

MEDIA RELEASE

NEWS FROM THE UNIVERSITY OF TASMANIA

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ATTENTION: Chiefs of Staff, News Directors



Today the Tasmania Law Reform Institute released its Issues Paper No 12:

CRIMINAL LIABILITY OF DRIVERS WHO FALL ASLEEP CAUSING MOTOR VEHICLE CRASHES RESULTING IN DEATH OR OTHER SERIOUS INJURY: *JIMINEZ*.

Fatigue was identified as a crash factor in 20 crashes that resulted in death or serious injury in 2006 on Tasmanian roads (2006 Tasmanian Serious Casualties, DIER). This Issues Paper considers the appropriate role for the criminal law in cases where a driver falls asleep and causes death or serious injury as a result of a motor vehicle crash.

Courts have had cause to consider the criminal responsibility of drivers who fall asleep at the wheel and are involved in crashes on a number of occasions. The leading decision is the case of *Jiminez v The Queen* ((1992) 173 CLR 572) where the High Court held that for a person to be found guilty of causing death or injury by driving, it is necessary for the prosecution to establish that the accused's act of driving was voluntary. And, in fall-asleep cases, the period of driving while asleep does not constitute that voluntary act. This means that the focus of the prosecution case must be on the driving which immediately precedes falling asleep. It is for this prior period of driving that the prosecution must establish criminal fault. A finding that the driver fell asleep may allow the inference of criminal fault to be drawn. However, the High Court also held that the liability for dangerous driving causing death was strict rather than absolute. This means that an accused can rely on the defence of honest and reasonable mistaken belief (that is, the accused can argue that they honestly and reasonably, but mistakenly believed that it was safe to drive). If the jury accepts that there was an absence of warning of the onset of sleep, then the accused is acquitted.

This Issues Paper examines the application of the principles articulated in *Jiminez* to the framework currently in place in Tasmania. An examination of the legal consequences of falling asleep at the wheel highlights the tension between two competing views. On one hand, there is a reluctance to apportion criminal liability to acts over which a person has no conscious control. On the other hand, the community is becoming increasingly aware of the dangers posed by drivers affected by tiredness or some other medical condition which may cause a person to fall asleep. The community has an interest in seeing that drivers are deterred from driving in circumstances where they pose a danger to themselves and other road-users, and are punished if they do so and cause harm or death to others.

Any group or person is invited to respond to this issues paper. Following consideration of all responses it is intended that a final report will be published, containing recommendations.

The Institute invites responses to the Issues Paper by 17 November 2007.

FURTHER INFORMATION/INTERVIEWS:
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Professor Warner is the Director of the Institute.

The Report can be downloaded from www.law.utas.edu.au/reform/
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