

# EXPOSURE DRAFT

**Attorney-General**

(Prepared by Parliamentary Counsel's Office)

## Road Transport Legislation Amendment Bill 2012

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## **EXPOSURE DRAFT**



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**Attorney-General**

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## Road Transport Legislation Amendment Bill 2012

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### A Bill for

An Act to amend road transport legislation, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Road Transport Legislation Amendment Act 2012*.

### 2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Legislation amended

This Act amends the following legislation:

- *Road Transport (Alcohol and Drugs) Act 1977*
- *Road Transport (Driver Licensing) Act 1999*
- *Road Transport (Driver Licensing) Regulation 2000*
- *Road Transport (General) Regulation 2000*
- *Road Transport (Offences) Regulation 2005*
- *Road Transport (Safety and Traffic Management) Regulation 2000*.

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## Part 2                      Road Transport (Alcohol and Drugs) Act 1977

### 4                      **Meaning of *special driver*** **New section 4B (1) (ea)**

*insert*

- (ea) the person is the holder of an Australian driver licence with an interlock condition; or

### 5                      **Section 4B (3), new definition of *interlock condition***

*insert*

*interlock condition*—see the *Road Transport (Driver Licensing) Regulation 2000*, section 73W.

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## Part 3                      Road Transport (Driver Licensing) Act 1999

### 6                      Driver licensing system New section 28 (2) (u) to (w)

*insert*

- (u) make provision in relation to the imposition of a condition on a person's driver licence, requiring an alcohol ignition interlock device to be fitted to a motor vehicle driven by the person, if the person is convicted or found guilty of a disqualifying offence, that relates to alcohol, against the *Road Transport (Alcohol and Drugs) Act 1977*; and
- (v) make provision in relation to court-ordered therapeutic programs for people convicted or found guilty of a disqualifying offence, that relates to alcohol, against the *Road Transport (Alcohol and Drugs) Act 1977*; and
- (w) make provision in relation to—
  - (i) the approval by the road transport authority of alcohol ignition interlock devices; and
  - (ii) the provision, installation, testing and maintenance of alcohol ignition interlock devices; and
  - (iii) the approval by the road transport authority of people to provide, install, test and maintain alcohol ignition interlock devices.

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**7 New section 33A**

*in part 3, insert*

**33A Failing to comply with interlock condition**

- (1) A person commits an offence if the person—
- (a) holds a driver licence with an interlock condition; and
  - (b) fails to comply with the interlock condition.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) If the person is convicted, or found guilty, by a court of an offence against subsection (1), the licence is automatically cancelled unless the court orders otherwise.
- (3) If the licence is cancelled under subsection (2), the cancellation takes effect from the time of the conviction or finding or, if the court orders a later date, on the later date.
- (4) Subsection (2) does not apply if the licence is cancelled under another provision of the road transport legislation.

*Note* Under the *Road Transport (General) Act 1999*, s 66 (1) the disqualification of a person from holding or obtaining a driver licence (whether or not by order of a court) operates to cancel any driver licence held by the person.

- (5) If the person's licence is cancelled under subsection (2), the person is disqualified from applying for, or being issued with, another driver licence with an interlock condition for the remainder of the disqualification period.

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(6) In this section:

***disqualification period***—see the *Road Transport (Driver Licensing) Regulation 2000*, section 73S.

***interlock condition***—see the *Road Transport (Driver Licensing) Regulation 2000*, section 73W.

**Discussion question**

Under section 33A, a person will have their licence cancelled for the remainder of their disqualification period (accompanied by a maximum penalty of 50 penalty units, imprisonment for 6 months or both) if they fail to comply with an interlock condition. Is licence cancellation a suitable penalty for a person convicted or found guilty of failing to comply with an interlock condition? If not, can you suggest an alternative penalty?

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## Part 4                      Road Transport (Driver Licensing) Regulation 2000

### **8                      Driver licence condition codes** **Table 10, item 4, column 2**

*substitute*

The licence holder must drive only a motor vehicle with a fitted interlock

### **9                      When probationary licence must be issued** **New section 52 (2A)**

*insert*

- (2A) This section also applies to a person if—
- (a) the road transport authority approves an application by the person for the issue of a driver licence (other than a learner licence) of a particular class; and
  - (b) the person—
    - (i) is eligible for a probationary licence with an interlock condition under section 73T (Mandatory interlock condition) or section 73V (Voluntary interlock condition); or
    - (ii) has an interlock exemption.

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**10      Section 52 (3) and note**

*substitute*

- (3) Subject to subsection (4), if this section applies to the person, the road transport authority must issue a probationary licence of the class approved by the authority to the person.

*Note*      The road transport authority must not issue a probationary licence to a person if s 73D (3) or s 73M (3) applies.

- (4) If a court has made an order under section 73U (Court-ordered therapeutic program) that a person comply with any treatment, referral or monitoring before being eligible to apply for, or be issued with a licence, the road transport authority must be satisfied that the person has complied with the order before issuing a probationary licence to the person.

**Discussion question**

Should compliance with a therapeutic order under section 73U (Court-ordered therapeutic program), where the Court has not specifically linked compliance to re-licensing, be a condition of obtaining a licence following a period of disqualification?

**11      Driver licence condition codes and explanatory notices  
Section 57 (3)**

*after*

code E,

*insert*

I,

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**12 Duties of holders of conditional licences  
Section 59 (3) and (5)***after*

code E,

*insert*

I,

**13 Conditional licence holders to comply with conditions  
Section 60 (2) and note***substitute*

(2) Subsection (1) does not apply to the holder of—

- (a) a restricted licence; or
- (b) a driver licence with an interlock condition.

*Note 1* It is an offence against the Act, s 33 for the holder of a restricted licence to contravene, without reasonable excuse, a condition to which the licence is subject.

*Note 2* It is an offence against the Act, s 33A for a person who holds a driver licence with an interlock condition to fail to comply with the interlock condition.

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**14 Eligibility to apply for licence if disqualified or licence suspended**  
**Section 66 (4) and note**

*substitute*

(4) This section is subject to—

- (a) section 49 (Issue of restricted licence by road transport authority); and

*Note* Section 49 deals with the circumstances in which a person may apply to the Magistrates Court for an order authorising the road transport authority to issue a restricted licence to a person.

- (b) section 73T (Mandatory interlock condition); and .

*Note* A person to whom s 73T applies is eligible for a probationary licence with an interlock condition after completing half the period of disqualification.

- (c) section 73V (Voluntary interlock condition).

*Note* A person to whom s 73V applies is eligible for a probationary licence with an interlock condition at any time during the period of disqualification.

**15 Application—div 3.13**  
**Section 73A**

*after*

person

*insert*

(other than a person who is subject to an order under section 73U (Court-ordered therapeutic program))

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**16 New part 3A***insert***Part 3A Alcohol ignition interlock devices****Division 3A.1 General****73S Definitions**

In this regulation:

*alcohol ignition interlock device* means a device approved under section 73ZM (Alcohol ignition interlock devices—approval).

*alcohol-related disqualifying offence*—see section 73B.

*approved interlock installer* means a person approved as an interlock installer under—

- (a) section 73ZP (Issue of approval); or
- (b) the *Road Transport (Driver Licensing) Regulation 2008* (NSW), part 10.

*approved interlock service provider* means a person approved as an interlock service provider under—

- (a) section 73ZP (Issue of approval); or
- (a) the *Road Transport (Driver Licensing) Regulation 2008* (NSW), part 10.

*approved label*—see section 73ZN.

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***disqualification period***—

- (a) for a person whose licence is subject to a mandatory interlock condition—see section 73T; or
- (b) for a person whose licence is subject to a voluntary interlock condition—see section 73V.

***exemption certificate***—see section 73ZH.

***fitted interlock*** means an interlock provided and installed in a motor vehicle by an approved interlock installer and maintained by an approved interlock service provider.

***habitual offender***, means a person who—

- (a) is convicted or found guilty of an alcohol-related disqualifying offence; and
- (b) has, within 5 years before the conviction or finding of guilt, also been convicted or found guilty of 2 or more other alcohol-related disqualifying offences.

*Note*     ***Alcohol-related disqualifying offence***—see s 73B.

***interlock*** means an alcohol ignition interlock device.

***interlock condition***—see section 73W.

***interlock data record*** is the database of information recorded by a fitted interlock in relation to a driver.

***interlock driver*** means a person whose driver licence is subject to an interlock condition.

***interlock exemption***—see section 73ZF.

***interlock period***, for a person, means the period applying to the person under section 73Y.

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***mandatory interlock condition*** means a condition imposed under section 73T (3) or (4).

***nominated vehicle***, for a person, means a motor vehicle nominated by the person under section 73X.

***voluntary interlock condition*** means a condition imposed under section 73V (3).

## **Division 3A.2                      Conditional licences—alcohol ignition interlock devices**

### **73T                      Mandatory interlock condition**

- (1) This section applies to a person who is—
  - (a) either—
    - (i) convicted or found guilty of an offence against the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (1) (Prescribed concentration of alcohol in blood or breath) if the court finds that the concentration of alcohol in the person's blood or breath was at level 4; or
    - (ii) a habitual offender; and
  - (b) disqualified for a period (the ***disqualification period***) from holding or obtaining a driver licence.
- (2) The person is eligible to apply for, or be issued with, a probationary licence if the person has completed at least half of the disqualification period.
- (3) The probationary licence must be issued with an interlock condition imposed by the road transport authority.

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- (4) If the person is not issued with a probationary licence before the end of the disqualification period, any probationary licence issued after the disqualification period must, unless the person has an interlock exemption, be issued with an interlock condition imposed by the road transport authority.

*Note* A person whose licence is subject to an interlock condition is a **special driver** under the *Road Transport (Alcohol and Drugs) Act 1977*. A special driver must not drive a motor vehicle if the driver has a concentration of alcohol of more than 0g in 100mL of blood or 210L of breath.

**Discussion question**

Under section 73T, a mandatory participant is eligible to have an interlock fitted to a vehicle and begin driving after serving 50% of their disqualification period. This is in line with international research which indicates the benefits of having an interlock fitted sooner rather than later. In considering the interaction between ACT disqualification periods for drink drivers and other penalties an offender would be subject to, when should offenders be eligible to have an interlock fitted to a vehicle and begin driving? Do you consider that offenders will be significantly deterred from reoffending if disqualification periods are reduced in this way?

**73U Court-ordered therapeutic program**

- (1) This section applies to a person mentioned in section 73T (1) (Mandatory interlock condition).
- (2) Before the person is sentenced, a report must be prepared for the court by the court alcohol and drug assessment service (*CADAS*) that assesses whether any form of therapeutic treatment or program might assist the person and, if so, makes recommendations about an appropriate treatment or program.

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- (3) In sentencing the person, the court must consider the report and may order that the person comply with any treatment, referral to treatment or monitoring by CADAS as a result of the assessment.

**Discussion question**

References to pre-sentence reports by CADAS for offenders who misuse or are addicted to alcohol are included in amendments to the *Crimes (Sentencing) Act 2005* by the *Crimes Legislation Amendment Bill 2012* ([www.legislation.act.gov.au/b/db\\_44971/default.asp](http://www.legislation.act.gov.au/b/db_44971/default.asp)). If that bill is passed by the Assembly, these amendments will apply to some (but not all) drivers subject to a mandatory interlock condition, and would require the court to obtain an offender's consent before it makes a treatment order. Under the current drafting of the *Road Transport Legislation Amendment Bill 2012*, a court is not required to obtain an offender's consent before making a treatment order; undergoing court ordered treatment is a condition of relicensing. The offender must either complete the court ordered treatment or miss out on obtaining a licence. How should the offender's consent to treatment be evidenced in this context – should consent be explicit at the time the treatment order is made? Alternatively, should consent be inferred from the offender's subsequent compliance with a treatment order?

**73V Voluntary interlock condition**

- (1) This section applies to a person (other than a person to whom section 73T applies) who is—
- (a) convicted or found guilty of an alcohol-related disqualifying offence; and
- Note*     *Alcohol-related disqualifying offence*—see s 73B.
- (b) disqualified for a period (the *disqualification period*) from holding or obtaining a driver licence.
- (2) The person is eligible to apply for, or be issued with, a probationary licence at any time during the disqualification period.

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- (3) The probationary licence must be issued with an interlock condition imposed by the road transport authority.

*Note* A person whose licence is subject to an interlock condition is a ***special driver*** under the *Road Transport (Alcohol and Drugs) Act 1977*. A special driver must not drive a motor vehicle if the driver has a concentration of alcohol of more than 0g in 100mL of blood or 210L of breath.

**Discussion question**

Under section 73V, a voluntary participant is eligible to have an interlock fitted to a vehicle and begin driving at any time during their disqualification period (under section 73Y (2) a voluntary participant must be on an interlock for a period of at least 6 months). Should voluntary participants be required to serve a portion of their disqualification period before being eligible to have an interlock fitted to a vehicle and begin driving? If so, how much of the disqualification period should be served?

**73W Interlock condition**

- (1) An ***interlock condition*** is a condition of a person's driver licence that, during the interlock period applying to the person, the person may drive only—
- (a) a motor vehicle that is a nominated vehicle for the person and has a fitted interlock; or
  - (b) if the person is receiving driver training from a driver trainer—
    - (i) a motor vehicle mentioned in paragraph (a); or
    - (ii) a motor vehicle provided by the driver trainer; or
  - (c) if the person is taking a practical driving test required by the road transport authority under section 78 (Tests and medical examinations of drivers etc)—any motor vehicle.

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- (2) In this section:

***driver trainer***—see the *Road Transport (Alcohol and Drugs) Act 1977*, section 4BA.

### **73X Nomination of vehicle**

- (1) For section 73W (1) (a), a nomination of a motor vehicle must be made to the road transport authority.

*Note* If a form is approved under the *Road Transport (General) Act 1999*, s 225 for this provision, the form must be used.

- (2) A person—

- (a) may only nominate a motor vehicle of a class shown on the person's driver licence; and
- (b) may nominate more than 1 motor vehicle.

#### **Examples**

- 1 the person's own motor vehicle
- 2 a motor vehicle owned by the person's spouse, friend or employer

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A motor vehicle cannot be the nominated vehicle for more than 1 person unless the vehicle has a fitted interlock that has the technical capability to identify the driver of the vehicle at a particular time.

#### **Example—technical capability**

- 1 the driver's use of a PIN, password or swipe card issued by an approved interlock provider
- 2 a camera installed by an approved interlock provider

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**73Y Interlock period**

- (1) The interlock period applying to a person whose licence is subject to a mandatory interlock condition is the period—
  - (a) starting on the day the interlock condition is imposed on the licence; and
  - (b) ending—
    - (i) at the later of—
      - (A) 6 months after that day; and
      - (B) the end of the person's disqualification period mentioned in section 73T; or
    - (ii) if, at that time, the road transport authority is not satisfied under subsections (4) and (5)—when the road transport authority is satisfied under subsections (4) and (5).
- (2) The interlock period applying to a person whose licence is subject to a voluntary interlock condition is the period—
  - (a) starting on the day the interlock condition is imposed on the licence; and
  - (b) ending—
    - (i) at the later of—
      - (A) 6 months after that day; and
      - (B) the end of the person's disqualification period mentioned in section 73V; or
    - (ii) if, at that time, the road transport authority is not satisfied under subsection (4)—when the road transport authority is satisfied under subsection (4).

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- (3) The interlock period applying to a person whose licence is subject to an interlock condition under section 73ZI (2) (When interlock exemption ends) is the period—
- (a) starting on the day the interlock condition is imposed on the licence; and
  - (b) ending—
    - (i) 6 months after that day; or
    - (ii) if, at that time, the road transport authority is not satisfied under subsections (4) and (5)—when the road transport authority is satisfied under subsections (4) and (5).
- (4) For subsections (1) (b) (ii), (2) (b) (ii) and (3) (b) (ii), the road transport authority must be satisfied that in the immediately preceding 3-month period, the person has not—
- (a) driven a nominated vehicle for the person—
    - (i) without first providing the vehicle's fitted interlock with a specimen of the person's breath; or
    - (ii) when the person knew, or ought reasonably to have known, that the vehicle's fitted interlock was not operating properly or had been interfered with; or
  - (b) recorded more than 2 failed attempts to start a nominated vehicle for the person as demonstrated by the interlock data record; or

**Example—failed attempt**

providing a sample of breath containing alcohol to the interlock

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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- (c) failed to comply with the interlock condition under section 73W.
- (5) For subsections (1) (b) (ii) and (3) (b) (ii), the road transport authority must also be satisfied that the person has complied with any order made for the person under section 73U (Court-ordered therapeutic program).
- (6) In this section:  
*interfered with* includes tampered with, damaged, destroyed and removed.

**Discussion question**

Under section 73Y, a minimum participation period of 6 months must be served by an offender whose licence is subject to an interlock condition before an offender is eligible to exit the interlock program. In other Australian jurisdictions, minimum participation periods range from 6 to 12 months. Is a 6 month minimum participation period sufficient to ensure a person demonstrates a separation of their drinking from their driving before they regain access to an unconditional licence.

**73Z When interlock condition ends**

- (1) The interlock condition ends when the interlock period ends.
- (2) If a person's probationary licence period ends before the person's interlock period ends, any licence subsequently issued to the person must be issued with an interlock condition imposed by the road transport authority for the remainder of the interlock period.

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**73ZA Using technical capability to identify driver**

A person commits an offence if the person—

- (a) drives a motor vehicle nominated under section 73X (3); and
- (b) fails to use the technical capability of the vehicle's fitted interlock to identify the person as the driver of the vehicle.

Maximum penalty: 20 penalty units.

**73ZB Producing interlock data record**

- (1) During an interlock driver's interlock period, the road transport authority may, by written notice, require the driver to give the authority, not later than 7 days after the day the notice is given, the driver's interlock data record for the period stated in the notice.
- (2) The road transport authority may, by written notice, require an approved interlock installer or an approved interlock service provider to produce to the authority, not later than 7 days after the day the notice is given, a person's interlock data record for the period stated in the notice.
- (3) A person must not fail to comply with a notice given to the person under subsection (1) or (2).

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

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**73ZC Destruction of interlock data record prohibited**

A person commits an offence if the person destroys an interlock data record before the end of the interlock period for the person to whom the record relates.

Maximum penalty: 20 penalty units.

**73ZD Interlock data record destroyed, lost or stolen**

- (1) This section applies if an interlock driver becomes aware, or reasonably suspects, that the driver's interlock data record has been destroyed, lost or stolen during the driver's interlock period.
- (2) The driver must tell the road transport authority as soon as practicable, but not later than 7 days after the day the driver becomes aware, or reasonably suspects, that the interlock data record has been destroyed, lost or stolen.

Maximum penalty: 20 penalty units.

**73ZE Offences relating to use of another person's means of identification**

An interlock driver commits an offence if—

- (a) a nominated vehicle for the driver is also a nominated vehicle for another person; and
- (b) the driver—
  - (i) uses the other person's means of identification to operate the vehicle; or

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- (ii) allows the other person to use the driver's means of identification to operate the vehicle.

Maximum penalty: 20 penalty units.

**Examples—means of identification**

a PIN, password or swipe card

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Division 3A.3 Interlock exemptions**

### **73ZF Exemption from interlock condition—application**

- (1) This section applies to a person to whom section 73T (4) (Mandatory interlock condition) applies.

*Note* Section 73T (4) applies to a person who chooses to complete the disqualification period, rather than apply for a probationary licence after completing half the disqualification period under s 73T (2). Section 73T (4) provides that any probationary licence issued to the person after the disqualification period must, unless the person has an interlock exemption, be issued with an interlock condition.

- (2) The person may apply to the road transport authority for an exemption from the mandatory imposition of an interlock condition on the person's probationary licence (an *interlock exemption*) because of special circumstances.

**Example—special circumstances**

a medical condition that prevents the applicant from providing a sufficient breath sample to operate an interlock

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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- (3) The road transport authority may, in writing, require the applicant to give the authority additional information or documents that the authority reasonably needs to decide the application.

*Note* Giving false or misleading information and producing false or misleading documents are offences against the Criminal Code, s 338 and s 339.

- (4) If the applicant does not comply with a requirement under subsection (3), the road transport authority may refuse to consider the application.

**73ZG Exemption from interlock condition—decision on application**

- (1) On application by a person for an exemption under section 73ZF, the road transport authority must—
- (a) grant the exemption; or
  - (b) refuse to grant the exemption.
- (2) If the road transport authority grants the exemption, the authority may impose conditions applying to the exemption.
- (3) The road transport authority may grant the exemption only if satisfied on reasonable grounds that special circumstances exist for granting the exemption.
- (4) The road transport authority is taken to have refused to grant the exemption if the applicant does not comply with a requirement under section 73ZF (3).

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**73ZH Exemption certificate**

- (1) This section applies if the road transport authority grants an interlock exemption under section 73ZG.
- (2) The authority must, by written notice, inform the applicant of—
  - (a) the matters of which the authority was satisfied under section 73ZF (2); and
  - (b) the matters about which the person must notify the authority, under section 73ZL, of any change.
- (3) The authority must also give the applicant a certificate about the exemption (an *exemption certificate*).
- (4) The exemption certificate must state—
  - (a) the expiry date of the exemption; and
  - (b) any conditions applying to the exemption.

*Note* If a form is approved under the *Road Transport (General) Act 1999*, s 225 for this provision, the form must be used.

**73ZI When interlock exemption ends**

- (1) A person's interlock exemption ends on the earliest of the following:
  - (a) the expiry date stated on the exemption certificate;
  - (b) 14 days after the day the person gives the road transport authority a notice under section 73ZL (Person with interlock exemption must give notice of change of circumstances);
  - (c) when the probationary licence period ends.

*Note* A probationary licence is generally issued for 1 year (see s 53).

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- (2) If a person's interlock exemption ends under subsection (1) (a) or (b), the road transport authority may impose an interlock condition on the probationary licence.
- (3) In deciding whether to impose an interlock condition under subsection (2), the road transport authority—
  - (a) must consider—
    - (i) whether the person is complying with any order under section 73U (Court-ordered therapeutic program); and
    - (ii) for a person whose interlock exemption ended under subsection (1) (b)—the extent to which the person's circumstances have changed based on the information provided by the person in the notice under section 73ZL; and
    - (iii) the period of time remaining on the person's probationary licence; and
  - (b) may consider any other relevant matter.

**73ZJ      Production of exemption certificate to police officer or authorised person**

- (1) This section applies to a person who has an interlock exemption.
- (2) The person must, if required by a police officer or authorised person, produce for inspection the person's exemption certificate, at a place directed by the police officer or authorised person, not more than 3 days after the request is made.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

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**73ZK Failing to comply with conditions applying to interlock exemption**

A person who has an interlock exemption commits an offence if—

- (a) the person's interlock exemption is subject to a condition under section 73ZG (2); and
- (b) the person fails to comply with the condition.

Maximum penalty: 20 penalty units.

**73ZL Person with interlock exemption must give notice of change of circumstances**

- (1) This section applies to a person who has an interlock exemption and a relevant change of circumstances happens.
- (2) The person must give written notice of the change to the road transport authority, as soon as practicable, but not later than 7 days after the day the circumstances change.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

*relevant change of circumstances* means a change in any of the matters stated, as required under section 73ZH (2) (b), (Exemption certificate) in a written notice given to the person.

## EXPOSURE DRAFT

## Division 3A.4      Approval

### 73ZM      Alcohol ignition interlock devices—approval

- (1) The road transport authority may approve a device (an *alcohol ignition interlock device*) that prevents a motor vehicle from being started, or continuing to be driven, unless the device is provided with a sample of a person's breath containing no alcohol.
- (2) The road transport authority must not approve an alcohol ignition interlock device unless the device complies with Australian Standard 3547-1997 (*Breath Alcohol Testing Devices for Personal Use*), and as in force from time to time.
- (3) The Legislation Act, section 47 (6) does not apply to Australian Standard 3547-1997.

*Note*      AS 3547-1997 does not need to be notified under the Legislation Act because s 47 (6) does not apply (see Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- (4) An approval is a notifiable instrument

*Note*      A notifiable instrument must be notified under the Legislation Act.

### 73ZN      Labelling for approved interlocks

- (1) The road transport authority may approve a form of labelling (an *approved label*) for an interlock with the words 'ACT approved interlock'.

#### **Example**

a sticker with the words 'ACT approved interlock'

*Note*      An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## EXPOSURE DRAFT



- (2) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **Division 3A.5 Interlock installers and service providers**

### **73ZO Application for approval as interlock installer or interlock service provider**

- (1) A person may apply to the road transport authority for approval as—
- (a) a person who may provide, install and remove an interlock in a motor vehicle (an *approved interlock installer*); or
  - (b) a person who may carry out maintenance to ensure the proper operation of an interlock or conduct inspections of an interlock (an *approved interlock service provider*).
- (2) The person must satisfy the eligibility requirements for approval under section 73ZQ.
- (3) The road transport authority may, in writing, require the applicant to give the authority additional information or documents that the authority reasonably needs to decide the application.

*Note* Giving false or misleading information and producing false or misleading documents are offences against the Criminal Code, s 338 and s 339.

- (4) If the applicant does not comply with a requirement under subsection (3), the road transport authority may refuse to consider the application.

*Note 1* If a form is approved under the *Road Transport (General) Act 1999*, s 225 for this provision, the form must be used.

*Note 2* A fee may be determined under the *Road Transport (General) Act 1999*, s 96 for this provision.

## **EXPOSURE DRAFT**

**73ZP Issue of approval**

- (1) If a person applies for approval under section 73ZO the road transport authority must—
  - (a) issue the approval; or
  - (b) refuse to issue the approval.
- (2) The road transport authority must not issue the approval unless satisfied that the applicant is eligible for approval under section 73ZQ.

*Note* An approval may be subject to conditions imposed by the road transport authority (see s 73ZS.)

- (3) However, the authority may refuse to issue the approval, only if—
  - (a) the authority has given the applicant written notice of the proposed refusal; and
  - (b) the notice states—
    - (i) the reasons for the proposed refusal; and
    - (ii) that written comments on the proposed refusal may be made to the authority before the end of a stated period of at least 14 days after the day the notice is given to the applicant; and
  - (c) the authority has considered any comments made by the applicant before the end of the stated period.
- (4) The road transport authority is taken to have refused to issue the approval if the applicant does not comply with a requirement under section 73ZO (3).
- (5) A person may be approved as an approved interlock installer and approved interlock service provider.

**EXPOSURE DRAFT**

**73ZQ Eligibility for approval as approved interlock installer or approved interlock service provider**

- (1) A person is eligible for approval as an approved interlock installer or an approved interlock service provider if the road transport authority is satisfied on reasonable grounds that the person—
- (a) is at least 18 years old; and
  - (b) is a suitable person to hold an approval having regard to the matters mentioned in section 73ZR; and
  - (c) for approval as an approved interlock installer—
    - (i) is suitably qualified and has the abilities, skills, knowledge and experience to perform the functions of an approved interlock installer; and
    - (ii) has access to equipment and facilities necessary to enable the person to provide, install and remove interlocks in motor vehicles; and
  - (d) for approval as an approved interlock service provider—
    - (i) is suitably qualified and has the abilities, skills, knowledge and experience to perform the functions of an approved interlock service provider; and
    - (ii) has access to equipment and facilities necessary to enable the person to carry out maintenance to ensure the proper operation of interlocks in motor vehicles or to inspect interlocks.

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- (2) A person is not eligible for approval as an approved interlock installer or an approved interlock service provider if the road transport authority is satisfied on reasonable grounds that the person—
- (a) is unable to perform the functions of an approved interlock installer or an approved interlock service provider because of illness or mental or physical incapacitation; or
  - (b) has at any time had an approval as an approved interlock installer or an approved interlock service provider revoked; or
  - (c) has failed to properly perform the functions of an approved interlock installer or an approved interlock service provider.

### **73ZR     Suitable person**

- (1) In deciding whether an applicant is a suitable person to be an approved interlock installer or approved interlock service provider the road transport authority must have regard to the following matters:
- (a) whether the person has been convicted or found guilty of a relevant offence within 5 years before the person applies for the approval;
  - (b) whether the person is, or at any time in the last 5 years has been, bankrupt or personally insolvent;  
*Note     **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.*
  - (c) whether the person has at any time had a driver licence with an interlock condition suspended or cancelled.

## **EXPOSURE DRAFT**

- (2) In this section:

**relevant offence**, means any of the following offences committed after the commencement of this section:

- (a) an offence involving dishonesty;
- (b) a relevant offence under the *Road Transport (Alcohol and Drugs) Act 1977*, section 4F;
- (c) an offence in a corresponding jurisdiction that would have been an offence under paragraph (a) or (b) if committed in the ACT.

### **73ZS Approval conditions**

- (1) The road transport authority may issue an approval under section 73ZP, or a renewal under section 73ZV with conditions.
- (2) The road transport authority may impose additional conditions or vary or revoke a condition after the approval is issued.
- (3) Conditions may include but are not limited to conditions of the following kind:
  - (a) conditions relating to the provision, installation, removal, inspection or carrying out of maintenance on interlocks;
  - (b) conditions relating to the interlock data record and the provision of the data to the road transport authority, persons nominated by the authority and interlock drivers.
- (4) However, the authority may impose an additional condition or vary or revoke a condition under subsection (2), only if—
  - (a) the authority has given the approval holder written notice of the proposed additional condition, variation or revocation of a condition; and

## **EXPOSURE DRAFT**

- (b) the notice states—
  - (i) the reasons for the proposed additional condition, variation or revocation of a condition; and
  - (ii) that written comments on the proposed additional condition, variation or revocation of a condition may be made to the authority before the end of a stated period of at least 14 days after the day the notice is given to the approval holder; and
- (c) the authority has considered any comments made by the approval holder before the end of the stated period.

**73ZT Term of approval**

- (1) An approval issued under section 73ZP—
  - (a) is issued for a period of not more than 3 years; and
  - (b) starts on the day the approval is issued or on the date stated in the approval.
- (2) An approval may be renewed under section 73ZV.

**73ZU Form of approval**

An approval issued under section 73ZP must include the following:

- (a) the name and business address of the approved interlock installer or approved interlock service provider;
- (b) the date of issue of the approval;
- (c) the end date of the approval;
- (d) any condition imposed on the approval under section 73ZS;
- (e) an identifying number for the approval.

**EXPOSURE DRAFT**

**73ZV      Renewal of approval**

- (1) An approved interlock installer or an approved interlock service provider may apply, in writing, to the road transport authority to renew an approval before the approval term ends.

*Note 1*    If a form is approved under the *Road Transport (General) Act 1999*, s 225 for this provision, the form must be used.

*Note 2*    A fee may be determined under the *Road Transport (General) Act 1999*, s 96 for this provision.

- (2) If a person applies to renew an approval under this section, the approval remains in force until the application is decided.
- (3) The road transport authority may, in writing, require the applicant to give the authority additional information or documents that the authority reasonably needs to decide the application.

*Note*       Giving false or misleading information and producing false or misleading documents are offences against the Criminal Code, s 338 and s 339.

- (4) If the applicant does not comply with a requirement under subsection (3), the road transport authority may refuse to consider the application.

**73ZW      Issue of renewed approval**

- (1) If an approved interlock installer or an approved interlock service provider applies under section 73ZV to renew an approval, the road transport authority must—
- (a) renew the approval; or
  - (b) refuse to renew the approval.

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- (2) The authority must not renew the approval unless satisfied that the applicant—
  - (a) is eligible for approval under section 73ZQ; and
  - (b) is complying with any condition of the approval.
- (3) However, the authority may refuse to renew the approval, only if—
  - (a) the authority has given the approval holder written notice of the proposed refusal; and
  - (b) the notice states—
    - (i) the reasons for the proposed refusal; and
    - (ii) that written comments on the proposed refusal may be made to the authority before the end of a stated period of at least 14 days after the day the notice is given to the approval holder; and
  - (c) the authority has considered any comments made by the approval holder before the end of the stated period.
- (4) A renewed approval is effective from the end date of the approval held immediately before renewal.

### **73ZX Revocation of approval**

- (1) The road transport authority may revoke the approval of an approved interlock installer or an approved interlock service provider if the approval holder—
  - (a) fails to comply with a condition on the approval; or
  - (b) is no longer eligible for approval under section 73ZQ; or
  - (c) contravenes a provision of this part.

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- (2) However, the road transport authority may revoke the approval, only if—
  - (a) the authority has given the approval holder written notice of the proposed revocation; and
  - (b) the notice states—
    - (i) the reasons for the proposed revocation; and
    - (ii) that written comments on the proposed revocation may be made to the authority before the end of a stated period of at least 14 days after the day the notice is given to the approval holder; and
  - (c) the authority has considered any comments made by the approval holder before the end of the stated period.

**73ZY Failure to comply with condition of approval**

- (1) A person commits an offence if the person—
  - (a) is an approved interlock installer or an approved interlock service provider; and
  - (b) fails to comply with a condition of the approval.

Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

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**73ZZ Installation or removal of interlock without approval**

- (1) A person commits an offence if the person—
  - (a) installs an interlock in, or removes an interlock from, a motor vehicle; and
  - (b) is not an approved interlock installer.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

**73ZZA Installation or removal of unlabelled interlock without approval**

- (1) An approved interlock installer commits an offence if—
  - (a) the person installs an interlock in, or removes an interlock from, a motor vehicle; and
  - (b) the interlock is not clearly labelled with an approved label.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

**73ZZB Maintenance or inspection of interlock without approval**

- (1) A person commits an offence if the person—
  - (a) carries out maintenance on, or conducts an inspection of, an interlock; and
  - (b) is not an approved interlock service provider.Maximum penalty: 20 penalty units.
- (2) An offence against this section is a strict liability offence.

**EXPOSURE DRAFT**

**73ZZC Maintenance or inspection of unlabelled interlock without approval**

- (1) An approved interlock service provider commits an offence if—
  - (a) the person carries out maintenance on, or conducts an inspection of, an interlock; and
  - (b) the interlock is not clearly labelled with an approved label.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

**73ZZD Unlawful labelling of interlocks**

- (1) A person commits an offence if—
  - (a) the person labels an interlock device with the words ‘ACT approved interlock’; and
  - (b) the device is not approved under section 73ZM (Alcohol ignition interlock devices—approval).

- (2) A person commits an offence if the person—
  - (a) labels an interlock device with the words ‘ACT approved interlock’; and
  - (b) is not an approved interlock installer or an approved interlock service provider.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

**EXPOSURE DRAFT**

**73ZZE Unlawful removal of labels**

- (1) A person commits an offence if the person removes an approved label from an interlock.

Maximum penalty: 20 penalty units.

- (2) This section does not apply if—
- (a) the person is an approved interlock installer or an approved interlock service provider; and
  - (b) the approved label—
    - (i) is being immediately replaced with another approved label; or
    - (ii) is not required because the person for whom the interlock was installed is no longer an interlock driver.

**73ZZF Notification of removal of interlocks**

- (1) An approved interlock installer commits an offence if the person—
- (a) removes an interlock with an approved label from a motor vehicle; and
  - (b) fails to give the road transport authority written notice of the removal not later than 7 days after the day of its removal.

*Note* Giving false or misleading information and producing false or misleading documents are offences against the Criminal Code, s 338 and s 339.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) (b) is a strict liability offence.

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**73ZZG Tampering or otherwise interfering with labelled interlocks**

A person commits an offence if the person tampers or otherwise interferes with an interlock with an approved label installed in a motor vehicle.

Maximum penalty: 20 penalty units.

**73ZZH Suspected tampering or otherwise interfering with labelled interlocks**

- (1) An approved interlock installer or approved interlock service provider commits an offence if the person—
- (a) becomes aware that an interlock with an approved label has been tampered or otherwise interfered with; and
  - (b) fails to give the road transport authority written notice of the tampering or interference not later than 7 days after the day the person becomes aware of it.

Maximum penalty: 20 penalty units.

*Note* Giving false or misleading information and producing false or misleading documents are offences against the Criminal Code, s 338 and s 339.

- (2) An offence against subsection (1) (b) is a strict liability offence.

**Division 3A.6 Other matters****73ZZI Agreements relating to interlocks**

The road transport authority may enter into an agreement with a person (not inconsistent with the Act or the regulation) about the supply, or provision of services relating to the installation, removal, maintenance and inspection of interlocks under the regulation.

**EXPOSURE DRAFT**

**73ZZJ Security and disclosure of interlock-related information**

- (1) The road transport authority must ensure that interlock-related information is kept securely and disclosed only in accordance with this regulation or another law in force in the ACT.

*Note* The Information Privacy Principles apply to the road transport authority. The Principles deal with the collection, storage, security and exchange of personal information (see *Privacy Act 1988* (Cwlth), s 14 to s 16).

- (2) In exercising its functions under this part, the road transport authority may disclose interlock-related information to the following people:
- (a) an approved interlock installer or an approved interlock service provider;
  - (b) a person who has entered into an agreement with the authority under section 73ZZI;
  - (c) a person who provides any services to a person who has entered into such an agreement in connection with interlocks;
  - (d) a police officer or prosecutor in connection with the enforcement of the road transport legislation.
- (3) In this section:

***interlock-related information*** means interlock data records, camera images from an interlock fitted with a camera and information entered in the driver licence register in relation to interlocks.

**EXPOSURE DRAFT**

**17 Dictionary, new definitions**

*insert*

***alcohol ignition interlock device***—see section 73ZM.

***approved interlock installer***—see section 73S.

***approved interlock service provider***—see section 73S.

***approved label***—see section 73ZN.

***corresponding jurisdiction*** means the Commonwealth, a State or New Zealand.

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1).

***disqualification period***—see section 73S.

***exemption certificate***—see section 73ZH.

***fitted interlock***—see section 73S.

***habitual offender***—see section 73S.

***interlock***—see section 73S.

***interlock condition***—see section 73W.

***interlock data record***—see section 73S.

***interlock driver***—see section 73S.

***interlock exemption***—see section 73ZF.

***interlock period***, for a person—see section 73S.

***level***, for a concentration of alcohol in blood or breath—see the *Road Transport (Alcohol and Drugs) Act 1977*, section 4E.

***nominated vehicle***, for a person—see section 73S.

## EXPOSURE DRAFT

## Part 5

## Road Transport (General) Regulation 2000

### Explanatory note

Consequential amendments of the *Road Transport (General) Regulation 2000* will be included in the Bill.

## EXPOSURE DRAFT



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## **Part 6                      Road Transport (Offences) Regulation 2005**

### **Explanatory note**

Consequential amendments of the *Road Transport (Offences) Regulation 2005* will be included in the Bill.

## **EXPOSURE DRAFT**

## Part 7

# Road Transport (Safety and Traffic Management) Regulation 2000

### Explanatory note

Consequential amendments of the *Road Transport (Safety and Traffic Management) Regulation 2000* will be included in the Bill.

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### Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2012.

**2 Notification**

Notified under the Legislation Act on 2012.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## EXPOSURE DRAFT