Business Area Management Review” (BAMR). In short, BAMR involves senior police officers auditing various aspects of the record-keeping and operations of police stations on a regular basis so that all aspects are audited at least once during a twelve month period. At the time of these events BAMR audits did not include random breath testing returns.

### **WHAT HAPPENED AT THE SUBURBAN TRAFFIC OFFICE?**

The falsification of random breath testing statistics at the suburban traffic office came to light in a different way. A senior sergeant at that office formed suspicions about the conduct of two officers after they submitted a return claiming that they had conducted between 400 and 450 random breath tests in one week in June 2001. This return was quite different to the returns submitted by officers at the police station. Whereas the police station returns included car registration details, the traffic office returns were simply numbers.

The two officers claimed that they stopped drivers at random and made physical observations. Subsequently they repeatedly blew into breath testing machines according to the number of drivers stopped and then submitted these as random breath tests. Micro-processors in the machines they used established that the high number of purported tests were conducted during impossibly short time intervals. Micro-processors also revealed that purported tests were

conducted at different times to the times other work records said that they were conducting random breath tests.

Like breath testing returns at the suburban police station, traffic office returns were also audited, but for the period 1 January 2001 to 31 March 2001 and using a much smaller sample. That audit did not reveal any evidence of systematic falsification of returns. Falsification appears to have been limited to the two officers identified by the senior sergeant.

### **IS THE PROBLEM WIDESPREAD?**

The falsification of random breath testing statistics at the suburban police station and traffic office discussed in this report demonstrate that the system of compiling random breath testing statistics is open to abuse. Officers motivated to falsify records have ample opportunity to do so and are not likely to get caught. It is therefore important to consider the likelihood of police officers falsifying records.

An audit of all police districts established that statistics compiled by booze buses are reliable. In the 2000/2001 and 1999/2000 financial years booze buses respectively accounted for 38% and 41% of the 1,078,217 and 1,080,755 reported random breath tests. However, it also established that the falsification of random breath testing statistics is a widespread problem at the police district level. The audit involved asking 1,739 people who had been reportedly subjected to random breath tests at the police district level two questions, with the following results:

#### **Question 1 - were you stopped by police?**

Yes - 52%                      No - 14%                      Maybe - 34%

#### **Question 2 - were you required to provide a sample of your breath for testing?**

Yes - 36%                      No - 35%                      Maybe - 29%

These results indicate that, at the police district level, at least 35% of reported random breath tests are false and that in at least 14% of reported random breath tests drivers were not actually stopped by police.

### ***Why does this occur?***

One of the arguments advanced about this question is that police station environments are such that police officers are too busy attending to other duties to conduct random breath tests and are therefore motivated to falsify returns to meet random breath testing quotas. Analysis of the workloads at the suburban police station discussed in this report does not support this claim. The actions of the two officers at the suburban traffic office also appear to be inconsistent with the claim. They appear to have drawn attention to themselves by claiming to have completed between 400 and 450 random breath tests in a one week period.

Some hints about why random breath testing statistics might be falsified were provided by Justices Wood<sup>1</sup> and Fitzgerald<sup>2</sup>. They expressed views that police culture is important in explaining why police officers engage in “process corruption”<sup>3</sup>. Falsification of records is one form of process corruption.

Police culture is not homogeneous. As Wood demonstrated, it varies between locations. Although the culture of the police station and the traffic office considered in this report are likely to be largely similar they are also likely to be different in important respects. The differences in the extent to which random breath testing statistics were falsified at these two locations illustrates the point that the likelihood of police falsifying records will vary as cultural factors vary between police stations. So much depends on factors such as the quality of leadership, peer pressure, local history and supervision.

The extent of cultural variation between police stations in Western Australia is unknown. But significant variation is certain. For example, the local histories of police stations in the

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<sup>1</sup> Final Report on the Royal Commission into the New South Wales Police Service, Volume 1, 1993.

<sup>2</sup> Report of a Commission of Inquiry Pursuant to Orders in Council, 1989.

<sup>3</sup> This term was used by Justice Wood to describe what is often misnamed “noble cause corruption”.

extreme north and south of the State are as likely to be as divergent as the quality of leadership between inner-city police stations and outer-metropolitan police stations and the types of peer pressures that exist in detectives offices and traffic offices.

Of course, as a means of rectifying the problem of false random breath testing statistics, examining police culture is at once useful and useless. It is useful because it provides a potential insight into why the problem of the falsification of random breath testing statistics may have arisen. It is useless because it leads to the observation that police culture should be changed. This is an entirely different, infinitely more challenging, and long winded job than understanding it, and is not likely to result in immediate resolution of the problem.

#### **WHAT IS BEING DONE TO FIX THE PROBLEM?**

Ongoing programs to change police culture in Western Australia are well documented and have been in train for some time. In the meantime I believe that the problem of falsifying random breath testing statistics should be tackled by developing accountability mechanisms that reduce the potential for police officers to do so. This means developing a system with the following features:

- Forms for roadside use that are consistent throughout the State and have sufficient detail to enable audit.
- Actual audit of completed returns.
- Front line management and leadership that recognises the possibility that returns may be falsified and pro-actively seeks to reduce that possibility.
- Willingness on the part of Police Service management to punish police officers who falsify returns.

After the second internal investigation a working party was established to review and evaluate the definitions, recording processes and operational practices associated with random breath testing. It resulted in the Police Service adopting the following strategies:

- The issue to all staff of a new random breath testing policy and procedure. This clarifies how random breath tests are to be conducted and reported.
- The development of a standard form for roadside use.
- The inclusion of random breath testing statistics in BAMR audits. These audits will include random surveys of people reportedly subjected to random breath tests.
- A follow-up review in April 2002 to determine whether these changes have positively affected the reliability of random breath testing statistics.

These strategies should go a long way to address the problem, particularly the first two of the four features mentioned above. I strongly support them. **My only recommendation is that the proposed follow-up review in April 2002 be repeated periodically as a means of providing Service-wide support to the district level BAMR process. Obtaining advice from the Office of the Auditor General when conducting these reviews would be a useful means of ensuring public confidence in them.**

In terms of the capacity of front line management and leadership, the Police Service is currently reviewing the underlying causes of poor and ineffective supervision. As for the willingness of Police Service management to punish police officers who falsify returns, the following disciplinary measures are to be taken against the officers identified by the two internal investigations:

- Eleven officers will be charged with breaching either Police Force Regulation 601(2) - *Acting in a manner likely to bring discredit on the Force*, or Regulation 605(1)(b) - *Failing to perform and carry out any duty in a proper manner*.
- Four officers will have 'Unfavourable Reports' placed on their personal files. This less serious form of disciplinary action is proposed because these officers were attached to the suburban police station as part of their probationary training. They had little experience and were vulnerable to the influence of more senior staff.

We obtained the opinion of the Director of Public Prosecutions (DPP) about whether the falsification of random breath test returns amounted to a criminal offence and, if so, whether it

was in the public interest to prosecute the police officers involved. In the DPP's opinion, the officers involved did not commit criminal offences. In any event, even if they had the public interest would best be served by taking disciplinary action against them. In the circumstances, I am satisfied that the disciplinary action proposed is an adequate form of punishment.

Alex Errington

**DEPUTY OMBUDSMAN**

21 November 2001