



Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003

under the

Road Transport (Driver Licensing) Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Driver Licensing) Act 1998*.

CARL SCULLY, M.P.,
Minister for Roads

Explanatory note

The object of this Regulation is to amend the *Road Transport (Driver Licensing) Regulation 1999* to facilitate the issue of interlock driver licences and the use of approved interlock devices by giving effect to the provisions of the *Road Transport Legislation Amendment (Interlock Devices) Act 2002*.

This Regulation is made under the *Road Transport (Driver Licensing) Act 1998*, including sections 20, 21C and 19 (the general regulation-making power).

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Clause 1 Road Transport (Driver Licensing) Amendment (Interlock Devices)
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**Road Transport (Driver Licensing) Amendment
(Interlock Devices) Regulation 2003**

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Road Transport (Driver Licensing) Act 1998

1 Name of Regulation

This Regulation is the *Road Transport (Driver Licensing) Amendment (Interlock Devices) Regulation 2003*.

2 Commencement

This Regulation commences on 8 September 2003.

3 Amendment of Road Transport (Driver Licensing) Regulation 1999

The *Road Transport (Driver Licensing) Regulation 1999* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 9 Suspended or disqualified persons not eligible

Insert at the end of the clause:

- (3) This clause does not apply to an application for renewal of an interlock driver licence by a person whose interlock driver licence is suspended (unless the licence is suspended under Division 3 of Part 4 of the *Fines Act 1996*).

[2] Clause 16 Procedure to obtain or vary driver licences

Insert at the end of the clause:

- (6) In addition to any other requirement of this clause, an applicant for issue of an interlock driver licence who is a person referred to in section 25E (1) of the *Road Transport (General) Act 1999* must:
 - (a) undergo, at the applicant's own cost, a consultation with a medical practitioner nominated by the Authority for the purpose of discussing and giving brief advice to the applicant about the risks of alcohol consumption (a ***drink less brief alcohol intervention consultation***), and
 - (b) provide to the Authority a certificate from that medical practitioner confirming that the applicant has undergone the drink less brief alcohol intervention consultation, and
 - (c) provide to the Authority a certificate, in a form approved by the Authority, from an approved interlock installer certifying that, at the request of the applicant, the installer 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 approved interlock installer, approved interlock service 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.

[3] Clauses 19A and 19B

Insert after clause 19:

19A Interlock driver licences

- (1) Without limiting clause 19, the Authority may approve an application for, and issue, a conditional licence (an *interlock driver licence*) that authorises the holder of the licence to drive a motor vehicle on a road or road related area subject to the condition that the vehicle must be fitted with an approved interlock device that has been installed by an approved interlock installer in accordance with this Regulation.

Note. Section 25E of the *Road Transport (General) Act 1999* entitles a person in respect of whom an order suspending a disqualification to hold a licence is made to participate in an interlock program if the person is issued with an interlock driver licence and the relevant disqualification compliance period has expired.

- (2) An interlock driver licence is subject to the following additional conditions:
 - (a) the holder of the licence must not drive a motor vehicle with a blood alcohol concentration of 0.02 or more grams of alcohol per 100 mls of blood,
 - (b) the holder of the licence may drive only a motor vehicle with a GVM that is not greater than 4.5 tonnes and that is constructed or equipped to seat not more than 12 adults (including the driver),
 - (c) the holder of the licence must not drive a public passenger vehicle (as defined in the *Passenger Transport Act 1990*) or a motor vehicle loaded or partly loaded with any dangerous goods (within the meaning of the *Dangerous Goods Act 1975* or the *Road and Rail Transport (Dangerous Goods) Act 1997*) and that is required by the *Road Transport Reform (Dangerous Goods) (New South Wales) Regulations* to have signs exhibited on it,
 - (d) for the purpose of counselling the holder of the licence with respect to the consumption of alcohol, the holder must (at his or her own cost) undergo such medical consultations, with such medical practitioners and at such times, as may be required by the Authority,

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- (e) the holder of the licence must ensure that maintenance is carried out as and when required by the Authority (at the holder's own cost) on the interlock device identified in the certificate the holder provided to the Authority under clause 16 (6) (c),
 - (f) the holder of the licence must not, without the approval of the Authority, remove or cause or permit to be removed the approved interlock device from the motor vehicle specified in that certificate or from any other motor vehicle in which it is subsequently installed,
 - (g) the holder of the licence must not drive any motor vehicle in which the approved interlock device is installed if the holder knows, or could reasonably be expected to know, that the approved interlock device installed is not functioning properly,
 - (h) the holder of the licence must use the approved interlock device in accordance with the instructions (if any) for the proper use of the device supplied to the holder by its manufacturer and the Authority,
 - (i) the holder of the licence must not interfere, or cause or permit any person (other than an approved interlock installer or approved interlock service provider installing, maintaining or removing the approved interlock device) to interfere with the proper operation of the device,
 - (j) the holder of the licence must, if required to do so by the Authority, authorise the Authority in writing (or any persons nominated by the Authority) to provide any data or other information collected by the approved interlock device to persons carrying out functions for the purposes of the alcohol interlock program during the period the licence is in force,
 - (k) the holder of the licence must permit a police officer to inspect the approved interlock device if the police officer asks to inspect the device.
- (3) The Authority may, by notice in writing given to the holder of an interlock driver licence, impose such other conditions relating to the use of an interlock device installed in a motor vehicle driven by the holder as the Authority considers appropriate.

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- (4) The Authority may, by notice in writing to the holder of the licence, vary or revoke any condition imposed by it under subclause (3).
- (5) The holder of a ***converted interlock driver licence*** (within the meaning of clause 19B) is not required to observe any of the conditions to which the interlock driver licence was subject under this clause.

Note. Under clause 56, the holder of an interlock driver licence who fails to comply with a condition of the licence is guilty of an offence.

19B Conversion of interlock driver licences

- (1) An interlock driver licence is deemed, at the end of the day on which its holder ceases to participate in the alcohol interlock program because the holder has completed the interlock participation period applicable to the holder under section 25C of the *Road Transport (General) Act 1999*, to be a car licence other than an interlock driver licence (in this clause referred to as a ***converted interlock driver licence***).

Note. This provision will enable a person who has been issued with an interlock driver licence for a period that is longer than the period the person is required to participate in an alcohol interlock program under section 25C of the *Road Transport (General) Act 1999* to continue to drive under the authority of the licence for the duration of the licence. The person will be able to drive any vehicle that the holder of a car licence other than an interlock driver licence may drive under clause 26 (3) of this Regulation. The conditions applicable to the interlock driver licence will no longer apply (see clause 19A (5)). The provision does not apply to a person referred to in section 25G (2) of that Act (early cessation of participation).

- (2) The converted interlock driver licence expires on the day recorded in the driver licence register as the licence expiry date for the interlock driver licence.

[4] Clause 25B

Insert after clause 25A:

25B Release of information relating to alcohol interlock program

The Authority may disclose to any person data or information recorded in the driver licence register 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 alcohol interlock program.

[5] Clause 26 Licence classes

Omit “car licence,” from clause 26 (1).

Insert instead “car licence (being a car licence other than an interlock driver licence or a car licence that is an interlock driver licence),”.

[6] Clause 26 (3) and (3A)

Insert “(other than an interlock driver licence)” after “car licence” wherever occurring.

[7] Clause 26 (3B)

Insert after clause 26 (3A):

(3B) The holder of a car licence that is an interlock driver licence may drive a motor vehicle with a GVM that is not greater than 4.5 tonnes and that is constructed or equipped to seat not more than 12 adults (including the driver).

[8] Clause 28 Conditional licences

Omit “a breath alcohol interlock device” from the Table to clause 28 (5).
Insert instead “an approved interlock device within the meaning of Part 2A of the Act”.

[9] Clause 33 Licence expiry date

Insert at the end of the clause:

Note. See also clause 19B.

[10] Part 7

Insert after Part 6:

Part 7 Interlock devices

Division 1 Definitions

50 Definitions

In this Part:

approval means an approval as an approved interlock installer or approved interlock service provider under section 21B of the Act.

labelled approved interlock device means an approved interlock device labelled with the words “NSW approved interlock device”.

Division 2 Approvals

51 Eligibility for approval as an approved interlock installer

- (1) A person is eligible to apply to be approved as a person who may install and remove approved interlock devices in motor vehicles for the purposes of Part 2A of the Act (an *approved interlock installer*) if the person:
 - (a) is at least 18 years of age, and
 - (b) is a fit and proper person to be an approved interlock installer, and

Note. See clause 53.

 - (c) is suitably qualified to perform the functions of an approved interlock installer, and
 - (d) is capable of performing the functions of an approved interlock installer, and
 - (e) has access to equipment and facilities necessary to enable the person to install and remove approved interlock devices in motor vehicles.
- (2) A person is not eligible to apply to be approved as an approved interlock installer if:
 - (a) in the opinion of the Authority, the person is unable to perform the functions of an approved interlock installer because of illness or mental or physical disability, or
 - (b) the person has at any time had an approval as an approved interlock installer revoked, or
 - (c) in the opinion of the Authority, the person has failed to properly perform the functions of an approved interlock installer under the Act or this Regulation, or to properly perform functions under a program that is similar to the alcohol interlock program established under the law of another jurisdiction, in a significant respect.

52 Eligibility for approval as an approved interlock service provider

- (1) A person is eligible to apply to be approved 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 Part 2A of the Act (an *approved interlock service provider*) if the person:
- (a) is at least 18 years of age, and
 - (b) is a fit and proper person to be an approved interlock service provider, and
- Note.** See clause 53.
- (c) is suitably qualified to perform the functions of an approved interlock service provider, and
 - (d) is capable of performing the functions of an approved interlock service provider, and
 - (e) has access to equipment and facilities necessary to enable the person to carry out maintenance to ensure the proper operation of approved interlock devices or to conduct inspections of such devices.
- (2) A person is not eligible to apply to be approved as an approved interlock service provider if:
- (a) in the opinion of the Authority, the person is unable to perform the functions of an approved interlock service provider because of illness or mental or physical disability, or
 - (b) the person has at any time had an approval as an approved interlock service provider revoked, or
 - (c) in the opinion of the Authority, has failed to properly perform the functions of an approved interlock service provider under the Act or this Regulation, or failed to properly perform functions under a program that is similar to the alcohol interlock program established under the law of another jurisdiction, in a significant respect.

53 Fit and proper persons

- (1) For the purposes of this Part, a person is not a fit and proper person to be an approved interlock installer or an approved interlock service provider if:

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- (a) a court in this State or elsewhere has convicted the person of a relevant offence within the period of 5 years immediately before the person applies for the approval, or
 - (b) the person is an undischarged bankrupt, or
 - (c) the person has at any time had an interlock driver licence suspended or cancelled under the Act or this Regulation or has had his or her participation in a program that is similar to the alcohol interlock program that is established under the law of another jurisdiction suspended or cancelled.
- (2) In this clause:
- relevant offence*** means any of the following offences committed after the commencement of this clause:
- (a) an offence involving dishonesty,
 - (b) a major offence within the meaning of the *Road Transport (General) Act 1999*,
 - (c) an offence in another jurisdiction that would have been an offence referred to in paragraph (a) or (b) if committed in this State.

53A Application for approval as interlock installer or service provider

- (1) An application for approval is to be made to the Authority in the form approved by the Authority and is to be accompanied by the applicable fee (if any) fixed under section 10 of the Act.
- (2) The Authority may require an applicant for approval to submit evidence, in a form approved by the Authority:
 - (a) that he or she is eligible for approval, or
 - (b) verifying any particulars set out in an application.
- (3) The Authority may require an applicant for approval to provide to the Authority information about any other matter relevant to the decision whether to approve the application.

53B Determination of applications for approval

- (1) The Authority may determine an application for approval by granting or refusing the application.

- (2) Without limiting subclause (1), the Authority may refuse an application for approval as an approved interlock installer if, in the opinion of the Authority, the applicant does not meet any of the eligibility requirements set out in clause 51.
- (3) Without limiting subclause (1), the Authority may refuse an application for approval as an approved interlock service provider if, in the opinion of the Authority, the applicant does not meet any of the eligibility requirements set out in clause 52.

53C Conditions of approvals

- (1) An approval may be granted unconditionally or subject to conditions specified in the approval.
- (2) After granting an approval, the Authority may, by notice in writing to the holder of the approval:
 - (a) impose conditions or further conditions on the approval, or
 - (b) vary or revoke any of the conditions to which the approval is subject.

Note. A notice under this subclause may be given to the holder of an approval by means of an electronic communication in the circumstances set out in the *Electronic Transactions Act 2000*.
- (3) Conditions may include (but are not limited to) conditions of the following kind:
 - (a) conditions relating to the installation, removal, inspection or carrying out of maintenance on approved interlock devices,

Note. *Maintenance* is defined in section 21 of the Act to include the retrieval of any information that is stored electronically by or with an interlock device and any work that improves or augments the functionality of an interlock device.
 - (b) conditions relating to the compiling and furnishing to the Authority, persons nominated by the Authority and to the holders of interlock driver licences of information obtained by the holder of the approval in carrying out functions for the purposes of Part 2A of the Act.

53D Duration of approvals

An approval takes effect on the date on which it is granted or on such later date as may be specified in it and (unless it is sooner revoked) remains in force for the period (not exceeding 3 years) specified in it.

53E Subsequent approvals

- (1) An approval may be renewed by making an application in accordance with this Part for a new approval (referred to in this clause as a *subsequent approval*).
- (2) If a person applies for a subsequent approval before the term of the person's current approval expires (referred to in this clause as the *old approval*) and the application has not been dealt with by the time the old approval expires the authority conferred by the old approval continues until such time as the person is notified of the grant, or refusal of, the subsequent approval.

53F Show cause notice

- (1) The Authority may serve a show cause notice on the holder of an approval if the Authority is of the opinion that there is reasonable cause to believe that there are grounds for revoking the approval under section 21B (4) of the Act.
- (2) A show cause notice is a notice requiring the holder of the approval to show cause why it should not be revoked on the grounds specified in the notice.
- (3) Without limiting the grounds that may be specified, grounds include the following:
 - (a) that the holder of the approval has failed to comply with the Act, this Regulation or a condition of the approval,
 - (b) that the holder of the approval does not satisfy any of the eligibility requirements for the approval set out in clause 51 or 52.
- (4) A show cause notice is to be in writing and is to specify a period of not less than 21 days after service of the notice as the period that the holder has to show cause as required by the notice.

- (5) The holder on whom a show cause notice is served may within the period allowed by the notice make written submissions to the Authority in respect of the matters to which the notice relates.
- (6) The Authority may conduct such enquiries and make such investigations in relation to the matters to which a show cause notice relates and the submissions, if any, made by or on behalf of the holder of the approval concerned as the Authority thinks fit.
- (7) This clause does not apply to a revocation of the approval of a holder if the Authority has reasonable grounds to believe that the holder has wilfully failed to comply with the Act, this Regulation or the conditions of the approval and is likely to continue to do so.

53G Notice of revocation of approval

- (1) The Authority is to include a statement of the reasons for its decision to revoke an approval in, or with, written notice of the revocation of an approval given under section 21B (4) of the Act.
- (2) Revocation of an approval by written notice under section 21B (4) of the Act takes effect on the day the notice is given to the holder of the approval or on a later day specified in the notice.

Division 3 Miscellaneous

53H Police may seize motor vehicle or device

- (1) A police officer may stop and inspect a motor vehicle driven on a road or road related area if the officer reasonably suspects that the motor vehicle may be fitted with an interlock device.
- (2) A police officer may seize a motor vehicle driven by the holder of an interlock driver licence in which an interlock device is installed if the officer reasonably suspects that the device has been used in contravention of the Act or the regulations.

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53I Agreements relating to interlock devices

The Authority may enter into an agreement with a person (not being inconsistent with the Act or this Regulation) with respect to the supply, or provision of services relating to the installation, removal, maintenance and inspection of, interlock devices for the purposes of the alcohol interlock program.

[11] Clauses 59–59I

Insert after clause 58:

59 Failure to comply with condition of approval

The holder of an approval within the meaning of Part 7 who fails to comply with a condition of the approval is guilty of an offence.

Maximum penalty: 20 penalty units.

59A False or misleading information

A person must not, in purported compliance with any requirement imposed by or under this Part to provide data or information relating to the operation of the alcohol interlock program, provide data or information that the person knows is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

59B Installation or removal of approved interlock devices without approval

A person must not install an approved interlock device in, or remove an approved interlock device from, a motor vehicle for the purposes of Part 2A of the Act unless the person is the holder of an approval as an approved interlock installer that is in force.

Maximum penalty: 20 penalty units.

59C Installation or removal of unlabelled approved interlock devices

An approved interlock installer must not install an approved interlock device in, or remove an approved interlock device from, a motor vehicle for the purposes of Part 2A 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.

59D Maintenance or inspection of interlock devices without approval

A person must not carry out maintenance on, or conduct an inspection of, an approved interlock device for the purposes of Part 2A of the Act unless the person is the holder of an approval as an approved interlock service provider that is in force.

Maximum penalty: 20 penalty units.

59E Maintenance or inspection of unlabelled approved interlock devices

An approved interlock service provider must not carry out maintenance on, or conduct an inspection of, an approved interlock device in a motor vehicle for the purposes of Part 2A 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.

59F Labelling approved interlock devices

- (1) A person must not label an interlock device with the words “NSW approved interlock device” unless:
 - (a) the device is an approved interlock device, and
 - (b) the person is an approved interlock installer or an approved interlock service provider.

Maximum penalty: 20 penalty units.

- (2) A person must not remove a label bearing the words “NSW approved interlock device” from an interlock device unless:
 - (a) the person is an approved interlock installer or approved interlock service provider, and
 - (b) the person for whom the interlock device was installed has ceased to participate in the alcohol interlock

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program in respect of which it was installed or the label is to be immediately replaced with another such label.

Maximum penalty: 20 penalty units.

59G Notification of removal of approved interlock devices

An approved interlock installer who removes a labelled approved interlock device from a motor vehicle must give the Authority written notice of the removal not later than at the end of the day of the removal.

Maximum penalty: 20 penalty units.

Note. Notice under this clause may be given to the Authority electronically in the circumstances set out in the *Electronic Transactions Act 2000*.

59H Tampering or otherwise interfering with labelled approved interlock device

- (1) A person who, without reasonable excuse, tampers or otherwise interferes with a labelled approved interlock device installed in a motor vehicle is guilty of an offence.

Maximum penalty: 20 penalty units.

- (2) A person who aids, abets or causes or permits the commission of an offence referred to in subclause (1) is guilty of an offence.

Maximum penalty: 20 penalty units.

59I Notification of suspected tampering or otherwise interfering with labelled approved interlock devices

An approved interlock installer or approved interlock service provider who becomes aware that a labelled approved interlock device has been tampered or otherwise interfered with must give the Authority written notice of that interference or tampering not later than at the end of the day on which he or she became aware of the interference or tampering.

Maximum penalty: 20 penalty units.

Note. Notice under this clause may be given to the Authority electronically in the circumstances set out in the *Electronic Transactions Act 2000*.

[12] Dictionary

Insert in alphabetical order:

alcohol interlock program, in relation to a person, means an interlock program referred to in Part 3 of the *Road Transport (General) Act 1999* the participants in which are holders of interlock driver licences under Part 2A of the *Road Transport (Driver Licensing) Act 1998*.

[13] Dictionary

Omit the definition of *breath alcohol interlock device*.