

Passed by both Houses



New South Wales

Road Transport Legislation Amendment (Interlock Devices) Bill 2002

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2002*



New South Wales

Road Transport Legislation Amendment (Interlock Devices) Bill 2002

Act No , 2002

An Act to amend the *Road Transport (General) Act 1999* to provide for the use of breath alcohol interlock devices as a partial alternative to licence disqualification for certain alcohol-related driving offences; to make amendments to the *Road Transport (Driver Licensing) Act 1998* relating to the issue of conditional licences restricting their holders to driving motor vehicles fitted with such devices and to the installation, removal, maintenance and use of such devices; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Road Transport Legislation Amendment (Interlock Devices) Act 2002*.

2 Commencement

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

3 Amendment of Road Transport (General) Act 1999 No 18

The *Road Transport (General) Act 1999* is amended as set out in Schedule 1.

4 Amendment of Road Transport (Driver Licensing) Act 1998 No 99

The *Road Transport (Driver Licensing) Act 1998* is amended as set out in Schedule 2.

Schedule 1 Amendment of Road Transport (General) Act 1999

(Section 3)

[1] Part 3 Enforcement of road transport legislation and other legislation

Insert the following heading before section 24:

Subdivision 1 General

[2] Section 25 Disqualification for certain major offences

Insert after section 25 (5):

(6) Relationship to Subdivision 2

This section has effect subject to the provisions of Subdivision 2.

[3] Part 3, Division 3, Subdivision 2

Insert after section 25:

Subdivision 2 Use of interlock devices as alternative to disqualification

25A Interpretation

In this Subdivision:

alcohol-related major offence means any of the following offences:

- (a) an offence under section 9 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (b) an offence under section 9 (2) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (c) an offence under section 9 (3) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (d) an offence under section 9 (4) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999*,

- (e) an offence under section 12 (1) (a) or (b) of the *Road Transport (Safety and Traffic Management) Act 1999* where the offence involved driving under the influence of alcohol,
- (f) an offence under section 15 (4) of the *Road Transport (Safety and Traffic Management) Act 1999*.

disqualification compliance period, in relation to a person, means the disqualification compliance period applying to the person under section 25D (a).

disqualification period, in relation to a person, means the disqualification period applying to the person for the purposes of section 25C.

disqualification suspension order, in relation to a person, means an order made under section 25C that, subject to certain conditions, may operate to suspend a disqualification under section 25 of the person from holding a driver licence.

interlock driver licence means a conditional licence issued under the *Road Transport (Driver Licensing) Act 1998* that restricts the holder of the licence to driving a motor vehicle fitted with an approved interlock device (within the meaning of Part 2A of that Act).

interlock participation period, in relation to a person, means the period during which the person must participate in an interlock program for the purposes of a disqualification suspension order.

25B Subdivision does not apply to habitual traffic offenders

This Subdivision does not apply in respect of a person convicted of an alcohol-related major offence who is declared to be an habitual traffic offender by operation of section 28 (whether or not as a result of the conviction).

25C Disqualification period may be suspended for participation in interlock program

If a court convicts a person of an alcohol-related major offence and the person is disqualified from holding a driver licence by or under section 25 (2) or (3) for a period (the ***disqualification period***), the court may order that the disqualification of the

person be suspended if the person participates in an interlock program for:

- (a) the minimum interlock participation period specified in column 2 of Schedule 1A set out opposite the category of offender specified in column 1 of that Schedule to which the person belongs, or
- (b) such greater interlock participation period as the court may order.

25D When person may participate in interlock program

A person in respect of whom a disqualification suspension order is made is entitled to participate in an interlock program only if:

- (a) the disqualification compliance period specified in column 3 of Schedule 1A set out opposite the category of offender specified in column 1 of that Schedule to which the person belongs has expired, and
- (b) the person is issued with an interlock driver licence by the Authority under the *Road Transport (Driver Licensing) Act 1998*.

25E Entitlement to apply for interlock driver licence

- (1) A convicted person in respect of whom a disqualification suspension order is made is entitled to apply for an interlock driver licence despite his or her disqualification:
 - (a) if the application is made before the expiry of the disqualification compliance 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 the disqualification compliance period but before the expiry of the disqualification period.
- (2) However, nothing in this Subdivision confers a right on a person in respect of whom a disqualification suspension order is made to be issued with an interlock driver licence.

25F When disqualification suspension order has effect

- (1) **When order operates to suspend disqualification**
A disqualification suspension order operates to suspend a disqualification while the person in respect of whom the order was made participates in an interlock program.
- (2) **Early termination of order**
A disqualification suspension order ceases to have effect before the expiry of the interlock participation period if the person ceases to participate in an interlock program.
- (3) **Effect of early termination of order**
If a disqualification suspension order ceases to have effect before the expiry of the interlock participation period, the person to whom the order relates is disqualified from holding a driver licence for the period equal to the difference between:
 - (a) the disqualification period originally applicable to the person, and
 - (b) the period of disqualification that had already been completed immediately before the disqualification suspension order operated to suspend the original disqualification.
- (4) **Effect of suspension of interlock driver licence on order**
If the interlock driver licence of a person in respect of whom a disqualification suspension order is made is suspended during the interlock participation period:
 - (a) the order does not cease to have effect only because the driver licence is suspended, and
 - (b) the period of suspension is to be added to the interlock participation period applicable to the person for the purposes of determining when the interlock participation period expires.

25G Participation in an interlock program

- (1) **Commencement of participation in interlock program and interlock participation period**
A person in respect of whom a disqualification suspension order is made commences to participate in an interlock program

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

(2) **Early cessation of participation**

A person in respect of whom a disqualification suspension order is made ceases to participate in an interlock program if and when:

- (a) the person is convicted by a court of a major offence during the interlock participation period and the court does not order that the disqualification suspension order continue in effect despite the conviction, or
- (b) the person ceases to hold an interlock driver licence before the expiry of the interlock participation period (whether by reason of cancellation of the licence or otherwise).

25H Effect of successful participation in interlock program

If a disqualification suspension order does not cease to have effect before the expiry of the interlock participation period:

- (a) the order ceases to have effect on the expiry of that period, and
- (b) the disqualification period in respect of which the order was originally made is taken to have expired on the expiry of the interlock participation period.

[4] Part 3, Division 3, Subdivision 3

Insert before section 26:

Subdivision 3 Effect of disqualification

[5] Section 26 Effect of disqualification

Omit “A person” from section 26 (4).

Insert instead “Subject to the provisions of Subdivision 2, a person”.

[6] Schedule 1A

Insert after Schedule 1:

Schedule 1A Interlock participation and disqualification compliance periods

(Sections 25C (a) and 25D (a))

Column 1	Column 2	Column 3
Category of offender	Minimum interlock participation period	Disqualification compliance period
1. A person convicted of an offence under section 9 (3) (a) or (b), (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is not or has not been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months
2. A person convicted of an offence under section 9 (4) (a) or (b), 12 (1) (a) or (b) or 15 (4) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	48 months	12 months
3. A person convicted of an offence under section 9 (3) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	24 months	6 months

Column 1	Column 2	Column 3
Category of offender	Minimum interlock participation period	Disqualification compliance period
4. A person convicted of an offence under section 9 (1) (a) or (b) or (2) (a) or (b) of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> who, at the time of the conviction or during the period of 5 years before the conviction, is or has been convicted of any other alcohol-related major offence (whether of the same or a different kind).	12 months	3 months

Schedule 2 Amendment of Road Transport (Driver Licensing) Act 1998

(Section 4)

Part 2A

Insert after Part 2:

Part 2A Interlock devices

21 Definitions

In this Part:

approved interlock device—see section 21A.

approved interlock installer—see section 21B (1).

approved interlock service provider—see section 21B (2).

interlock device means a device designed to:

- (a) analyse a breath sample for the presence of alcohol, and
- (b) prevent a motor vehicle from being started if it detects more than a certain concentration of alcohol.

interlock driver licence—see section 21C (2) (a).

maintenance, in relation to an interlock device, includes (but is not limited to) the following:

- (a) the retrieval of any information that is stored electronically by or with the device,
- (b) any work that improves or augments the functionality of the device.

21A Approved interlock devices

In this Part, an *approved interlock device* is an interlock device of a type approved by the Authority by order published in the Gazette.

Note. The Authority may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.

21B Approved interlock installers and service providers

- (1) In this Part, an *approved interlock installer* means a person approved in writing by the Authority as a person who may install and remove approved interlock devices in motor vehicles for the purposes of this Part.
- (2) In this Part, an *approved interlock service provider* means a person approved in writing by the Authority as a person who may carry out maintenance to ensure the proper operation of approved interlock devices, or conduct inspections of such devices, for the purposes of this Part.
- (3) A person may be both an approved interlock installer and approved interlock service provider for the purposes of this Part.
- (4) The Authority may revoke any approval given to a person under this section by written notice given to the person.

Note. Section 44 of the *Road Transport (General) Act 1999* provides for the service and giving of documents to persons under the road transport legislation, which includes this Act.

- (5) The Authority is not liable in civil proceedings (whether for negligence or otherwise) for anything done or omitted to be done by an approved interlock installer or approved interlock service provider in exercising (or purportedly exercising) any function under this Act or the regulations. In particular, the Authority is not vicariously liable for any such act or omission.

21C Regulations may provide for installation, maintenance and use of interlock devices

- (1) Without limiting section 20, the regulations may make provision for or with respect to the installation, removal and maintenance of interlock devices on motor vehicles and the use of such devices (whether or not for the purposes of a disqualification suspension order within the meaning of section 25A of the *Road Transport (General) Act 1999*).
- (2) Without limiting the scope of the regulations under subsection (1), the regulations may:
 - (a) provide for the issue of conditional licences (*interlock driver licences*) that restrict the holders of such licences to driving motor vehicles fitted with approved interlock devices by approved interlock installers, and

- (b) require (or authorise the Authority to require) applicants for interlock driver licences to submit to medical consultations before such applicants can be issued with such licences or at any time during which such licences are in force, and
- (c) prescribe additional conditions (or authorise the Authority to impose conditions) that holders of interlock driver licences must observe, including (but not limited to) the following:
 - (i) conditions relating to the maximum concentration of alcohol that may be present in the blood of holders of such licences when they drive motor vehicles,
 - (ii) conditions relating to the installation, maintenance and removal of interlock devices (including the payment of costs relating to such installation, maintenance or removal),
 - (iii) conditions relating to the inspection of interlock devices (or motor vehicles fitted with such devices) and the provision of information relating to such inspections to the Authority,
 - (iv) conditions relating to the provision of any data or other information collected by an interlock device (including the payment of any costs relating to the provision of such data or other information),
 - (v) any other conditions relating to the use of interlock devices, and
- (d) provide for certain motor vehicles (or classes of motor vehicles) not to be driven by holders of interlock driver licences,
- (e) provide for the Authority to inspect motor vehicles fitted with interlock devices (or require such motor vehicles to be inspected by other persons), and
- (f) specify procedures (or authorise the Authority to specify procedures) for approved interlock installers and approved interlock service providers to observe when installing, removing, inspecting or carrying out maintenance on approved interlock devices, and

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- (g) provide for applications by persons to be approved by the Authority as approved interlock installers or approved interlock service providers and for fees payable in respect of such applications, and
 - (h) authorise a police officer:
 - (i) to stop and inspect motor vehicles that the officer reasonably suspects may be fitted with an interlock device, and
 - (ii) to seize any such motor vehicles or devices where the device is fitted to a motor vehicle driven by the holder of an interlock driver licence and the officer reasonably suspects that the device has been used in contravention of this Act or the regulations, and
 - (i) provide for offences relating to the following:
 - (i) the use of approved interlock devices, or the use of devices that are not approved interlock devices, by holders of interlock driver licences,
 - (ii) tampering or other interference with approved interlock devices fitted to motor vehicles driven (or to be driven) by holders of interlock driver licences, or with breath samples provided for such devices,
 - (iii) the installation, maintenance or removal of interlock devices that are used (or may be used) by holders of interlock driver licences,
 - (iv) the provision of data or information concerning interlock devices that are used (or may be used) by holders of interlock driver licences,
 - (v) any other acts or omissions that may assist the holder of an interlock driver licence in contravening any conditions of the licence or committing an offence against this Act or the regulations.

21D Financial assistance for use of approved interlock devices

- (1) The Authority must establish a scheme under which persons seeking to gain the use of, or who are using, approved interlock devices may obtain financial assistance for the installation, removal or maintenance of such devices.

- (2) The Authority may approve the provision of financial assistance under this section subject to any means tests and conditions as may be determined by the Authority from time to time.
- (3) If it is a condition of the provision of any financial assistance provided under this section that all or part of it be repaid in specified circumstances, the amount of financial assistance that becomes repayable on the occurrence of those circumstances is a debt due to the Crown recoverable in a court of competent jurisdiction.
- (4) For the purposes of subsection (3), a certificate issued by the Authority that certifies that it was a condition of the provision of financial assistance that all or part of it be repaid in specified circumstances is prima facie evidence that the assistance was provided on that condition.
- (5) Payments of financial assistance are to be paid from the Roads and Traffic Authority Fund established by section 77 of the *Transport Administration Act 1988*.