# COMMUNITY LEGAL CENTRES TASMANIA

**Animal Welfare Community Legal Centre • Environmental Defenders Office • Hobart Community Legal Service • Launceston Community Legal Centre • North West Community Legal Centre • Tenants' Union • Women's Legal Service • Worker Assist**

15 October 2013

Legislative Council
Parliament House
Hobart TAS 7000
Attn: Chair of Parliamentary Standing Committee on Subordinate Legislation

By email: sue.mcleod@parliament.tas.gov.au

Dear Secretary,
**Re: Review of Tasmania's Alcohol Interlock Laws**

Community Legal Centres Tasmania (CLC Tas) welcomes the Legislative Council's Parliamentary Standing Committee on Subordinate Legislation review of Tasmania's alcohol interlock laws.

CLC Tas is the peak body representing the interests of eight community legal centres located throughout Tasmania. We are a member based, independent, not-for-profit incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

CLC Tas supports the government's intention of reducing serious road injuries and deaths through the introduction of alcohol interlock devices. The recently enacted amendments mean that offenders convicted of two drink-driving offences in five years or driving with a blood alcohol reading of .15 or above will have to install the interlock devices.

However, in circumstances where the laws are being applied retrospectively, we believe that the laws circumvent the long established common law sentencing principle of proportionality, resulting in unduly harsh sentences. In short, the application of the laws to offenders sentenced prior to 1st July 2013 is unfair.

## Proportionality in Sentencing

The High Court has held on a number of occasions that the principle of proportionality is a fundamental sentencing principle at common law.[1] The proportionality principle imposes an obligation on judicial officers to ensure that sentences imposed on offenders are of a severity that reflects the objective

[1] *Veen v The Queen* [No 1] (1979) 143 CLR 458; *Veen v The Queen [No 2]* (1988) 164 CLR 465; *Hoare v The Queen* (1989) 167 CLR 348.

seriousness of the offence.[2] The objective seriousness of the offence is determined by the maximum statutory penalty for the offence, the degree of harm caused by the offence and the degree of culpability of the offender.[3] In other words, the proportionality principle prevents the imposition of sentences that are manifestly excessive or lenient, thereby ensuring that sentences imposed are just and fair.

It is our strong belief that the Government's alcohol interlock laws are a circumvention of the proportionality principle and bring the justice system into disrepute through the imposition of overly harsh sentencing practices.

A number of our member centres have firsthand accounts of clients, who believe that they have been unfairly treated.

> ***Case Study***
> *In August 2012 John* was sentenced in the Magistrates Court to 12 months disqualification for exceeding 0.05. He did not qualify for a restricted licence application but his employer assured him that he would be reassigned duties for 12 months. John made financial decisions throughout the 12-month period on the basis of his being able to re-apply for his licence in August 2013. Three months before re-applying for his licence John received notification that he would be required to install an alcohol interlock system. John lives 30 minutes away from his place of employment and his employment duties require the use of motor vehicles. Under the changes introduced by the Government, John is required to install the system in not only his own vehicle but also any work vehicle that he may be required to use. John is worried that he may lose his job as it is financially not viable for his employer to install an alcohol interlock system in every work vehicle.*

In our opinion, the alcohol interlock laws should only apply to offences committed after the 1st July 2013. This is because it unfairly impacts on offenders who have already been sentenced and believe that they have served their punishment. The retrospective aspect of the law also means that it is likely that the penalty is disproportionately harsh with Magistrates having already sentenced offenders to an appropriate sentence.

**'Satisfying' the Registrar**

We also have concerns about the impact of the alcohol interlock program that could be clarified either through the *Vehicle (Driver Licensing and Vehicle Registration) Regulations 2010* or the 'Mandatory Alcohol Interlock Program' website.[4] Currently, regulation 26H(1) of the *Vehicle (Driver Licensing and Vehicle Registration) Regulations 2010* provides that data downloaded from the interlock device is taken to be the holder's data. This may be problematic particularly when interlock devices are affixed to multiple vehicles (for example

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[2] *Hoare v The Queen* (1989) 167 CLR 348, 354.

[3] R Fox, The Meaning of Proportionality in Sentencing' (1994) 19 *Melbourne University Law Review* 489 at 498.

[4] As found at http://www.transport.tas.gov.au/safety/interlocks (Accessed 14th October 2013).

private and work vehicles) and where multiple drivers use the vehicle. It is unfair that an offender already sentenced to fifteen months of having an alcohol interlock device installed would have the penalty extended because someone else has been 'locked out' of the offender's vehicle.[5]

It is recommended that clarification be provided either in the Regulations or on the website as to the requirements that will 'satisfy' the Registrar that the offender has not breached the terms of the interlock system. Examples may include provision of statutory declarations, sworn evidence in court, witness statements etc. It is suggested that providing a list of materials in support of the offender's application for re-instatement of their driving licence provides transparency in decision-making and ensures fairness.

**Financial Hardship**

Finally, whilst we endorse the Government's introduction of a concession rate to holders of a valid Health Care Card we believe that flexibility can be inserted into the laws to remove disproportionate impacts on the socially and financially disadvantaged. Whilst all persons charged after 1st July 2013 with drink-driving will be aware that alcohol interlock laws have come into effect, some offenders sentenced prior to this date may not be aware that they need to make provision for the cost of having an alcohol interlock device installed. The effect is particularly harsh for concession holders who have little disposable income.

By failing to provide at least 12 months notice, health care card holders have not been provided with an opportunity to put aside a percentage of their fortnightly pension. Whilst those already gainfully employed are more likely to be able to pay for the installation of an alcohol interlock device this is unlikely with health care card holders. We therefore strongly recommend that flexibility be provided to health care card holders so that those who were sentenced prior to the 1st July 2013 are able to have an alcohol interlock device installed at government expense with a no-interest re-payment plan being entered into over 12 months. In our opinion, this flexibility will enable the government to meet its policy of reducing serious road injuries and deaths through the introduction of alcohol interlock devices but at the same time not disproportionately impacting on the socially and financially disadvantaged.

If you, or your Committee have any queries about our submission, please do not hesitate to contact us.

Yours faithfully,

Benedict Bartl
Policy Officer
**Community Legal Centres Tasmania**

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[5] See, for example, Regulation 27J of the *Vehicle (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas).

cc: David O'Byrne
Minister for Infrastructure
Parliament House
Hobart TAS 7000