



New South Wales

Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014 No 42

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New South Wales

Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014 No 42

Act No 42, 2014

An Act to amend the *Road Transport Act 2013* to make provision with respect to a mandatory alcohol interlock program and further provision with respect to demerit points; and for other purposes. [Assented to 26 August 2014]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Road Transport Act 2013 No 18

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

approved interlock device—see section 45.

driver education course means a course designed to increase knowledge of, and to encourage, safe driving behaviour.

driver knowledge test, in relation to a person, means a test of the person's knowledge of safe driving practices and road law.

interlock condition means the conditions imposed on an interlock driver licence by or under this Act.

interlock device—see section 44.

interlock driver licence—see section 209 (1).

mandatory interlock order—see section 211.

[2] Section 4 (1), definition of “threshold number of demerit points”

Insert at the end of the definition:

, and

- (c) for the holder of an unrestricted driver licence (other than a professional driver)—13 or more demerit points, and
- (d) for the holder of an unrestricted driver licence who is a professional driver—14 or more demerit points.

[3] Section 9 Determination of “first offence” and “second or subsequent offence”

Insert “or the making of mandatory interlock orders” after “forfeitures” in the note to section 9 (1).

[4] Section 36 Driver may elect to be of good behaviour as alternative

Insert “(the *original suspension day*) or, if the person is required by notice given under section 43A to undertake a driver knowledge test, the later of the original suspension day and the day on which the person undertakes and passes the test to the satisfaction of the Authority” after “be suspended” in section 36 (1) (a).

[5] Section 36 (1) (b) (i)

Insert “(the *original ineligibility day*)” after “effect”.

[6] Section 36 (1A)

Insert after section 36 (1):

- (1A) Despite subsection (1) (b), if a person who makes an election under that paragraph is required by notice given under section 43A to undertake a driver knowledge test, the good behaviour period is for a period of 12 months from the later of the original ineligibility day or day of election (as the case requires) and the day on which the person undertakes and passes the test to the satisfaction of the Authority.

[7] Section 43A

Insert after section 43:

43A Consequences for repeated incurring of threshold number of demerit points

- (1) The Authority may, by notice in writing, require the holder of an unrestricted driver licence who incurs the threshold number of demerit points on 2 occasions within a period of 5 years to undertake a driver knowledge test or driver education course, or both, specified in the notice.
- (2) The Authority may, by notice in writing, require the holder of a provisional P1 licence or provisional P2 licence who incurs the threshold number of demerit points on 2 occasions (whether or not within a period of 5 years) to undertake a driver knowledge test specified in the notice.
- (3) Notice under this section must specify the period within which the driver knowledge test or driver education course must be undertaken and must contain any other matters specified in the statutory rules.
- (4) The person to whom a notice is given under this section must undertake the required test or course within the period specified by the notice (or such longer period as the Authority may allow).
- (5) Notice may be given under this section whether or not the person has been given a notice of licence suspension or notice of licence ineligibility under section 33, 35, 40 or 41 as a result of incurring the threshold number of demerit points justifying the giving of the notice under this section and whether or not a person has given notification of an election under section 36.
- (6) Any period of licence suspension or licence ineligibility applicable to a person required to undertake a driver knowledge test by notice given under this section is extended until such time as the person has undertaken, and passed to the satisfaction of the Authority, the driver knowledge test.
- (7) The Authority may give a notice to a person required to undertake a driver education course by notice under this section who fails to undertake the course suspending all driver licences held by the person until such time as the person undertakes the course to the satisfaction of the Authority.

[8] Section 44 Definitions

Omit "Part". Insert instead "Act".

[9] Section 44

Omit the definitions of *approved interlock device*, *approved interlock installer* and *approved interlock service provider*.

[10] Section 44

Insert in alphabetical order:

accredited interlock service provider means a person accredited by the Authority under section 46 to exercise functions with respect to interlock services.

interlock services include the supply, installation, removal, inspection, testing and maintenance of interlock devices and collection and provision of data concerning the installation and use of interlock devices.

[11] Section 45 Meaning of “approved interlock device”

Omit “Part”. Insert instead “Act”.

[12] Section 46 Meaning of “accredited interlock service provider”

Omit section 46 (1)–(4). Insert instead:

- (1) The Authority may enter into an agreement with a person about the exercise of functions by the person with respect to the provision of interlock services for the purposes of this Part and Division 2 of Part 7.4 (an *interlock services agreement*).
- (2) An agreement may (without limiting the matters with respect to which it may make provision) include provision about the following:
 - (a) pricing arrangements for provision of interlock services,
 - (b) setting and maintenance of service standards (including, without limitation, standards relating to the process of installing, maintaining and removing interlock devices and delivery of services),
 - (c) the provision, sharing and protection of data recorded on interlock devices.
- (3) The functions of an accredited interlock service provider may be exercised by any employee or agent of the accredited interlock service provider authorised to do so by the accredited interlock service provider.
- (4) The Authority may, by order in writing, accredit a person referred to in subsection (1) as an accredited interlock service provider.

[13] Section 46 (5)

Omit “approved interlock installer or approved interlock service provider”.

Insert instead “accredited interlock service provider or an employee or agent of such a provider”.

[14] Section 47 Statutory rules concerning installation, maintenance and use of interlock devices

Omit “(whether or not for the purposes of a disqualification suspension order within the meaning of section 208)” from section 47 (1).

[15] Section 47 (2) (a)

Omit the paragraph. Insert instead:

- (a) provide for the issue of interlock driver licences that restrict the holders of such licences to driving motor vehicles that are fitted with approved interlock devices by accredited interlock service providers, and

[16] Section 47 (2) (a1)

Insert after section 47 (2) (a):

- (a1) without limiting paragraph (a), make provision with respect to the period during which an interlock driver licence issued to a person who is the holder of a relevant Australian driver licence of another jurisdiction that is subject to a requirement under a law of that jurisdiction allowing the person to drive only a motor vehicle fitted with an interlock device (however described) is to be subject to interlock conditions, and

- [17] **Section 47 (2) (f) and (g)**
Omit the paragraphs.
- [18] **Section 48 Financial assistance for use of approved interlock devices**
Omit “for the installation, removal or maintenance of such devices” from section 48 (1).
Insert instead “with respect to the cost of interlock services”.
- [19] **Section 48 (5)**
Omit the subsection. Insert instead:
(5) Financial assistance is to be paid from the Roads and Maritime Services Fund established by section 77 of the *Transport Administration Act 1988*.
- [20] **Section 107 Definitions**
Insert in alphabetical order in section 107 (1):
applicable interlock driver licence means an interlock driver licence issued on or after the commencement of this definition.
- [21] **Section 107 (1), definition of “novice driver”**
Omit “licence or applicable provisional licence” from paragraph (a) of the definition.
Insert instead “licence, applicable provisional licence or applicable interlock driver licence”.
- [22] **Section 107 (1), definition of “novice driver”, paragraph (b)**
Omit “licence or applicable provisional licence”.
Insert instead “licence, applicable provisional licence or applicable interlock driver licence”.
- [23] **Section 107 (1), definition of “novice driver”, paragraph (c)**
Omit “licence or applicable provisional licence”.
Insert instead “licence, applicable provisional licence or applicable interlock driver licence”.
- [24] **Section 107 (2) (a)**
Omit “or applicable provisional licence”.
Insert instead “, applicable provisional licence or applicable interlock driver licence”.
- [25] **Section 107 (2) (b) (iii)**
Omit “licence or applicable provisional licence”.
Insert instead “licence, applicable provisional licence or applicable interlock driver licence”.
- [26] **Section 107 (2) (b) (iv)**
Omit “or an interlock driver licence” after “provisional licence”.
- [27] **Section 204 Court may disqualify driver on conviction**
Insert “and Division 2” after “disqualification provision” in section 204 (1).

[28] Section 205 Disqualification for certain major offences

Omit section 205 (6). Insert instead:

(6) Relationship to Division 2

This section does not (except as provided by section 212 (2)) apply to a person to whom Division 2 applies.

[29] Part 7.4, Division 2

Omit the Division. Insert instead:

Division 2 Mandatory alcohol interlock program

208 Application of Division

- (1) This Division applies to and in respect of a person convicted of a mandatory interlock offence committed on or after the commencement of this section.
- (2) This Division does not apply to or in respect of a person convicted of a mandatory interlock offence who is declared to be a habitual traffic offender by operation of section 217 (whether or not as a result of the conviction).

209 Definitions

- (1) In this Division:

alcohol-related major offence means the following:

- (a) an offence against section 110 (1) (a) or (b),
- (b) an offence against section 110 (2) (a), (b) or (c),
- (c) an offence against section 110 (3) (a), (b) or (c),
- (d) an offence against section 110 (4) (a), (b) or (c),
- (e) an offence against section 110 (5) (a), (b) or (c),
- (f) an offence against section 112 (1) (a), (b) or (c) involving driving a motor vehicle while under the influence of alcohol,
- (g) an offence against clause 16 (1) (b) or 17 (1) (a1) of Schedule 3,
- (h) any other offence that, at the time it was committed, was an alcohol-related major offence for the purposes of this Division or a former corresponding provision to this Division.

converted interlock period—see section 213 (5).

former corresponding provision of this Division includes a provision of this Division as in force before its substitution by the *Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014*.

interlock driver licence means a conditional licence that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device.

interlock exemption order means an order under section 212.

interlock period, in relation to a person, means the period:

- (a) starting on the day the person is issued with an interlock driver licence, and
- (b) ending on the later of the expiry of the interlock period applicable to the person under section 211 or the converted interlock period applicable to the person.

mandatory interlock offence means any of the following offences:

- (a) an offence against section 110 (1) (a) or (b) that is a second or subsequent offence by the offender for any other alcohol-related major offence,
- (b) an offence against section 110 (2) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence,
- (c) an offence against section 110 (3) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence,
- (d) an offence against section 110 (4) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence,
- (e) an offence against section 110 (5) (a), (b) or (c) that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence,
- (f) an offence against section 112 (1) (a), (b) or (c) that involved driving under the influence of alcohol and that is a second or subsequent offence by the offender for any other alcohol-related major offence,
- (g) an offence against clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence that involved driving under the influence of alcohol,
- (h) any other offence prescribed by the statutory rules.

Note. Section 9 (3) (a) provides that an offence is a second or subsequent offence to another offence if the person is convicted of the offences within a 5-year period.

mandatory interlock order means an order under section 211.

offender means a person convicted of a mandatory interlock offence.

participation in an interlock program—see section 215.

- (2) For the purposes of section 9 (5) (e), an offence against an alcohol-related major offence is declared to be an equivalent offence to any other alcohol-related major offence (whether of the same or a different kind).

210 Sanctions with respect to mandatory interlock offences

A court that convicts a person of a mandatory interlock offence committed on or after the commencement of this section must, at the time of conviction, make one of the following orders in respect of the person:

- (a) a mandatory interlock order,
- (b) an interlock exemption order.

211 Mandatory interlock orders

- (1) A mandatory interlock order is an order that:
 - (a) disqualifies a person convicted of a mandatory interlock offence from holding any driver licence for a period, being:
 - (i) the minimum disqualification period for that kind of mandatory interlock offence, or
 - (ii) a longer period (not exceeding the maximum disqualification period for that kind of offence) specified by the court, and

- (b) disqualifies the person from holding a driver licence (other than a learner licence or interlock driver licence) during the period of 5 years commencing on the day of the conviction unless the person has first held an interlock driver licence:
- (i) for a period (or periods in total) equivalent to the minimum interlock period, or
 - (ii) for a longer period specified by the court.
- (2) In this section:
- maximum disqualification period* for a mandatory interlock offence of a kind described in Column 1 of the Table to this section means the maximum disqualification period set out opposite the offence in Column 3 of that Table.
- minimum disqualification period* for a mandatory interlock offence of a kind described in Column 1 of the Table to this section means the minimum disqualification period set out opposite the offence in Column 2 of that Table.
- minimum interlock period* for a mandatory interlock offence of a kind described in Column 1 of the Table to this section means the minimum interlock period set out opposite the offence in Column 4 of that Table.
- (3) Any disqualification under this section is in addition to any penalty imposed for the offence.

Table

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|--|--|---------------------------------|
| Mandatory interlock offence | Minimum disqualification period | Maximum disqualification period | Minimum interlock period |
| An offence against section 110 (1) (a) or (b), (2) (a), (b) or (c) or (3) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence | 1 month | 3 months | 12 months |
| An offence against section 110 (4) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence | 6 months | 9 months | 24 months |
| An offence against section 110 (5) (a), (b) or (c) that is a first offence by the offender for any alcohol-related major offence | 6 months | 9 months | 24 months |
| An offence against section 110 (5) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence | 9 months | 12 months | 48 months |
| An offence against section 112 (1) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence | 6 months | 9 months | 24 months |

| Column 1 | Column 2 | Column 3 | Column 4 |
|--|--|--|---------------------------------|
| Mandatory interlock offence | Minimum disqualification period | Maximum disqualification period | Minimum interlock period |
| An offence against clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 that is a first offence by the offender for any alcohol-related major offence | 6 months | 9 months | 24 months |
| An offence against clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 that is a second or subsequent offence by the offender for any other alcohol-related major offence | 9 months | 12 months | 48 months |

212 Interlock exemption orders

- (1) An interlock exemption order is an order that exempts an offender from the operation of section 211.
- (2) Section 205 (Disqualification for certain major offences) applies to and in respect of an offender to whom an interlock exemption order applies.

Note. If an interlock exemption order is made, the offender concerned will automatically be disqualified from holding a driver licence for the relevant period set out in section 205 and will not be subject to the requirement to participate in an interlock program.
- (3) A court may make an interlock exemption order only if the offender proves to the court's satisfaction:
 - (a) that the offender does not have access to a vehicle in which to install an interlock device, or

Note. For example, there is only one vehicle to which the offender has access in which an interlock device could be installed and it is used jointly with a family member or other person who has a medical condition preventing the person from providing a sufficient breath sample to operate the device and it is not reasonably practicable to modify the device.
 - (b) that the offender has a medical condition diagnosed by a registered medical practitioner that prevents the offender from providing a sufficient breath sample to operate an approved interlock device and it is not reasonably practicable for an interlock device to be modified to enable the offender to operate the device.
- (4) A person has *access* to a vehicle for the purposes of subsection (3):
 - (a) if the person is the registered operator, owner or part owner of the vehicle or shares the use of the vehicle with the registered operator, owner or part owner of the vehicle, and
 - (b) it is reasonable in all the circumstances to install an interlock device in the vehicle.
- (5) An interlock exemption order must not be made merely because an offender:
 - (a) cannot afford the cost of installing or maintaining an approved interlock device, or

Note. Financial assistance for use of approved interlock devices is available in certain cases—see section 48.

- (b) will be prevented from driving a vehicle in the course of his or her employment if the interlock exemption order is made, or
- (c) has access to a vehicle but the registered operator of the vehicle refuses to consent to the installation of an interlock device in the vehicle.

Note. For example, the offender's wife is the registered operator of the only vehicle to which he has access and she refuses consent to installation of an interlock device in it; the offender owns a chauffeur-driven limousine business and seeks exemption from installing an interlock device in cars used in the business.

- (6) The Authority may, by notice in writing given to an offender to whom an interlock exemption order applies, require the offender to undergo a drink driving education program nominated by the Authority within a period specified by the Authority.

213 Conversion of disqualification period of offender to whom interlock exemption order applies into interlock period

- (1) This section applies to an offender to whom an interlock exemption order applies who has completed so much of the disqualification period applicable to the offender under section 205 as is equivalent to the minimum disqualification period that would have been required to be imposed on the offender under section 211 (1) (a) (i) if the interlock exemption order had not been made.
- (2) The Authority may suspend the disqualification period applicable under section 205 to the offender by issuing an interlock driver licence to the offender under this section.
- (3) The Authority must not issue an interlock driver licence under this section unless:
 - (a) the offender satisfies the Authority that there has been a change in the circumstances that existed when the interlock exemption order applying to the offender was made that makes the participation of the offender in an interlock program feasible or practicable, and
 - (b) any other requirements for issue of such an interlock driver licence under this Act have been satisfied.
- (4) The issue of an interlock driver licence under this section operates to suspend the disqualification of the offender and convert so much of the disqualification period applicable under section 205 as has not been completed (the *incomplete disqualification period*) into a converted interlock period.
- (5) The converted interlock period is the period:
 - (a) commencing on the day the interlock driver licence is issued, and
 - (b) ending on the later of the day on which:
 - (i) the disqualification period (or periods in total) equivalent to the incomplete disqualification period ends, or
 - (ii) the minimum interlock period (or periods in total) would have ended if a mandatory interlock order had been made against the offender under section 211 (1) (a) (i).
- (6) The suspension under subsection (4) ceases to have effect before the end of the converted interlock period if the offender ceases to participate in an interlock program.

Note. Section 215 (2) provides for cessation of participation in an interlock program.

- (7) If such a suspension ceases to have effect, the offender is disqualified from holding a driver licence (other than an interlock driver licence or a learner licence) until the day on which a period of 5 years commencing on the day the offender was convicted of the relevant mandatory interlock offence ends.

214 Dangerous driving offences in respect of which interlock orders may be made

- (1) This section applies to a person who is:
- (a) convicted of a prescribed dangerous driving offence on or after the commencement of this section, and
 - (b) disqualified by or because of the conviction or offence from holding a driver licence for a particular period.
- (2) A person to whom this section applies may, in addition to being disqualified by or because of the conviction or offence, be disqualified by the court convicting the offender from holding a driver licence (other than a learner licence) unless the person has first held an interlock driver licence for a period specified by the court of not less than 36 months.
- (3) Any interlock order under this section is in addition to any penalty imposed for the offence.
- (4) In this section:
- prescribed dangerous driving offence* means the following:
- (a) an offence under section 52A (1) (a) or (3) (a) of the *Crimes Act 1900* in circumstances where at the time of the impact occasioning death the accused was under the influence of intoxicating liquor,
 - (b) an offence under section 52A (2) of the *Crimes Act 1900* in circumstances where at the time of the impact occasioning death the prescribed concentration of alcohol was present in the accused's breath or blood,
 - (c) an offence under section 52A (4) of the *Crimes Act 1900* in circumstances where at the time of the impact occasioning grievous bodily harm the prescribed concentration of alcohol was present in the accused's breath or blood.

215 Participation in an interlock program

(1) **Commencement of participation in interlock program and interlock period**

A person commences to participate in an interlock program on the date on which the person is issued with an interlock driver licence. The interlock period applicable to the person also commences on that date.

(2) **Cessation of participation**

A person ceases to participate in an interlock program:

- (a) if and when the person is convicted by a court of a major offence during the interlock period, or
- (b) during any period in which the person ceases to hold an interlock driver licence before the expiry of the interlock period applicable to the person (whether by reason of cancellation of the licence or otherwise), or
- (c) if and when the person is issued with a licence without an interlock condition.

Note. The statutory rules provide that an applicant for issue of a licence may be required to undergo a fitness to drive assessment or do certain other things.

- (3) Without limiting the grounds on which the Authority may refuse to issue a licence without an interlock condition as referred to in subsection (2) (c), it may refuse to issue the licence because of any contravention by the holder of an interlock driver licence of any interlock condition or any medical assessment concerning the holder's fitness to drive.

215A Effect of completion of interlock period

- (1) At the end of the day on which the holder of an interlock driver licence completes the interlock period applicable to the holder:
- (a) the disqualification period referred to in section 211 (1) (a) in respect of which a mandatory interlock order or interlock exemption order was originally made or the incomplete disqualification period referred to in section 213 is taken to have expired, and
 - (b) the holder is entitled to apply (if otherwise eligible) for a licence without an interlock condition.
- (2) Nothing in this section confers a right on the holder of an interlock driver licence who has completed an interlock period applicable to the holder to be issued with a licence without an interlock condition.
- (3) Any period during which an interlock driver licence held by a person is suspended is not to be taken into account in determining whether the person has completed the interlock period applicable to the person for the purposes of this section.

215B Entitlement to apply for interlock driver licence

- (1) A person in respect of whom a mandatory interlock order is made is entitled to apply for an interlock driver licence despite being disqualified from holding a licence:
- (a) if the application is made before the expiry of the disqualification period applicable to the person—no earlier than 28 days before the expiry of that period, or
 - (b) at any time after the expiry of that period.
- (2) A person in respect of whom an interlock exemption order is made is entitled to apply for an interlock driver licence under section 213 despite being disqualified from holding a licence:
- (a) at any time after the end of the minimum disqualification period referred to in section 213 and no earlier than 28 days before the expiry of that period, or
 - (b) at any time after the expiry of the disqualification period.
- (3) However, nothing in this Division confers a right on a person in respect of whom a mandatory interlock order or interlock exemption order is made to be issued with an interlock driver licence.

[30] Section 225 Effect of immediate licence suspension notice

Insert “or in deciding any period of disqualification to be imposed by an order under section 211” after “section 205” in section 225 (3) (a).

[31] Section 225 (3) (b)

Omit “that section”. Insert instead “section 205 or 211”.

[32] Schedule 1 Examples of statutory rule-making powers

Insert at the end of clause 1 (2) (o):

, and

- (p) without limiting paragraph (n) or (o), driver education courses to be undertaken by holders of driver licences who have exceeded the threshold number of demerit points.

[33] Schedule 4 Savings, transitional and other provisions

Insert at the end of the Schedule with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014

Definition

In this Part:

amending Act means the *Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014*.

Use of interlock devices as alternative to disqualification

- (1) Division 2 of Part 7.4, as in force immediately before its substitution by the amending Act, continues to apply to a person in respect of whom a disqualification suspension order (within the meaning of that Division) was made before that substitution.
- (2) The conditions to which an interlock driver licence issued to a person referred to in subclause (1) was subject immediately before that substitution continue to have effect until the expiry of the interlock participation period applicable to the person.
- (3) However, an interlock driver licence issued to a person referred to in subclause (1) after that substitution (whether or not applied for before that substitution) is subject to the conditions applicable to an interlock driver licence issued on or after that substitution.

Existing approved interlock installers and approved interlock service providers

- (1) Without limiting section 26 of the *Interpretation Act 1987*, an interlock services agreement (within the meaning of section 46 as amended by the amending Act) may be entered into before the commencement of the amendments made to section 46 by the amending Act.
- (2) A person who, immediately before the commencement of the amendments to section 46 made by the amending Act, held an approval for a specified period as an interlock installer or an interlock service provider, or both, may (subject to any conditions to which that approval was subject) continue to exercise the functions the person was approved to exercise until the end of that period as if the person were an accredited interlock service provider.
- (3) The Authority may revoke the accreditation of a person referred to in subclause (2), and revoke or vary any conditions referred to in that subclause, by notice in writing given to the person.

Demerit points

Demerit points recorded in the NSW demerit points register immediately before the commencement of section 43A may be counted towards determining a threshold number of demerit points reached after the commencement of that section.

[Second reading speech made in—
Legislative Assembly on 17 June 2014
Legislative Council on 13 August 2014]