

# ACT Alcohol Interlock Program

Exposure Draft

Road Transport Legislation Amendment Bill 2012



A guide to understanding the Bill



**ACT**  
Government

June 2012

# Road Transport Legislation Amendment Bill 2012

## A Guide to understanding the Bill

### Table of Contents

Consultation Arrangements	2
Key Concepts in the Exposure Draft	3
Introduction	4
Notes on Clauses - <i>Road Transport Amendment Bill 2012</i>	6

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## Consultation Arrangements

The Exposure Draft and this Consultation Guide are available on the Legislation Register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au). The consultation period for the Exposure Draft closes on **7 September 2012**.

**Confidentiality:** please note that unless you advise us that you wish your comments to be treated as confidential, your submission may be published or referred to in subsequent reports on the consultation for this Exposure Draft.

**Comments or submissions** on the Exposure Draft should be sent to:

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## Key Concepts in the Exposure Draft

**alcohol ignition interlock device (interlock)** - An interlock is a breath test device connected to the ignition of a vehicle to stop it from starting, or continuing to operate, if the driver has a specified concentration of alcohol present in his or her breath. If the driver fails the breath test the ignition system is locked for a certain period before the driver can take another test (generally 5 to 30 minutes, depending on the alcohol concentration reading). Interlocks can be fitted to almost any type of motor vehicle.

**prescribed concentration of alcohol** - In the Exposure Draft, this term has the same meaning as it does in the *Road Transport (Alcohol and Drugs) Act 1977*. To drive or ride a motor vehicle in the ACT, the concentration of alcohol in your blood or breath must remain below a legally set level, known as the prescribed concentration. For a special driver, the prescribed concentration of alcohol in a person's blood or breath is more than 0g of alcohol in 100mL of blood or 210L of breath. The meaning of 'special driver' is defined in section 4B of the *Road Transport (Alcohol and Drugs) Act 1977*. Examples of special drivers include the holder of a learner licence, provisional licence, probationary licence or restricted licence, and driver supervisors, assessors or instructors accompanying a learner driver. For all other drivers, the prescribed concentration of alcohol in a person's blood or breath is 0.05 grams or more. Under the proposed laws, it will be an offence for a person subject to an interlock condition on their driver licence to drive a motor vehicle on a public road if their alcohol concentration is more than 0g of alcohol in 210L of breath.

## Introduction

This Bill seeks to amend the *Road Transport (Alcohol and Drugs) Act 1977* and related legislation to provide for an alcohol ignition interlock program (Interlock Program) in the Australian Capital Territory (ACT).

By releasing an Exposure Draft for public consultation, the Government is not committing itself to a particular legislative model, nor does the release of the Exposure Draft Bill mean that funding for any or all of the elements of the program would be agreed in future Budgets. Options for implementation would need to be considered after consultation having regard to available resourcing.

The primary purpose of the Bill would be to reduce the road safety risk posed by drink drivers to themselves and other road users by preventing the driver from starting, or continuing to operate, a vehicle fitted with an interlock device if the driver has a specified concentration of alcohol present in his or her breath.

The Bill would establish an ACT interlock program that:

- a) is administered by the road transport authority;
- b) requires mandatory participation by high range drink driving offenders;
- c) requires mandatory participation by habitual drink driving offenders;
- d) offers reduced disqualification periods for offenders who participate in the interlock program;
- e) ensures that high-risk offenders who are unable or unsuitable to participate in the interlock program must complete their full disqualification period before applying for a probationary licence; these offenders will be required to obtain an exemption from the requirement for an interlock condition in order to be issued a probationary licence after completing their disqualification;
- f) offers the option of voluntary participation for special licence holders, low and mid range drink driving offenders;
- g) prescribes a six month minimum program participation period, and also requires participants to demonstrate successful performance (i.e. no alcohol detected in the person's breath samples over a period of time) before leaving the interlock program;
- h) for high-risk offenders, may include a court-ordered therapeutic program following a pre-sentence assessment; and
- i) permits the voluntary use of interlock camera technology to distinguish between different users of the same vehicle.

The road transport authority's power to impose conditions on a driver licence is found in section 7 (d) of the *Road Transport (Driver Licensing) Act 1999*. Alcohol interlock licence conditions are already recognised by the ACT licensing regime (see section 10 of the *Road Transport (Driver Licensing) Regulation 2000*) but these provisions are rarely, if ever, used.

This Bill makes the imposition of an interlock condition mandatory for high range drink driving offenders and habitual drink driving offenders, unless the offender has been granted an exemption because of special circumstances.

The *Road Transport (Driver Licensing) Act 1999* will confer power on the road transport authority to administer the program. This Act will also include regulation-making powers to establish the alcohol interlock scheme under the *Road Transport (Driver Licensing) Regulation 2000*.

## Notes on clauses - Draft Bill

### Part 1 Preliminary

This part deals with formal matters including the name of the legislation and its commencement.

#### Clause 1 Name of Act

This clause provides that the Act will be known as the *Road Transport Legislation Amendment Act 2012*.

#### Clause 2 Commencement

This clause explains when the Act will take effect. In summary, the Minister may commence the Act by notice. If it has not commenced within 12 months after its notification date, clause 2 (2) provides for the automatic commencement of the Act after 12 months.

The 12 month default commencement date has been included to provide sufficient time to establish a contract for the supply and maintenance of the interlock devices. Currently, there are three companies in Australia that provide alcohol interlock devices and related services. An open tender process would be undertaken to procure the services of the most suitable provider/s. Allowing 12 months for implementation has also been included to enable essential programming work to be undertaken in the rego.act system. The rego.act system manages the ACT's vehicle registration and driver licence databases, the demerit point scheme and the road transport infringement notice scheme. It is a complex system that is required to manage hundreds of thousands of client records each year. It is estimated that the 12 month period will enable the required changes for the implementation of the alcohol ignition interlock program to be fully programmed into the system.

To allow for a 12 month default commencement, clause 2 (3) makes it clear that section 79 of the Legislation Act does not apply to a provision that is mentioned in clause 2 (2). That section provides for automatic (default) commencement after 6 months. Disapplying this provision allows the new provisions to be commenced later than 6 months after they are enacted.

#### Clause 3 Legislation amended

This clause lists the road transport legislation to be amended by the *Road Transport Legislation Amendment Act 2012*.

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

The amendments in this part affect the *Road Transport (Alcohol and Drugs) Act 1977*. This Act provides the legal basis for alcohol and drug testing of drivers and driver

trainers in the ACT, and includes the main “drink driving” offences that are linked to requirements to undergo an alcohol interlock program.

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

This clause inserts new section 4B (1) (ea) into Part 1A of the *Road Transport (Alcohol and Drugs) Act 1977*. Section 4B (1) sets out various circumstances in which a person is deemed to be a special driver, for example, if the person holds a learner, provisional, probationary or restricted licence, or if the person is the driver of a public passenger vehicle or heavy vehicle. For a special driver, the prescribed concentration of alcohol in a person’s blood or breath is more than 0g of alcohol in 100mL of blood or 210L of breath. In effect, this means that a special driver must not have any alcohol in his or her breath.

New section 4B (1) (ea) provides that a person who holds an Australian driver licence with an interlock condition will also be considered to be a special driver for the purposes of ACT road transport law. It ensures that drivers on an alcohol interlock are subject to a zero alcohol limit.

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

This clause inserts a new definition of *interlock condition* into section 4B (3). This definition refers readers to new section 73W - Interlock condition, of the *Road Transport (Driver Licensing) Regulation 2000*.

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

The amendments in this part apply to the *Road Transport (Driver Licensing) Act 1999*. This Act establishes the legal framework for the driver licensing system. It includes detailed regulation making powers for the driver licensing system and the more serious offences relating to driver licence matters, to which higher penalties apply than are available for offences that are created by the regulations.

**Clause 6      Driver licensing system  
New sections 28 (2) (u) to (w)**

Section 28 of the *Road Transport (Driver Licensing) Act 1999* enables the regulations to provide for a system of licensing drivers of motor vehicles, authorising the driving of motor vehicles and identifying people as licensed drivers of motor vehicles on roads and road related areas.

Clause 6, which inserts new sections 28 (2) (u), (v) and (w), enables the regulations to provide the necessary requirements to establish an interlock program in the ACT.

New section 28 (2) (u) provides that the regulations may provide for the imposition of a condition on a person’s driver licence, requiring an alcohol ignition interlock device to be fitted to the person’s motor vehicle, if the person is convicted or found

guilty of an alcohol related disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977*.

New section 28 (2) (v) provides for regulations to be made about court-ordered therapeutic programs for people convicted of offences against *the Road Transport (Alcohol and Drugs) Act 1977*.

New section 28 (2) (w) provides that the regulations may confer on the road transport authority the power to approve alcohol ignition interlock devices; the provision, installation, testing and maintenance of alcohol ignition interlock devices; and approval of people to install, test and maintain the devices.

#### **Clause 7      New section 33A**

This clause inserts a new section 33A. This section includes an offence provision – new section 33A (1) – that makes it an offence for a person who holds a driver licence with an interlock condition to fail to comply with the interlock condition. The offence attracts a maximum penalty of 50 penalty units, imprisonment for 6 months or both. This penalty is commensurate with other maximum penalties for breaches of licence conditions, such as section 33 of the *Road Transport (Driver Licensing) Act 1999*, which deals with contraventions of conditions of a restricted licence.

New section 33A (2) provides that if a person is convicted, or found guilty, by a court of failing to comply with an interlock condition, the person's licence is automatically cancelled unless the court orders otherwise. It should be noted in this context that an interlock licence condition will ordinarily be attached to a probationary licence, which has been granted following a period of licence disqualification. In general, probationary licences must be held for one year before the driver is able to regain a full licence. The purpose of probation is to encourage the formation of better driving behaviours during the probationary year.

A cancellation under 33A (2) takes effect from the time of the conviction or finding of guilt or, if the court orders a later date, on the later date. Under new section 33A (5), a person whose licence is cancelled cannot obtain another licence with an interlock condition for the remainder of their disqualification period.

New section 33A (4) provides that an automatic cancellation under section 33A (2) does not apply if the person's licence is cancelled under another provision of the road transport legislation. The note to section 33A (4) explains that under section 66 (1) of the *Road Transport (General) Act 1999*, if a person is disqualified from holding or obtaining a driver licence (whether or not by order of a court) any driver licence already held by the person is cancelled.

New section 33A (6) contains definitions of the terms “disqualification period” and “interlock condition”, which refer readers to the *Road Transport (Driver Licensing) Regulation 2000*. The amendments to insert the relevant provisions of that Regulation are made in Part 4 of this Bill.

The Discussion Question for this clause invites readers of the Bill to comment on whether, in accordance with new section 33A, licence cancellation is a suitable penalty for a person who is convicted or found guilty of failing to comply with an interlock condition. In this regard, it should be noted that fines and/or imprisonment are also included as sanctions for this offence.

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

This part includes amendments to the *Road Transport (Driver Licensing) Regulation 2000*, to establish an alcohol interlock scheme for drivers convicted of certain drink driving-related offences. The amendments in this part deal with the issue of licences subject to an alcohol interlock condition, court-ordered therapeutic programs, the duration and expiry of interlock conditions, exemptions from interlock conditions, interlock data records, approval of interlock installers and providers, and ancillary matters.

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

This clause inserts a new description of the ‘I’ licence condition in Table 10 – Driver licence condition codes. The “I” (for “interlock”) condition requires the driver subject to that condition to drive a vehicle fitted with an alcohol ignition interlock device.

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

This clause amends section 52, which explains when a probationary licence must be issued. The insertion of new 52 (2A) provides that the road transport authority must issue a probationary licence, with an interlock condition, to a person who is eligible for a probationary licence under new section 73T or new section 73V. These are people who are participating in the mandatory (section 73T) or voluntary (section 73V) alcohol interlock program. A probationary licence must also be issued to an eligible person who has an interlock exemption.

### **Clause 10 Section 52 (3) and note**

This clause replaces section 52 (3) and inserts new section 52 (4), with a new note.

Replacement section 52 (3) is similar to existing section 52 (3). It authorises the road transport authority to issue probationary licences of the relevant class. However, it is made subject to new section 52 (4). That section requires the road transport authority to be satisfied that the applicant for the probationary licence has complied with any order under new section 73U (court-ordered therapeutic program), if the court has made compliance with the order a condition of obtaining a driver licence.

There is a discussion question in the Draft Bill for this provision, asking whether the road transport authority should be required to consider compliance with court-

ordered therapeutic programs as a factor in re-licensing where the court has not made compliance a condition of re-licensing.

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

This clause amends section 57 (3), which requires the road transport authority, when issuing a conditional licence to a person, to give that person a written notice containing a full explanation of the conditions to which the licence is subject. The amendment ensures that the road transport authority must give a person who is subject to an interlock condition a written notice that contains a full explanation of the interlock condition.

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

This clause amends sections 59 (3) and (5) so that they apply to persons subject to an 'I' condition. Section 59 deals with the duties of conditional licence holders generally. The amendment to section 59 (3) ensures that that a holder of a conditional licence issued under the law of another jurisdiction that shows an interlock condition must, when driving on a road or road related area in the ACT, carry any notice given to the person by the licensing authority that issued the licence which contains an explanation of the conditions to which the licence is subject. This requirement aligns with similar requirements in other Australian jurisdictions. It is an offence to fail to produce these items when required to do so (see section 59 (4) of the Regulation).

The amendment to section 59 (5) ensures that it is an offence if the holder of a driver licence subject to an interlock condition fails to produce his or her driver licence, the notice mentioned in section 57 (3), or for the holder of a conditional licence issued in any other jurisdiction, any notice mentioned in section 59 (3) when required to do so by a police officer or authorised person.

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

This clause replaces section 60 (2), so that it also refers to drivers who are subject to an interlock condition. The effect of section 60 (2) is to make it clear that the offence in section 60 (1), which relates to contravening a licence condition without a reasonable excuse, does not apply to the persons mention in section 60 (2). These people are instead to be charged with more serious offences under the *Road Transport (Driver Licensing) Act 1999*, which carry higher penalties. This intention is made clear in the notes.

Note 1 explains the relevant offence for breaching a condition of a restricted licence is found in section 33 of the *Road Transport (Driver Licensing Act) 1999*; note 2 explains that the relevant offence for breaching an interlock condition is found in section 33A of the *Road Transport (Driver Licensing) Act 1999*.

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

This clause amends section 66, which deals with a person's eligibility to apply for a driver licence where the person's driver licence is suspended or has been disqualified. It replaces existing section 66 (4) with a new section 66 (4), that makes it clear that the restrictions on eligibility to apply for a licence do not apply to drivers to whom sections 49 (restricted licence), 73T (mandatory interlock condition) or 73V (voluntary interlock condition) apply. The effect is that a suspended or disqualified driver who is subject to any of these provisions is eligible to apply for a driver licence (this will be a probationary licence, for persons to whom section 73T or 73V applies) notwithstanding that they are still subject to a period of licence disqualification.

The note inserted into new section 66 (4) (b) explains that a person to whom section 73T applies is eligible to apply for a probationary licence, with an interlock condition, after completing half the period of disqualification. The note inserted into new section 66 (4) (c) explains that a person to whom section 73V applies is eligible for a probationary licence, with an interlock condition, at any time during the period of disqualification.

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

This clause amends section 73A, which requires a person convicted or found guilty of a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977* to complete an alcohol awareness course in order to regain or retain a driver licence. This amendment has the effect of exempting a person who has been ordered to undergo a therapeutic program by the court, under new section 73U, from the requirement to complete an alcohol awareness course. This provision recognises that high risk offenders may have more serious issues relating to alcohol use and driving, and that where a court-ordered program is specified for that person, completion of a more general alcohol awareness course may not provide any additional rehabilitation benefit for the offender.

**Clause 16 New part 3A**

This clause inserts new Part 3A, which provides for alcohol interlock devices and their use. This part consists of new sections 73S to 73ZZJ.

**Division 3A.1 General**

Section 73S Definitions

New section 73S defines key words and terms used in Part 3A.

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

This Division contains the core provisions relating to the imposition of interlock conditions and the therapeutic program.

### Section 73T Mandatory interlock condition

New section 73T deals with mandatory interlock conditions for specific high risk drink driving offenders. It applies to certain drink driving offenders who are detected with a BAC at or above level 4 (0.15g of alcohol in 100 ml of blood, or higher) and people who have been convicted or found guilty of 3 or more alcohol-related disqualifying offences within a 5 year period, who have been disqualified from holding a driver licence for a period<sup>1</sup>.

New section 73T (2) provides that a person covered by section 73T (1) is eligible to apply for a probationary licence after completing half their licence disqualification period. New section 73T (3) provides that the probationary licence must be issued with an interlock condition. The purpose of this discounted disqualification period is to provide an incentive for offenders with alcohol and driving issues to return to driving sooner, subject to an alcohol interlock condition. The purpose of allowing the driver to return to driving part-way through their disqualification period, subject to a mandatory alcohol interlock condition, is to enable the person to learn, in a practical way, how to separate drinking from driving. The basis for this policy is that an earlier return to driving, with an interlock, will support the person in adopting better approaches to managing the person's drinking and driving behaviours following the person's conviction for a drink-driving related offence.

While it is anticipated that a substantial proportion of drivers will apply for a probationary licence after completing half their disqualification period, it is possible that some drivers may opt to complete all their disqualification before applying for a probationary licence. New section 73T (4) will apply in this circumstance. It explains that if the person does not take up the option of applying for a probationary licence before the end of the disqualification period, any probationary licence issued to the person after the disqualification period must be issued with an interlock condition, unless the person has been given an exemption. The intention of new section 73T is that every high-risk drink driver will be required to hold a probationary licence that is subject to an interlock condition. However, it is also recognised that some offenders may not be capable of using interlocks (for example, because of a medical condition) and for this reason, Division 3A.3 deals with exemptions from interlock conditions.

The note in new section 73T explains that a person who holds an Australian driver licence with an interlock condition is a special driver. For a special driver, the prescribed concentration of alcohol in a person's blood or breath is more than 0g of alcohol in 100mL of blood or 210L of breath. This note relates to the amendment in clause 4.

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<sup>1</sup> In this context, it should be noted that the *Road Transport (Alcohol and Drugs) Act 1977* provides for default (automatic) disqualification periods for drink driving related offences, although the court may impose a higher or lower disqualification period, subject to the statutory minimum period. The default applies where no specific disqualification period is ordered by the Court.

The Discussion Question for section 73T invites readers of the Bill to comment on the proposal that high risk drink drivers should be eligible to have an interlock fitted to a vehicle and begin driving after serving at least half their disqualification period. Readers are asked to respond to questions regarding when offenders should be eligible to have an interlock fitted to a vehicle and begin driving, and whether they consider that offenders will be significantly deterred from reoffending by the option of returning to driving, with an interlock, after completing 50% of a disqualification period.

#### Section 73U Court-ordered therapeutic program

New section 73U applies to a person mentioned in section 73T (1). It provides that before the person is sentenced, the Court Alcohol and Drug Assessment Service (CADAS) must prepare a report that assesses whether any form of therapeutic treatment or program might assist the person and make a recommendation about an appropriate treatment or program.

In practice, CADAS would assess whether the offender is likely to benefit from accessing counselling, group therapy or another type of more intensive drug treatment to address an alcohol-related health problem such as alcohol dependency. An initial assessment would enable therapeutic responses to be tailored to individual participants to support road safety outcomes through changed driving behaviours. Offenders who are assessed as being suitable for counselling may be required to attend up to four counselling sessions whilst on the interlock program. Counselling sessions may be delivered on an individual or group basis depending on the offender's needs. A key component of the counselling may be for the offender to discuss with the counsellor any reports generated by the offender's interlock device; that is, whether the offender has recorded positive readings on the interlock device and, if so, the circumstances relating to the breach of the "no alcohol while driving" condition and how this breach can be addressed.

Offenders who are assessed as having a severe alcohol problem may need to be referred for a medical assessment. These drivers may be assessed as being unfit to drive on medical grounds. In these cases, their participation in an interlock program may need to be suspended while they are accessing treatment for alcohol dependency, such as an in-patient medical withdrawal program.

It should be noted that these provisions are a preliminary draft only. Other legislative reforms in relation to court-based assessments of persons with alcohol and drug issues (see the Crimes Legislation Amendment Bill 2012) are underway and it is anticipated that section 73U will be revised once those other reforms are finalised.

The Discussion Question for section 73U invites readers of the Bill to comment on how an offender's consent to treatment should be evidenced, particularly whether the offender's consent should be explicit at the time the treatment order is made or whether consent can be inferred from the offender's subsequent compliance with a treatment order. Readers should consider how section 73U engages the right to

protection from compulsory medical treatment under section 10 (2) of *the Human Rights Act 2004*, which states that “No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent”.

#### Section 73V Voluntary interlock condition

New section 73V enables a person who is disqualified from holding or obtaining a driver licence because of an alcohol-related disqualifying offence, but who is not subject to a mandatory interlock condition, to apply for a probationary licence with an interlock condition at any time during the person’s disqualification period.

The voluntary interlock program operates in a similar same way as the mandatory interlock program, however participation is voluntary and the person can elect to participate at any stage during the disqualification period.

The Discussion Question for section 73V invites readers of the Bill to comment on whether voluntary participants should be required to serve a portion of their disqualification period before being eligible to have an interlock fitted to a vehicle and begin driving, and if so, what portion is appropriate.

#### Section 73W Interlock condition

New section 73W defines the term ‘interlock condition’. An interlock condition refers to a condition of a person’s driver licence that, during the interlock period applying to the person, the person may drive only a vehicle nominated by the person that has a fitted interlock.

In certain circumstances, where the person is receiving driver training, the person may also drive a vehicle provided by the driver trainer. Also, if the person is taking a practical driver test, the person may drive any motor vehicle.

#### Section 73X Nomination of vehicle

New section 73X deals with the nomination of vehicles to be fitted with an interlock. Interlocks can be fitted to almost any type of motor vehicle. This means that motorcycle riders, heavy vehicle drivers and public passenger vehicle drivers can continue to use a vehicle for transportation or employment purposes.

Under section 73X (1), nominations are to be made in the approved form to the road transport authority. Under section 73X (2), a person may nominate one or more vehicles of a class (or classes) that correspond with the class(es) of vehicle on the person’s driver licence. A person may nominate the person’s own vehicle, or a vehicle owned by an employer, a spouse or a friend.

New section 73X (3) explains that a vehicle cannot be the nominated vehicle for more than 1 person unless it has been fitted with an interlock that has the “technical capability” to identify the person who is driver of the vehicle at a particular time. The provision goes on to give examples of “technical capability” in this context, such as a PIN issued to a driver, a password, a swipe card issued by approved interlock provider, or a camera installed by an approved interlock provider.

### Section 73Y Interlock period

New section 73Y defines the period of time for which a person will be subject to an interlock condition. This period of time is called the *interlock period* and includes both time-based components and performance-based components. Performance-based programs acknowledge that drink drivers are not a homogenous cohort; some people take longer than other people to separate drinking and driving. The National Road Safety Strategy 2011-2020 supports a performance based approach to interlock use, as it requires offenders to demonstrate rehabilitation from alcohol misuse (including alcohol dependence) before the removal of an interlock condition.

New section 73Y (1) deals with the interlock period for a person who is subject to a mandatory interlock condition. It provides that the interlock period starts on the day the condition is imposed on the person's probationary licence. The interlock period ends at the later of 6 months or the end of the person's disqualification period (**time based elements**), subject to the road transport authority being satisfied of the matters mentioned in new section 73Y (4) and (5) (**performance-based elements**).

New section 73Y (2) provides that for voluntary participants, the interlock period commences on the day the interlock condition is imposed on the person's licence and ends 6 months later, or when the person's disqualification period ends, whichever is the later (**time based element**), subject to the road transport authority being satisfied about the matters mentioned in new section 73Y (4) (**performance-based element**). This requirement ensures that a minimum period of 6 months must be served on the voluntary interlock program.

New section 73Y (3) deals with persons who have an interlock condition imposed after an interlock exemption ends. The interlock period begins on the day the interlock condition is imposed on the person's licence and ends 6 months afterwards (**time based element**), subject to the road transport authority being satisfied about the matters mentioned in new section 73Y (4) and (5) (**performance-based elements**).

The performance based elements in new section 73Y (4) are that, within the previous 3 months, the person has not

- driven a nominated vehicle without providing a breath sample;
- driven the vehicle when the person knew (or should have known) the interlock was not working or had been interfered with;
- had more than 2 failed attempts to start a nominated vehicle; and
- failed to comply with an interlock condition.

The performance based element in new section 73Y (5) requires the road transport authority to be satisfied that the person is complying with an order under section 73U. In practice, the authority and the ACT Health Directorate will develop protocols for reporting on client progress with court-ordered therapeutic programs that operate in conjunction with the alcohol interlock program.

The Discussion Question for section 73Y invites readers of the Bill to comment on whether a 6 month minimum participation period is sufficient to ensure a person demonstrates a separation of the person's drinking from the person's driving. In this context, it should be noted that the 6 month minimum is subject to the road transport authority being satisfied about the person's performance on the interlock program.

#### Section 73Z When interlock condition ends

New section 73Z (1) explains that an interlock condition ends when the person's interlock period ends. New section 73Z (2) explains that if a driver is still subject to an interlock condition when his or her probationary licence ends, the condition attaches to any licence subsequently issued to the driver by the road transport authority.

#### Section 73ZA Using technical capability to identify driver

New section 73ZA creates an offence of driving a vehicle that is a **nominated vehicle** for two or more people, where the driver fails to use the fitted interlock's technical capacity to identify the driver. The purpose of this offence is to ensure that drivers who share a nominated vehicle properly identify themselves, to maintain the integrity of the interlock data record for each driver. The maximum penalty for this offence is 20 penalty units.

#### Section 73ZB Producing interlock data record

New section 73ZB sets out the obligations of drivers, service providers and installers in relation to the production of an interlock data record requested in writing by the road transport authority. Interlock data records are needed by the road transport authority for the purposes of determining whether a driver meets the requirements in section 73Y (4) – without this information, the authority cannot determine whether the person's interlock period should end.

Under section 73ZB (1) , the road transport authority may give a written notice to a driver requiring the production of the driver's interlock data record for the period specified in the notice. The record must be given to the road transport authority no later than 7 days after the notice is given to the driver. Under new section 73ZB (2), the road transport authority may require an interlock service provider or installer to produce a person's interlock data record for a period specified in the written notice, no later than 7 days after the notice is given.

Section 73ZB (3) makes it an offence for a person mentioned in 73ZB (1) and (2) to fail to comply with a notice issued by the authority to produce an interlock data record, prescribing a maximum penalty of 20 penalty units. This is a strict liability offence under section 73ZB (4).

### Section 73ZC Destruction of interlock data record prohibited

New section 73ZC makes it an offence for a person to destroy an interlock data record before the end of the interlock period. The maximum penalty for this offence is 20 penalty units. The purpose of this offence is to discourage people from destroying interlock data records.

### Section 73ZD Interlock data record destroyed, lost or stolen

New section 73ZD deals with the situation where an interlock driver becomes aware or reasonably suspects that the driver's interlock data record has been lost, destroyed or stolen. The driver commits an offence if he or she fails to notify the road transport authority as soon as possible, and no later than 7 days, after becoming aware of the loss, theft or destruction. The maximum penalty is 20 penalty units.

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

New section 73ZE deals with the use of another person's means of identification where the vehicle is the **nominated vehicle** for more than one person subject to an interlock condition.

Section 73ZE makes it an offence for a person to use another person's means of identification to operate a vehicle. It is also an offence to allow another driver to use the person's means of identification to operate a vehicle.

The maximum penalty for each of these offences is 20 penalty units.

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

This division deals with exemptions from interlock conditions, for persons who would otherwise be subject to a mandatory interlock condition under section 73T when they obtain a probationary licence following a period of licence disqualification for a drink-driving related offence.

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

New section 73ZF applies to a person who is subject to a mandatory interlock condition and who does not apply for a probationary licence before their disqualification period expires — this is a person to whom new section 73T (4) applies. Ordinarily, a person in this circumstance is eligible to apply for a probationary licence, with an interlock condition, when the person's disqualification ends. The person is not eligible to apply for any other licence.

New section 73ZF (2) explains that the person may apply for an exemption from the mandatory imposition of an interlock condition, because of **special circumstances**. The Bill gives examples of what may constitute **special circumstances** for the purposes of an application for an exemption. This example is not exhaustive, and other situations or circumstances not listed in the provision may also be considered to be special circumstances for this provision.

Section 73ZF (3) provides that the authority may require the applicant to provide any additional information or documents that the authority reasonably needs to decide the application.

Section 73ZF (4) provides that the authority may refuse to consider application for an exemption if the applicant does not provide the required additional information or documents requested by the authority.

#### Section 73ZG Exemption from interlock condition—decision on application

Section 73ZG deals with decisions about exemptions from interlock conditions.

Section 73ZG (1) provides that the authority must either grant the exemption or refuse to grant the exemption.

Section 73ZG (2) provides that exemptions can be granted subject to conditions. The purpose of this provision is to enable the road transport authority to require the person seeking the exemption to do certain things.

Section 73ZG (3) makes it clear that an exemption can be granted only if the authority is satisfied on reasonable grounds that special circumstances exist.

Under section 73ZG (4), an application is deemed to be refused if an applicant fails to provide additional information or documents as requested by the authority under section 73ZF (3).

#### Section 73ZH Exemption certificate

New section 73ZH explains the actions the authority must take when it grants an exemption under section 73ZG. Section 73ZH (2) requires the authority to notify the applicant about certain matters. In summary, these matters are the special circumstances that formed the basis of the exemption decision, and any circumstances about which the person has an obligation to notify the authority if there is any change.

Section 73ZH (3) requires the authority to give the applicant an exemption certificate. The certificate must state the expiry date of the exemption and any conditions applying to the exemption.

#### Section 73ZI When interlock exemption ends

New section 73ZI explains when a person's interlock exemption ends. The actual expiry will depend in part on the nature of the special circumstances that gave rise to the exemption. For example, if the special circumstances are temporary in nature, it is possible that the road transport authority would grant an exemption only for the expected duration of those circumstances by specifying an expiry date that corresponds to that duration. If the circumstances change before this expiry date, the person will be required to notify the authority of the change and the exemption will end 14 days after the notice is given. Where the special circumstances are permanent in nature, a longer exemption period is required – it may be appropriate

for the road transport authority to grant an exemption for the whole of the period that an exemption would be required — in practice, this is for the period that the person holds a probationary licence.

To take account of these different situations, new section 73ZI (1) provides that an exemption expires on the earliest of:

- the expiry date stated on the certificate;
- 14 days after the person gives the authority notice of a change in circumstances; or
- when the person's probationary licence ends.

New section 73ZI (2) explains what happens if an exemption ends before the person's probationary licence ends.<sup>2</sup> The road transport authority may impose an interlock condition on the person's probationary licence. This power is discretionary, and recognises that depending on the particular circumstances in each case, the imposition of an interlock condition many months after the person has already returned to driving may not be appropriate, particularly if the person has been complying with a court-ordered therapeutic program during that time.

The factors relevant to the exercise of the discretion are listed in section 73ZI (3) and include the person's compliance with any court-ordered therapeutic program, the extent to which the person's circumstances have changed since the exemption was granted, the length of time remaining on the person's probationary licence and any other relevant matter.

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

New section 73ZJ requires a person who has been granted an exemption to produce the person's exemption certificate to a police officer or authorised person, at a place directed by the police officer or authorised person, within 3 days. A failure to do so is an offence, with a maximum penalty of 20 penalty units. This is a strict liability offence.

#### Section 73ZK Failing to comply with conditions applying to interlock exemption

New section 73ZK makes it an offence for a person who has an interlock exemption to fail to comply with any conditions that apply to the exemption. The maximum penalty for this offence is 20 penalty units.

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

New section 73ZL has the effect of making it an offence for a person with an interlock exemption to fail to notify the road transport authority of a relevant change in the person's circumstances. A relevant change in circumstances is a change in the circumstances mentioned in the exemption notice; in practice these are the circumstances that formed the basis of the decision to grant the person an

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<sup>2</sup> It should be noted that the mandatory interlock condition in section 73T (4) applies to a *probationary licence* issued to the person.

exemption. The person is required to give written notice of the change as soon practicable, and no later than 7 days after the change occurs. This strict liability offence has a maximum penalty of 20 penalty units.

#### **Division 3A.4 Approval**

This division deals with the approval of ***alcohol ignition interlock devices*** for installation in nominated vehicles.

##### Section 73ZM Alcohol ignition interlock devices—approval

New section 73ZM empowers the road transport authority to approve an alcohol ignition interlock device if the device complies with Australian Standard 3547-1997 (*Breath Alcohol Testing Devices for Personal Use*), as in force from time to time.

The approval is a notifiable instrument under the Legislation Act.

Section 73ZM (1) explains that an alcohol ignition interlock device is a 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.

The note explains that the Legislation Act, section 47 (6) does not apply to AS 3547-1997. The effect is that this Standard will not be notified on the Legislation Register. The ACT Government does not own the copyright to this Standard and cannot publish it on the Register.

##### Section 73ZN Labelling for approved interlocks

New section 73ZN provides that the road transport authority may approve a form of labelling, for example, a sticker, for an interlock device with the words 'ACT approved interlock'. An approval under this section is a notifiable instrument under the Legislation Act.

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

This division contains provisions relating to interlock installers and providers. It is important that interlocks are installed and maintained by appropriately qualified persons, who can ensure that the devices are operating according to specifications and that interlock data is captured, recorded, stored and disclosed in accordance with the legislation.

The provisions in this division have been closely modelled on provisions in the New South Wales *Road Transport (Driver Licensing) Regulation 2008*. Subject to comments received during consultation, these provisions may be modified further so they are consistent with drafting conventions used in the ACT road transport legislation, and so that they align more closely with the Territory's criminal and administrative law policies.

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

New section 73ZO explains that a person may apply to the road transport authority for approval as an interlock installer or as an interlock service provider. An interlock installer is a person who provides, installs, or removes interlocks in vehicles. An interlock service provider is a person who carries out maintenance to ensure the proper operation of interlocks, or conducts inspections of interlocks.

New section 73ZO (2) explains that the person must satisfy the eligibility criteria for approval in new section 73ZQ. Under new section 73ZO (3), the authority may also require additional information or documentation to decide the application. Under new section 73ZO (4), the authority may refuse to consider the application if this information is not provided.

### Section 73ZP Issue of approval

New section 73ZP (1) explains that where a person applies for approval under section 73ZO, the road transport authority must either issue the approval or refuse to issue the approval.

New section 73ZP (2) makes it clear that approval cannot be issued unless the authority is satisfied the applicant is eligible for approval under 73ZQ. The note explains that approvals may be subject to conditions.

The authority may refuse to issue an approval only after it has:

- provided the applicant with a written notice of its reasons for the refusal;
- invited the applicant to provide written comment on the refusal before the end of a stated period (which must be at least 14 days after the notice is given); and
- considered any comments made by the applicant before the end of the stated period.

New section 73ZP (4) explains that if the applicant does not provide the information requested by the authority under section 73ZO (3), the application is deemed to have been refused by the authority.

New section 73ZP (5) makes it clear that a person can be issued an approval as an interlock installer and an interlock service provider.

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

New section 73ZQ (1) sets out the eligibility criteria for approval as an interlock installer or an interlock service provider. In summary, these criteria relate to:

- age (applicant must be at least 18);
- suitability – the person must satisfy the “suitable person” test in new section 73ZR;
- skills, qualifications, equipment, facilities – these criteria relate to the person’s technical competence and capacity to undertake the tasks involved.

The factors that make a person ineligible for approval are set out in new section 73ZQ (2). These are:

- physical or mental incapacitation;
- revocation of previous approval as an interlock installer or service provider; and
- previous failure to perform functions as an interlock installer or service provider.

#### Section 73ZR Suitable person

New section 73ZR sets out the matters that the road transport authority must consider in assessing whether an applicant is a suitable person to be an approved interlock installer or approved interlock service provider. In summary, these matters relate to:

- whether the person has been convicted or found guilty of certain types of offences, including offences involving dishonesty, within the previous 5 years;
- the person's solvency;
- whether the person has ever had a driver licence with an interlock condition suspended or cancelled.

#### Section 73ZS Approval conditions

New section 73ZS (1) explains that approvals as an interlock installer or service provider may be made subject to conditions. Under subsection (2), these conditions may be imposed when the approval is issued, or the approval may subsequently be varied to include, vary or revoke a condition.

New section 73ZS (3) explains that conditions may relate to certain matters (noting that this subsection does not limit the conditions that can be imposed), such as conditions about the provisions, installation, removal, inspection or maintenance of interlocks; and conditions relating to interlock data records and the provision of data to certain persons.

The process for adding, varying or revoking a condition is explained in new section 73ZS (4). The authority is required to give the approval holder written notice of the proposed action and the reasons for it and invite the applicant to provide written comment on the proposed action within a specified timeframe.

#### 73ZT Term of approval

New section 73ZT (1) explains that approvals as an interlock installer and interlock service provider cannot be issued for a period of more than 3 years. The term starts either when the approval is issued, or on a date stated in the approval.

New section 73ZT (2) explains that approvals may be renewed. The process for renewing an approval is set out in new section 73ZV.

#### 73ZU Form of approval

New section 73ZU details the information that must be included in an approval. In brief, the approval must include:

- the name and business address of the approved installer or service provider;
- date of issue;
- end date;
- any applicable conditions; and
- an identifying number.

#### 73ZV Renewal of approval

New section 73ZV explains how an approval as an interlock installer or interlock service provider may be renewed.

Under new section 73ZV (1), the approved installer or service provider can apply for renewal of the approval. The application must be made in writing, before the person's approval expires. The requirement to make the application before the current approval expires is to ensure that the approval holder's clients are not left without ready access to an approved installer or service provider when the approval expires.

Under new section 73ZV (2), the person's existing approval remains in force until the renewal application is decided. This provision ensures that any delays in processing the renewal will not result in the clients of the installer or service provider inadvertently failing to comply with a requirement of the interlock program, due to a lapse in the approval status of the installer or provider.

Under new section 73ZV (3), the road transport authority may request additional information to assist it in making a decision on the renewal application.

Section 73ZV (4) makes it clear that the authority is not required to consider an application if this information is not provided.

#### Section 73ZW Issue of renewed approval

New section 73ZW sets out the process that the road transport authority must follow when making decisions on renewal applications. This process is similar to the process for deciding applications for approval.

Under new section 73ZW (1), the authority must either renew the approval or refuse to renew the approval. Under new section 73ZW (2), the approval cannot be renewed unless the authority is satisfied the applicant for renewal satisfies the eligibility criteria for approval in section 73ZQ (which include the "suitable person" test under section 73ZR), and that the applicant is meeting any conditions of his or her existing approval.

Under new section 73ZW (3), the authority may refuse to renew an approval only after it has:

- provided the applicant with a written notice of its reasons for the refusal
- invited the applicant to provide written comment on the refusal before the end of a stated period (which must be at least 14 days after the notice is given); and

- considered any comments made by the applicant before the end of the stated period.

New section 73ZW (4) ensures the continuity of approvals, by providing that a renewed approval takes effect from the date of the expiry of the approval held immediately before renewal.<sup>3</sup>

#### Section 73ZX Revocation of approval

New section 73ZX (1) sets out the grounds on which the road transport authority may revoke an approval as an interlock installer or service provider. In summary, these grounds are that the approval holder:

- has failed to comply with a condition;
- no longer satisfies the eligibility criteria in section 73ZQ; or
- contravenes a provision of the Regulations relating to alcohol interlocks.

Under new section 73ZX (2), the authority may revoke an approval only after it has:

- provided the approval holder with a written notice of its reasons for the revocation;
- invited the approval holder to provide written comment on the revocation before the end of a stated period (which must be at least 14 days after the notice is given); and
- considered any comments made by the approval holder before the end of the stated period.

#### Section 73ZY Failure to comply with condition of approval

New section 73ZY provides that it is an offence if an approved interlock installer or an approved interlock service provider fails to comply with a condition of the person's approval. The maximum penalty for this offence is 20 penalty units.

#### Section 73ZZ Installation or removal of interlock without approval

New section 73ZZ deals with unauthorised installations or removals of interlocks from vehicles. It provides that it is an offence for a person who is not an approved interlock installer to install an interlock in, or remove an interlock from, a motor vehicle. The purpose of this provision is to ensure that only approved installers install interlocks for the purpose of the ACT interlock scheme.

This is a strict liability offence, with a maximum penalty of 20 penalty units.

#### Section 73ZZA Installation or removal of unlabelled interlock without approval

New section 73ZZA provides that it is an offence if an approved interlock installer installs an interlock in, or removes an interlock from, a motor vehicle and the interlock is not clearly labelled with an approved label. The purpose of this provision is to ensure that approved interlock installers only deal with interlocks that are labelled under the ACT scheme, which they are approved to install or remove. They

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<sup>3</sup> It should be noted that applications for renewal must be made before the current renewal expires.

are not authorised under this legislation to install or remove alcohol interlocks under another scheme or for another purpose.

This is a strict liability offence, with a maximum penalty of 20 penalty units.

Section 73ZZB Maintenance or inspection of interlock without approval

New section 73ZZB makes it an offence for a person who is not an approved interlock service provider to carry out maintenance on, or conduct an inspection of, an interlock. This is a strict liability offence, with a maximum penalty of 20 penalty units.

Section 73ZZC Maintenance or inspection of unlabelled interlock without approval

New section 73ZZC provides that it is an offence if an approved interlock service provider carries out maintenance on, or conducts an inspection of, an interlock and the interlock is not clearly labelled with an approved label. The purpose of this provision is to ensure that an approved interlock service provider only deals with interlocks that are labelled under the ACT scheme, for which they are approved to carry out maintenance or conduct inspections. They are not authorised under this legislation to work with interlocks under another scheme or for another purpose.

This is a strict liability offence, with a maximum penalty of 20 penalty units.

Section 73ZZD Unlawful labelling of interlocks

New section 73ZZD (1) provides that it is an offence if the person labels an interlock device with the words 'ACT approved interlock' and the device is not an approved interlock device.

New section 73ZZD (2) provides that it is an offence for a person, who is not an approved interlock installer or an approved interlock service provider, to label an interlock device with the words 'ACT approved interlock'. This provision ensures that only approved installers or service providers are authorised to affix labels relating to the ACT interlock scheme to interlocks approved under that scheme.

These are both strict liability offences, which have a maximum penalty of 20 penalty units each.

Section 73ZZE Unlawful removal of labels

New section 73ZZE (1) provides that it is an offence if a person removes an approved label from an interlock. New section 73ZZE (2) explains that this offence does not apply if the person who removes the label is an approved installer or service provider, and the label is either immediately replaced with another approved label, or the label is not required anymore as the interlock period for the driver of the vehicle has expired.

Section 73ZZF Notification of removal of interlocks

New section 73ZZF explains that an approved interlock installer commits an offence if the installer removes an interlock with an approved label from a motor vehicle and

fails to give the road transport authority written notice of the removal not later than 7 days after the removal.

Strict liability attaches to the element in section 73ZZF (1) (b). The maximum penalty for this offence is 20 penalty units.

#### Section 73ZZG Tampering or otherwise interfering with labelled interlocks

New section 73ZZG provides that a person commits an offence if the person tampers or otherwise interferes with an interlock with an approved label installed in a motor vehicle.

The maximum penalty for this offence is 20 penalty units.

#### Section 73ZZH Suspected tampering or otherwise interfering with labelled interlocks

New section 73ZZH (1) provides that is an offence if an approved interlock installer or approved interlock service provider becomes aware that an interlock with an approved label has been tampered or otherwise interfered with, and he or she fails to give the road transport authority written notice of the tampering or interference no later than 7 days after becoming aware of it.

Strict liability attaches to the element in section 73ZZH (1)(b). The maximum penalty for this offence is 20 penalty units.

### **Division 3A.6 Other matters**

#### Section 73ZZI Agreements relating to interlocks

New section 73ZZI enables the road transport authority to make agreements with a person about the supply, or provision of services relating to the installation, removal, maintenance and inspection of interlocks under the regulation. For example, the road transport authority may seek to enter into an agreement with interlock suppliers relating to the terms and conditions on which interlocks will be supplied to clients in the ACT, including terms relating to pricing, timeframes for service and repairs, protection of personal information and so forth.

#### Section 73ZZJ Security and disclosure of interlock-related information

New section 73ZZJ (1) imposes an obligation on the road transport authority to ensure that interlock-related information is kept securely and disclosed only as permitted by law. The note to new section 73ZZJ explains that the Information Privacy Principles, under the *Privacy Act 1988*, apply to the road transport authority.

New section 73ZZJ (2) identifies certain persons to whom interlock-related information may be disclosed under the Regulation, and the purposes for which that information may be disclosed. It should be noted that this section does not exclude the provision of interlock-related information to other persons to whom that information may lawfully disclosed under the *Privacy Act 1988* or another law in force in the ACT.

New section 73ZZJ (3) contains a definition of ***interlock-related information***. This term includes interlock data records, images from an interlock fitted with a camera and information in the driver licence register relating to interlocks.

This provision provides a starting point for privacy protection for interlock-related information. Further consideration may be given to specifying the uses that may be made of images from any cameras that may be linked to interlock devices, and for regulating the way in which these images are stored, retained, accessed and destroyed when no longer required.

#### **Clause 17 Dictionary, new definitions**

The dictionary defines important words and concepts used in the regulation. This clause provides for new definitions for the following terms to be inserted into the dictionary to the *Road Transport (Driver Licensing) Regulation 2000*:

- alcohol ignition interlock device
- approved interlock installer
- approved interlock service provider
- approved label
- corresponding jurisdiction
- disqualification period
- exemption certificate
- fitted interlock
- habitual offender
- interlock
- interlock condition
- interlock data record
- interlock driver
- interlock exemption
- interlock period
- level
- nominated vehicle

#### **Part 5 Road Transport (General) Regulation 2000**

The explanatory note for Part 5 notes that consequential amendments to the *Road Transport (General) Regulation 2000* will be included in the Bill when it is finalised.

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

The explanatory note for Part 6 notes that consequential amendments to the *Road Transport (Offences) Regulation 2005* will be included in the Bill when it is finalised.

#### **Part 7 Road Transport (Safety and Traffic Management) Regulation 2000**

The explanatory note for Part 7 makes it clear that consequential amendments to the *Road Transport (Safety and Traffic Management) Regulation 2000* will be included in the Bill when it is finalised.