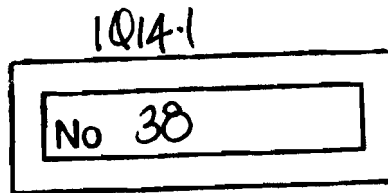




Your Ref:
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Date: 15 February 2006

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The Research Director
Travelsafe Committee
Parliament House
George Street
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Dear Sir/Madam

INQUIRY INTO VEHICLE IMPOUNDMENT FOR DRINK DRIVERS

Thank you for the opportunity to make this submission.

Legal Aid Queensland's First Advice Contact Team and Regional Advice Solicitors provide advice to clients charged with drink driving and license offences on a regular basis, both to first time offenders and repeat offenders. Grants of Legal Aid Assistance for representation of clients charged with drink driving, disqualified driving or any other traffic offences are only provided if the client is likely to be imprisoned. For this reason, most of the comments and opinions expressed in this submission are provided from the perspective and observations of advice solicitors.

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

Yes, it is quite clear from the background information provided to advice solicitors by clients about their traffic history that many drivers do drive illegally after being apprehended by the police or disqualified by the Courts.

2. Is this a significant number of drivers?

Legal Aid Queensland is not in a position to provide statistics on this issue. Queensland Police Service or the Courts would be in a better position to provide these. However given that our advice solicitors regularly give advice to persons charged with driving whilst under a Court disqualification we believe that it is a significant number.

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

In addition to the comments in 2 above, it is Legal Aid Queensland's perception, based upon observations of advice lawyers, that drink drivers comprise a significant proportion of drivers who drive illegally after being disqualified by the Court.

4. What are the costs and benefits of vehicle impoundment and forfeiture?

Given that many drivers do continue to drive after being disqualified, impounding and/or forfeiture of vehicles would reduce the number of offenders committing repeat offences whilst under a disqualification.

In the case of vehicles of drivers with a history of drink driving offences, this ought to improve road safety. The statistics provided by the Committee reveal that alcohol is a significant contributor to traffic accidents. It would also presumably decrease the number of offenders processed through the courts for offences of driving whilst disqualified and repeat drink driving offences.

Impoundment and forfeiture of vehicles would incur storage costs and costs associated with selling or otherwise disposing of vehicles which have been forfeited. There could also be other costs relating to appeals against impoundment or forfeiture of vehicles. It would not be reasonable to have automatic impoundment or forfeiture provisions with no discretion in the courts to order that the vehicle be returned to the owner or another owner or driver. That may be in some cases due to mitigating circumstances of the driver/offender but even more so in the case of other users/owners of the vehicle.

Notices to any other persons who may have an interest in the vehicle proposed to be impounded (at least for a lengthy period) or forfeited would need to be served. Administrative time and expense would be incurred in identifying who these people are and arranging for the Notices to be prepared and served. Additional court time would be required to hear submissions and appeals from persons other than the offender.

5. What are the costs and benefits of ignition key confiscation

In many cases the same benefits mentioned in 4 would also apply to ignition key confiscation. The costs would be considerably less to store confiscated ignition keys than cars.

It may be much more difficult to achieve the desired effect of keeping repeat offenders off the roads however given that ignition key confiscation does not guarantee that the vehicle will not be used. There is no way for the courts or police to know for sure how many sets of keys to the vehicle may exist, where they are and whether the offender is likely to be able to obtain access to those other keys. Similarly the offender may be able to have replacement keys made. Some offenders may have little hesitation in 'hot wiring' vehicles of low value to drive them if they do not have the keys

The same comments also apply in relation to the need to allow other users or owners of the vehicle to appeal the confiscation of the keys so that they can drive the vehicle. It would be possible to release the keys to another interested person who uses the vehicle. However the success of the aim of stopping the offender from driving the vehicle would then depend upon the ability of the person entrusted with the keys to prevent the offender from using them.

6. Should vehicle impoundment or key confiscation be used in Queensland to prevent drink drivers from repeating or continuing the offence.

There would be merit in considering either vehicle impoundment or key confiscation for repeat drink drivers. For the reasons already stated vehicle impoundment or forfeiture would be the most effective (but also most costly) method of stopping drink drivers from continuing to drive for long periods. Vehicle ignition key confiscation may prove an effective enough method of preventing drink drivers driving in the short term e.g. 24 hours. The fact that offenders may still be able to obtain other keys has already been discussed, however this would take time. It may prove highly effective for police to have the power to confiscate ignition keys for 24 hours in conjunction with a notice suspending the person's license for that same period.

7. Would other vehicle sanctions help reduce the amount of repeat drink driving?

Vehicle immobilisation as a means of preventing repeat drink drivers from driving may have merit.

Unlike vehicle impoundment, there would not be the problem of storage costs. Like impoundment however, it does not deal with the issue of other owners or users being unable to use the vehicle. For this reason there would still need to be notice given to other interested persons to enable them to appeal. The same costs would be associated with the appeals as detailed in 4.

Cancellation of a vehicle's registration is unlikely to be much more effective than license cancellation. Drivers who are prepared to drive without a current license would in many cases also be prepared to drive an unregistered vehicle. Cancellation of the registration would also have the added disadvantage that other users and/or owners of the vehicle would be affected. The same problems would occur with vehicle plate impoundment.

The fitting of special plates to a vehicles used by a disqualified drivers or a repeat drink driving offenders has merit. The special plates would draw attention making it more likely that police would apprehend and license check the owner. Another user of the vehicle would not suffer major disadvantage providing he or she had a current license. The only change would be that the person would be stopped by the police more often for license checks. This method would not be as effective as vehicle impoundment or immobilisation in ensuring that disqualified drivers or repeat drink drivers did not drive because some offences would remain undetected. It may be considered a worthwhile compromise however in that it gives due consideration to the needs of other users of the vehicle.

The alcohol interlock also has merit because it would allow other users to continue using the vehicle, providing they were not over the legal alcohol limit and would also allow the offender to keep driving after the court ordered license disqualification had ended. It would however, stop the offender again driving under the influence of alcohol. It is understood that these devices are costly. Presumably wherever possible, this and expenses associated with other vehicle sanctions would be passed on to the offender. In some cases, however, the offender may be impecunious.

8. Would these vehicle sanctions work in conjunction with vehicle impoundment and key confiscation?

Consideration should be given to making a range of vehicle sanctions available to courts. The sanction chosen would be depend on the particular circumstances. For example, if the offender was the main or sole user of the vehicle and the offender was to be disqualified for a lengthy period, then vehicle impoundment or immobilisation may be the most appropriate. If the aim was to stop the offender driving for a short period, for example when he or she may be still affected by alcohol, giving the police power to confiscate the ignition key for 24 hours may be the most appropriate measure. If there were other innocent users of the vehicle who would be severely adversely affected by the measures already mentioned and it was not practical or reasonable to make those persons responsible for ensuring the offender does not drive, then special plates or an alcohol interlock may be the most appropriate measure.

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

Rehabilitation programmes to address the causes of alcohol dependency and offending behaviour are already used. This has included the "Below the Limit" courses at certain court locations as a sentencing option and also probation with a condition that the offender attend a rehabilitation programme as directed by his or her probation officer. There is little doubt that in some cases rehabilitation courses would be effective in reducing the risk of reoffending.

On the other hand it is difficult to see how the compulsory carriage of licenses of all drivers would have much of an effect on offending behaviour. Most drivers are likely to be aware that the police have the capacity to relatively quickly check the validity and currency of a person's license whether it is produced or not. People who take the risk of driving without a license do so because they believe there is a good chance that the police will not apprehend them.

The major effect of enforcing compulsory license carriage is likely to be numerous entries on traffic histories because of forgetfulness rather than dangerous or risky driving behaviour. Another effect on people who are penalised for their forgetfulness and no other reason is likely to be disrespect for the law and suspiciousness of the motives of law makers and enforcers. Police currently have the power to require a person to produce their driver's license within 48 hours if they do not have it with them at the time of the request. This is adequate to detect persons driving without a license and is less likely to have the negative results already discussed.

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

The existing penalties are sufficient to deter many offenders from committing a repeat drink driving offence. There does appear to be a class of offender who has no or little respect for the law and the existing penalties do not deter them. This may be because they perceive that there is very little *immediate* consequence. The most common penalty is a fine that will have to be paid at some time in the future. The offender's license is immediately disqualified, but the offender still has the means to drive when they've been drinking and for the reasons already discussed may be prepared to take the risk of being caught driving without a license. Others can not control themselves because of their dependency on alcohol. The more regular use of rehabilitation programmes as part of the sentence would address the causes of offending behaviour. Vehicle sanctions would remove (or at least hinder) the ability of the offender to commit a repeat offence, at least for the period the sanction was in place.

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

The police have the power already to suspend a drink driver's license for 24 hours. Some offenders are prepared to run the risk of being caught and drive within that period. As discussed above, giving the police power to confiscate ignition keys or immobilise the vehicle of the offender for 24 hours deserves some consideration. From a road safety perspective this is a particularly attractive option in the case of drivers whose blood alcohol content is at or exceeding 0.15%.

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

Legal Aid Queensland is not able to comment specifically on this issue generally or on whether the 'hooning laws' have reduced the number of first offences or repeat offences.

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

As already discussed Legal Aid Queensland agrees that the impounding of the vehicles of repeat drink drivers *in some circumstances* has merit and is worthy of consideration.

There is merit in amending the Police Powers and Responsibilities Act to allow police to impound the vehicles of drink drivers who register high blood alcohol levels for 24 or 48 hours. In terms of longer impoundments or forfeiture, the current provisions in relation to "hooning" may be too simplistic. The reasons for offenders committing "hooning" behaviour when not intoxicated are usually not complex. They are generally confined to bad behaviour, carelessness or lack of driving skills. It is also far more likely to be young males with their own cars but without family responsibilities who commit repeat offences of this type.

The reasons for drink driving can be more complex. Punishments alone may not have a lasting deterrent effect. Rehabilitation will need to be a feature more often of the sentencing because of alcohol addiction and other life experiences which may lead to problem drinking. Impounding an offender's vehicle for a lengthy period or forfeiting it may in some cases impede rehabilitation. Lack of a vehicle may result in an offender being unable to retain employment and also cause stress and hardship to other family members affected by the loss of the vehicle.

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

It is quite unlikely, in our opinion that successful applicants for a work license perceive that there are no consequences for their drink driving. Quite clearly there are consequences. If anything, a person who has obtained a work license is more likely to be aware of the consequences of re offending. The process of applying for a work license involves the person discussing in an affidavit their traffic history to convince the court that they are a fit and proper person to hold a license. They have to be in a position to state that they have not had their licenses disqualified, suspended or cancelled in the last 5 years because of their driving behaviour. They also have to obtain an affidavit from their employer stating that they would lose their job if they lost their license. Persons on a provisional license and under the age of 25 years are not eligible for a work license. Males in this category are probably in the highest risk category for reoffending.

There are consequences for a person on a drink driving work license. The person can only drive in accordance with the conditions of the work license, for example during the hours specified and for the purposes of their work only. Under the current law a work license is not available for any other type of hardship such as disability or general hardship. Being unable to drive for social or family purposes is a significant consequence. A person caught driving other than in accordance with the terms of their work license loses the work license and must serve out the balance of the disqualification already ordered by the court plus 3 months.

The disqualification period may be up to double (compared with a situation where a work license is not granted), if the person is granted a work license. For this reason, many clients we speak to elect to suffer the disqualification period rather than risk having a longer disqualification period when the blood alcohol limit is low. They will get someone to drive them for work purposes or take holidays for the one or two months.

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

It must be pointed out that the process of issuing of a work license is not an appeal but rather an application to the court, initiated by the offender but heard at the same time as the conviction is entered and sentence handed down. In other words, the person is still punished for the offence. The usual penalty is a fine which is imposed regardless of whether the application for a work license is successful or not.

As discussed in 14 above, the criteria for the granting of a work license is already quite strict. As far as we are aware there is no evidence, statistical or otherwise, to suggest that a person who has obtained a work license for a first offence is more likely to commit a further offence than one who has not.

It is not clear from the discussion paper whether the 1995 figures quoted of successful applications for work licenses represent a percentage of all drink drivers convicted or a percentage of all appeals lodged. If only 17% of the appeals lodged are successful, then the criteria would appear to be more than strict enough given that it would not take account of offenders who may meet the mandatory minimum criteria to apply but after obtaining legal advice elect not to file the application because they have been advised that their prospects of success are low.

It is more likely that a person who successfully appeals against suspension of his or her license by the Department of Transport for accumulating too many demerit points or a major speeding offence may perceive there to be no consequences. When appeals are successful, the appellants simply keep their current licenses. They are not restricted to using that license for work purposes.

Whilst an appellant must still prove to the court that he or she would suffer financial hardship by being deprived of the means of earning his or her livelihood, there is no requirement that the person must not have had their license suspended or disqualified in the past 5 years (contra work license application for drink driving). This means that a person could have a number of successful appeals against suspension of his or her license within a five year period.

It is advisable but not mandatory that the person provide an affidavit from the employer as corroborative evidence that the offender will lose his or her job if not the holder of a driver's license. This is to be contrasted with an application for a work license under Section 87A of TORUM where the person must provide an affidavit from the employer. It is therefore more likely in an appeal against administrative suspension of the offender's driver's license that the Magistrate could be duped by false evidence that the person would lose their job without a license. An offender applying for a work license when disqualified for drink driving would have to convince his or her employer to lie also.

Consideration should therefore be given to requiring a person to apply for a restricted work license if they wish to drive for work purposes when under an administrative suspension for accumulation of demerit points or major speeding offences rather than having an appeal process to simply keep their current license.

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

Legal Aid Queensland has no statistics to comment on this issue.

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

The legislation in other states is not uniform. Unless the other states agree to co-operate in introducing uniform legislation there will never be complete consistency. It would be better to consider the merit of various different sanctions and introduce those that best suit the circumstances of Queenslanders. For example, because of the size of Queensland and the higher number of rural populations which have little or no public transport, vehicle forfeiture and immobilisation may have a more detrimental effect on offenders and their families than in some of the other states.

The Research Director

15 February 2006

We look forward to the opportunity to comment on any draft legislation in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read "J. A. Hodgins", written in a cursive style.

JOHN HODGINS
CHIEF EXECUTIVE OFFICER