

Alcohol Interlock Program

Guide for Magistrates, Legal Practitioners and Police Prosecutors

Roads and Maritime Services | December 2018



The Alcohol Interlock Program applies to drivers who are convicted of middle range, high range, repeat and other serious drink driving offences.

This guide includes images of different interlock devices. Their appearance varies between devices.

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About the NSW Alcohol Interlock Program

The Alcohol Interlock Program applies to drivers who are convicted of middle range, high range, repeat and other serious drink driving offences.

The *Road Transport Act 2013* prescribes certain driving offences as 'mandatory interlock offences' and outlines applicable disqualification and interlock periods, which vary in length by offence type. All references in this guide to the *Road Transport Act 2013* are to that Act as amended. The interlock licence conditions and offences relating to the program are contained in the Road Transport (Driver Licensing) Regulation 2017.

Other Australian States and Territories with interlock programs currently in place include the Australian Capital Territory, Queensland, Victoria, South Australia, Western Australia and Tasmania.

What is an interlock?

Interlocks are electronic breath testing devices linked to the ignition system of cars, motorcycles and heavy vehicles. Drivers must provide a breath sample that the interlock analyses for the presence of alcohol. It prevents the vehicle from starting if alcohol is detected. Randomly timed breath tests must also be passed while you drive.

All breath test results, a photograph of the person providing the sample, and any attempts to tamper with the device are recorded by the interlock. This information is used to monitor attempts to drink and drive, and any breach of interlock licence conditions.

In NSW, all program participants must have a zero blood alcohol concentration when driving. This means that they cannot have any alcohol in their system while driving.

Aim of the interlock program

The aim of the interlock program is to reduce drink driving-related deaths and injuries on NSW roads.

The interlock program is designed to help drink drivers separate drinking and driving and reduce road safety risk. It does this by keeping offenders in the licensing system on a closely monitored basis, with the interlock physically preventing drink driving.

Research shows that interlock programs reduce the number of offenders who reoffend while a device is installed in a vehicle. Best practice programs include shorter up-front licence disqualifications followed by an interlock participation period to ensure the separation of drinking from driving as soon as possible after the offence.

Offences and penalties

The Alcohol Interlock Program is a requirement under the *Road Transport Act 2013* (the Act) for drivers who are convicted of a 'mandatory interlock offence', which is defined in section 209 of the Act. These are offences against:

- Section 110 (1) (a) or (b) that is a second or subsequent offence by the offender for any other alcohol-related major offence
- Section 110 (2) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence
- Section 110 (3) (a), (b) or (c) that is a second or subsequent offence by the offender for any other alcohol-related major offence
- Section 110 (4) (a), (b) or (c) that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence
- Section 110 (5) (a), (b) or (c) that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence
- Section 112 (1) (a), (b) or (c) that involved driving under the influence of alcohol that is a first

offence or a second or subsequent offence by the offender for any other alcohol-related major offence

- Clause 16 (1) (b) or 17 (1) (a1) of Schedule 3 that is a first offence or a second or subsequent offence by the offender for any other alcohol-related major offence that involved driving under the influence of alcohol
- Any other offence prescribed by the statutory rules.

See Appendix 1 for the full list of:

- Prescribed offences for the Alcohol Interlock Program (including section numbers)
- Minimum and maximum driver licence disqualification periods
- Minimum interlock periods.

Interlock orders

Under sections 210 and 211 of the Act, a court that convicts a person of a mandatory interlock offence committed on or after the start date of the legislation must, at the time of conviction, make one of the following orders in respect of the person:

- Mandatory interlock order
- An interlock exemption order (see Interlock exemption orders on page 5).

When a mandatory interlock order is made by the Court, the order includes a licence disqualification period followed by an interlock period. The legislation sets out the minimum and maximum licence disqualification periods that the Court can impose.

The legislation sets out the minimum interlock period that the Court must impose.

The mandatory interlock order is in addition to any penalty imposed by the Court and therefore does not alter other sentencing options, such as imprisonment and fines.

Both the prescribed minimum disqualification period and the prescribed minimum interlock period increase with the severity of the drink driving offence.

Minimum interlock periods range from **12 months** for low range and novice range repeat offences or middle range first offences, to **48 months** for repeat, high range offences.

These periods ensure that offenders must demonstrate over a period of time that they have changed their behaviour, and can separate drinking from driving, before they can be eligible to drive without an interlock device.

Under section 211 of the Act, people who receive a mandatory interlock order and who do not enter or complete their interlock period remain disqualified for at least five years from the date of their conviction.

Roads and Maritime licensing rules also set out that if an offender is given a total sanction that exceeds five years (for example, a one year disqualification followed by a six year interlock order) they will not be eligible to enter the NSW licensing system unless they have either completed an interlock program, or a period equal to their total sanction has passed since their date of conviction.

For flow charts demonstrating some examples of how the program operates see Appendix 2.



Dangerous driving offences

Under section 214 of the Act, the Court may issue an alcohol interlock order to people convicted of dangerous driving offences involving alcohol under section 52A of the *Crimes Act 1900*. For a list of offences and prescribed minimum interlock periods see Appendix 1 Table 2.

If an offender receives an alcohol interlock order for a dangerous driving offence, the interlock period is to be served after they have completed any disqualification period that has been applied for the offence. These offenders will not be eligible to apply for a licence without an interlock condition until they have completed the interlock period ordered by the Court.

Offences while subject to a mandatory alcohol interlock order

People with an interlock licence are subject to licence conditions that they must comply with. There are also offences including misusing the interlock device (see interlock licence participation and conditions on page 8). For the full list of conditions and offences see Appendices 3 and 4.

Importantly, interlock licence holders may only drive a vehicle equipped with an interlock, and are subject to a zero blood alcohol concentration when driving. Interlock licence holders who are detected with any alcohol in their system may be charged with a prescribed concentration of alcohol offence.

Interlock exemption orders

There are limited situations where a court can make an interlock exemption order.

Under section 212(3) of the Act, the Court may make an interlock exemption order (for any type of mandatory interlock offence) if the offender proves to the Court's satisfaction that the offender:

- Does not have **access to a vehicle** in which to install an interlock device, or
- Has a **medical condition** diagnosed by a registered medical practitioner that prevents the offender from providing a sufficient breath sample to operate an approved interlock device, and it is not reasonably practicable for an interlock device to be modified to enable the offender to operate the device.

If an offender seeks an exemption on either of these grounds, the legislation provides that this cannot be based merely on financial grounds or if the offender is required to drive in the course of their employment (section 212(5)).

Concession rates and severe financial hardship assistance is available to assist eligible offenders who receive an interlock order to complete their program (see costs and concessions on page 7).

If the offender is convicted of an offence against Section 110 (4) (a), (b) or (c) that is a first offence, an interlock exemption order may also be made if the offender proves to the Court's satisfaction:

- that the making of a mandatory interlock order would cause severe hardship to the offender, **and**
- that the making of an interlock exemption order is more appropriate in all the circumstances than the making of a mandatory interlock order.

An exemption order due to **severe hardship** (section 212(3)(c)) can only be made if the offender is convicted of a middle range PCA first offence. It cannot be made for other mandatory interlock offence types.

An exemption must be requested at the time of sentencing. Roads and Maritime does not have any power to exempt an offender after they have received an interlock order. It is the responsibility of the offender to prove the grounds for an exemption.





An exempted offender will serve a driver licence disqualification under section 205 of the Act. Roads and Maritime also require the offender to complete, at their cost, a drink driver rehabilitation program before they apply for their licence to return to driving.

Offenders who are exempt may, if they experience a change in circumstances (e.g. gain access to a vehicle) choose to enter the interlock program at a later date. This does not require the offender to go back to the Court. These offenders should seek legal advice and contact Service NSW on **13 77 88** if they would like to explore this option.

Offenders who hold a learner licence or have never been licensed

There is no exemption based simply on an offender holding a learner licence or having never been licensed.

Roads and Maritime may issue a learner driver licence without an interlock condition to an offender who is subject to an interlock order, if that is the only licence for which that offender is eligible.

When the offender seeks to progress to a provisional licence, he or she can only be issued a licence with an interlock condition and must participate in the interlock program.

A learner rider licence cannot be issued to a person subject to an interlock order.

Section 10 of the *Crimes (Sentencing Procedure) Act 1999*

The Alcohol Interlock Program does not impact on the options available to the Court under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. However, the existing limitations under section 203 of the *Road Transport Act 2013* (the Act) continue to apply.

Offenders convicted of multiple or subsequent offences

Multiple offences

Offenders who have unserved licence disqualifications in addition to their interlock disqualification are required to serve all their disqualifications before they can be eligible to get an interlock licence.

This includes situations where:

- The offender already has a pre-existing disqualification period when the Court is sentencing the offender to a mandatory interlock order, and

- The Court is sentencing the offender for multiple offences at the same time it is sentencing the offender to a mandatory interlock order.

The five year disqualification period under section 211 of the Act starts from the date of conviction, regardless of the other disqualification periods.

Example

If an offender is disqualified for two years for a 'drive while disqualified' offence and a first time high range drink drive offence, the offender will not be eligible to obtain an interlock licence until both disqualification periods have been completed.



Subsequent drink driving offences

If an interlock licence holder is convicted of a subsequent drink driving offence, any unserved portion of their initial interlock period will be superseded by a subsequent interlock order.

There is no limit on the maximum interlock period that may be ordered by the Court. The Court may take into consideration any uncompleted interlock period when making the subsequent order.

Costs and concessions

The Alcohol Interlock Program is a user pays program. All device costs are paid by the participant, including:

- Installation
- Monthly leasing fees
- Device maintenance
- Removal.

The costs for standard services are approximately \$2,200 - \$2,500 per year. For more detailed costs, offenders need to check with the accredited interlock service providers (concession rates and severe financial hardship arrangements may apply see below).

Other expenses which the offender may be required to pay include:

- Additional costs for non-standard interlock services (e.g. repairing damaged devices; unscheduled servicing)
- Licensing costs to Roads and Maritime for the issue of an interlock licence (including a one off interlock administration fee).

These costs are part of the program cost and must be paid by the offender.

Program pricing structure

The program has a three-tiered pricing structure to enable all offenders to complete their ordered interlock period:

1. **Full cost** (default)
2. **Concession rate** for standard interlock services (granted when the participant shows a valid concession card to the interlock service provider)
3. **Severe financial hardship** (the participant must apply for a financial hardship assessment, which is completed by an external assessment agency).

The concession rate will provide 35 percent off standard program fees for eligible concession card holders (details of eligible card holders can be found at rms.nsw.gov.au/interlock).

The concession rate is provided by the interlock service providers.

Roads and Maritime also provides assistance to participants who meet severe financial hardship criteria. Support for up to 100 percent of standard program fees may be available for periods of three months at a time. Support is only available upon application by the participant, who will be referred to an assessment agency for a financial hardship assessment.



Interlock licence participation and conditions

Participating in the program

A participant's period on the interlock program starts when Roads and Maritime issues an interlock licence.

Participants must show during their participation in the program that they can separate drinking from driving. Roads and Maritime regularly collects data from interlocks for monitoring. Roads and Maritime may send program participants who continue to attempt to drink and drive letters recommending that they visit a doctor to discuss how to separate drinking from driving.

For further details

on participating in the interlock program, see the Participant Guide at rms.nsw.gov.au/interlock.

Interlock licence conditions

Interlock licence conditions apply to all who are participating in the interlock program.

The interlock licence conditions are contained in the Road Transport (Driver Licensing) Regulation 2017.

For a summary of the conditions that apply to interlock licences issued after 1 February 2015 see Appendix 3.

All interlock licences issued after 1 February 2015 require the holder to have a zero blood alcohol concentration when driving.

There are also offences related to breaching these conditions or misusing the interlock device. For these offences see Appendix 4.

Completing the interlock program—separating drinking from driving

For the last six months of involvement in the program, participants who fail breath tests and cannot show that they can safely separate drinking and driving may be referred for an *Interlock Medical Examination* before they will be eligible to hold a licence without an interlock condition. This examination is conducted in accordance with the Austroads *Assessing Fitness to Drive* guidelines.

Based on the recommendation of the doctor, Roads and Maritime may extend a participant's time in the interlock program for a further six months.

Roads and Maritime may also extend a participant's time on the interlock program if their licence has been suspended during their participation on the program, or if they are convicted of a breach of licence condition offence that involves driving a vehicle without an interlock installed.

Appendix 1: Offences, disqualifications and interlock periods

Table 1: Interlock program for Road Transport Act 2013 offences*

* This Table is a summary only, provided for easy reference. The offences and relevant periods are outlined in the *Road Transport Act 2013*.

Mandatory interlock offence	Disqualification and interlock periods under interlock order Disqualification period	Disqualification and interlock periods under interlock order Minimum interlock period	Disqualification period (if exemption order is made) Note: as per Road Transport Act 2013 s 205	Applies to offences committed on or after
<p>Offence against section:</p> <ul style="list-style-type: none"> • 110 (1) (a) or (b) • 110 (2) (a) (b) or (c) • 110 (3) (a) (b) or (c) <p>where there is a previous conviction for any alcohol-related major offence within the previous five-year period.</p>	<p>Min: 1 month Max: 3 months</p>	12 months	<p>Automatic: 12 months (Min: 6 months)</p> <p>See Note 1</p>	1 Feb 2015
<p>Offence against section 110 (4) (a) (b) or (c) (middle range PCA) that is a first offence by the offender for any alcohol-related major offence.</p>	<p>Min: 3 months Max: 6 months</p>	12 months	<p>Automatic: 12 months (Min: 6 months)</p>	3 Dec 2018
<p>Offence against section 110 (4) (a) (b) or (c) (mid-range PCA) where there is a previous conviction for any alcohol-related major offence within the previous five-year period.</p>	<p>Min: 6 months Max: 9 months</p>	24 months	<p>Automatic: 3 years (Min: 12 months)</p>	1 Feb 2015
<p>Offence against section 110 (5) (a) (b) or (c) (high range PCA) that is a first offence by the offender for any alcohol-related major offence.</p>	<p>Min: 6 months Max: 9 months</p>	24 months	<p>Automatic: 3 years (Min: 12 months)</p>	1 Feb 2015
<p>Offence against section 110 (5) (a) (b) or (c) (high range PCA) where there is a previous conviction for any alcohol-related major offence within the previous five-year period.</p>	<p>Min: 9 months Max: 12 months</p>	48 months	<p>Automatic: 5 years (Min: 2 years)</p>	1 Feb 2015

Mandatory interlock offence	Disqualification and interlock periods under interlock order Disqualification period	Disqualification and interlock periods under interlock order Minimum interlock period	Disqualification period (if exemption order is made) Note: as per Road Transport Act 2013 s 205	Applies to offences committed on or after
Offence against section 112 (1) (a) (b) or (c) (involving driving a motor vehicle under the influence of alcohol) that is a first offence by the offender for any alcohol-related major offence.	Min: 6 months Max: 9 months	24 months	Automatic: 3 years (Min: 12 months)	3 Dec 2018
Offence against section 112 (1) (a) (b) or (c) (involving driving a motor vehicle under the influence of alcohol) where there is a previous conviction for any alcohol-related major offence within the previous five-year period.	Min: 9 months Max: 12 months	48 months	Automatic: 5 years (Min: 2 years)	3 Dec 2018 (See Note 2)
Offence against clause 16 (1) (b) or 17 (1) (a1) that is a first offence by the offender for any alcohol-related major offence.	Min: 6 months Max: 9 months	24 months	Automatic: 3 years (Min: 12 months)	1 Feb 2015
Offence against clause 16 (1) (b) or 17 (1) (a1) where there is a previous conviction for any alcohol-related major offence within the previous five-year period.	Min: 9 months Max: 12 months	48 months	Automatic: 5 years (Min: 2 years)	1 Feb 2015

Notes

- 'Supervise learner offences' in s 110 (2) (c) and s 110 (3) (c) are not defined as a 'major offence' under the *Road Transport Act 2013* and do not have a prescribed disqualification period. However, under s 204 of the *Road Transport Act 2013*, the court may disqualify a driver for offences against road transport legislation.
- This table outlines the disqualification and interlock periods in section 211 which apply to offences committed on or after 3 December 2018. Offences of this type that occurred between 1 Feb 2015 and 2 Dec 2018 are subject to the law in place at the time of the offence.

Table 2: Interlock program for *Crimes Act 1900* offences

While an interlock order is required for the *Road Transport Act 2013* offences in Table 1, the Court has discretion to make an interlock order for the below *Crimes Act 1900* offences.

If an interlock order is made for these offences, the offender is required to complete the interlock period as determined by the Court.

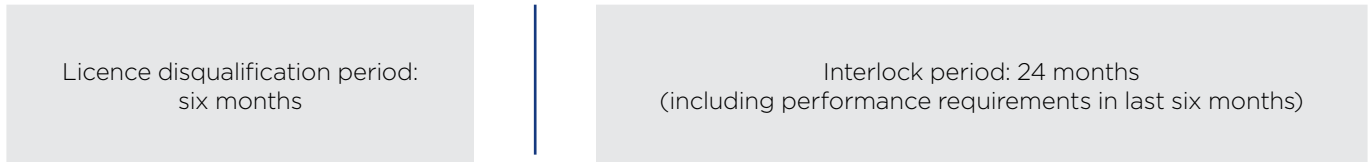
<i>Crimes Act 1900</i>	Offence	Penalty (including fine, imprisonment and disqualification period)	Minimum alcohol interlock participation period available for magistrates (for offence committed on or after 1 February 2015)
s 52A (1) (a)	Dangerous driving occasioning death with driver being under the influence of alcohol.	Determined at sentencing by Court – alcohol interlock participation period to be applied in addition to other penalties for these serious offences.	36 months
s 52A (2)	Aggravated dangerous driving occasioning death where alcohol was present.		36 months
s 52A (3) (a)	Dangerous driving occasioning grievous bodily harm with driver being under the influence of alcohol.		36 months
s 52A (4)	Aggravated dangerous driving occasioning grievous bodily harm where alcohol was present.		36 months

Appendix 2: Examples of how the program operates

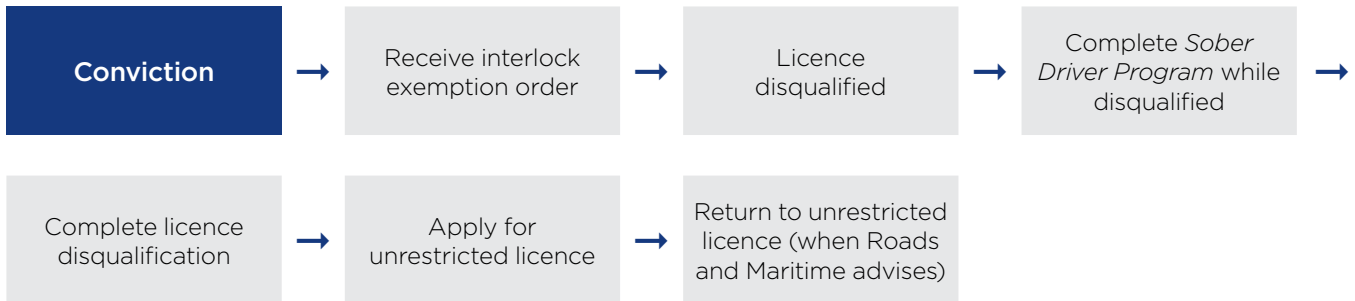
Example 1: Interlock order



Example

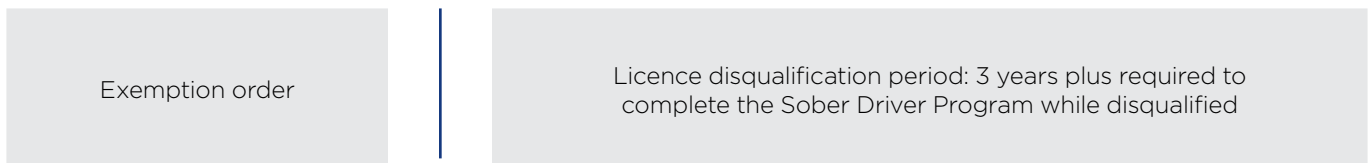


Example 2: Interlock exemption order



Example

Offence with a minimum **12 month** and maximum **unlimited** licence disqualification.



Appendix 3: Interlock licence conditions

Interlock licence conditions apply to all interlock licence holders in the NSW Alcohol Interlock Program. These are provided for under the Road Transport (Driver Licensing) Regulation 2017.

All interlock licence holders must:

- a. Only drive a vehicle on a road or road related area if the vehicle is fitted with an approved interlock device that has been installed by an accredited interlock service provider.
- b. Have access to at least one nominated vehicle with an approved interlock device installed.
- c. Only drive the vehicle if they have personally provided all breath samples required by the device, both prior to starting the vehicle and as required while driving the vehicle.
- d. Submit to all medical consultations required under the program.
- e. Ensure that the device installed in their vehicle has been serviced and maintained in accordance with all program requirements.
- f. Not drive any motor vehicle if they know that the interlock device is not working properly, or that the interlock device (or any identification features of the device) has been circumvented in any way.
- g. Not drive a vehicle which is loaded or partly loaded with dangerous goods that must be placarded under the Dangerous Goods (Road and Rail Transport) Regulation 2014.

Penalties

Conditions (a) (c) and (f) are subject to a Level 13 Penalty Notice and a three month extension of interlock condition. Condition (g) is punishable by up to 20 penalty units and may result in a suspension of licence.

Appendix 4: Offences while on the interlock program

There are a range of offences under the Road Transport (Driver Licensing) Regulation 2017 relating to breaching interlock licence conditions or misusing the interlock device.

It is an offence for:

- a. Anyone other than an accredited interlock service provider to:
- b. Install, maintain or remove an interlock
- c. Label, or remove the label from, an interlock.
- d. A person to tamper with or otherwise interfere with an interlock.
- e. Interlock licence holders to refuse to allow a police officer to inspect an interlock device.
- f. A person to help an interlock licence holder bypass an interlock (for example, by providing a breath sample to circumvent the interlock).

Penalties

All offences are punishable by up to 20 penalty units. The offence for refusing to allow a police officer to inspect an interlock device is subject to a Level 13 penalty notice.



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