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**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**ROAD TRANSPORT LEGISLATION  
AMENDMENT BILL 2013 (No 2)**

**EXPLANATORY STATEMENT**

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## Road Transport Legislation Amendment Bill 2013 (No 2)

### Outline

This Bill amends the road transport legislation, particularly the *Road Transport (Driver Licensing) Act 1999* and the *Road Transport (Driver Licensing) Regulation 2000*, to provide for an alcohol ignition interlock program (interlock program) in the Australian Capital Territory. 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 their breath. Interlocks can be fitted to almost any type of motor vehicle.

The primary purpose of the Bill is 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 main features of the interlock scheme established by the Bill, predominantly through amendments to the *Road Transport (Driver Licensing) Regulation 2000*, are as follows:

- a) Participation in the alcohol interlock program is a mandatory condition of relicensing for certain high risk drink driving offenders (high range and habitual drink driving offenders).
- b) For these high risk offenders, participation in the program may include a court ordered therapeutic component as well as a requirement to drive only a vehicle fitted with an interlock device. For this reason, the Bill requires all high risk offenders to undergo a pre-sentence assessment by the Court Alcohol and Drug Assessment Service. The Court is required to have regard to the report when sentencing the offender.
- c) Voluntary participation is an option for other drink driving offenders, who may reduce their total disqualification period by agreeing to participate in, and comply with, an alcohol interlock program. These offenders may elect to apply for a probationary licence, which will be issued subject to an interlock condition, at any time during their disqualification period.
- d) High risk offenders who obtain an exemption from participation in the scheme are required to complete their full disqualification period before applying for a probationary licence. Exemptions are available only where special circumstances exist.
- e) There is a 6 month minimum program participation period, with program participants required to demonstrate a continuous period of three months compliance with the interlock program (i.e. no alcohol detected in the person's breath samples) and compliance with any treatment order before the interlock condition may be removed.
- f) The Bill includes compliance and enforcement powers and associated offences to address fraud, tampering and other attempts to circumvent the operation of interlocks.

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, including in relation to interstate drivers (see section 10 of the *Road Transport (Driver Licensing) Regulation 2000*). In practice, these provisions are rarely used.

The amendments to the *Road Transport (Driver Licensing) Act 1999* will confer power on the road transport authority to administer the program and provide for regulations to be made to establish the scheme. The amendments to the *Road Transport (General) Act 1999* will allow the road transport authority or the CTP regulator to issue evidentiary certificates in relation to the operation of the program. This Bill also includes consequential amendments to other provisions in the *Road Transport (General) Regulation 2000*, the *Road Transport (Offences) Regulation 2005* and the *Road Transport (Alcohol and Drugs) Act 1977*.

### **Human rights implications**

The establishment of an interlock program may be seen as engaging the right to recognition and equality before the law (section 8 of the *Human Rights Act 2004*), in so far as it imposes certain obligations and limits on some categories of drink driving offenders that do not apply to other offenders or to drivers more generally.

It is also possible that, to the extent that participation in the program entails the sharing of information between agencies involved in the provision of treatment services, the road transport authority, police, and interlock service providers and installers the provisions in the Bill may engage the right to privacy and reputation (section 12 of the *Human Rights Act 2004*).

The powers of police and authorised officers to inspect vehicles to determine whether interlocks are fitted and in working order may also engage various rights including the right to freedom of movement and the right to privacy and reputation. The provisions relating to assessment and treatment for alcohol dependency may engage the right to protection from compulsory medical treatment without consent (section 10 of the *Human Rights Act 2004*) to the extent that a court may order an offender to undergo a treatment program in conjunction with participation in an alcohol interlock program.

There are also several strict liability offences in the Bill that may engage rights relating to criminal trials, mainly relating to the installation, use and maintenance of interlocks and the way that information about interlock usage is reported. Specifically, strict liability offences can be seen as engaging or limiting the right in section 22 (1) of the *Human Rights Act 2004* – the presumption of innocence.

In this Bill, strict liability offences are used as part of a scheme that establishes positive obligations on a range of people to ensure that interlock devices that are required to be fitted to an interlock driver's vehicle under this legislation are operating effectively; several of the offences are aimed at ensuring that any faults, defects, tampering or other unauthorised activity that could prevent an interlock from operating as intended can be addressed quickly. Other strict liability offences in the Bill relate to obligations to provide certain information when required, or to comply with conditions attaching to a licence or other form of authority that has been granted to the person.

While the inclusion of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences including mistake of fact remain open to the accused, depending on the particular facts of each case.<sup>1</sup> The use of

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<sup>1</sup> See *Criminal Code 2002*, chapter 2, especially part 2.3, for more detail on the circumstances where there is no criminal liability for an offence.

strict liability in these offences is considered to be a reasonable limitation of rights on the basis that these offences involve breaches of positive duties or obligations that are necessary for the effective operation of the scheme, and that allowing for carelessness or inadvertence that results in non-compliance would defeat the purpose of the scheme.

If the provisions in the Bill engage all or any of the rights identified in the preceding paragraph, the issue that then arises is whether these rights are limited by the Bill, and if so whether the limitation of rights is “reasonable” for section 28 of the *Human Rights Act 2004*.

In assessing the total impact of the Bill on rights of individuals, it may be significant to have regard to the benefits accruing to program participants in addition to the purpose to be achieved by the Bill.

Firstly, participation in the interlock program allows an offender to return to driving more quickly than would otherwise be the case. The scheme has the effect of reducing the period of licence disqualification that would otherwise apply to that person. Secondly, the person also receives the direct road safety benefit of driving with an interlock, which prevents that person from driving while affected by alcohol.

Evaluations of international interlock schemes indicate that the use of interlocks can support offenders to address alcohol misuse, particularly where interlock programs operate in conjunction with programs that address an offender’s alcohol misuse and other underlying health or social issues (See Voas et. al., 1999, *The Alberta Interlock Program: The evaluation of a province-wide program on DUI recidivism*; Bax, et. al., 2001, *Alcohol interlock implementation in the European Union: feasibility study*). If so ordered by the Court, the person may also receive free treatment to assist them to separate their drinking and driving behaviours and thereby to avoid re-offending. Interlock programs that incorporate a therapeutic component may contribute to prolonged and sustainable changes in behaviour which reduce the risk of further drink driving.

Section 28 (2) of the *Human Rights Act 2004* requires the legislature to consider a range of matters when considering whether a proposed limitations of rights is reasonable. These matters include:

- (a) the nature of the right affected;
- (b) the importance of the purpose of the limitation;
- (c) the nature and extent of the limitation;
- (d) the relationship between the limitation and its purpose;
- (e) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

For the purpose of section 28 (2) (a), it is considered that the rights that may be engaged or limited by the provisions in the Bill are significant rights. In relation to section 28 (2) (b), the purpose of the scheme (promotion of road safety through prevention of drink driving) is considered to be of high importance, given the known risks of death and injury associated with drink driving. For section 28 (2) (c), the extent of any limitation is not considered to be extensive, and is considered to be justified by the road safety benefits arising from the use of alcohol interlocks, which are discussed in more detail below. Any restrictions or limitations of rights in the Bill result from provisions that support the objective of an alcohol interlock scheme that is effective and enforceable. Schemes that have limited application, or where the use of interlocks and compliance with treatment are not consistently enforced, are not as

effective at reducing drink driving and promoting road safety. Furthermore, in some instances the limitation on rights is transient or temporary (such as the new power to stop and inspect vehicles under proposed section 81A of the *Road Transport (General) Act 1999*).

In terms of section 28 (2) (e), experience in other jurisdictions shows that mandatory participation by high-risk offenders, with effective mechanisms for monitoring their compliance with the interlock condition and measures to preventing tampering and fraudulent use of devices, are best practice features for alcohol interlock schemes. A scheme that does not include these features will be less effective in realising the underlying road safety objectives – it is therefore considered that the measures in the Bill are the least restrictive means reasonably available to achieve the purpose of the limitation.

Over the last 30 years, the Territory has implemented a range of measures, including legislative and educational measures as well as policing activities, to detect and deter drink driving. Nevertheless, for around 30% of offenders, recidivism remains an issue. Traditional criminal law responses such as fines and imprisonment are not particularly effective in preventing recidivism in the longer term. While licence disqualifications are somewhat more effective than fines or the possibility of imprisonment as a deterrent for many drivers, sanctions that physically prevent the driver from drinking and driving are most effective where the driver has difficulty in separating their drinking and driving behaviours. These incapacitative measures can include vehicle sanctions such as impoundment or seizure, or the use of devices such as ignition interlocks that prevent a driver who has consumed alcohol from using the vehicle.

The ACT interlock program will automatically apply to high risk drivers. High risk drivers are defined as those who are either high range drink drivers, or habitual drink drivers. High range drink drivers are offenders who are convicted or found guilty of driving with an alcohol concentration at or above 0.15g (level 4). Habitual offenders are repeat offenders who have been convicted or found guilty 3 or more times of a disqualifying offence under the *Road Transport (Alcohol and Drugs) Act 1977* within the previous 5 years.

The available evidence shows that high range drink driving offenders are more likely to be involved in a crash than low range and mid range drink driving offenders. Similarly, the risk of a person being involved in a crash resulting in injury, property damage or death increases exponentially with the number of offences a person commits. The interlock program, whether viewed in isolation or a part of an existing matrix of road safety measures that includes other ACT Government education and deterrence programs, is intended to reduce these risks. For this reason the limits are considered to be demonstrably justified in a free and democratic society for the purposes of section 28 of the *Human Rights Act 2004*.

## **Notes on Clauses**

### **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 is a formal provision that sets out the name of the proposed legislation.

## **Clause 2 Commencement**

This clause explains when the provisions in the Bill will take effect. Clause 2 (2) provides for a delayed commencement period, of up to 12 months, for the Bill. The reason for the delayed commencement is to enable the administrative arrangements for the management of the Interlock Program to be finalised. This process will require entering into arrangements with interlock providers and any associated programming work that may be required for the rego.act system.

To allow for this delayed commencement, clause 2 (3) makes it clear that section 79 of the *Legislation Act 2001* will not apply to this Bill. That section would otherwise require automatic commencement after six months.

## **Clause 3 Legislation amended**

This clause lists all the road transport legislation to be amended by the Bill.

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

The amendments in this part apply to the *Road Transport (Alcohol and Drugs) Act 1977* and are primarily of a consequential nature.

### **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 their breath.

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

### **Clause 5 Section 4B (3), new definitions**

This clause is a consequential amendment that inserts new definitions of *corresponding law* and *interlock condition* into section 4B (3).

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

The amendments in this part apply to the *Road Transport (Driver Licensing) Act 1999*. They include a new offence provision and amendments to the regulation making powers to cover matters relating to alcohol interlocks.

#### **Clause 6              Offence against this Act—application of Criminal Code etc Section 5A, note 1**

This clause amends note 1 to explain that the Criminal Code, sch 2 applies to an offence under new section 33A of the Act. New section 33A provides that a person commits an offence if the person holds a driver licence with an interlock condition and fails to comply with that condition.

#### **Clause 7              When road transport authority may issue or renew driver licences Section 10 (5)**

This clause replaces section 10 (5) with a new subsection. Section 10 deals with residency requirements for obtaining a driver licence in the ACT. The new provision has the effect that subsections (1) and (4), which relate to when the road transport authority may issue or renew driver licences, do not apply to a person who is a resident of the ACT but is living temporarily outside the ACT, or to a holder of a foreign driver licence who is eligible for a ACT probationary licence under section 103AA. This is to ensure that these drivers are able to hold an ACT probationary licence that is subject to an interlock condition.

#### **Clause 8              Driver licensing system New sections 28 (2) (u) to (x)**

New section 28 (2) (u) provides that 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.

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

New section 28 (2) (w) provides that 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.

New section 28 (2) (x) provides that regulations may be made detailing matters to be included in agreements between the road transport authority and the providers, installers, testers and maintainers of interlock devices.

#### **Clause 9              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. The fault element of recklessness applies to this offence.

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. In the ACT, an interlock licence condition will be attached to a probationary licence. Probationary licences are granted following a period of licence disqualification. The purpose of probation is to encourage the formation of better driving behaviours while the driver holds the licence. Better driver behaviour is re-enforced through the demerit point system; under the existing law, which is not affected by the amendments in the Bill, probationary licence holders who incur two or more demerit points must have their driver licence cancelled.

A cancellation under new 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.

#### **Clause 10 Dictionary, definition of *probationary licence*, new paragraph (aa)**

This clause amends the definition of *probationary licence* to include driver licences issued with an interlock condition under section 73W of the *Road Transport (Driver Licensing) Regulation 2000*.

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

The amendments in this part apply to the *Road Transport (Driver Licensing) Regulation 2000* (the Regulation) and include the majority of the provisions that establish the interlock scheme and support its operation.



**Clause 11      Offence against regulation—application of Criminal Code etc**  
**Section 4, note 1**

This clause amends note 1 to explain that the Criminal Code, sch 2 applies to offences against new part 3A (Alcohol ignition interlock devices).

**Clause 12      Basic kinds of driver licence**  
**Section 5 (2), note, definition of *probationary licence*, new paragraph (ab)**

This clause amends the note to refer to the amended definition of probationary licence in the *Road Transport (Driver Licensing) Act 1999*. The amended definition provides that a probationary licence includes a driver licence issued with an interlock condition.

**Clause 13      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 with an alcohol interlock ignition device.

**Clause 14      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. In this context, it should be noted that the mandatory interlock condition in new section 73T also applies to the holders of an overseas drivers licence who are no longer exempt from holding an Australian driver licence, by operation of proposed new section 103AA. A probationary licence must also be issued to an eligible person who has an interlock exemption under new section 73ZE.

**Clause 15      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 a 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.

**Clause 16      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. The purpose of this amendment is to provide the interlock driver with relevant information about their obligations under the interlock condition.

**Clause 17      Duties of holders of conditional licences  
Section 59 (3) and (5)**

This clause amends sections 59 (3) and (5) so that they apply to people who are subject to an 'I' condition. Section 59 deals with the duties of conditional licence holders generally. The amendment to section 59 (3) ensures 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 holder by the licensing authority that issued the licence that contains an explanation of the conditions to which the licence is subject. 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 their 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. (Note: the Criminal Code does not apply to this offence as amended, which was created before the commencement of that Act).

**Clause 18      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 people mentioned 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.

It is possible that this provision could be seen as drawing distinctions between people in a way that limits the right to equality before the law. However, the purpose of the distinction is to ensure that breaches of conditions that are considered to have more serious road safety implications are subject to higher penalties, in order to encourage compliance with the relevant conditions. For this reason, the possible limitation of the right to equality before the law is considered justifiable for section 28 of the *Human Rights Act 2004*.

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 19      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 even though 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 20      Application—div 3.13  
Section 73A**

This clause amends section 73A, which requires a person who is 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 21      Section 73B heading**

This clause replaces the heading for section 73B, and is consequential upon the amendment to that section. The new section 73B will only contain one definition (*alcohol awareness course*) and the heading better reflects the content of the section.

**Clause 22      Section 73B, definition of *alcohol-related disqualifying offence***

This clause is a consequential omits the definition of *alcohol-related disqualifying offence* from section 73B. The definition is relocated to the Dictionary by clause 28 of the Bill. This relocation enables the term to have the same meaning in every provision in the Regulation in which it appears.

**Clause 23      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 73ZZD.

Division 3A.1 General

Section 73S      Definitions—pt 3A

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 requirements to undertake a court ordered 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 100mL 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>2</sup> By operation of new section 103AA, new section 73T also applies to certain foreign drivers who are temporarily resident in the ACT and who are convicted or found guilty of certain drink driving offences.

New section 73T (2) provides that a person covered by section 73T (1) is eligible to apply for a probationary licence after completing half the licence disqualification period ordered by the court, providing the person is not otherwise disqualified from holding or obtaining a licence (for example, because the person has also been disqualified in relation to a different offence for which a second disqualification period has been imposed).<sup>3</sup>

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. Allowing the driver to return to driving part-way through their disqualification period, subject to a mandatory alcohol interlock condition, can assist the driver 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 fitted to the person's vehicle, will support the driver in adopting better approaches to managing the person's drinking and driving behaviours following the driver'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 a 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

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<sup>2</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.

<sup>3</sup> Section 69 of the *Road Transport (General) Act 1999* deals with cumulative periods of licence disqualification. It provides:

If—

- (a) a person is disqualified (whether or not by court order) from holding or obtaining an Australian driver licence because of being convicted or found guilty by a court in Australia of an offence against the law of any jurisdiction; and
- (b) before the period of disqualification has ended, the person is again so disqualified;

the periods of disqualification are cumulative unless a court in Australia orders otherwise.

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 reflects the amendment to the concept of *special driver* that is made by clause 4 of the Bill.

#### 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 assessed as being suitable for counselling may be required to attend counselling sessions either 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.

#### 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.

#### 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.

### 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 elements and performance-based elements.

Interlock programs that include performance based elements 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 people 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 subject to the road transport authority being satisfied about the matters in 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.

#### Section 73Z When interlock condition ends

New section 73Z (1) explains that an interlock condition imposed on a person's licence ends when the interlock period applying to the person 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 person is only eligible to apply to renew the probationary licence. Under new section 73Z (3) the interlock condition attaches to any probationary licence subsequently issued to the driver by the road transport authority. The purpose of this provision is to clarify that drivers who are subject to an interlock condition are regarded as probationary drivers for the whole of the period that they are subject to that condition.

#### Section 73ZA Producing interlock data record

New section 73ZA 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 73ZA(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 not later than 7 days after the notice is given to the driver. Under new section 73ZA (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, not later than 7 days after the notice is given.

Section 73ZA (3) makes it an offence for a person mentioned in 73ZA (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. A discussion relating to the use of strict liability in offences created by this Bill is found at page 2 of this Explanatory Statement.

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

New section 73ZB 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 require people to protect interlock data records from

destruction. Strict liability also applies to this offence. Again, readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

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

New section 73ZC 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 not later than 7 days, after becoming aware of the loss, theft or destruction. The maximum penalty is 20 penalty units. This is also a strict liability offence and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

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

New section 73ZD deals with the use of another person's means of identification where the vehicle is the nominated vehicle for more than 1 person subject to an interlock condition. Section 73ZD 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. Strict liability applies to these offences and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Division 3A.3 Interlock exemptions

This division deals with exemptions from interlock conditions for people 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 73ZE Exemption from interlock condition—application

New section 73ZE 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 type.

New section 73ZE (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 73ZE (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 73ZE (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 73ZF Exemption from interlock condition—decision on application

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

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

Section 73ZF (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 73ZF (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 73ZF (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 73ZE (3).

#### Section 73ZG Exemption certificate

New section 73ZG explains the actions the authority must take when it grants an exemption under section 73ZF. Section 73ZG (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 73ZG (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 73ZH When interlock exemption ends

New section 73ZH 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 73ZH (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.<sup>4</sup>

New section 73ZH (2) explains what happens if an exemption ends before the person’s probationary licence ends. 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 73ZH (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 matter the authority considers relevant.

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

New section 73ZI 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 and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Section 73ZJ Failing to comply with condition of interlock exemption

New section 73ZJ 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. Again, this is a strict liability offence and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

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

New section 73ZK 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 exemption. The person is required to give written notice of the change as soon practicable, but not later than 7 days after the change occurs. This strict liability offence has a maximum penalty of 20 penalty units, and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Division 3A.4 Approval

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

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

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

New section 73ZL 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, and the device has the technical capability to identify the driver of the vehicle at a particular time. The approval is a notifiable instrument under the Legislation Act.

Section 73ZL (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 2001*, 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. AS 3547-1997 is available for purchase through Standards Australia.

### 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 people, 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.

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

New section 73ZM explains that a person may apply to the road transport authority for approval as an interlock installer and/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.

Under new section 73ZM (2), the authority may also require additional information or documentation to decide the application. Under new section 73ZM (3), the authority may refuse to consider the application if this information is not provided.

### Section 73ZN Issue of approval

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

New section 73ZN (2) makes it clear that approval cannot be issued unless the applicant is eligible for approval under 73ZO. 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 73ZN (4) explains that if the applicant does not provide the information requested by the authority under section 73ZM (2), the application is deemed to have been refused by the authority.

#### Section 73ZO Eligibility for approval

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

- age – the applicant must be at least 18);
- suitability – the person must satisfy the “suitable person” test in new section 73ZP; and
- 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 are set out in new section 73ZO (2). These are:

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

#### Section 73ZP Suitable person

New section 73ZP 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;
- whether the person has been bankrupt or personally insolvent within the previous 5 years; and
- whether the person has ever had a driver licence with an interlock condition suspended or cancelled.

#### Section 73ZQ Approval conditions

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

New section 73ZQ (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 people.

The process for adding, varying or revoking a condition is explained in new section 73ZQ (4). The authority is required to give the approval holder written notice of the

proposed action and the reasons for it, and to invite the applicant to provide written comment on the proposed action within a specified timeframe.

#### Section 73ZR Term of approval

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

#### Section 73ZS Form of approval

New section 73ZS 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 (and start date, if a different date);
- end date;
- any applicable conditions; and
- an identifying number.

#### Section 73ZT Renewal of approval

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

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

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

#### Section 73ZU Issue of renewed approval

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

Under new section 73ZU (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 73ZU (4) provides for 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>5</sup>

### Section 73ZV Revocation of approval

New section 73ZV (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 73ZO; or
- contravenes a provision of the Regulation relating to alcohol interlocks.

Under new section 73ZV (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 73ZW Failure to comply with condition of approval

New section 73ZW 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. This is a strict liability offence, with a maximum penalty of 20 penalty units, and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

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

New section 73ZX 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 offence has a maximum penalty of 20 penalty units. This is

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<sup>5</sup> It should be noted that applications for renewal must be made before the current renewal expires.

a strict liability offence and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Section 73ZY Maintenance or inspection of interlock without approval

New section 73ZY 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. Readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Section 73ZZ Notification of removal of fitted interlocks

New section 73ZZ explains that an approved interlock installer commits an offence if the installer removes a fitted interlock 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.

This is a strict liability offence, with a maximum penalty of 20 penalty units. Readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

#### Section 73ZZA Tampering or otherwise interfering with fitted interlocks

New section 73ZZA provides that a person commits an offence if the person tampers or otherwise interferes with a fitted interlock in a motor vehicle. This is a strict liability offence and readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement. The concept of tampering includes the example of removing or interfering with a tamper-evident seal that has been placed on the interlock.

#### Section 73ZZB Suspected tampering or otherwise interfering with fitted interlocks

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

This is a strict liability offence, with a maximum penalty of 20 penalty units. Readers are directed to the discussion of strict liability on page 2 of this Explanatory Statement.

### Division 3A.6 Other matters

#### Section 73ZZC Agreements relating to interlocks

New section 73ZZC enables the road transport authority to make agreements with a person about the supply of interlocks, or the provision of services relating to the installation, removal, maintenance and inspection of interlocks under the Regulation.

Under new section 73ZZC (2), an agreement may make provision about the following matters:

- pricing arrangements for the supply, installation, maintenance and inspection of interlocks;
- service standards, and compliance with those standards;
- record keeping, and the use, sharing and protection of data; and
- evaluation and reporting requirements.

New section 73ZZC (3) provides that any agreement is not limited to these matters. This provision reflects the general principle of contractual freedom of parties (including the authority on behalf of the Territory) to enter into agreements that are not otherwise contrary to law.

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

New section 73ZZD (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 73ZZD explains that the Information Privacy Principles under the *Privacy Act 1988* (Cwlth) apply to the road transport authority.

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

New section 73ZZD (3) contains a definition of *interlock-related information*. This term includes interlock data records, any photographic images from that a component of an interlock system that enables the driver's identity to be verified, and information in the driver licence register relating to interlocks.

#### **Clause 24 Exemption of overseas drivers—Act, s 31 (1) (b) New section 94 (4) (c)**

This clause inserts a new section 94 (4) (c). Section 94 deals with the exemption of overseas drivers from the requirement to hold an Australian driver licence when driving a motor vehicle on a road or road related area in the ACT. The new provision has the effect that an overseas driver who would otherwise be exempt from the requirement from holding an Australian driver licence ceases to be exempt if the person is convicted or found guilty of an offence in the ACT that would, if committed by the holder of a driver licence, have resulted in them being subject to a mandatory interlock condition under section 73T. This provision, together with new section 103AA (to be inserted by clause 25 of the Bill) will enable the interlock condition in section 73T to be applied to these overseas drivers. A person to whom this new provision applies must hold a probationary licence with an interlock condition if he or she drives a motor vehicle on roads or road related areas in the Territory.

#### **Clause 25 New division 6.5**

This clause inserts a new division 6.5, which deals with the treatment of certain overseas drivers who cease to be exempt from holding an Australian driver licence.

#### Division 6.5 Overseas driver licence holders – eligibility for probationary licence



## Section 103AA Overseas drivers – eligibility criteria

New section 103AA applies to a person who ceases to be exempt from holding an Australian driver licence under section 94 (4) (c) (Exemption of overseas drivers licence—Act, s 31 (1) (b)). As explained in the notes for clause 24, amended section 94 provides that an overseas driver is no longer exempt from the requirement to hold an Australian driver licence if they commit certain offences under the road transport legislation. These offences include an offence in the ACT that, if committed by the holder of an Australian driver licence, would have them being subjected to a mandatory interlock condition under section 73T.

New section 103AA (2) explains that part 3A of the Regulation applies to the person as though that person were subject to section 73T. The effect of this section is to apply the mandatory interlock condition, and all the associated obligations and requirements, to the person.

New section 103AA (3) sets out the circumstances in which the person is eligible to apply for, or be issued with, a probationary licence. It provides that the road transport authority must be satisfied about certain matters, including:

- the person’s successful completion of tests or assessments demonstrating the person’s driving ability;
- the provision of other evidence of the person’s suitability to hold a driver licence as required;
- satisfactory completion of a medical assessment, in accordance with the required medical standards;
- information about an illness, injury or incapacity suffered by the person, and the effects of treatment for that illness, injury or incapacity; and
- any other documents relevant to the person’s medical fitness to hold a driver licence.

Under new section 103AA (3) any probationary licence issued by the road transport authority must be issued with an interlock condition imposed on that licence.

### **Clause 26 Dictionary, note 2**

This clause inserts a reference to *AS* as a term that is defined in section 164 (1) of the *Legislation Act 2001*. That definition provides that a reference to an *AS* in an Act or statutory instrument is a reference to the Australian Standard so numbered published by or on behalf of Standards Australia.

### **Clause 27 Dictionary, new definition of *alcohol ignition interlock device***

This clause is a consequential amendment to insert a definition of *alcohol ignition interlock device* into the dictionary.

### **Clause 28 Dictionary, definition of *alcohol-related disqualifying offence***

This clause moves the definition of *alcohol-related disqualifying offence* into the dictionary. The term was previously defined in section 73B, but has been relocated to the dictionary as the term is now more widely used in the Regulation.

## **Clause 29 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:

- *approved interlock installer;*
- *approved interlock service provider;*
- *disqualification period;*
- *exemption certificate;*
- *fitted interlock;*
- *interlock;*
- *interlock condition;*
- *interlock data record;*
- *interlock driver;*
- *interlock exemption;*
- *interlock period;*
- *level;*
- *mandatory interlock condition;*
- *nominated vehicle;* and
- *voluntary interlock condition.*

## **Part 5 Road Transport (General) Act 1999**

The amendments in this part are to the *Road Transport (General) Act 1999*, and include new powers relating to vehicles driven by interlock drivers, as well as consequential amendments to evidentiary certificate provisions and provisions relating to disqualification of drivers.

### **Clause 30 Effect of disqualification Section 66 (6)**

This is a consequential amendment to section 66, which deals with the effect of a licence disqualification. Existing section 66 (6) has the effect that a person who is disqualified from driving cannot apply for or be issued with a licence during the disqualification period ordered by the court, apart from a restricted licence. The amendment modifies this provision to enable the person to be issued with a driver licence that is subject to an interlock condition during the person's disqualification period. Under new sections 73T and 73V of the Regulation, interlock conditions may only be applied to probationary licences.

### **Clause 31 Section 66 (6), new note**

This amendment inserts a new note after section 66 (6), to refer to the circumstances in which a person may be eligible for a driver licence with an interlock condition. The purpose of the note is to assist readers of the legislation to locate these provisions, which are set out in another part of the road transport legislation.

**Clause 32      New section 66 (7)**

This is a consequential amendment that inserts a definition of *interlock condition* into section 66.

**Clause 33      Certificate evidence and other evidentiary provisions  
New section 72 (1) (ba) to (bd)**

This clause inserts new sections 72 (1) (ba) to (bd) into the Act. Section 72 (1) is an evidentiary provision, and provides that a certificate that appears to be signed by or on behalf of the road transport authority or the CTP regulator, and contains a statement regarding a matter, is evidence of the matters it contains.

This new clause will add a number of interlock related matters to the list of matters for which the road transport authority or the CTP regulator may give an evidentiary certificate.

**Clause 34      New section 72 (1A)**

New section 72 (1A) is also a evidentiary provision, and provides that a certificate that appears to have been issued by an approved interlock installer or an approved interlock service provider and states a matter that is taken from a interlock data record, is evidence of that matter.

**Clause 35      Section 72 (2)**

This clause is consequential upon the creation of new section 72 (1A), and provides that an evidentiary certificate mentioned in section 72 (1) or (1A) may state a matter by reference to a date or period.

**Clause 36      Division 5.1 heading**

This replaces the heading of division 5.1 to better reflect the contents of the division as amended by this Bill (particularly the insertion of new section 81A). The change is required by new section 81A applies to police and authorised people.

**Clause 37      New section 81A**

This clause inserts a new section 81A, which relates to powers to inspect interlocks in motor vehicles. Section 81A (1) provides that section applies if a police officer or authorised person reasonably suspects an interlock driver is driving a motor vehicle.

In practice, the type of authorised person who would exercise this power would be a vehicle inspector. It should be noted that roadside vehicle inspections are already carried out by police and vehicle inspectors for a number of reasons under other provisions of the road transport legislation, including to monitor compliance with the vehicle standards and mass, loading and dimension requirements.

Under section 81A (2), the police officer or authorised person may stop, detain and enter the vehicle to inspect and test the interlock. Section 81A (3) clarifies the powers the police officer or authorised person have in undertaking such a search.

It is recognised that this new power engages and may limit human rights, including the right to freedom of movement. The new power is considered to be a reasonable limitation of rights as an ability to monitor compliance with the interlock condition is an essential component of the interlock scheme. For a more detailed discussion of this issue, readers are directed to the discussion of the human rights implications of the Bill at pages 2 to 4 of this Explanatory Statement.

## **Part 6                      Road Transport (General) Regulation 2000**

The amendments in this part apply to the *Road Transport (General) Regulation 2000*. These provisions have the effect of providing rights to review a range of administrative decisions made by the road transport authority relating to alcohol interlocks.

### **Clause 38      Internally reviewable decisions Schedule 1, part 1.4, new item 4A**

This clause adds new section 52 (4) of the *Road Transport (Driver Licensing) Regulation 2000* to the list of decisions that are an internally reviewable decision for the purposes of section 90 of the *Road Transport (General) Act 1999*. Section 52 (4) provides that the road transport authority must be satisfied that a person who was ordered by a court to undertake a court-ordered therapeutic program and who then applies for a licence has actually complied with the order before the authority licence can issue the licence. This result of this new clause is that a person whose interests are affected by a decision of the road transport authority under section 52 (4) can access the review provisions for internally reviewable decisions set out in Part 7 of the *Road Transport (General) Act 1999*.

### **Clause 39      Schedule 1, part 1.4, new items 28A to 28M**

This clause adds the following new sections of the *Road Transport (Driver Licensing) Regulation 2000* to the list of decisions that are internally reviewable decisions for the purposes of section 90 of the *Road Transport (General) Act 1999*:

- 73Y (1) (b) (ii)
- 73Y (2) (b) (ii)
- 73Y (3) (b) (ii)
- 73ZF (1) (b)
- 73ZF (2)
- 73ZH (2)
- 73ZL (1)
- 73ZN (1) (b)
- 73ZQ (1)
- 73ZQ (2)
- 73ZR (1) (a)
- 73ZU (1) (b)
- 73ZV (1)

#### **Clause 40      Schedule 1, part 1.4, new item 45A**

This clause adds a reference to section 103AA (2) of the *Road Transport (Driver Licensing) Regulation 2000* to the list of decisions that are internally reviewable decisions for the purposes of section 90 of the *Road Transport (General) Act 1999*. This amendment ensures that decisions about the eligibility of certain overseas drivers to be issued a probationary licence will be reviewable.

#### **Clause 41      Dictionary, new definitions**

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

- *alcohol ignition interlock device*;
- *approved interlock installer*;
- *approved interlock service provider*;
- *interlock condition*;
- *interlock exemption*; and
- *interlock period*.

### **Part 7                      Road Transport (Offences) Regulation 2005**

This part amends Schedule 1 of the *Road Transport (Offences) Regulation 2005* to include references to the offences created by this Bill.

#### **Clause 42      Short descriptions, penalties and demerit points Schedule 1, part 1.5, new item 19A**

This clause inserts the short description of the offence in section 33A (1) of the *Road Transport (Driver Licensing) Act 1999* (Contravening interlock condition) into the list of offences under that Act, and provides for penalties for that offence. The short description for an offence against a provision is one of the pieces of information that must be included in an infringement notice as required by section 25 of the *Road Transport (General) Act 1999*.

#### **Clause 43      Schedule 1, part 1.6, item 23, column 3**

This clause amends the short description for the offence of contravening conditions of a driver licence in section 60 (1) of the *Road Transport (Driver Licensing) Regulation 2000* to include a reference to a driver licence with an interlock condition.

#### **Clause 44      Schedule 1, part 1.6, new items 24A to 24O**

This clause inserts short descriptions of the new interlock-related offences in the *Road Transport (Driver Licensing) Regulation 2000* introduced by this Bill for use on infringement notices issued for contravening those sections, and prescribes infringement notice penalty amounts for those offences.

## Clause 45 Dictionary, new definitions

The dictionary defines important words and concepts used in the Regulation. This clause is a consequential amendment that provides for new definitions for the following terms to be inserted into the dictionary:

- *approved interlock installer;*
  - *approved interlock service provider;*
  - *exemption certificate;*
  - *fitted interlock;*
  - *interlock;*
  - *interlock condition;*
  - *interlock data record;*
  - *interlock driver;*
  - *interlock exemption;* and
  - *interlock period.*
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