



New South Wales

# Road Transport (Driver Licensing) Amendment (Mandatory Alcohol Interlock Program) Regulation 2015

under the

Road Transport Act 2013

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport Act 2013*.

DUNCAN GAY, MLC  
Minister for Roads and Freight

## Explanatory note

The object of this Regulation is to amend the *Road Transport (Driver Licensing) Regulation 2008*:

- (a) to make provision with respect to the mandatory alcohol interlock program established by the *Road Transport Act 2013* (as amended by the *Road Transport Amendment (Mandatory Alcohol Interlock Program) Act 2014*), including the issue of interlock driver licences for the purposes of that program, and
- (b) to provide for a new scheme for the issue of interlock driver licences by the Authority, other than those issued under the mandatory alcohol interlock program, and
- (c) to make provision with respect to the regulation of the installation, removal, maintaining and carrying out of other functions in relation to interlock devices, and
- (d) to make provision with respect to applications made by holders of interlock driver licences from other Australian jurisdictions for the issue of interlock driver licences of this State.

This Regulation is made under the *Road Transport Act 2013*, including sections 23 (the general regulation-making power), 24, 30 and 47 and Schedule 1.

## **Road Transport (Driver Licensing) Amendment (Mandatory Alcohol Interlock Program) Regulation 2015**

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### **1 Name of Regulation**

This Regulation is the *Road Transport (Driver Licensing) Amendment (Mandatory Alcohol Interlock Program) Regulation 2015*.

### **2 Commencement**

This Regulation commences on 1 February 2015 and is required to be published on the NSW legislation website.

## **Schedule 1 Amendment of Road Transport (Driver Licensing) Regulation 2008**

### **[1] Clause 4 Definitions**

Insert in alphabetical order in clause 4 (1):

*external interlock driver licence* means an Australian driver licence of another jurisdiction that is subject to a requirement under a law of that jurisdiction allowing the holder to drive only a motor vehicle fitted with an interlock device (however described).

### **[2] Clause 46 When application for driver licence can be refused**

Insert at the end of clause 46 (2) (d):

, or

- (e) if the applicant is a person who, if already licensed, would be liable to have action taken against the person under section 43A (7) of the Act.

### **[3] Clause 47 Issue and variation of driver licence**

Insert “(subject to subclause (2A) and clause 72)” after “must” in clause 47 (1).

### **[4] Clause 47 (2A)**

Insert after clause 47 (2):

- (2A) If an applicant for a driver licence is the holder of an external interlock driver licence, the Authority may issue a licence that is an interlock driver licence.

### **[5] Clause 55 Variation, suspension or cancellation of driver licence by Authority**

Insert after clause 55 (3):

- (3A) Without limiting subclause (1), the Authority may vary an interlock driver licence by recording in the NSW driver licence register the removal of the interlock condition to which it is subject if:
- (a) the holder of the licence has completed the applicable interlock period, and
- (b) the Authority is satisfied that the holder has not, during the applicable interlock period, contravened a condition of the licence imposed under clause 72 (3) or 74 (1) (e) or (f), other than a contravention that led to a suspension or other sanction.
- (3B) Any period during which an interlock driver licence held by a person is suspended is not to be taken into account when determining whether the person has completed the interlock period applicable to the person for the purposes of subclause (3A).
- (3C) The holder of an interlock driver licence varied under subclause (3A) is not required to observe any of the interlock conditions to which the licence was subject before the variation.

### **[6] Clause 55 (5)**

Insert after clause 55 (4):

- (5) In this clause:
- applicable interlock period*, in relation to the holder of an interlock driver licence, means the following:

- (a) if the holder is subject to a mandatory interlock order or the licence was issued under section 213 (2) of the Act—the interlock period within the meaning of Division 2 of Part 7.4 of the Act,
- (b) if the interlock driver licence was issued to the holder under clause 72 (1) (b)—the interlock period notified to the holder by the Authority under clause 72 (4).

**[7] Clause 71 Definitions**

Omit the definitions of *approval*, *approved interlock device* and *interlock device*.

**[8] Clause 71**

Insert in alphabetical order:

*acceptable provider* means:

- (a) an accredited interlock service provider, or
- (b) a person referred to in clause 51 of Schedule 4 to the Act (an existing approved interlock installer or existing approved interlock service provider).

**[9] Clause 71 (2)**

Insert at the end of clause 71:

- (2) A reference in this Part to a function exercised by an acceptable provider includes a reference to the exercise of that function by an employee or agent of the provider who is authorised to exercise the function by the provider.

**[10] Clause 72**

Omit the clause. Insert instead

**72 Authority may issue interlock driver licence**

- (1) Without limiting clause 47, the Authority may:
  - (a) approve an application for, and issue, an interlock driver licence to a person in respect of whom a mandatory interlock order has been made, or
  - (b) approve an application for, and issue, an interlock driver licence to a person under section 213 of the Act, or
  - (c) approve an application for a licence other than an interlock driver licence but issue an interlock driver licence.
- (2) Without limiting subclause (1) (c), an interlock driver licence may be issued under that subclause if a medical practitioner has recommended that an interlock condition should be imposed following an assessment of the applicant's fitness to drive.
- (3) An interlock driver licence is issued subject to the condition that the holder of the licence may only drive a motor vehicle if an approved interlock device that was installed by an acceptable provider is fitted to the motor vehicle.
- (4) If an interlock driver licence is issued under subclause (1) (c) to a person, the interlock period applicable to the person is the period specified by the Authority by notice in writing given to the person:
  - (a) starting on the day the person is issued with the interlock driver licence, and

(b) ending on the day specified by the Authority in the notice.

**Note.** Section 209 of the Act defines the meaning of *interlock period* for holders of licences issued under clause 72 (1) (a) and (b).

- (5) The applicable interlock period for the holder of an external interlock driver licence who applies for issue of an interlock driver licence of this State is the period specified by the Authority by notice in writing given to the person:
- (a) starting on the day the person is issued with the interlock driver licence, and
  - (b) ending on the day specified by the Authority in the notice and verified under subclause (6).
- (6) The Authority is to verify the day on which the applicant would have been eligible to have his or her requirement to hold the external interlock driver licence reviewed or removed by the relevant court or other authority of the jurisdiction that imposed the requirement had that licence remained in force.

**[11] Clause 73**

Omit the clause. Insert instead:

**73 Additional application procedures**

- (1) In addition to any other requirement applying to an applicant under Part 5, an applicant for issue of an interlock driver licence must:
- (a) undergo, at the applicant's own cost, a consultation with a medical practitioner for the purpose of discussing and giving advice to the applicant about the risks of alcohol consumption, and
  - (b) provide to the Authority a certificate, in a form approved by the Authority, from that medical practitioner confirming that the applicant has undergone the consultation, and
  - (c) provide to the Authority a certificate, in a form approved by the Authority, from an acceptable provider certifying that, at the request of the applicant, the provider has installed an approved interlock device (identified in the certificate) in a vehicle (identified in the certificate), and
  - (d) give authority in writing for the collection, use and disclosure by an acceptable provider, the Authority or any person on behalf of the Authority of information obtained as a result of the applicant's participation in the alcohol interlock program, and
  - (e) give the Authority the interlock administration fee.
- (2) In addition to any relevant requirements applying to an applicant under Part 5 and subclause (1), a holder of an external interlock driver licence who applies for issue of an interlock driver licence of this State must give the Authority:
- (a) any evidence that the Authority may reasonably require to verify the day on which the applicant would be eligible to have their requirement to hold the external interlock driver licence reviewed or removed by a relevant court or other authority of the jurisdiction concerned, and
  - (b) any data or other information that the Authority requests in relation to the performance of the applicant in the interlock program (however described) in that jurisdiction.
- (3) In this clause, *evidence* includes:
- (a) an order or other document of the relevant court or other authority of the jurisdiction concerned, or

- (b) the expiry date specified in the external interlock driver licence held by the applicant for the requirement allowing the holder of the licence to drive only a motor vehicle fitted with an interlock device.
- (4) Subclause (1) (a) and (b) do not apply to a holder of an external interlock driver licence who applies for issue of an interlock driver licence of this State.

**[12] Clause 74 Additional interlock driver licence conditions**

Omit clause 74 (1). Insert instead:

- (1) An interlock driver licence is subject to the following conditions in addition to the condition set out in clause 72:
  - (a) the holder of the licence must not drive a motor vehicle with a placard load within the meaning of the *Dangerous Goods (Road and Rail Transport) Regulation 2014*,
  - (b) for the purpose of counselling the holder of the licence with respect to the consumption of alcohol, the holder must (at the holder's own cost) undergo such medical consultations, with such medical practitioners and at such times, as may be required by the Authority,
  - (c) the holder of the licence must ensure that an approved interlock device is installed in at least one nominated vehicle at all times,
  - (d) the holder of the licence must ensure that the approved interlock device installed in any nominated motor vehicle has been maintained in accordance with the requirements of the Authority,
  - (e) the holder of the licence must not drive any motor vehicle in which an approved interlock device is installed if the device is not functioning properly or if any features of the interlock device (including any driver identification features of the device) have been circumvented or interfered with,
  - (f) the holder of the licence must not drive a motor vehicle to which an approved interlock device is fitted if any breath sample required to start or operate the vehicle is provided by another person.

**[13] Clause 74 (4)–(6)**

Omit clause 74 (4). Insert instead:

- (4) If the holder of an interlock driver licence (other than a person who is the subject of a mandatory interlock order) fails to comply with a condition under clause 72 (3) or subclause (1) (e) or (f), the Authority may extend the interlock period applicable to the holder by 3 months from the date of the expiry of the interlock period applicable to the holder under clause 72 (4).
- (5) If the holder of an interlock driver licence (including a person who is the subject of a mandatory interlock order) fails to comply with a condition under clause 72 (3) or subclause (1) (a)–(d), the Authority may suspend the interlock driver licence until such time as the Authority indicates, by notice in writing, to the person that the period of suspension has ended.
- (6) The holder of an interlock driver licence must nominate, in a form approved by the Authority, a motor vehicle for the purposes of this clause (*a nominated motor vehicle*).

**[14] Clause 75**

Omit the clause. Insert instead:

**75 Authority may refuse application for variation of interlock driver licence**

- (1) In determining an application for variation of an interlock driver licence, the Authority may require the holder of an interlock driver licence to undergo an examination to ensure that the holder meets the medical standards contained in Assessing Fitness to Drive that are applicable to the driver licence.
- (2) The Authority may refuse an application for variation of an interlock driver licence under clause 55 (3A) if the Authority is satisfied that:
  - (a) a medical practitioner has recommended that the interlock condition should be retained following an assessment of the applicant's fitness to drive, or
  - (b) the applicant has not completed the interlock period applicable to the person under clause 72 (4), including any extension of that period under clause 74 (4), or
  - (c) the applicant has not complied with a requirement of the Act or this Regulation relating to the application.
- (3) For the purposes of this clause, the Authority may consider any relevant data or other information collected by an approved interlock device installed in the motor vehicle driven by the holder of an interlock driver licence.

**[15] Part 10, Division 3 Approvals relating to interlock devices**

Omit the Division.

**[16] Clause 86 Failure to comply with a condition of approval**

Insert at the end of the clause:

- (2) In this clause:  
*approval* means approval of a person referred to in clause 51 of Schedule 4 to the Act (an existing approved interlock installer or existing approved interlock service provider).

**[17] Clauses 87 and 88**

Omit clauses 87–90. Insert instead:

**87 Installation, removal, maintenance or inspection of interlock devices**

- (1) A person must not install, remove, carry out maintenance on or service, or conduct an inspection of, an approved interlock device for the purposes of Division 2 of Part 7.4 of the Act unless the person is an acceptable provider.
- (2) A person must not carry out maintenance on or service an approved interlock device for the purposes of Division 2 of Part 7.4 of the Act unless the device is clearly labelled in a form approved by the Authority with the words "NSW approved interlock device".  
Maximum penalty: 20 penalty units.

**88 Assisting holder of interlock driver licence to disable or circumvent approved interlock device**

A person must not, without reasonable excuse, assist the holder of an interlock driver licence to start or drive a motor vehicle to which an approved interlock device is fitted:

- (a) by supplying a breath sample for use in the interlock device, or
- (b) by disabling or otherwise circumventing any features of the interlock device (including any driver identification features of the device).

Maximum penalty: 20 penalty units.

**[18] Clause 91 Labelling approved interlock devices**

Omit “approved interlock installer or an approved interlock service provider” wherever occurring.

Insert instead “acceptable provider”.

**[19] Clause 91 (2) (b)**

Omit the paragraph. Insert instead:

- (b) the interlock device is no longer an approved interlock device or the label is to be immediately replaced with another such label.

**[20] Clause 93 Tampering or otherwise interfering with labelled approved interlock device**

Insert “(including tampering or otherwise interfering with a part of the device that enables it to identify the person using the device)” after “motor vehicle” in clause 93 (1).

**[21] Clauses 94 and 95**

Omit the clauses.

**[22] Clause 96 Police may seize motor vehicle or device**

Insert after clause 96 (2):

- (3) A person must not refuse to allow a police officer to inspect an interlock device fitted to a motor vehicle.

Maximum penalty: 20 penalty units.

**[23] Clause 97**

Omit the clause. Insert instead:

**97 Authority may require evidence from persons to whom an interlock exemption order applies**

- (1) The Authority may require a person to whom an interlock exemption order applies who has completed the disqualification period applicable to the person and who applies for a licence to provide evidence acceptable to the Authority of the person’s completion of a drink driving education program nominated by the Authority within a period specified by the Authority.
- (2) The Authority may refuse to issue a licence to the person if the person fails to provide the evidence required by the Authority under subclause (1).

**[24] Clauses 106–106B**

Omit clause 106. Insert instead:

**106 Release of information relating to mandatory alcohol interlock program**

- (1) The Authority may, for the purpose of enabling the Authority to perform functions conferred or imposed on the Authority in relation to the mandatory alcohol interlock program under Division 2 of Part 7.4 of the Act, disclose to

the following persons data or information recorded in the NSW driver licence register:

- (a) an acceptable provider,
  - (b) a person who has entered into an agreement with the Authority under section 46 of the Act,
  - (c) a person who provides any services to a person who has entered into such an agreement in connection with the alcohol interlock program.
- (2) The Authority may, for the purpose of enabling an acceptable provider to exercise functions with respect to the provision of interlock services, disclose to the acceptable provider, data or information recorded in the NSW driver licence register.
  - (3) In this clause, *data or information* does not include a photograph to which Part 3.5 of the Act applies.

**106A Use of information for the purposes of the mandatory alcohol interlock program**

- (1) The Authority or Transport for NSW may use data or information recorded in the NSW driver licence register for the purpose of research and evaluation of the mandatory alcohol interlock program under Division 2 of Part 7.4 of the Act.
- (2) In this clause, *data or information* does not include a photograph to which Part 3.5 of the Act applies.

**106B Collection of information for the purposes of the mandatory alcohol interlock program**

The Authority may collect data or information in respect of an interlock driver licence holder from an acceptable provider for the purpose of enabling the Authority to perform functions conferred or imposed on the Authority by or under the Act in relation to the mandatory alcohol interlock program under Division 2 of Part 7.4 of the Act.

**[25] Clause 120C**

Insert after clause 120B:

**120C Suspension for failure to undertake driver education course**

For the purposes of section 43A (7) of the Act, the driver licence held by a person is suspended until such time as the Authority indicates, by notice in writing, to the person that the period of suspension has ended.

**[26] Clause 121 Savings and transitional provisions**

Insert at the end of the clause:

- (3) This Regulation as in force immediately before its amendment by the *Road Transport (Driver Licensing) Amendment (Mandatory Alcohol Interlock Program) Regulation 2015* (the *amending Regulation*) continues to apply to and in respect of an interlock driver licence issued before the commencement of the amendments.
- (4) A reference in this Regulation as applied by subclause (3) to an “approved interlock service provider” or “approved interlock installer” is to be read as a reference to an *acceptable provider* within the meaning of Part 10 as amended by the amending Regulation.

**[27] Schedule 3 Fees**

Insert after item 8:

9	Interlock administration fee for an interlock driver licence	150
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## **Schedule 2 Amendment of Road Transport (General) Regulation 2013**

**[1] Clause 131 Decisions excluded from definition of “appealable decision”**

Insert “or (e)” after “clause 46 (2) (d)” in clause 131 (a).

**[2] Clause 131 (c)**

Insert after clause 131 (b):

- (c) a decision of the Authority to suspend a person’s driver licence under section 43A (7) of the Act.

**[3] Schedule 5 Penalty notice offences**

Insert in appropriate order in Columns 1, 2 and 3 of the matter relating to *Road Transport (Driver Licensing) Regulation 2008*:

Clause 96 (3)	Class 1	Level 13
Clause 114 (1) (where the licence concerned is an interlock driver licence):		
(a) in relation to a condition imposed by clause 72 (3)	Class 1	Level 13
(b) in relation to a condition imposed by clause 74 (1) (e) or (f)	Class 1	Level 13