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THE PARLIAMENTARY STANDING COMMITTEE OF SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 19 SEPTEMBER 2013.

**VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE REGISTRATION) AMENDMENT (MANDATORY ALCOHOL INTERLOCK) REGULATIONS 2013 (SR2013, No. 50) and
VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE REGULATION) AMENDMENT (MANDATORY ALCOHOL INTERLOCK) AMENDMENT REGULATIONS 2013 (SR 2013, No. 63)**

Mr ADAM McLENNAN WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Forrest) - Welcome, Adam. You would have received information from the committee.

Mr McLENNAN - I got it this morning just before I walked in.

CHAIR - If you have any questions feel free to ask at any time. We have 20 minutes and we are focussing on the regulations around the alcohol interlock. If you could address yourself to the concerns that you have. There are only certain areas that we can consider, we cannot consider policy decisions. You can comment on that if you wish but the committee will not be considering that in its deliberations it is more about the impact on individuals and other concerns that you may wish to raise. If you can make some opening statements and then members will ask questions.

Mr McLENNAN - A quick brief on myself. Within the last five years I have had two low range drink driving offences both were a 0.07. The latest one that I am currently disqualified for ends on 28 October. I have been in small business for myself for 11-12 years now. First and foremost, I am not opposed to the alcohol interlocks as a whole; just certain areas of the way it has been brought forward. The first would be the retrospective angle which I believe is totally unfair and putting an extra penalty - financial and restrictions, after the court has already presided over and made rulings. Especially in my case.

I lost my licence for a period of time. Financially it has been hard running your own business. I have certainly learnt a lesson and it has been rather costly - over \$50 000 - 60 000 it has cost me to date. Then to have this law change and come out. I have multiple vehicles as part of my business and private as well - I have six currently; it is about to get to seven. The additional cost to me could be at least \$18 000-odd if I was to fit those in my various vehicles.

This legislation seems to be going over and above its intention. They had mentioned that it should be a cost of some \$3 000 but for people with multiple vehicles such as myself and also running a business, I may need to drive a forklift, I need to hire trucks, and hire cars and bits and pieces. That is another restriction that I am unable to do.

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The area of business I am in is refrigeration and air conditioning in heavy industry and in light commercial, which also means I do need to drive customers vehicles, trucks and other bits and pieces in regards to my work as well - I will be unable to do that. The law coming in seems to be a blanket one-size-fits-all; it doesn't take into account individuals and their life circumstances. Typically, if you are going to court and you are putting forward your individual life circumstances, the presiding judge would take into account all of that and make a ruling on that. That is why I come back to the respective law that has come in. I had been ruled on. I have just about finished serving my time, my penalty.

CHAIR - What year was this ruling made?

Mr McLENNAN - It would have been in April, I believe.

CHAIR - Of this year?

Mr McLENNAN - Of this year, yes, which was prior to 31 July - I think that was the date this new law came out. For me, it is going to have a rather large impact, especially the angle of employment, trying to get my life back on track again. I have gone through significant hardship currently. My wife has had to go down to a few days a week to drive me to get my various works done, just to maintain a living. At the end of my time, 28 October, to then have another large financial impost put on top of me again after I have already served my time - this legislation seems to be going over and above the court's rulings and decisions.

CHAIR - Because your sentencing was done in April 2013, the judge obviously didn't have the capacity to impose this penalty on you at that time. You are saying if it had been after 31 July and the judge imposed it at that point, you would still be suffering the same consequence, I guess, but you would have known - is that - ?

Mr McLENNAN - The judge would have made a ruling knowing that technically it is another fine, a \$3 000 minimum per vehicle. Typically that can actually be more depending on what kind of vehicle you have, if it is a diesel it is even further up. I have spoken with one of manufacturers, Guardian; I spoke to the general manager in Melbourne some weeks ago. Depending on the vehicles the cost can be higher.

Yes, the judge would have had an informed decision to make a judgment, imposed what he did or didn't do - if he had known what was coming forward, he may or may not have made another decision in regards to what penalty he gave me, and now having the further penalties.

Ms ARCHER - Do you know if you got the minimum penalty that is required under the law, because there is a minimum?

Mr McLENNAN - There is a minimum, I actually got a little bit extra.

Ms ARCHER - So that is your argument, that you possibly could have got a lower one because obviously the benchmark is the minimum.

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Mr McLENNAN - The benchmark is the minimum but also my fine was some \$800-\$900, but now that, depending on what I will need to drive and what vehicles I have, that could be a minimum of \$18 000 now, and the added restrictions thereof in regards to work and conducting daily business.

CHAIR - Did you apply for a restricted licence?

Mr McLENNAN - No, I didn't. The judge said I would not be applicable for that because I had had two infringements within the time.

Ms ARCHER - Thank you.

CHAIR - Adam, is it predominantly the retrospectivity? From 1 July onwards the -

Mr McLENNAN - 31 July wasn't it? I was sent correspondence on or thereabouts the date of 31 July.

CHAIR - Yes, I am sorry, 31 July. From that date on, someone in your circumstances this would be imposed on them. In the personal circumstances you are talking about the retrospectivity, which is one thing?

Mr McLENNAN - Yes.

CHAIR - But if your circumstances occurred now, they are operational as we sit here, then that would be the outcome regardless. Do you have a view on that?

Mr McLENNAN - Yes, and also the judge may have made a decision differently knowing extra penalties would have been applied. He gave me extra as his ruling but he may not have done following that. The other angle is having a retrospective law. We could have, speaking for myself and others, some people may have been disqualified for years/months and then just about to get their licence back say on 1 August, there was one gentleman, and then having this impost straight on him. Mandatory and/or retrospective laws are discriminatory.

Mr STURGES - I take your point in relation to retrospectivity. I have heard loudly and clearly. I also take your point in relation to one-size-fits-all. By way of a comment, this has been for sometime now, once a licence is suspended it is not automatically renewed. The Registrar of Motor Vehicles has always had the right to determine whether or not. I thought I would make that clear for those who are in the room.

Mr McLENNAN - Yes, I am aware of that. But in speaking with this registrar, apart from one factor which has always been there, having a liver function test, there would be no reason why I would not get it back.

Mr STURGES - There are observers and I wanted to make that clear. I have listened to you and you have made a couple of very pertinent points.

Mr McLENNAN - I do not have any problems with alcohol interlocks in their entirety if people were recidivists of very high readings, not low readings, 0.07 is just over, yes I could see that. And in that having not a mandatory alcohol interlock system but having

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the judge preside over, discretionary power, to still have the thing but allow the courts to do their thing instead of having no discretion. Currently there is no right to appeal this law which was another concern. This was the only avenue and I have spoken with a number of lawyers and then my course of action was to go to parliamentary areas.

Ms ARCHER - Adam, you mentioned your work situation. Do you have employees that would be impacted, and then similarly do you have family members that will be impacted because of having to fit them to every vehicle that might be used by yourself?

Mr McLENNAN - Currently I do not have any employees at the moment. That may change down the track. I have had to restrict myself to two days work per week. My wife has had to only work three days a week, keeping two days to drive me around to earn a living. Yes, the fitting the alcohol interlocks to the vehicles that I need to drive that are the similar vehicles my wife Christie drives. The impact is that she would not be law abiding under 0.05 but may have a reading of 0.01 but still not able to drive the vehicle, which is another angle. I did speak with the gentleman from Guardian, I forget his name.

I have motorcycles as well. Currently, the devices which are to be fitted are not waterproof. They must be fitted in a pannier or a bag, which is okay in some respects but to start the motorcycle, one must breathe into it as the same for any other vehicle that it is fitted to, but then you will get random calls to blow in that. If this is fitted in a pannier or in a bag, you have a helmet on, it cannot be heard because it has to be out of the weather as well. The angle of that, when I spoke with him was, okay the mandatory interlock will actually lock the car out. On a motorcycle, if one was overtaking or coming across an intersection, you physically cannot hear it, and what would happen on a motorcycle, or any vehicle, being hung up in an intersection or overtaking where you need to have that vehicle under control.

CHAIR - Did anyone from Guardian tell you that? We were informed at a previous session that it does not actually stop the vehicle. It just sends a message that you need to go and have recorded as to why you did not stop.

Mr McLENNAN - That is what I was told, so that is what I believe to be the case. If it is different, then I would not be happy with that.

CHAIR - It does mean that the clock starts again so, there is an issue there, but it would not actually physically stop your bike so you could not keep riding it, unless you turn the engine off.

Mr STURGES - I thank, Madam Chair, we should check that out.

CHAIR - Yes.

Mr STURGES - I was at the understanding that if you had not responded within a certain period of time, that is not hearing it, that the flasher lights will come on, the horn will go but the engine will not be immobilised.

CHAIR - Yes, we need to check that out.

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Mr McLENNAN - Yes, check that. It also depends on - I have one motorcycle which will need to be fitted with panniers but also to have two others which do not have panniers but also do not have the provision for a tank bag -

CHAIR - What is a pannier, sorry?

Mr McLENNAN - A pannier is actually like your boxes or your suitcases which are actually a part of the motorcycle.

Mr MORRIS - An added part. They are not stock standard, usually.

Mr McLENNAN - My vehicles do come stock standard, but they are normally an option. Normally if they do not come, they are an option to be fitted later, that is correct.

Mrs TAYLOR - Usually buy them later.

Ms ARCHER - Do you use that for work?

Mr McLENNAN - I have used my bike for work, especially parking in town, I look after 188 Collins Street, the government centre, and I have a park down under there but it is only big enough for a motorcycle. So I do use my motorcycle as part of work.

Mr MORRIS - You mentioned, Adam, that there are also impacts on you using the forklift. Does your high risk work licence been cancelled as well?

Mr McLENNAN - No, forklifts and trucks and other bits and pieces that I would need to use, no, that has not been cancelled ó it is on your licence but I believe that would be cancelled as well. In saying that -

Mr MORRIS ó It is on your licence? I have a separate licence for a forklift which is a licence to do high risk work. It is not attached to my driver's car licence.

Mr McLENNAN ó Yes, but if a forklift is registered to be on the road, it is a registered vehicle. I am not saying a forklift within a confined area. Sometimes forklifts need to be driven and they are a registered vehicle.

Mr MORRIS - Right. It is a rarity though.

Mr McLENNAN - There is quite a lot, especially in places which obviously do have roads, they are attained, for short distance but nevertheless. It also comes down to me travelling interstate. I cannot use a hire car. I cannot hire a vehicle as part of my daily work as well, so there is another aspect there.

Mr MORRIS - I do think your argument that the retrospectivity component is reasonable but it is deliberately designed as a significant deterrent for people drink driving. But anyone who gets caught now, they absolutely know well, they have no reason not to know what the penalty is.

Mr McLENNAN ó Exactly, and the judge that presides over that, now knows that as well.

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Mr STURGES - If I may, Madam Chair, I do not want to hold you up too long on this line of questioning, but you raised the issue before of what I have referred to as discretion from the bench. I think in your situation, and I do not want to verbal you, it would give you the opportunity to put your case when you are there - let us forget about the retrospectivity - but to put your unique case and for that to be taken in to account by the magistrate. Is that what you were suggesting?

Mr McLENNAN - Yes.

Mr STURGES - That as a small business operator with the issues that you have raised today?

Mr McLENNAN - Absolutely. As my lawyer has informed me and others, not being a high-risk person, having made a mistake, yes, doing my time for 0.07 is nowhere near in the realms of DUI or high readings like that.

Mr STURGES - At the end of the process, after you have made your case, the magistrate would then make a decision -

Mr McLENNAN - Absolutely.

Mr STURGES - based on the case that you have made, rather than at the moment it is mandatory.

Mr McLENNAN - Yes, and a blanket white-wash. If you are person who has been caught 10 times of extremely high readings or a person who has low readings you are all treated the same. You do not have the discretionary power of the courts, which that is why we have a judicial system.

CHAIR - One further point, and I notice your lawyers have talked to you about this and we will take some advice anyway. In the regulations there is an exemption from this division that a holder of an interlocked licence may apply for an exemption under the application of the regulation. Did you ask your lawyer if there is any capacity for you to ask for an exemption if it is being proposed?

Mr McLENNAN - I did at that stage. My lawyer was Steve Chopping, who said at this point it was mandatory, and there was no recourse for appeal. That is why I had to go down this angle. I have also spoken with Jim Wilkinson as well.

Ms RATTRAY - That is good advice.

Mr STURGES - Pro bono I am sure, Madam Chair.

CHAIR - I think we are virtually out of time. We have to have another witness to go to, but thank you for your time and your evidence. It will certainly be considered by the committee. We will consider all evidence we take before we report to the parliament about the findings in regards to these regulations. The process is if the committee deemed there was an issue that needed to be addressed by the government we would notify the government and potentially put a disallowance motion on the notice paper to disallow all or part of the regulations. But even if the committee decided that was

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appropriate, the parliament still has to support that. It is not a foregone decision that a decision of the committee would be supported by the parliament. Just so you are aware how the process works.

Mr McLENNAN - Absolutely. Thank you so much for the opportunity to speak.

CHAIR - Did you cover everything that you wanted to?

Mr McLENNAN - Rather closely. There were also a few other points that I had down there, which was potential discrimination in the workplace. If one was to lose your licence within the course of being employed and driving vehicles, let us say in my industry, driving multiple vehicles through a company, that may cause you not being able to maintain employment, or not being able to gain employment because of having an impost on an employer to have fitted to their vehicles mandatory interlocks. That was one of the other angle, being technically labelled as an extra cost, and extra burden because of having to use this for work as well.

CHAIR - Thanks very much.

THE WITNESS WITHDREW

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Ms DENISE HAY WAS CALLED (TELECONFERENCE), MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR ó Denise, the committee members who are here are: Elise Archer, Tim Morris, myself Ruth Forrest, Adriana Taylor, Tania Rattray and Graeme Sturges. We only have 20 minutes for the evidence so I will just explain to you how the committee works. It is a Joint House Committee, the proceedings are being recorded on *Hansard*, so they become part of the public record. You are protected by parliamentary privilege during the proceedings of the committee, but if you speak to media or others afterwards, anything you say there won't be. The committee will make a report at a later time and that report will be available publicly as well. If there is anything you particularly wanted to say in confidence you would need to ask for that, otherwise it is public.

Ms HAY - Yes.

CHAIR - If you would like to make some opening statements regarding your concerns about the regulations and the members will ask questions after that.

Ms HAY - I am not a lawyer and I don't ever aspire to be. I am just a mum who has lived through a couple of years of not a very nice time. The interlock program - I had absolutely no problem with what it is and what it is for, and I will probably at some stage would like to see it in every single vehicle because I think it is a good thing.

The problem that I do have with it is that it has been implemented in a retrospective manner so that it becomes not a predictable way of implementing it. It is not equitable and I do not believe it is a fair way of implementing such an important thing.

I have done a little bit of research since I knew I was going to speak today. I have looked at a couple of other states and how they implement it, and it was exactly how I would have assumed that we should have. That is that it was for all new offences on or after the implementation date rather than people that were due to get their licences back. That is basically the standpoint that I am taking today.

CHAIR ó Okay

Ms RATTRAY ó Tanya Rattray, Denise. Can you just identify those states that you did your research on?

Ms HAY - The two that I did identify, one was Queensland. They implemented their's on 6 August 2010, and it was very clearly stated that it was for all new convictions or offences on or after the date of 6 August 2010. The other one I found was South Australia which had, I don't know their date but it was, again, for all new convictions on or after.

CHAIR - Denise, the retrospectivity as such has been talked about by others, and one of the concerns is that the judgment being made by the court at the time was for a certain penalty. At the time a judge could not impose a mandatory alcohol interlock because it wasn't available to do so. You would be aware that when someone does lose their licence, for any reason, that it is not automatic that they get it back.

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Ms HAY - Yes, I am aware. I think that the judge delivered the sentence that was relevant at the time. I have no problem with that. What I do have a problem with was that the judge at that stage wasn't able to take into account that this could be or would be coming into effect. In fact, my son's original fine with the cost of the interlock has actually tripled his original fine if you take into account the \$3 000 for the interlock plus service fees which I anticipate will be up to about 10 times during the 15 months. He is a tradesman and he will then have to take time off work every 45 or so days.

My thinking is that had the judge had this in his repertoire at the time maybe it would have been different; the fine may have been different. Some of the research I have done is that the judge has actually shortened the length of suspension and put a mandatory interlock on to reflect that shorter sentence. This was not available to us.

Ms ARCHER - Did your son get above a minimum mandatory penalty?

Ms HAY - I think it was the minimum but it was still two years because he was over 0.15. It was his first offence and it certainly better be his last or he won't live another day!

Members laughing.

Ms HAY - You have no idea what we have been through as part of this. Because he was entering his fourth year as an apprentice we obviously thought this was going to impact on his ongoing employment and finishing his apprenticeship. We as parents did everything in our power to make sure that did not happen. I work in Launceston. On some occasions I would drive to Deloraine, drop him off, so we would be leaving home at 6.45 am, I would leave him at Deloraine with the tool trailer, I would drive back to Launceston, do my job, at the end of the day go back to Deloraine, pick him up. We would do this day after day after day. That is what you do when you are a mum. We have done it hard.

He has taken his time. He has done everything we could have asked and more. Then you see a snippet in the paper prior to getting a brochure quite a few months later to say that this was in the wind. I thought, "Oh my god, how much more does he have to pay?" for something that he did when he was 20. He has paid his fine, he has done time, he is nearly at the end, and it is one more thing that we had no idea about. Had this been in place and he had done it, we would have said, "Serve you right, you knew." But because it was something that was done well before this came into effect it seems like a double penalty. Had it been in place when his offence occurred I would have said, "Tom, you knew and you have nowhere to go." But this is old stuff and that is my bone of contention - how it was implemented.

CHAIR - Another question from Elise Archer.

Ms ARCHER - Denise, on that, your argument is not that he should not have received the minimum mandatory -

Ms HAY - Absolutely not.

Ms ARCHER - It is the retrospectivity you did not know at the time of the offence.

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Ms HAY - That is exactly right. I had no problem. Look, I was shocked with the two years but it is what it is. We have done it hard. The fine was \$1 500 plus he had to get his own ute fixed and buy tool trailers, all the bits. We estimated probably upwards of \$10 000 his stupidity cost him plus two year's suspension. That is not my issue at all. My opinion is that if you do the crime, you do the time; you suck it up and then you move forward. This is an additional penalty for an original misdemeanour and sentence on top of it.

Ms ARCHER - That he was not aware of.

Ms HAY - I am in education and we always say to parents when kids have done something wrong we have a consequence at school. That is fine. Do not double punish. They have already done their time and this to me seems like a double punishment.

Ms ARCHER - Thank you.

CHAIR - Do you think that he has learnt from the experience?

Ms HAY - Gosh yes. I have three sons and, as I said, I would kill them with my bare hands if one of them ever decided to do it again for a \$10 taxi fare. It is ridiculous.

Mrs TAYLOR - You realise that you are being recorded on *Hansard*? We are going to worry if any of your sons die!

Laughter.

Ms HAY - I have an alibi.

CHAIR - They now know exactly where they stand; there can be no mistake.

Ms HAY - To be honest, if they did do it again and as I said they had better not, but if they did the mandatory interlock system is in place and well known now. It is the retrospectivity that is difficult for us to swallow. Given that most laws are prospective, future driven, the retrospective law is very unusual in legal circles. That is the thing that we are finding very challenging. It is to the fact that we always want to save our boys, we don't, we think that they should cop it sweet.

Ms RATTRAY - Or girls.

Ms HAY - This is an exception for us and that is why I have become a bit antsy and write to a few people because I think it is unfair implementation.

CHAIR - Thank you for taking the appropriation actions and contacting the Subordinate Legislation Committee because that is the only way that these things can be dealt with. As far as what happens now with the information the committee will consider and we have a few other witnesses to hear from. Also, we will hear again from the department about this issue. We will then report to the minister as well as to the parliament. If the committee decides that sections of these regulations are inappropriate, or the application of them, we could possibly put a disallowance motion to the parliament. However, there

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is no guarantee that even the committee decision would be supported in the parliament. Just so that you understand the process. It will be reported on and that report will be made public. Thanks for your time.

Ms HAY - Thank you for listening and inviting me to speak today, it has been much appreciated.

THE WITNESS WITHDREW.

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Mr CHRIS TODD WAS CALLED (TELECONFERENCE) MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR ó Thanks, Chris. This is a Joint House Committee and the members are Elise Archer, Tim Morris, Graeme Sturges, Tanya Rattray, Adriana Taylor and myself, and Sue is our secretary. The evidence you are giving is being recorded in *Hansard* and is a public hearing. The evidence you give is protected by parliamentary privilege during the time of the committee hearings but if you speak to the media or anyone else beyond that time you are not covered - just to make you aware of that. If you have any questions please ask and if you want to provide detail in confidence to the committee you would need to make that request, otherwise it is a public hearing. There is media here listening, to make you aware.

Would you like to give us an opening statement about your concerns about the regulations? The committee can consider submissions regarding the impost on individuals, not so much the policy decisions. The policy decision of government was established under the law that was made so we cannot reject something based on policy but can on other basis. So if you explain your concerns to us the committee will then ask questions.

Mr TODD - I wrote a two-page stat dec, if you are happy for me to read that.

CHAIR - That will be fine.

Mr TODD - My name is Christopher Andrew Todd, born 15 February 1984. I am writing this letter to declare that I lost or misplaced my licence on the same night I was pulled over by Tasmania Police and recorded a reading of 0.054, subsequently losing my licence for a period of three months. The date of my first offence was 14 October 2010 and I was not required to appear in court.

I have not held a licence since 14 October 2010 and was caught for my second offence - drink driving without a licence, returning a recorded reading of 0.08 in October 2012. The disqualification period was 10 months, ending on 18 August 2013.

When trying to apply for my licence I contacted Service Tas inquiring as to what I needed to do. I required a letter of explanation and a liver function test which could be submitted on 18 July 2013. When I went to Service Tas to submit these documents I was for the first time made aware that the Department of Infrastructure, Energy and Resources had returned mail in regards to handing my licence in for my 2010 offence and would therefore carry this forward to begin at the end of my second offence suspension being 18 August 2013, putting me in the category for two offences in under five years according to new legislation introduced at the end of July 2013 regarding vehicle interlocks.

My understanding of my 2010 offence was that I lost my licence instantly and began my three months' disqualification period immediately. I did not hand my licence in, partly due to not receiving notice to do so, as recorded by the DIER and because I thought the Tasmania Police kept it on the night of my first offence. However, I have been told by the DIER this is not the case so I can only assume I lost or misplaced it that night.

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I am currently serving the three month's disqualification period and being forced to participate in a vehicle interlock program towards the end of November. It has been a very difficult three years, being unemployed, the births of my first two children and expecting our third any day now. We have been forced to move into housing in a less than preferable area when considering our children's best interests.

After everything I have worked hard to build a better lifestyle for me and my family while this has happened when I was recently accepted into a program called NEIS. After being accepted into that program I was approved for a \$1 000 grant from my job service provider who I had been with for about four years. I was approved for a \$3 000 loan by a government-funded business called NILS, which is a no-interest loan scheme, and I will receive exactly \$12 500 in the next 12 months from my NEIS scheme to help in starting up a small business, alongside Certificate III in Small Business Operations.

This was all based on me getting my licence back on 18 August until the DIER informed me of my 2000 offence and the issues that had popped up from that not being served. My business is unable to start trading while I am still making loan repayments. I still have to start my business somehow on 10 October this year to fulfill my NEIS requirements or I could face being dropped from this scheme.

Overall, I have had two drink-driving offences. The first recorded reading was a very low 0.054 and the second 0.08. I am a social drinker and now a small business owner with three children, almost, with so much to lose. I do not see myself driving after even one drink in the future and definitely don't think my family, my business or myself deserve to be punished with the interlock program based on these circumstances.

CHAIR - Thanks Chris. Did you get legal advice around the whole issue?

Mr TODD - I did. Legal Aid wouldn't help me because it was a drink-driving offence, and I had to pay a deposit of up to \$500 just to sit with a lawyer and explain this to them. I really have nowhere to go when I am in so deep with my business.

Mrs TAYLOR - Do you need a vehicle for your business?

Mr TODD - I am a gardener, a sole trader, so definitely.

Ms RATTRAY - Where are you based?

Mr TODD - Ravenswood, Launceston.

Mrs TAYLOR - Is your main concern the fact that it is mandatory, or the fact that it's backdated, that this happened before the legislation?

Mr TODD - I guess it is quite circumstantial. It has been backdated from 2010 for such a low reading because the DIER believed they had returned mail and weren't able to enforce that three months' period. This is after I had already been through court on my second offence, served that suspension, and now that puts me in the category of two offences in under five years with the new legislation. They are both very low readings.

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Mrs TAYLOR - The period of suspension you had for your second offence - when did that finish?

Mr TODD - That finished on 18 August this year.

CHAIR - Chris, the policy decision of the government is that alcohol interlocks were mandatory for people who had two offences within that period. In the future, as far as that being the case, should you reoffend - you said you have changed your ways, and that is good to hear - but do you have a issue with mandatory alcohol interlocks being used in the future?

Mr TODD - I personally do not have any problems with interlocks. I can see the point of them but I guess my concern is very low readings may need to be taken into consideration when people are being forced to install these interlocks at such a large cost. For people in my position it can be very daunting with everything else I am trying to achieve. But I do not disagree with why they are bringing them into the State.

CHAIR - So your last appearance in court was back in 2012?

Mr TODD - That is correct.

CHAIR - At that point obviously you had no capacity to explain to a judge, and I guess your circumstances have changed since then, have they?

Mr TODD - Yes. The judge was aware of my first offence and took that into consideration when handing down the 10-month suspension. That is where it was confusing. Why did DIER believe they were unable to contact me and carry that forward, so it had to run consecutively after my second offence?

CHAIR - If the retrospectivity didn't apply here - you were sentenced in 2012 - that would address these issues for you? Because you were sentenced in October 2012, I guess there is still that 2010 offence you were serving into 2013, which took you beyond the 31 July.

Mrs TAYLOR - No, the second offence took him beyond 31 July.

Mr MORRIS - Chris, can you re-explain for us - as I understand it, you had had your licence cancellation expiry date passed for your drink-driving offences before 31 July. It was only that you received a subsequent extension of suspension from DIER for not having a licence - so it was nothing to do with your drink-driving - that has taken you beyond the 31 July. Is that correct?

Mr TODD - That is correct.

Mr MORRIS - So the periods of suspension for your drink-driving offences had expired prior to 31 July?

Mr TODD - Correct.

Mr MORRIS - Had you been able to get your licence -

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Mr TODD - I would like to say that I believe my second offence and the 10 months I served for that, which carried me into the 18 August, which was 18 days after new legislation was introduced, and that is why that is marked down as my first offence because the suspension period goes after the new legislation was introduced. That 10 months that I received may have been less if the first offence had been dealt with properly. I have been over this whole situation quite a lot now, so please bear with me.

Mr MORRIS - I think we understand sufficiently. Had this not had the effect of being retrospective, even though the legislation itself isn't retrospective, it just has a retrospective effect. Had you known all this information you know now at the time you were in court, you may well have not been picked up by the interlock system.

Mr TODD - That is correct.

Ms ARCHER - It is not necessarily the time of the appearance in court. I would have thought it was the time of the commission of the offence because you know then by inference what the penalty might be. It is a deterrent penalty.

Mr MORRIS - That's right, but that is even earlier.

Ms ARCHER - So it is the retrospectivity that is the issue.

CHAIR - Any final points you want to make, Chris, before we finish?

Mr TODD - No, I think I have covered most of it and explained it the best I can.

CHAIR - Thank you very much. We appreciate you taking the time to contact us. The committee is still hearing from other witnesses and in due course we will report. The committee may or may not recommend that certain sections of the regulations or the whole of it could be disallowed. Even if the committee decides that is the case, it still has to be taken to parliament and either House of parliament can support a disallowance motion, in which case the regulations wouldn't exist. They continue to apply until that point.

Mr TODD - That's fine.

CHAIR - The report will be made public.

Mr TODD - How long do you expect this to last?

CHAIR - Hopefully not very long. We have more hearings, but within three or four weeks hopefully we will have an answer, or at least a decision of the committee.

Ms ARCHER - If something was going to be done in parliament, it would need to be done fairly quickly because we don't have that many sitting weeks left.

Ms RATTRAY - People need to know where they are heading in their life.

CHAIR - Thank you for your time, Chris.

THE WITNESS WITHDREW.

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**THE PARLIAMENTARY STANDING COMMITTEE ON SUBORDINATE LEGISLATION
MET IN COMMITTEE ROOM 1, PARLIAMENT HOUSE, HOBART, ON THURSDAY
26 SEPTEMBER 2013.**

**VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE REGISTRATION)
AMENDMENT (MANDATORY ALCOHOL INTERLOCK) REGULATIONS 2013 (SR 2013,
No. 50) AND VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE
REGULATION) AMENDMENT (MANDATORY ALCOHOL INTERLOCK) AMENDMENT
REGULATIONS 2013 (SR 2013, No. 63).**

Mr STEVEN CHOPPING WAS CALLED, MADE THE STATUTORY DECLARATION AND
WAS EXAMINED.

CHAIR (Ms Forrest) - Welcome, Steven, we appreciate your coming in today. This is a public hearing so the media is here. What you say here is covered by parliamentary privilege and will potentially form part of our report. When you are outside the committee you are not covered by parliamentary privilege. If you want to give any evidence in camera, you can request it and the committee will need to decide.

Mr CHOPPING - I contacted the President of the Legislative Council because I had some concern about the mandatory alcohol interlock program that had been introduced by the Registrar of Motor Vehicles. It seemed to me it was bad law, for a number of reasons. It had a retrospective effect, a draconian effect, and had a greater effect than the act itself required. It seems it acts unfairly in relation to people who committee drink-driving offences. I am an absolute teetotaler so I don't have any interest in trying to protect my licence on the basis of this. My wife is similarly a teetotaler, for no reason other than that we do not like it. I do a lot of road safety alcohol and drugs prosecutions, I do a lot of restricted licences, I have contact with a wide range of people. The breathalyser legislation is something that impacts on a wide range of people. There is no defence to the fact that charges are imposed. But it seems to me what is happening is the Registrar is imposing a penalty which is well beyond the mandatory minimum penalties that are required by the act, and a lot of these are having a retrospective effect. Anybody who completes a disqualification after the commencement of the regulations is bound to have an alcohol interlock installed. Many of those offences were committed well before there was even any suggestion of an interlock. The penalties were imposed by the courts on the basis of the minimum penalties that are required by law - and there are maximum penalties - and there are people who committed offences, have served their penalty and now find that they have an impossible penalty that is imposed on them by the legislation.

If a person is convicted of three or more offences, for 10 years they are required to have a zero blood alcohol content by law. There are a range of other people who under the act are required to have a zero blood alcohol content and they include learner drivers, provisional licence holders, taxi drivers, drivers of public vehicles and the like. In some circumstances the Registrar has been able to impose a condition on a person's licence when they are relicensed after a period of disqualification that they not drive with any alcohol in their body. That operates as a requirement of law.

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The interlock requires that a device be fitted to a car and that must be every car that a person drives. If a person works for a building company or a small contractor or even has their own business, they would have to have an interlock on every vehicle they drive and the effect then is that every person who drives that vehicle has to have a zero blood alcohol content. If, for instance, Mr Smith has a requirement that there is an interlock on his car and he and Mrs Smith go out for dinner and she has one glass of wine, she can't drive the car home. She may be well within the law and she hasn't in any other way effected any breaches of the law but she wouldn't be able to drive that car unless she was zero. If Mr Smith worked for a company where his employer required that he drive one, two or more vehicles, every one of those vehicles would have to be fitted with an interlock device and every person who drove those cars would have to have a zero blood alcohol content.

It seems to me that it would have the effect that people who have a requirement for an interlock device would be simply unemployable because it is just an impost that would be impossible for an employer to bear. Plus a family might have one, two or three cars and each of those, if the person with an interlock requirement was to drive, would need to have each of those cars fitted and every person who drove those cars would be required. If a person travelled and was interstate he can't rent a car to do anything because you have to drive a vehicle only with an interlock.

The law is strong enough without an interlock. To say, as the program currently does, that if you have a reading above 0.15 or if you have two convictions within a five-year period you must have an interlock is, I think, far too hard. The range of people who have a blood alcohol conviction might be from a reading of 0.012 per cent to - and I have had, in my experience, as high as 0.39 - there are people who have prior convictions for readings of 0.051. In my experience, all the advertising seems to be falsely aimed at standard drinks. I don't even know what a standard drink is and more than anybody I've got no concern with what a standard drink is. It seems to me that the rough rule of thumb is one can of beer, one nip of spirits or one glass of wine for a male is going to equal about 0.025 and for a female equal to about 0.04 per cent. The rate of absorption is about 0.015 per hour. My advice to any of my clients is that any male who drinks more than two stubbies, two glasses of wine or two nips of spirits within an hour shouldn't drive for at least another hour, and that any female who has one drink shouldn't drive if she has any more than one drink for at least three hours for each extra drink to be within the 0.05. If we call standard drinks stubbies, glasses of wine or nips of spirits, that is far easier. If you go to the hotel and you have two cans or two glasses, you then know that you could be within the limit. If you have both of those in a short time, there is a risk that you are on the limit.

The revolver advertisement that is on television is, to a degree, misleading. Yes, the people are playing Russian roulette with the number of drinks they have. In fact, the voice-over on that recording was a client of mine who was done on his second breathalyser. Even he didn't listen to his own advertising.

The law says that if you have three or more convictions since 1991, you are zero. If a person has three or more convictions they are a slow learner. But somebody who has two readings five years apart of 0.051 or 0.052 really doesn't deserve the same penalty as someone who has two reading of 0.149. Both are treated exactly the same. Anybody who is 0.15, must be, to a degree, a hardened drinker to be able to physically operate a

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car. It seems to me too hard to get to 0.15 and you are never going to think, 'I might be under the limit at 0.15' - you know you are over. That is a different situation. I've got no problem with the high readings. It is the two in five years.

The Road Safety (Alcohol and Drugs) Act came in 1970. In 1991 it came back to 0.05 and we have had, ahead of a lot of other states, a zero blood alcohol content for provisional licence holders. That has been good. That takes away a person's ability to think about it and takes away your judgment. Currently, we allow people to exercise their judgment - 'Am I under or over 0.05?'. We don't give much assistance for people to determine whether they are under or over 0.05. I liken it a lot of times to my clients who say, 'I thought I was under. I have had the same amount previously and I was okay and I passed a random test.'

Imagine driving down Macquarie Street and you have to do 50 kilometres per hour and imagine doing 50 kilometres per hour if your car had never had a speedo. That is the same sort of thing. You are allowed to a certain thing, there is a limit beyond which you can't go and if you transgress the limit by a little bit, this has a draconian effect. Plus I have had a lot of people complain to me that when they committed their offence and they might have got two years' disqualification, now they find that they are required for an interlock. I have had others who have had very low readings for whom it happens to have been a second offence in the five years, who have been given advice that the requirement is that they have an interlock.

I got a copy of a letter from a lady who - I was amazed that she was apprehended - was a senior secretary at the university. She was in her early sixties. She had no prior convictions at all. She was prevailed upon by her neighbour who is a severe alcoholic to drive the neighbour to the hotel at Lauderdale. She was 0.151, she shouldn't have been driving, she did drive and she has now been given a requirement for an interlock. She has done some research and she shows that the servicing of the units is in three places and one of those, the GPS used Brighton as being 109 kilometres from Hobart, so we wonder about the accuracy of the people who are to service these devices if they can't even find that Brighton is perhaps 39 and not 109 kilometres from Hobart. She has a range of other things.

We have a retrospective effect. We have a draconian effect that goes far beyond what the requirements of the law are. The Registrar has enough teeth without doing this. I have no problems with persistent offenders and I think three or more are persistent offenders already catered for by the law. But, for instance, a person now might have a second offence in five years, get six to nine months' disqualification, do the six to nine disqualification with a restricted licence, which enables him to drive in the course of his employment, but as soon as he gets his licence back his employer has to put an interlock device on the car for him to be able to continue driving. I know what is going to happen to his job.

The majority of the people comply with the law. The old saying is 95 per cent of the offences are committed by 5 per cent of the people. I think this and traffic offences are a wider spread than just 5 per cent of the people, and this is having a big impact on people who didn't even know that it was a possibility when they committed their offence.

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Part of the reason for punishment is to reform people and to deter people or others from committing similar offences. If someone says, 'You might have done that a year ago, but since then we have introduced hanging for that offence so you are now going to be hanged', that is not fair. That is an extreme example, but it seems to me that it is akin to it. This is a law with enough teeth and the Registrar has gone overboard in requiring this device for such a wide range of people, in my view.

Mr STURGES - I note your comment on retrospectivity and I note your comment on fairness of the regulation, but you mentioned the Registrar has enough teeth. Could you elaborate a little on that, please?

Mr CHOPPING - Section 24, I think it is, of the Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations enables the Registrar to impose requirements of a person that you only drive with no alcohol in your blood, even though the law mightn't otherwise require it.

Ms ARCHER - Conditional licences?

Mr STURGES - Condition of licence, yes, I'm aware of that.

Mr CHOPPING - As a licence condition. It might be that you have been a persistent offender so you can only drive for the next 12 months from 7 a.m. to 7 p.m. You can only drive with no alcohol in your body. You can only drive for work purposes. Not restricted licences given by the court, but conditional licences imposed. The Registrar has an ability to impose these things and then the law has the ability to enforce penalties on somebody who breaches those conditions. This seems to me to go beyond that and it is much like putting a governor on cars to prevent speeding or something.

CHAIR - We understand the retrospective nature of this. If that was removed, and that anyone from now if they know that if you have two events within five years, even if it is only 0.051, because the line is drawn for scientific and medical reasons that have been well established, or if you have a particularly high reading, then part of your relicensing will be the requirement for an alcohol interlock. Let's not worry about the employer's issues here, but as an individual, do you have an issue with that?

Mr CHOPPING - No. If the law said that if you commit your second breathalyser offence or a high breathalyser offence from now on and when you get your licence back it is going to be subject to an interlock, that is okay, but not somebody who did an offence in

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CHAIR - I just wanted to clarify that.

Mr CHOPPING - If the penalty for taking drugs into Bali is that you go to jail for 15 years and you take drugs into Bali, you cop it. If you know what the penalty is when you commit the offence and what the consequences are, you go in there with your eyes open. Drink-driving is not compulsory and there is no reason why. If you take away the retrospectivity, 95 per cent of my argument disappears.

Ms ARCHER - I suppose what you are also saying, Steven, is that for some people it is unnecessarily harsh. Not that we can do much about it because it is probably more of a

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policy decision, but say if it was two consecutive offences and they were very low readings.

CHAIR - A 0.051 reading?

Mr CHOPPING - Currently the Registrar only has a discretion not to allow the condition on very limited medical grounds and it may be that if the Registrar had a discretion in certain circumstances, 'Yours were both very low readings,' or something else and there was a wider discretion for the Registrar, that might remove much of the other objection.

Mr STURGES - You also made mention and you are not the only person to give evidence in relation to multiple vehicles. If it was someone's employment as an electrician, builder or whatever, would you see that discretion apply to that sort of situation where a person is required to have an alcohol interlock, but as part of their normal course of employment they may be required to drive?

Mr STURGES - If there was discretion that said your private vehicle is fitted with an interlock but your work vehicle provided by your employer is not. For anybody who drives a heavy truck, there are random drug tests, there are random breathalyser tests when you go to work and things like that. If there is a discretion that your work vehicles are not included, with the full support of your employer, that again would overcome a big problem.

Mr CHOPPING - You would see that addressing the fairness issue that you're raising?

Mr STURGES - Yes.

Mrs TAYLOR - My question was actually related and similar to that, asking you perhaps from a legal point of view, because what you are doing with this law, I think, apart from retrospectivity, is imposing a penalty on people who haven't committed an offence.

Mr CHOPPING - You are imposing a restriction on people that the law doesn't impose. Mrs Offender stuck and all the kids are stuck with being zero whenever they drive the car.

Mrs TAYLOR - Yes, and all your workmates and your employer and whatever, so is that legal? Is that not challengeable?

Mr STURGES - It is now.

Mr CHOPPING - Currently it is legal. That's why I say I think it's objectionable on that basis. It has too wide a flow-on. You drop the pebble in the pond and the ripples have extended far wider than they really need to.

CHAIR - We heard from a witness last week, who talked about her son and the implications that had for the broader family. They all had to do their bit to assist, so there are implications even under the current arrangements.

THE WITNESS WITHDREW.

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Mr ANDREW ROWLING AND Mr WAYNE ROWLING WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED BY PHONE.

CHAIR (Ms Forrest) - Welcome to you both. You are covered under parliamentary privilege while you are speaking to the committee but if you repeat any comments outside the committee process you are not covered, so you need to be conscious of what you say. It is being recorded and media are in attendance. You could ask to give information in camera if it were important to remain confidential but otherwise the evidence is part of a public hearing.

Mr WAYNE ROWLING - When Andrew got pinged he accepted the penalty. He is not disputing at that all, the only thing he - and I and a fair few others - is disputing is that he handed his licence in on 19 June when he went to court that day and it says in the paper it was 31 July that it was legal. Therefore, if it was made legal on 31 July, how come he has got pinged to go on this interlock beforehand? Therefore, why should I have one of those interlocks put into my car for when he drives it? I'm not the offender and it's extra money being spent for no reason at all. After the talkback radio shows, the things that have been written in the paper and the amount of people talking about it in different areas and down the streets, he reckons it wants reconsidering, rethinking and resetting-out and done properly through parliament instead of being signed off by somebody who just makes up these things. I know we've got to have this stuff to stop things in law but if other people are getting caught up through this unnecessarily - if they deserve it, they deserve everything they get, but you have to let commonsense prevail. That's what I'm on about, Ruth.

CHAIR - Andrew, when did you do the drink-driving?

Mr ANDREW ROWLING - On 25 April I made the offence of DUI. On 19 June this year I went to court and the magistrate said they knew nothing about it; they didn't say anything about this at all. I had a six-month suspension of my licence, which I handed in then and there on 19 June. There was nothing said about the interlock at that stage. A couple of weeks later an information letter was sent out to me saying that at the end of the six months there would be an interlock put into my vehicle and any other vehicle that I'd be driving. I know recently from people from Victoria where it may have come from, that it only goes into the vehicle you drive, no work vehicle unless the employer says yes. If not, you don't drive that vehicle. The concern is that it goes into both my parents' car, my vehicle -

CHAIR - Do you have your own vehicle?

Mr ANDREW ROWLING - I do, yes.

CHAIR - So if it was just applied to your vehicle? Say, your offence was after 31 July when this started and it was known that that would be the penalty and it was just applied to your vehicle, that wouldn't pose the same challenge as if it had to be applied to your father's vehicle, for example?

Mr ANDREW ROWLING - If I got my offence after 31 July, I'd say to just my vehicle only and not to my parents'.

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CHAIR - That would mean you couldn't drive your father's car, though.

Mr ANDREW ROWLING - It means I can't. These interlocks, it has been proven over 15 months if caught driving another vehicle then a charge would be laid against me because I am not driving a vehicle with an interlock fitted into that vehicle.

CHAIR - But if you were aware that was the rule? It's a bit like you know you are not allowed to drink-drive either. That's the rule.

Mr ANDREW ROWLING - What I'm trying to say is: from people I've known in Victoria it only goes into their own vehicle, not into any other vehicle. It goes into the car that you drive 100 per cent of the time, so therefore if my father - I'm a full-time carer for my father - if he goes into a cardiac arrest and I've got to blow into this machine to take him, if the response team of the ambulance is late, 20 minutes, then I'd have to jump in and start this interlock, then by that stage his brain could be incapacitated for the rest of his life.

CHAIR - It's always best to wait for the ambulance in those cases, by the way, but at least someone answered that question for you.

Mr ANDREW ROWLING - That could be one of the cases though for these interlocks.

Ms ARCHER - Do you need to drive your parents' vehicles, or could you make do with just your own vehicle?

Mr ANDREW ROWLING - Yes, I agree with your question. It's that being the carer for my father he would like me to drive his vehicle rather than my own in his situation, that everything to do with his pension runs through his vehicle. But, yes, I could remotely use my car.

Ms RATTRAY - Was it your second offence that has brought the mandatory interlock system in to your situation?

Mr ROWLING - It was my second offence, yes.

Ms RATTRAY - Can you just give us some idea - you don't have to if you don't want to - what the level of your first offence was?

Mr ANDREW ROWLING - My first offence was 0.071, that was for three months. That was a mid to low range.

Ms RATTRAY - How long ago?

Mr ANDREW ROWLING - Just under two years. The situation I've been talking to people about this interlock is that in the two years, or in the two-year bracket, it never came to my assumption that it would be within a five-year period.

Ms RATTRAY - We've had some evidence around someone having a very low reading, potentially 0.051, and then having this imposed on them after a second offence.

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Ms ARCHER - With your second offence you mentioned DUI, did you mean to say 'exceeding 0.05' for your second offence, because they are two different offences, and DUIs are dealt with on a different basis. With your second offence what did you blow?

Mr ANDREW ROWLING - My second offence was 0.089. As I told the police in their report I only had the five drinks that night, and also I was on two tablets of codeine as well for severe pain. Yes, my fault that I had a couple of drinks on that - and I also told the magistrate in court the same thing.

Ms ARCHER - But you were dealt with in the same manner in the sense that you were sentenced under the minimum mandatory section for mid-range?

Mr ANDREW ROWLING - I was, yes, mid-range to low. They said in the Devonport Magistrates Court that it was not a high-range limit, therefore after a six-month period I could get my full licence back.

Ms ARCHER - Thank you.

Mr MORRIS - Andrew, in relation to when you were talking about the alcohol interlock with the relevant officer and they asked you to nominate which vehicles you wanted to drive, did they make it clear that before you nominated which vehicles you wanted to drive that this would cause you vast expense? How did that process work?

Mr ANDREW ROWLING - Nothing was actually improvised or said to me in any manner of anything. The officer said as soon as I get it back that I'd be able to drive the vehicle that I drive the most, and no interlock was even mentioned at that stage at all.

Mr MORRIS - But once you became aware or you were told that you would need an interlock, were you asked to nominate which vehicles you wanted to drive? What information were you given about what that would involve?

Mr ANDREW ROWLING - I was only involved with a letter that was sent out to me saying that I'd be entering a 15-month interlock program for - a car. There was no vehicle as such, what it would go into and it did not explain that I would be paying a \$3 000 fee for the interlock to be put into my vehicle. It was not explained that it would go into every other vehicle that I would drive. That was not the stipulation that was actually put and therefore it should be made known not only to me but to everybody else as well that this is what was supposed to be happening.

CHAIR - I think we have the general idea of what your concerns are and we appreciate you and you dad taking the time to contact us.

Mr ANDREW ROWLING - The interlock is not actually proven 100 per cent accurate, and the police would say that on the side of the road as well with their breathalyser, that it is not 100 per cent true unless you have a blood test. For the interlock has been proven that some foods may set it off and give you a count against you on this interlock, such as if you brush your teeth and you have a mouthwash, which contains alcohol, that gives you a reading, bang, and you have a count against you.

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If your partner has been drinking and you give a kiss to your girlfriend, there is alcohol on your breath, which, if you start your car then there is another count against you. Therefore, after so many counts you have to start this program again for 15 months' time again and pay out another \$3 000, which to me is insufficient and not fair for anyone at all.

CHAIR - We'll need to look at that sort of information with the people who produce this equipment or the department may be able to tell us that.

Mr ANDREW ROWLING - I agree.

CHAIR - Stay away from your girlfriend then.

Laughter.

Mr WAYNE ROWLING - The other thing I was concerned about was when it was legislated on 31 July and it becomes law. I spoke to various departments of government, both opposition and the government. One person in the Attorney-General's area had a vague idea but he wasn't too sure of it, because of my daughter-in-law being a lawyer as well, she knew of it. Some people in the Liberals, Adam Brooks and other people like that, some did and some didn't. I asked in David O'Byrne's, the minister's office and spoke to one of the girls there and she said she was aware of it and complaints, but also the same day that I rang her there was a big full spread in the paper from Greg Barns and he really had a big tongue-lashing on it.

CHAIR - As Greg does.

Mr WAYNE ROWLING - Then it was followed up by Leon Compton on the ABC and then the phones were jammed red hot. Then it came on further up here and it was in the *Advocate* and whatever other comments were made. The law is the law, we all know that, Andrew accepts that and I accept that as well, but I think you've got to be re-thought out and people caught after 31 July - that's when the penalty should start, not try to bring it back. That's commonsense to us otherwise I think we might have the Eureka Stockade all over again.

CHAIR - Thanks, Wayne, for your time today.

THE WITNESSES WITHDREW.

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Mr NORM McILFATRICK, SECRETARY, DIER; **Mr BOB RUTHERFORD**, DEPUTY SECRETARY, DIER; **Ms PENNY NICHOLLS**, GENERAL MANAGER, LAND TRANSPORT SAFETY, DIER; AND **Ms DEBORAH DAVIS**, MANAGER, LAND TRANSPORT SAFETY POLICY BRANCH, DIER, WERE CALLED, MADE THE STATUTORY DECLARATION AND WERE EXAMINED.

CHAIR (Ms Forrest) - Thank you all for coming. Most of you would be aware that you are covered by parliamentary privilege while we are under the committee proceedings. The media are here and it is a public hearing. We would like you to address your minds to the main issues. One is the retrospective, unintended impact of this and whether there is a way that can be addressed. There is also the issue of multiple vehicles in employment and any cost impact of that.

CHAIR - It has also been raised about the function and the reliability of these devices and mouthwash being used beforehand, even kissing your girlfriend, we were last told, could have an unfortunate impact on being able to start the vehicle.

Mr McILFATRICK - There are some technologies but we will come to that later. I had wanted to address one more issue and not necessarily retrospectivity, but the issue of severe hardship. I might give an overview and then come back to those.

CHAIR - Yes, thanks Norm.

Mr McILFATRICK - We started off with a proposition that we are here delivering an election promise from the 2010 election, based on a trial that was undertaken between 2008 and 2009. The reason for that is drink-driving is one of the biggest causes of serious injury and deaths on our roads. You don't need reminding that we've had 53 fatalities and 317 serious injuries related to alcohol in the five-year period from 2008. The mandatory alcohol interlocks program was aimed at reducing death and injury from drink-driving. It's about trying to separate people's drinking activity from their driving activity.

We've all had letters and have seen the results of road trauma and I won't go into that here. Many times people have lost their licence several times before they have clearly learnt the lesson that they shouldn't drink and drive. It's very difficult, I believe, to accidentally drink and drive at 0.15. Those people who have done that, that's why there is a clear distinction here between people who have had a very high reading and then someone who has knowingly put themselves behind the wheel in that case. That's a one-strike issue and the other ones are the repeat offenders.

I would like to remind you that if you had three strikes in the current legislation, you are required to drive without alcohol in your system for 10 years. With this, we are trying to put a halfway position in place. So I don't make any apology for trying to separate people's drinking habits from their driving habits. But for some of the things we have looked at taking into account, we have heard the same feedback from the public since 31 July. Employment-related matters and hardship issues are matters we need to deal with. I'm talking about severe hardship issues here, but let's try to separate them. If you are required to have an interlock to get your licence back it will be a condition set by the Registrar. We are preparing for inclusion a further exemption that would say if you have

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one of those interlocks in your private vehicle but needed to drive a work vehicle to or from work, or during your course of work, we would allow an exemption under those conditions.

CHAIR - Like a restricted licence?

Mr McILFATRICK - It's a bit like a restricted licence. We have had a couple of reports of people who, for instance, have multiple vehicles they drive at work. So this is to say that we do require you, while driving as a private citizen, not in work, to have the alcohol interlock, but we understand that it could be a severe restriction on your employment if you have to have two or three or more.

Mr Sturges - And that would be subject to making a case, an application to the Registrar?

Mr McILFATRICK - Yes, but it would not be unduly withheld if there was a reasonable case. In every case where a person comes to get their licence back after an offence, they have to convince the Registrar. This is just another thing, and in many cases people have been asked to have liver-function tests. It is a condition of your licence being given back to you that you convince the Registrar you are going to separate driving from drinking. That's the previous way; this is another way of going forward. So we are preparing an exemption; it would be under section 26N, which is another exemption.

Mr RUTHERFORD - That's the section on exemptions.

Mr McILFATRICK - We anticipate it would be 26N(e) or something like that, but we would need to draft that for you in the time that you're considering this issue.

So if we take that into account you then could have a circumstance where someone is able to fulfil their employment under that first exemption, but may be under severe hardship from another angle. It may not be an employment angle; it could be severe financial hardship. It may be that a member of their family is severely impacted by the fact that they've got an interlock. So we are taking the broader context into account. It would be hard to build a set of guidelines now that would cover every one of those elements. So we put a severe-hardship exemption in, which may mean you don't have to have an interlock at all. So it would be different to the employment one, which meant you had to have one in the first place.

Under the regulations the Registrar can develop guidelines to help interpret the regulations. We would anticipate a set of guidelines built through experience, where the Registrar would still have to take into account the broader issues about severe hardship. Queensland has a hardship exemption in their law, but it's very strict, so we might have to broaden ours. It does not allow exemptions purely on the basis that you can't afford it. It doesn't allow purely on the basis of employment, but we're saying specifically that we will have an employment exemption.

Those two in themselves will go a long way towards giving the Registrar the ability to take into account the individual circumstances, as they do now, but to take them into account a little bit more explicitly than they can under the current law. In fact everything is mandatory otherwise. It would be subject to the same conditions that the current Registrar makes the decisions on. He makes a decision; that stands. It's subject to

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internal review; it's then subject to external review. I couldn't write the guidelines for you today; they will only be able to be built up over time. It's a bit like case law. It would be the guidelines as they developed, and would be presented for people to look at to ask, 'Do I fit?'.

It does put a fair burden administratively on the department to do that, but I think it's a better way forward than having some sort of statutory exemption that tries to describe everything that we think might be an exemption. You would have people included in the statutory exemption that maybe you should not have, and you would have some that were excluded. So that's the way we've gone.

Ms ARCHER - I know that in the past the use of the word 'unusual' can cause a lot of problems because it can leave out someone unless they have unique circumstances, whereas what we are envisaging here is that quite a few people have come forward with very similar circumstances and it might exclude them on the basis of that term.

Mr McILFATRICK - No, it is not unusual. You have to judge the whole family circumstance. I do not want to make a judgment here about what that might be, but you do need to take in the broader aspects of the person in the community and in the family.

Ms ARCHER - I mention that because restricted licences at one stage were only granted on the basis of severe and unusual hardship, and that caused problems.

Mr McILFATRICK - We will have to find the right words. If we have an indication from you today that you wish us to go forward, we would need to get Parliamentary Council to draft them - not large amendments; they would be a few paragraphs.

I did want to go to retrospectivity. We always look backwards. The Registrar does not just look forward. When someone goes to apply for their licence, they look at the history. This will not apply to people who have been disqualified in the past and have just waited and do not have their licence back. It is people who were disqualified when the regulation was tabled. If I lost my licence in 2008 and I was outside my disqualification period, I am not subject to an interlock decision. It is only if I was disqualified and my period of disqualification had not ended on 31 July this year. It is not retrospective for the people who may have just sat around and not applied for their licence.

CHAIR - There are quite a few people who were sentenced in recent times and they may have lost their licence for six months. The six months takes them into August and they are being caught up. When the magistrate made a decision about their sentence, their alcohol intake was not -

Mr McILFATRICK - Let me distinguish where I think we are. The magistrate made the decision to fine them or disqualify them on the basis of their breaking the law. We are making a distinction on their history of what they need to do to be allowed to drive again in terms of forward looking. There is a distinction between breaking the law and the re-licensing that we are making here, and that has always been the case. Some of these will go back even to 2009. The majority of people we believe will be coming up are in the period probably from about - given the bell-shaped curve - August 2011 through to now.

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Ms ARCHER - Effectively it is a penalty and therefore the argument is that at the commission of the offence someone should be aware - if it is truly a deterrent factor - of what the likely penalty is going to be. I understand the distinction you have drawn, but it is a bit of a semantic decision because effectively it is a penalty as well on top of the penalty.

Mr McILFATRICK - I guess there are two things. One is the breaking of the law and one is the Registrar's lawful duty to give people a condition on their licence which enables him or her to make the decision that they will not re-offend or they will be able to manage their drinking and driving.

Ms ARCHER - It's like another fine, though, because they have to pay for it.

Mr McILFATRICK - They have to pay for it. In many ways they have had to pay for things in the past, like liver-function tests and a whole range of things.

Ms ARCHER - Not \$3 000.

Mr STURGES - We have taken a fair amount of evidence and this issue has been raised. I am aware the Registrar has had the capacity since 1991 to put conditions on the return of a licence, but the argument from many of those from whom we have taken evidence or received correspondence is that the Registrar did not have the alcohol interlock in his toolkit prior to 31 July. Therefore if you were punished, even though your period of suspension went past 31 July, that should not be an option that the Registrar has. If you are punished on 1 August, certainly that is an option the Registrar should have. What is your opinion on that?

Mr McILFATRICK - We have been trialling this interlock for nearly five years. Any member of the judiciary who did not know it was coming, given it had been announced in the 2010 election and has been announced a number of times, as policies often are, and has been publicly displayed by ministers and other people looking at the technology. I do not want to say everyone should have been aware of it, but they were aware this technology was coming. I could take another view; the Registrar now has alcohol interlocks as a technology available. I would be very surprised, if this mandatory system wasn't in place, that the Registrar would not say to me, 'I should be using these'. They are the best way of avoiding someone mixing their drinking and driving. What we have decided to do in the three or four years looking at this is to take the mandatory position first and then look at exemptions. The exemptions will go a long way to making sure someone is not taken out of employment or unduly severely impacted by this so they cannot live their life. We want to make sure people do not impact the lives of others by being allowed to drive when we have this technology.

Ms RATTRAY - Most of us appreciate what you are saying, Norm, but people have argued that when they were sentenced and fined the magistrate may well have taken into consideration the ongoing penalty had they known it was available. We don't know that but I think it is a reasonable argument.

Mr McILFATRICK - In terms of the scale of the fine?

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Ms RATTRAY - No, they may have reduced the sentence by one month and that would have left them being caught up in this. I believe that is a fair and reasonable argument.

Mr McILFATRICK - We did have that idea in our mind when we made the small modification regarding people who may have just had that delay of two or three months in their sentencing period, which would have only taken them through to about September this year, so we did make that exemption that if they had been in that earlier period we would pay for the interlock to be established into their vehicle. There is a bit of a window there that has taken that very situation into account. There are very few where the magistrate would have had a variation of longer than three months, so we could probably cope with that implicitly in that up-front installation, the first three months payment et cetera.

No matter when we put this in it was going to have an impact on people. It is a high cost and it is never going to be easy to pay, but we have tried to cope with that by at least having a regular payment plan. People on concessions have a lesser payment and can pay it through their Centrelink payments et cetera. It is very fundamentally driven about making a big change in the way people who are repeat offenders do not get back on the road.

Mr MORRIS - I hear what is a quite hard line on this, but could you clarify that you have paid for all the interlocks that have been installed in the first three months?

Mr McILFATRICK - Yes, in the first three months. It was to cover that very point that Ms Rattray raised.

Mr MORRIS - How many so far?

Ms DAVIS - At the moment we have about 60-65 interlocks installed in vehicles.

CHAIR - At a cost to the department?

Ms DAVIS - Yes.

Ms DAVIS - Those costs are being met by the department up until 31 October.

Mr MORRIS - That is not if they request it?

Mr McILFATRICK - No. Very early on that issue was raised that a magistrate may have given someone six months when he might have otherwise given three. It only really affects the people who crossed over that line in the early days.

CHAIR - The first three months of its application?

Mr McILFATRICK - Yes.

Mr MORRIS - Say common knowledge of this started to arise about the middle of this year, before it came in but not a long time ago, if someone had a two-year disqualification period starting 18 months ago, they are not going to get their licence back until next year

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Mr McILFATRICK - They may not have been getting it back anyway.

Mr MORRIS - Yes, for all sorts of reasons, but that is the extreme end of it. It seems that back then there really was very little knowledge about these coming. I ask whether you would consider putting another possible exemption in there, at 26N, to allow the Registrar to have discretion if it seems that someone can build a case on the basis that they should be grandfathered.

Mr McILFATRICK - I said before that the hardship issues are going to be hard to build. I couldn't give you an example. Let me run that example - two years and it wasn't known. I don't think the Registrar would give an exemption purely because of the scale, but if they had hardship associated with that - the scale of the penalty, impact on their family, the whole range of things - that would be taken into account. However, I don't think there would be a case ever that they would accept it just because it's going to marginally or even in a large way affect your financial situation. It has to be a broader severity than that. In the Queensland case you can't get it purely because you can't afford it. There would be, on a case-by-case basis, a situation you just raised where the Registrar could, and probably would, take that into account. But to go back and try to define every one of those cases now, on your basis probably 9 per cent of the cases that we estimate are coming forward are before mid-2011, and maybe 20 per cent if I added up all the smaller bits before that. It's going to be mostly people that are in 2011, 2012 and 2013. Most of them, the bigger volume, upwards of 40 per cent, are going to be this last 12 months. They're usually three months or six months.

Ms ARCHER - I feel that most people who could come forward fall in that category. For argument's sake let's call them people affected retrospectively. The ones contacting us weren't aware of the devices, and on top of that they are now suffering a hardship, whatever form that takes. I think that it probably does cover those situations, because they are motivated to come forward and tell their story because they are experiencing hardship as a result. We had a very refreshing case from a mother saying, 'I don't condone my son's actions, but we are heavily impacted as a result of this, of not knowing that this could be a possible penalty'.

Mr McILFATRICK - That would be a context you would put in, but it wouldn't be the reason. It would have to have that -

Ms ARCHER - I have no problem with it being mandatory and having exemptions, as long as the exemptions cover hardship.

Mr McILFATRICK - An exemption can cover hardship impacted by the previous court decision, but it would be in the context of the broader hardship context. The Registrar is a human being, and his/her employers make decisions every day that impact people's lives. So we are saying that we will have reasonableness in this, but it can't be just on one issue.

Ms ARCHER - Because at the moment the exemption only covers medical circumstances, or whatever it is, and it's very limited.

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Mr McILFATRICK - The employment one is probably not as wide as you might have thought, but it is about exemption for your employment. If there is an additional hardship issue on top of that, that would be treated as a separate issue, but maybe a related issue.

Mrs TAYLOR - I'm really glad to hear this is happening, that the Registrar is going to have more flexibility.

Mr McILFATRICK - I've had Greg Barns ringing me too.

Laughter

Mrs TAYLOR - My question is about people who might have fallen into this three-months holiday period, but we know there are a number of people whose period of suspension or disqualification finishes, and who then don't immediately apply for their licence.

Mr McILFATRICK - Yes, that's right.

Mrs TAYLOR - Some of them might be people whose sentence finished in July or August, but who choose, for one reason or another, to not -

Mr McILFATRICK - If they finished in July they're okay; they've got until next July to apply. If they finished in August they're part of the programme.

Mrs TAYLOR - Right.

Mr McILFATRICK - If they finished their disqualification before 31 July then they're out, but we have said they would probably need to apply within a year. There are others where the disqualification period, finished, say tomorrow, and they don't apply for six months. That is up to them but they would still have to go through the process.

Mrs TAYLOR - And even if they don't apply for another three years?

Mr McILFATRICK - The same.

Ms RATTRAY - The Victorian model; we were given some evidence that they only have to have interlocks in their drivers' vehicles.

Mr McILFATRICK - I would have to check that. I don't believe that is the case. I believe they have to have an interlock in the vehicle they are driving. If they chose to drive another vehicle, I believe they would be driving against the law. The major difference between ours and Victoria's is that theirs is court-imposed interlock and ours are regulatory imposed. In many cases Victorian conditions are a bit more onerous than ours.

Mr RUTHERFORD - The advice we have is that a person who has been ordered to have an interlock must only drive a vehicle with an approved interlock. We believe their system is a lot more restrictive than what we are bringing forward. We are very conscious of the issues of our dispersed population. A lot of the hardship things we are talking about come about because of the lack of alternatives for our dispersed population. That is what

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we have been trying to cope with, balanced against the Registrar's duty to drive the behavioural separation. If we viewed the system purely in penalty terms, we would miss the whole duty of the Registrar looking forward to ask the question, 'How can I safely let this person back on the roads?'.

Mr McILFATRICK - That's our information, but we will check if there is a difference and let you know.

Technology can be influenced by what you have eaten, probably within the last five or 10 minutes. One of the reasons they err on the side of caution is that anyone who gets an interlock has a training period. They get to use it before they use it in action, where it may lock them out. It records their activity but once they have been through the training period, if they do have a lock-out, they go back to square 1 and have to keep going. There will be instances where someone might have used a mouthwash or a certain form of food, but it is only in that first few minutes after that it counts. If they lock out because of that, they will probably find that due to their normal habits in that training period. There is not a lot of evidence that this causes massive problems once the system is up and running.

Ms NICHOLLS - When the participants have their interlock installed there is quite a comprehensive training regime the service providers put the individuals through.

CHAIR - Over a period of time?

Ms NICHOLLS - No, when they first have face-to-face contact, bring their vehicle in and have the interlock installed. These issues are part of the training of the individual MAIB participant. Following that face-to-face training they sign something that says they recognise everything they have been trained in. They are not just learning a lot of this stuff through experience during that learning period; they are being trained, before they take control of their vehicle, that these things can happen. The focus is that before you get into the car make sure there is a 10-minute gap before you -

Mr STURGES - We received evidence that indicated that periodic sampling during the journey could result in the vehicle being immobilised. Could you tell us what happens if you have to pull over and blow into it, but you don't -

Mr McILFATRICK - It doesn't stop by blowing -

Mr STURGES - One of our witnesses said, 'The car is going to become immobilised and I could be on the bridge'.

Ms NICHOLLS - It's the next time when you pull over. If you don't meet the re-test, things may happen, such as your lights might flash and the horn will go off, but it's only until you pull over and stop that vehicle. The engine would then not allow you to restart it. It would never stop whilst you were on the road.

CHAIR - Thank you all very much.

THE WITNESSES WITHDREW.

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THE PARLIAMENTARY STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 1, PARLIAMENT HOUSE, HOBART, ON THURSDAY 17 OCTOBER 2013.

VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE REGISTRATION) AMENDMENT (MANDATORY ALCOHOL INTERLOCK) REGULATIONS 2013 (SR 2013 No. 50) AND VEHICLE AND TRAFFIC (DRIVER LICENSING AND VEHICLE REGULATIONS) AMENDMENT (MANDATORY ALCOHOL INTERLOCK) AMENDMENT REGULATIONS 2013 (SR 2013, No. 63).

Mr BOB RUTHERFORD, DEPUTY SECRETARY AND **Ms DEBRA DAVIS**, MANAGER, LAND TRANSPORT SAFETY POLICY, DEPARTMENT OF INFRASTRUCTURE, ENERGY AND RESOURCES, WERE CALLED, AND WERE EXAMINED.

CHAIR (Ms Forrest) - Thanks, Bob and Debra. You are both still sworn from last time so you do not have to redo that, but you are still under oath. Feel free to lead off on what the proposal is here.

Mr RUTHERFORD - The secretary indicated he would come back to you with regulations that included changes that would pick up the work-related exemption and the exemption for severe hardship. We tried to make these clear and cover all the bases, so you will notice in the work-related exemption that we covered off the issue that was raised over the - and I keep thinking that it was the trading problem -

Ms RATTRAY - That is six?

Mr RUTHERFORD - Yes, six is the one that covers the problem where you might want to have the interlock in your Commodore, for instance, but you have a ute you use for business and you might be unwilling to put an interlock in the second vehicle. There is an exemption in that situation - we are not treating someone in that position differently because they are self-employed. I apologise as I don't remember who made that point in the discussion, but it was an important point.

Mr STURGES - It came from evidence we got from a witness. Could I just clarify - what happens if a small business person is required, as part of their normal duties, to work on other vehicles. The case in a question we received was a refrigeration mechanic who said from time to time he might be required to drive a customer's truck to fix the refrigeration gear, or a fork lift truck. Does this pick him up?

Ms DAVIS - Yes, because they would be driving for the purposes of employment and their employer has agreed -

Mr STURGES - It is a matter of making the case to the Registrar - that is the way I see this.

Ms DAVIS - Yes, that was my understanding - that the employer would agree that they need to drive for the purposes of working and for that purpose they are not requiring them to have the interlock.

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Mr STURGES - Or a small business operator?

Ms DAVIS - Yes, or as a self-employed person, as Bob said, with the employer hat on, they are unwilling or unable to install an interlock on a work-related vehicle.

CHAIR - Just on this point before we go on, Bob. If you have a person who is self-employed they would still have to make application to the Registrar -

Mr RUTHERFORD - Yes.

CHAIR - because if they only used one vehicle for their employment and as their private vehicle, it would be unlikely the Registrar would grant an exemption?

Mr RUTHERFORD - I think that is correct because the Registrar has to be satisfied under 6C(I) that the applicant has nominated a vehicle and has had an interlock installed in the vehicle nominated, and the applicant must drive another vehicle to or from work. We are sticking with the principle that the interlock is there to separate the pattern of drinking and driving but we have completely taken away the employment aspect of it.

Mr STURGES - Bob, in sub-clause II of the clause that you quote, for the record it says - 'or for the purposes of work'. That picks up, dare I say, the motor mechanic who may be required to road test a vehicle.

Mr RUTHERFORD - You will see that we have something that I originally thought was curious, because I have never seen it. Under IIIB, we have 'type or class or quantity'. I queried that because I didn't know what it meant, but it refers to a number of vehicles of a particular type. It was a legal solution which I had never seen before - you are relying on your draftperson to give us the capacity to make sure we covered all those bases. I read it and didn't notice anything different - it referred to 'type or class'. But there is also the 'number'. If there were six buses in the yard and an employee has to be able to drive all of them, then you have that quantity of vehicles. Class would cover the issue that you raised, Madam Chair.

CHAIR - Bob, I think we have all accepted - in the community and the government - that if a person breaks the law with an excessively high alcohol reading, or more than one offence, an alcohol interlock is appropriate. If that person has a work vehicle - say it was one of us, and our vehicle is provided by the parliament. It is the vehicle we use to go to work and to do everything. You could not avoid having an alcohol interlock fitted to that vehicle?

Mr RUTHERFORD - I am not certain about that because it would depend on whether you had another vehicle that you used for private purposes. In my case, I get a private vehicle as part of my package. I believe that because I use that vehicle for all purposes, I would have to have an interlock fitted.

CHAIR - That is what I am saying, it is the same with me.

Mr STURGES - Bob, I don't want to labour this point, but it would be up to the individual to make a case. For example, if the elected member, in the example you cite, has staff that

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drive the vehicle. If you use it to travel to work, but it is used for other purposes, you could make a case, the way I read this.

Ms RATTRAY - Is that right?

Mr RUTHERFORD - No. That is only the case where it is second vehicle. If it is the only vehicle, then I would be saying to my wife, 'You had better make sure you are absolutely clear when you get in that car'. The difficulty with all of this, as I am sure you understand, is there are probably rare cases you could find that would give us an issue, but we have not been able to think of any.

Ms RATTRAY - Think of me.

Mr RUTHERFORD - In the case of me or you, and we are in the same position, we would have to fit the interlock and that would be essential to separate if we were -

Ms RATTRAY - But doesn't that disadvantage our family and our staff?

Mr RUTHERFORD - It doesn't disadvantage. It would mean that anyone driving that vehicle has to be able to drive it without any blood alcohol.

Mr MORRIS - Which is hardly onerous.

Mr RUTHERFORD - I don't think is a serious problem. I think our situation is somewhat rare in the community, if I can put it that way. We are very privileged and need to be so, of course, because of the responsibilities that go with the roles, particularly for elected members where you are expected to do an awful lot of driving around the community. The general notion that you would be expecting your staff to be able to drive it alcohol-free is probably consistent with our normal driving policies.

Ms RATTRAY - Can I take you back to the family situation? They will be disadvantaged if they are coming to a function with us and they might offer to drive home because you have already driven to Hobart and back.

Mr STURGES - I think it fixes all the problems.

Mr MORRIS - It is not onerous.

Ms DAVIS - It does have a severe hardship provision, which is separate from the work provision. So the work provision is clearly where there is an interlock fitted in a private vehicle. However, the severe hardship does allow for cases where there are impacts on families and it is a severe impact. So there maybe situations which are not covered under the work provision, but would meet a severe hardship claim. By having the two exemption provisions in there some of the situations may be covered as a severe hardship as opposed to a work.

Ms RATTRAY - You are saying that I could apply to not have an interlock in my private plated only car, a sedan type of car, that our family has?

Ms DAVIS - It might not be granted though.

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Mrs TAYLOR - If it is granted you would want to think about how it looks to the community when everybody else has to have it and they say, yes, but you are a member of parliament and you got away with it.

Ms DAVIS - What I am pointing out is that there are two separate exemption provisions.

Mr RUTHERFORD - I think the member is trying not to make a personal case, but you are trying to put the case to test. You are testing, quite appropriately, the boundaries of the exemption.

Ms RATTRAY - We have had that put forward that the difficulty and the challenges for family members who drive that vehicle, when you only have one vehicle.

Mr RUTHERFORD - I think we did, but we didn't -

Ms RATTRAY - Well, it's not here.

Mr RUTHERFORD - What we have done and it is important, we have not looked at that from, as it were, the point of view of people who could reasonably be imagined to have the capacity to install an interlock and cope with the consequence.

The burden placed on the family in this regard is not that they cannot have access to the car, it is that they must drive a car with an interlock and drive it with zero blood alcohol. That is a burden on a family in a sense that the family is carrying some of the burden of assisting the community in separating the drinking and driving behaviour. I think given the criticality of it, that is important.

The cases that seem to us really important, and I think the ones that we focused on the last time, were where we were dealing with people, as we all know there is an awful lot of our community is in this position, where there were serious income issues. I will go to this because it is important, there were issues where a child might have a medical condition. We have elected in this, in order to give the Registrar the maximum discretion, to put that in the hardship exemption rather than putting it in a separate medical test. It seemed to us that the Registrar has to be able to look at the whole situation and if it is the case that a family is distant from public transport, the child has a medical condition, then you would certainly in that case, I think, want to be able to exempt. That is what we have tried to look at.

Those family concerns that you raised previously we have really tried to address, but not at the level of people where we believed in a sense that when we do it from ourselves, well actually of course we would be in a position to deal with that because we would still have a vehicle and the other person driving,

CHAIR - It does not stop the person driving who has committed the offence previously. If they want to drive, they just do not drink.

Mr RUTHERFORD - That is correct.

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CHAIR - If you are going out with the family then someone is the designated driver. It may well be the person who has committed the offence, maybe it should be.

Ms RATTRAY - I just cited the case, if you have already been on the road for 10 hours that day but you have another function to go to and somebody offers to drive, which they do, in our jobs, if somebody is good enough to come with you, they often come with you to drive if you have been on the road a long time.

Mr RUTHERFORD - And they can but they must be alcohol-free who use the machine.

CHAIR - Show of hands, any one who has not been drinking, put your hand up.

Ms RATTRAY - I still think it is really imposing that penalty on somebody who did not undertake the penalty. Anyway, that is my view and I am allowed that.

Mr MORRIS - That is right. Could I come back to the other matter that we were talking about last time?

CHAIR - Have we finished this issue?

Mr RUTHERFORD - The workplace exemption one?

CHAIR - We will deal with the exemption first, any other questions on the exemption?

Mrs TAYLOR - I am satisfied that at least there is flexibility with the Registrar being able to grant an exemption or whatever if that decision been made by the Registrar who has got now that flexibility to say yes, this is a hardship case, I will grant an exemption.

Mr STURGES - Last point, Chair, if I may and it is just to pick up the what if. Is there a capacity for the Registrar if something comes out of left field to take that into account? We have personal hardship; you talked about the medical condition of the child; isolation. The honourable member for Apsley was raising a few issues and does the Registrar have any other matter that may be taken into account if he or she considers it appropriate?

Mrs TAYLOR - It says that in CB, page six.

Mr STURGES - I was just asking.

CHAIR - 'Is appropriate in the circumstances'.

Mrs TAYLOR - 'Is appropriate in the circumstances' to grant the exemption. It would have to be any other reason really, is it not.

Mr STURGES - Thank you, I did not read that far.

Mrs TAYLOR - That is what I am saying, Graham, I think that is now covered.

Ms DAVIS - Except that it says 'and' not 'or'.

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Mr RUTHERFORD - Yes, it is because it is about looking at to take up Graham's point.

Mrs TAYLOR - Serve hardship to the applicant or another person and is appropriate.

CHAIR - One at a time please, it makes it hard for *Hansard*.

Mr RUTHERFORD - I think that is an important point because it is a quite conscious decision but we are limiting the universe of the thing from left field to a dimension of severe hardship. I think that is an important thing because the whole issue was, if there was a type of severe hardship that we have not contemplated and the Registrar in his discretion believes it to be the driver of severe hardship, then the Registrar has the discretion under this to make that judgment. That is where it comes down. I thank the member for that clarification.

CHAIR - Anyone else on that point? Tim, we will go to the retrospective issues.

Mr MORRIS - Thank you for this draft. I am pleased to be able to see it here before it is coming into force. That is great. So we can have a look, entirely satisfied with this component. So thank you very much.

The other aspect that we talked about last time was in relation to the retrospective nature that will be impacting on some people. I have a couple of questions but we received another submission in relation to this matter. I will quote briefly a little relevant part. It is not quite accurate - I will do the fixes as I go:

In short, the application of the laws to offenders sentenced prior to *í* and he says 1 July 2013 and it is 31 July 2013:

í is unfair.

It says proportionality in sentencing is the relevant principle. It goes on:

The proportionality principle imposes an obligation on judicial officers to ensure that sentences imposed on offenders are of the severity that reflects the objective seriousness of the offence. 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.

In other words the proportionality principle prevents the imposition of sentences that are manifestly excessive of 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.

I don't agree with the last bit, but the rest of it I do. So, the sentencing principle was established when the sentences were applied to each person before 31 July, and that was the sum total of their sentence. Whilst this is not strictly a sentence, it certainly is an

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extra imposition that was not able to be considered by the relevant sentencing person at the time the person was being sentenced. So my question is: How many people so far, who received their sentences before 31 July, have had alcohol interlock requirements placed on them? Secondly, do you have an estimate of how many there are likely to be in total?

Mr RUTHERFORD - I don't have those numbers before me. I know how many interlocks are currently being installed.

Mr MORRIS - We will assume that most of those - if not all - were sentenced before 31 July, because they would have had suspensions - because they would have had their licences suspended.

Mr RUTHERFORD - I think that's highly likely, and the current number is 97.

Mr MORRIS - Right.

Mr RUTHERFORD - We're talking about a significant difference of view as to what the role of the registrar is, because the secretary, Mr McIlfatrick, last time spoke to the issue of how the role played by the judiciary in imposing a penalty for past behaviour - and the proportionality principle is well understood - is one thing, but the duty on the registrar is not that. The duty on the registrar is to look forward, and relicensing is not a right. His duty is to ensure that the licensing system supports safety on the roads. A fundamental element of that is that people can demonstrate they can separate their drinking behaviour from their driving.

As Mr McIlfatrick said last time, in the past and indeed at present the registrar has, and does, impose extra conditions at his discretion on people re-entering the licensing system. He does not have regard, in so doing, to the penalty that was previously imposed.

Mr MORRIS - Absolutely, that's correct.

Mr RUTHERFORD - We are using the technology to ensure that separation. We are using improvements in technology to ensure that the returning person, where there is evidence of a difficulty in separating the behaviours, comes back with a licence under conditions where they have a period of becoming accustomed to separating driving and drinking behaviours. We do not see it as part of the penalty process.

Mr MORRIS - I know. You don't.

Mr RUTHERFORD - So that has been fundamental.

Mr MORRIS - I understand that. So, my question following on from that is: Is there a relationship between the requirement to install an alcohol interlock and the liver-function test that must be undertaken?

Mr RUTHERFORD - Certainly the -

Mr MORRIS - If not, why not?

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Mr RUTHERFORD - The registrar at present, or in the past, has certainly required liver-function tests as the sort of thing you could do to try to ensure an ongoing, forward-looking separation of those behaviours.

CHAIR - A quite unreliable one, I might say. There are many reasons why you would have altered liver-function tests. I could drink quite a lot and still have a normal liver-function test. I could have five drinks tonight and then drive with an absolutely normal liver-function test before, during and after. The point here is that we're trying to find another measure, aren't we, to enable the registrar to consider if someone who has demonstrated excessive drinking or repeated offences, has been able to separate the drinking from the driving?

Mr RUTHERFORD - That's right, and in a way the technology of the interlock is the way we get away from those rather difficult and imperfect instruments.

Mr MORRIS - So are you saying that the registrar won't be requesting liver-function tests?

Mr RUTHERFORD - I've got to be careful, because I'm not sure that we have restricted them in law, but I can see no purpose or reason why he would continue with them. But I would be brave to say a statutory officer won't do something when I'm not the statutory officer. You don't know what might happen in the future, but I think there is no reason - and I suppose my clear expectation would be that the need for that kind of thing would vanish.

Mr MORRIS - So the only qualification, if I can call it, for an alcohol interlock would be that you have been convicted of having a blood alcohol reading over 0.15, or two or more drink-driving offences in five years.

Mr RUTHERFORD - Yes, that's right.

Mr MORRIS - That is the only qualification. Everyone who qualifies will get an interlock. Is that correct? Unless there's an exemption?

Mr RUTHERFORD - Unless there's an exemption. And that is precisely how they've been brought in in other places, and brought in without the benefit of the sort of exemptions you have before you. I am very happy with the exemption we're bringing before you because I think the points made earlier about the very different circumstances in Tasmania have been understood. We have dispersed populations, and we have problems with access to medical facilities, schools, and all those things. I think we've adapted what has gone on in other jurisdictions to our circumstances, informed by the discussion in this place. I am quite happy to come back with those exemptions, thinking we have done our best to address the issues put before us.

Mr MORRIS - Yes, but the retrospectivity provision - the objection still exists. It would not be that difficult for the regulations to have stated that these regulations apply to anyone who has been convicted of qualifying offences after 31 July 2013.

Mr RUTHERFORD - It might have been possible, but in our view that would have confused the concept of the penalty for the past offence with the whole purpose of these

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interlocks, which is to enable the registrar to discipline future driving behaviour, to separate the drinking from the driving.

Mr MORRIS - Only for that fixed number of people, not for anyone convicted from now on.

Mr RUTHERFORD - If you abstract from the penalty, there is no difference from someone coming back with those quite severe offences and risk to other drivers.

Mr MORRIS - That's not the point that we're arguing. The point is about bringing in a law that impacts on people who had their penalty applied prior to the law coming in, that's all. It is something that we in this place very rarely do and only do it in exceptional circumstances, and I am just not sure whether we have exceptional circumstances.

Ms ARCHER - That is where the main objections came from and I think that this committee has concern around the number of people who have come forward in that situation and it does seem to be unfair.

Mr RUTHERFORD - I think there are two separate issues being brought together here, if I can put it that way. I am making, from following the arguments that Norm put last time, the argument that what we are about is not an additional penalty. It is an additional mechanism that improves how the Registrar separates the behaviours. Because that has a cost to it, some people are seeing that as if it were part of a penalty. But it is quite normal in most areas of life, as technology advances, that the relative cost of availing yourself of opportunities changes.

What we have done because of concerns over cost is try to deal with that in terms of disadvantage. When we looked at severe disadvantage, we looked at 'does this impact in a very serious way on the situation of families?'. We have attempted, so that we didn't move away from our principle that this is not and never has been a penalty, we have tried to address it from the point of view of the severity of the impact on families. That is why we have put as much effort into that severe hardship amendment.

Ms ARCHER - I understand and me, of all people, I understand the difference between a penalty but the effect is for some people that they do see it as a penalty, and particularly those who - I have had correspondence from one person who has been put on a repayment plan and still does not feel that they can afford that. I suppose I am just trying to reconcile this period about which people did not know that this type of thing would be imposed, if you like, and they do see it as a penalty. Even though it may not technically be a penalty, they would see that as a very semantic point. We are trying to deal with this grey area fairly.

CHAIR - Just on that point, there was discussion last time and some information put about the department paying for the installation. I am just wondering if that has happened for this person or this person has slipped through the gap?

Ms ARCHER - I don't think that the three-month period is going to capture all of those people who are left in the situation where they committed their offence and/or they were sentenced prior to this coming into play. A three-month period is not going to capture all of those circumstances. If you do it for one, why are we just limiting it to those who fall

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or are captured by a three-month period? There has already been a concession for them on cost. Why aren't we extending it to anybody who is captured in that situation?

Mr RUTHERFORD - If I can just respond. The issue as we saw it there, and again I will go back to it, hinges on the basic principle of separating it from the penalty, is we understood that a change like this is unanticipated, and that is a different issue to whether it is an extra penalty. It is that you have not had time to prepare for a change in the cost of reaccessing the licensing system in order that you can demonstrate this. We saw the three-month period as a sensible period to allow people to plan their finances for that.

We also recognise, and that is what we have come back to you with, that for some people that three months does not do enough because of their family circumstances. So that is why we have gone down the line of addressing it as a severe hardship issue. We have tried to walk the line between giving people time to prepare themselves financially and giving them the opportunity also to make a case on their hardship. It is certainly true that we would not see just putting up a simple case of 'it is difficult for me to afford the interlock' as enough. You would have to put a much more comprehensive case over hardship because otherwise you are opening a gate where everyone argues 'I can't afford it'. That is how we have tried to deal with it.

I well understand the points you are making about the grey area and perception.

Ms ARCHER - It is the fact that they didn't know whether it was a penalty or not. I understand the argument you are making, but to them it is a matter of this was not a foreseeable consequence of the licensing system of getting their licence back. It does in effect impact on people as if it is a penalty even though in law it is not a penalty, and for that that is where the grey area arises. I think we have all seen that in the last few weeks.

Mr STURGES - If I may, Chair - to put it bluntly and I don't want to breach confidential discussions we have had - the use of the interlock is not an issue. It just has not been an issue, I think if I may Chair, for the committee and I don't think we have received any evidence to suggest that they are totally opposed to the interlock and the exemption. I accept all of that and that is very good work that has been done and I commend you for going away and doing that work. The issue that is on the table now is the retrospective nature of the application of this concept. That is purely it.

Ms ARCHER - Yes.

Mr MORRIS - Anyway, we can continue our discussion.

Mr STURGES - That is why I have raised it now because I would rather discuss here. Is there capacity to discuss that? Because that is a sticking point with the Subordinate Legislation Committee as a result of representations that have been received from the legal fraternity, from constituents throughout the Tasmanian community, and it is our opportunity now to put that on the table. As far as I understand it, honourable colleagues, that is the sticking point - not the concept but the retrospective application of the concept.

Ms ARCHER - Absolutely.

Mr STURGES - Is that up for negotiation with the department? That is the nub of it.

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Mr RUTHERFORD - It obviously puts me in a difficult position because I have been arguing this from a point of principle but -

Mr STURGES - I understand that, Bob, and that is why I came to this point because that has been the -

Mr RUTHERFORD - I obviously can't at the table -

Mr STURGES - I don't want to ambush you.

Mr RUTHERFORD - I can't accept the point over retrospectivity because it is a fundamentally different view to the one we have built our approach on.

Mr STURGES - Do you think there is - and again I don't want to verbal you and I don't want to ambush you - that is the only sticking point that I see at the moment.

Mr RUTHERFORD - If I might, because this is where it gets to the nub of it, is it a sticking point of principle?

CHAIR - I was going to get to that. I might explain, Bob, if that is all right. The way I see this - and the committee needs to keep in mind what our duty is under our legislation we operate under - this is a matter, as I see it, of government policy. Now where the policy impacts in a way - I will get the act and have a look.

The functions of the committee are set out in section 8 of the act as follows:

- (a) to examine the provisions of every regulation, with special reference to the question whether or not
 - (i) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;
 - (ii) the form or purport of the regulation calls for elucidation;
 - (iii) the regulation unduly trespasses on personal rights and liberties;

That could be the relevant area. The act goes on:

- (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
- (v) the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation;

That is where we are at. This is a matter of policy but where it has impinged on someone's rights or liberties, then that is in the purview of the committee.

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I don't want to put you in a position where you can't respond to a question, because you are not the minister, so I think it might be prudent to write to the minister, saying this is the point we have been able to get to. You have provided a very clear position of the policy behind the regulations, so we could ask the minister if there is any other consideration that could be given to this aspect, in light of the functions of committee.

Mr RUTHERFORD - It seems to me that a critical question is whether this is, in essence, an issue over adjustment or whether it is a fundamental issue of principle. It goes a bit to the point Elise made about it being a grey area - are we being asked to do something fundamental to our design, which is to change the date of application, or are we being asked to consider stretching the period of adjustment, which is a different concept? Can I ask you to consider that rather than -

Mr MORRIS - It is not so much the date of application, it is the trigger point for the application. At the moment, the trigger point is when someone seeks to get their licence back, as of 31 July. The retrospectivity does not apply to anyone who was sentenced after 31 July. That is the trigger at the moment - someone applying to get their licence back - not sentencing. If it was changed so that it applied to people sentenced after 31 July. It will wash itself out over time, anyway. There is nothing so fundamental there - within a year or two it will wash itself out and it will not be an issue, but we have this period now.

Mr RUTHERFORD - I am not confident that it is as simple as that. The issue of retrospectivity has been an announced policy of the government for a considerable period and while the judiciary is sometimes accused of being out of touch with current events, I am confident they would have been well informed that this was coming.

Ms ARCHER - They may have been well informed, but the members of the public who have contacted us do not feel they were well informed, even though it was policy.

Mr RUTHERFORD - No, but it goes to the heart of what we are doing here and I am very uncomfortable with the whole notion of viewing this as part of a penalty. I believe that the registrar, if he elected to now, could impose a requirement to have an alcohol interlock put in a car, of his discretion.

CHAIR - This is making it mandatory.

Mr RUTHERFORD - Yes. What we were trying to do was take away all of the issues around it, and the uncertainty. I understand this is not an issue about whether these are a good thing, but we do seem to have an impasse over it. That is why I asked if this is an adjustment problem - is it a version of hardship, if I can put it that way, and we have not gone far enough - or is it a fundamental issue over a date, which is very difficult for us to accommodate.

CHAIR - If it was not for the significant cost associated with installing and then maintaining the devices, I think there would have been less resistance. Many of these people have paid a fine and had a period of time where they are not allowed to drive, and they see those things as a penalty. I do not think generally there is a view that having an alcohol interlock is a bad thing if you are trying to change behaviours and separate drinking and driving behaviours. The problem arises because of the imposition of an additional cost

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that was not anticipated or expected. Also, I have had a number of calls from people who have no idea that there is any requirement to get your licence back - they just think you can rock up to Service Tasmania, and your licence will be handed back.

So I think a lot of public education is needed, not just with alcohol intoxication but any other driving offence. I got a really angry phone call from a man the other day about having to go through the learner driver process again. I have not got to the bottom of what he did, but it was probably something quite serious or some time ago and he has not driven for quite some time, perhaps. But he had the expectation that whenever he wanted his licence back after he had done his disqualification period, he would get it.

There are a few issues, but it is predominantly the cost of the device. Is there another way of looking at it - could the three-month period for paying for the installation of the device be extended? To answer that question, we need to have some idea of how many people had a penalty imposed before 31 July, and how many of those are yet to finish their disqualification period. Are they only three month disqualifications, or are there six or 12 month periods. That may give us a better idea of whether that is an appropriate approach to take. I do not know - I am just looking for ways to address this issue and still maintain the government policy position, which we cannot object to.

Mr RUTHERFORD - As you can imagine, you will have people with a past pattern of behaviour and we will be putting them in cars without requiring an interlock, and we all know that is a ticking clock. And that is a very serious issue for the parliament.

CHAIR - But if you allow them to be put into the vehicles but address the cost issue, that could be a way of addressing the problem.

Mr RUTHERFORD - That is the other side of that argument, and why the registrar is availing himself of the tool. That is the critical thing we have to deal with. It is never easy. It interests me that in many areas of public life, we change the rules, particularly if they are economic ones, without compensation. We just change the rules and you start again and we do it irrespective. I build a large house - I do not insulate it, I do nothing to the walls, I have a nice, big, open place and a government imposes a tax on carbon. I should have known, someone should have told me this is retrospective. When you see it in different contexts, it does not make as much sense.

Mr MORRIS - However, they did compensate you for it, and Mr Sturges, minister for [inaudible], would have compensated you if he had taken -

Mr RUTHERFORD - There are lots of other examples around the world where - I grew up in an area where we mined coal. The area went smokeless, bang. There was no contemplation of compensation because in the public interest cleaning up that situation was desirable. It was very costly for households to install the new smokeless stuff and the gas, but you had to do it in the public interest. I'm not so sure in principle there is such a big difference there, because what this is about -

Mr STURGES - If I may, Chair, are we going to write to - because in fairness, Bob, I don't want to ambush you - and I'm just mindful that we have *Hansard* recording all this. I think we've got to a point where we put the issue on the table. It appears to me that it is the only outstanding issue. In fairness we probably should be determining, Chair, at the

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risk of me telling you what to do - determining to write to the minister and outline our concerns, then let you have the -

Mr MORRIS - One last question. Bob, related to the point that you said about the three-month period where you were making the \$3000 payment for the fitting of the interlock till the end of October, I noticed in your annual report, in relation to the contracts, the total value of the contracts it says - related to the interlock -

'The service provider will be paid direct by program users, i.e., nil cost to the department.'

So how is the department funding this?

Ms DAVIS - That was the original arrangement before the transition department payment came in.

Mr RUTHERFORD - That was the original arrangement.

Mr MORRIS - The department must have some money somewhere to be making some \$30 000 worth of payments.

A member - Bob's bonus.

Mr RUTHERFORD - I wouldn't quite go there!

Laughter.

Mr MORRIS - There must be a pool of money there, and it must not be intimately tied with the contracts. What I am asking is, it seems like it's a possibility that if we -

Mr RUTHERFORD - I think we found the money to accommodate that issue, but we certainly haven't got a bucket set aside.

Mr MORRIS - No.

Mrs TAYLOR - How much is it costing for the three months you're doing it for?

Mr RUTHERFORD - I'm sorry, I don't have that information.

Mr MORRIS - If there are 97 gone in so far and you have paid for them at \$3000 apiece, that will give us a bit of an indication.

Ms DAVIS - The \$3000 is the total over 15 months, so you're only paying for the installation and up to three months of servicing, so up to \$3000 is probably the entire cost over the 15 months that it would be in place.

Mr MORRIS - So what are you actually paying for?

Ms DAVIS - I believe, I would have to double check, but it's the installation.

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Mrs TAYLOR - Which costs how much?

Ms DAVIS - I would have to check that.

Mr MORRIS - Could you provide us with that information? Is there a limit to the amount per person that you're paying?

Ms DAVIS - There is a limit in terms of the time. If somebody came in in July they would be able to get three months' worth of fees paid.

Mr MORRIS - Till the end of October.

Ms DAVIS - Yes, if they came in in August obviously they would get two months, then -

Mr RUTHERFORD - So it was a calendar day.

Mr MORRIS - Is there an installation fee and then the monthly rental?

CHAIR - Service fee.

Ms RATTRAY - The service fee was \$50 I recall, or around that.

Ms DAVIS - I would have to double check that number.

Mr MORRIS - So that might leave an installation fee of about \$1200 or something.

Ms DAVIS - I would have to check that.

Mr MORRIS - It might be a mechanism to resolve.

CHAIR - Thanks very much for coming back. We will write to the minister and no doubt you will see that letter.

THE WITNESSES WITHDREW.