



# Cairns Community Legal Centre Inc

---

13 March 2006

The Research Director  
Travelsafe Committee  
Parliament House, George Street  
BRISBANE Q 4000

And By Email: [tsafe@parliament.qld.gov.au](mailto:tsafe@parliament.qld.gov.au)

## **INQUIRY INTO VEHICLE IMPOUNDMENT FOR DRINK DRIVERS**

We refer to the Parliamentary Travelsafe Committee's Issues Paper No. 10 (the Issues Paper), Inquiry into Vehicle Impoundment for Drink Drivers (the Inquiry).

We also refer to our conversation with Lyndell on 6 February and thank the Committee for agreeing to accept the Centre's submission on or before 13 March 2006.

### **Background and Experience of the Cairns Community Legal Centre Inc**

The Cairns Community Legal Centre Inc (the Centre) is a not for profit community organisation. The Centre, which has been operating since approximately 1991, is funded by Commonwealth and State governments.

The Centre provides legal advice, information, referrals, casework, community legal education and law reform work. The Centre provides these legal services for the benefit of socially and financially disadvantaged people in Far North Queensland. The services are provided across a broad range of legal areas including traffic matters. This encompasses various drink driving and disqualified driving matters.

The Centre's response to the Inquiry is based on its experiences in providing the work outlined above.

### **Scope of Response**

The Centre's response is more in response to the proposals put forth for dealing with drivers (including drink drivers) who drive illegally following disqualification by the Courts. In particular the Centre:

- comments on the issue of confiscation verses immobilisation;
- comments on other approaches proposed in order to address the issue of driving while disqualified;
- comments on the need to continue to address the social issues surrounding the use of alcohol to a high level;
- set out some (what we believe to be) important differences between drink drivers who continue to drive illegally following disqualification and 'hoon drivers'.

The Centre does not comment on:

- whether drink drivers continue to drive illegally after being apprehended by the police;
- confiscation of ignition keys and vehicles of people who have tested positive to a breath test.

## Response to the Inquiry

*Do drink drivers in Queensland continue to drive illegally after being disqualified from driving ?*

In our opinion disqualified drivers, whether disqualified for drink driving or for other reasons (eg accumulation of points), do continue to drive illegally after being disqualified from driving.

Usually we find disqualified driving occurs as a consequence of the driver trying to avoid inconvenience or as a consequence of thinking that they will not get caught. This appears to be the case regardless of whether the driver who is driving while disqualified, was originally disqualified for drink driving or for some other reason.

Driving while disqualified we find also occurs *no more* by those who *are* under the influence of alcohol at the time of driving while disqualified, than those who are *not* under the influence of alcohol at the time of driving while disqualified.

*We don't know however whether this is a significant number of drivers*

It is noted that almost all disqualified drivers seen by the Centre have driven while disqualified. This is the very reason why those people have sought the assistance of the Centre ie to receive advice on their disqualified driving charge. If they hadn't been driving while disqualified (or hadn't been caught while doing so) such people would not have sought the assistance of the Centre and therefore would not have come to our attention.

We don't know how many disqualified drivers are out there who are abiding by the orders not to drive, or alternatively are not being caught driving while disqualified.

It follows therefore that we are unable to comment on what percentage of the total number of disqualified drivers continue to drive illegally or if the number of drivers who are driving while disqualified is significant.

*Vehicle immobilisation is preferable to confiscation*

In our view vehicle confiscation (impoundment) is an inappropriate manner in which to address disqualified driving.

In our view vehicle confiscation is not cost effective.

If paid for by government, confiscation only places another burden on the taxpayer dollar.

If paid for by the offender, it is likely that the cost will only redirect funds away from the families of the disqualified driver whose car has been impounded. The effect of this is likely to be significant on lower socio-economic families (which we note that such families are noted in the Issues Paper as being one of the groups to which drink drivers are commonly associated).

We consider that it may be possible however for the issue of costs to be effectively dealt with by immobilising the vehicle at a location where the offender is staying. This would of course depend however on the costs associated with immobilisation vehicles.

As mentioned in the Issues Paper, we believe that immobilisation is also likely to prevent the abandonment of inexpensive vehicles in public impoundment.

Further we believe that if vehicles are to be immobilised, that it is preferable for this to occur in a manner such that the vehicle may still be cheaply and easily re-mobilised and used by other people including:

- co-owners of the vehicle;

- drivers in a house hold who may rely on that vehicle as the only means of family transport (eg use of the vehicle by a partner to get to work or use by a partner to take children to school etc).

Many lower socio-economic families are unlikely to have access to more than one vehicle. The ability for others within the household to continue use the family's only vehicle is therefore important. This is especially so in rural, regional and remote areas where public transport is limited.

*Permanent confiscation or immobilisation is not appropriate*

We believe that any permanent confiscation or even immobilisation is not appropriate.

While we believe that disqualified persons may most often be able to make reasonable short term / temporary arrangements for their period of disqualification (despite the fact that they may not always choose to do so), keeping up these arrangements indefinitely would most likely be quite difficult.

It is likely that a person's ability to retain or obtain gainful employment will be adversely affected by any permanent confiscation or immobilisation. Unemployment, especially on the long term, is likely to have far reaching consequences such as depression or financial hardship leading to poverty.

Further the long term effect on the family of a disqualified driver is likely to be more significant possibly adding strain to relationships possibly leading to family / relationship breakdown thereby creating a whole new set of problems for not only the offender but also their partner, children, others and society generally.

Further we believe that the permanent confiscation or immobilisation of a vehicle is only likely to result in more offences of disqualified driving being committed.

Short term / temporary mobilisation may however be appropriate provided some safeguards to protect co-owners / users are put in place. It is assumed that work licences will also still be available for temporarily disqualified drivers as they are at present.

*Need to address social issues underpinning drink driving*

Neither confiscation or immobilisation (or a term of imprisonment) is likely to address the underlying social issues which face most people who engage in high levels of alcohol consumption.

Any method of addressing the matters raised by the Issues Paper, in particular drink driving, must adopt and incorporate other means to address the underlying cause of the problem (eg mental health, relationship breakdown, gambling, financial problems etc).

*Disqualified drivers who drive someone else's car*

We are aware of cases where disqualified drivers have in fact driven someone else's car while disqualified. Immobilisation (nor confiscation for that matter) would prevent a disqualified driver from driving someone else's car.

It may be appropriate to penalise a person who knowingly and willingly allows the use of a vehicle by a person they know to be disqualified. Penalties may include a fine and / or the owner of the vehicle having their own vehicle temporarily immobilised.

Defences of threat etc should however be available to protect someone who has allowed a vehicle to be used by a disqualified driver under the threat of that person. All of the circumstances would need to be taken into account.

*Registration cancellation not appropriate*

---

In our opinion the registration of the vehicles of disqualified drivers should not be cancelled.

The main reason why we would be opposed to this is that if the vehicle does get driven (despite being unregistered), and the driver of the vehicle is involved in an accident injuring another person, then neither the driver or *more importantly the injured person* will be able to have the benefit of compulsory third party insurance. Taking action against the driver will be of no use where that person is impecunious. The only one to suffer will be the injured person.

Further we believe that it is inappropriate to cancel the registration of a jointly owned or used vehicle.

### *Special Vehicle Plates*

Although there is likely to still be some disqualified drivers who may drive a vehicle despite the attachment of special vehicle plates, this may be an effective and cost effective means of addressing the occurrence of disqualified driving.

It may not be appropriate however to expect a co-owner or other user, who has not been disqualified from driving, to drive a vehicle which bears such plates. At the very least it may be embarrassing for them. This may be a downside to the use of special vehicle plates.

### *Sentencing and Appeals*

We strongly recommend against any tightening of the appeals process, including for driving offences.

The appeals process is an inherent and important aspect of the legal system within Australia. It should not be 'tightened' as to do so may lead to more injustices if harsh, unjust, unreasonable or otherwise inappropriate sentences cannot be appealed. To curtail the appeals process is to limit a fundamental right available to all in our legal system.

### *Differences between drink / disqualified drivers and 'hoon drivers'*

Significance of difference in demographics:

Unlike 'hoon drivers', the general demographic of drink drivers we believe is quite different. Hoon drivers are more likely in our opinion to be young single males who have an income which they are able to freely dispose of on 'hotting up their cars and taking them for a burn'.

Unlike the drink / disqualified driver, the 'hoon driver's' financial and other commitments to family or others is, in our opinion, less likely. Confiscating the vehicles of 'hoon drivers' does not usually affect other innocent people like it may very well do in the case of confiscating the vehicle of a drink / disqualified driver (as outlined above).

Further, given the general demographic of 'hoon drivers', it is less likely in the case of 'hoon drivers' that their vehicles are co-owned by others (such as a partner) or used by or for the benefit of others (eg a partner or children).

Significance in difference in social issues:

Further 'hoon drivers' unlike drink / disqualified drivers we find face different social issues than drink drivers. For instance in our view a feature of hooning stems from peer pressure and the failure of youth to appreciate that there are consequences for ones actions.<sup>1</sup> The social issues surrounding drink drivers on the other hand are (as mentioned above) often we find mental health, relationship or financial issues.

---

<sup>1</sup> The failure of young people to appreciate the consequences of their actions is something that has been told to us on a number of occasions by persons who work and have experience with young people.

Confiscation of vehicles is more likely in our opinion to address the social issues common to 'hoon drivers' by teaching a connection between actions and consequences. Confiscation of vehicles of drink drivers who drive after having been disqualified is less likely in our opinion to address the social issues common to drink / disqualified drivers.

Common ground with drink drivers and hooners:

We have found in our experience however that disqualified drivers and 'hoon drivers' both appear to be aware that they should not be either driving while disqualified or 'hooning' ie the problem of driving while disqualified (or 'hooning') does not appear to arise because an offender is ignorant of the fact that they should not be driving while disqualified (or 'hooning').

## **Conclusion**

1. We oppose vehicle confiscation as a means of preventing driving while disqualified.
2. Vehicle immobilisation may be an effective means of preventing driving while disqualified. This is of course assuming that the costs of immobilisation are minimal. We also believe that it is important that any immobilisation still allows other family / household members or co-owners to have use and / or benefit of the vehicle.
3. We do not support registration cancellation.
4. Use of special vehicle plates would appear cost effective and might work.
5. No confiscation or immobilisation should be permanent.
6. We believe that neither vehicle confiscation or immobilisation will address the social and other issues surrounding the underlying of drinking. Programs need to continue to address these separate issues.
7. We strongly recommend against any tightening of the appeals process including for driving offences.
8. Drink drivers who drive while disqualified and 'hoon drivers' are different and should not be treated in the same manner.

We hope that this information has been of assistance to the Committee. Should you require any further clarification on any of the comments made please do not hesitate to contact us.

We look forward to seeing the Committee's report when it becomes available.

Authorised and signed by Giselle Negri, Principal Solicitor  
For and on behalf of the  
**Cairns Community Legal Centre Inc**  
**(incorporating the Disability Discrimination Legal Service)**

Per:

Giselle Negri