

Road Traffic (Authorisation to Drive) Amendment Regulations (No. 2) 2016

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Road Traffic (Authorisation to Drive) Amendment Regulations (No. 2) 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 24 October 2016.

3. Regulations amended

These regulations amend the *Road Traffic (Authorisation to Drive) Regulations 2014*.

4. Regulation 3 amended

In regulation 3 insert in alphabetical order:

alcohol interlock offence means —

- (a) an offence under RTA section 59(1)(a) or (bb);
or
- (b) an offence under RTA section 59A(1)(a)
or (bb); or
- (c) an offence under RTA section 63(1)(a) or (c);
or
- (d) an offence under RTA section 64(1), if the offender has, within the period of 5 years preceding conviction for that offence, been convicted of an offence —
 - (i) referred to in paragraph (a), (b) or (c); or
 - (ii) against RTA section 64(1), 64AA(1) or 64A(1) or (4); or
 - (iii) referred to in paragraph (g),
which was committed on or after the scheme commencement day; or
- (e) an offence under RTA section 64AA(1), if the offender has, within the period of 5 years

preceding conviction for that offence, been convicted of an offence —

- (i) referred to in paragraph (a), (b) or (c); or
 - (ii) against RTA section 64(1), 64AA(1) or 64A(1) or (4); or
 - (iii) referred to in paragraph (g),
which was committed on or after the scheme commencement day; or
- (f) an offence under RTA section 64A(1) or (4), if the offender has, within the period of 5 years preceding conviction for that offence, been convicted of an offence —
- (i) referred to in paragraph (a), (b) or (c); or
 - (ii) against RTA section 64(1), 64AA(1) or 64A(1) or (4); or
 - (iii) referred to in paragraph (g),
which was committed on or after the scheme commencement day; or
- (g) an offence under RTA section 67(2)(a), (b) or (c);

approved alcohol interlock means an alcohol interlock that the CEO has approved under regulation 69I;

RTA means the *Road Traffic Act 1974*;

scheme commencement day means the day on which the *Road Traffic (Authorisation to Drive) Amendment Regulations (No. 2) 2016* regulation 3 comes into operation;

5. Part 3A inserted

After regulation 53 insert:

Part 3A — Loss of authorisation to drive

53A. Terms used

- (1) In this Part —
- prescribed offence*** means an offence under RTA section 63, 64, 64AB, 67 or 67AA.
- (2) In this Part, a reference to a driver's licence —
- (a) does not include a provisional licence; but
 - (b) includes an extraordinary licence or any other driver's licence, in either case whether or not the licence is suspended.

53B. Effect of disqualification: cancellation

If the holder of a driver's licence or learner's permit is disqualified from holding or obtaining a driver's licence by order of a court on being convicted of an offence (the *present offence*), the licence or permit is by force of this regulation cancelled —

- (a) if the present offence is a prescribed offence, other than an offence under RTA section 64 and the holder has previously been convicted of a prescribed offence; or
- (b) if the present offence is an offence under RTA section 64 and the holder has previously been convicted of a prescribed offence within the period of 5 years preceding the holder's conviction for the present offence; or
- (c) if the present offence is an alcohol interlock offence.

53C. Effect of disqualification: suspension

(1) Subregulation (2) applies if the holder of a driver's licence or learner's permit is disqualified from holding or obtaining a driver's licence —

- (a) by order of a court on being convicted of an offence, unless the licence or permit is cancelled by force of regulation 53B in consequence of the conviction; or
- (b) by operation of the Act; or
- (c) by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

(2) If this subregulation applies, the licence or permit is by force of this regulation suspended so long as the disqualification continues in force.

6. Part 5A inserted

After regulation 69 insert:

Part 5A — Alcohol interlock scheme

Division 1 — Preliminary

69A. Terms used

In this Part —

accredited service provider means a person accredited as a service provider under regulation 69G;

alcohol assessment and treatment means assessment and treatment provided by a provider approved under regulation 69J(2)(a);

alcohol interlock scheme means the scheme constituted by this Part;

alcohol offender means —

- (a) a person who has been convicted of an alcohol interlock offence committed on or after the scheme commencement day; or
- (b) a person who —
 - (i) holds; or
 - (ii) immediately before being granted a driver's licence, held, another jurisdiction's driving authorisation which is or was subject to a condition or restriction limiting the authorisation to vehicles fitted with alcohol interlocks,

and who in either case has not ceased to be an alcohol offender under regulation 69F(a);

interlock contract means a contract between an accredited service provider and an interlock-restricted driver on terms approved by the CEO under regulation 69H(1);

interlock-restricted driver means a person who holds a driver's licence that is endorsed with condition I;

restricted driving period means a period starting as provided in regulation 69L or 69O and terminating as provided in regulation 69O or 69P;

trigger, in relation to an approved alcohol interlock fitted to a vehicle, means —

- (a) prior to the operation of the vehicle, provide the interlock with a breath specimen containing a concentration of alcohol sufficient to cause the interlock to prevent the vehicle from being operated; or
- (b) during the operation of the vehicle, provide the interlock with a breath specimen containing a concentration of alcohol sufficient to cause the interlock to signal that the vehicle ought not to be operated; or
- (c) during the operation of the vehicle, fail to provide the interlock with a breath specimen when the interlock requires it.

Division 2 — Consequences of being an alcohol offender

69B. Extension of RTA section 49 to certain alcohol offenders

The following are prescribed as a class of persons for the purposes of RTA section 49(3)(da) —

- (a) alcohol offenders who drive a motor vehicle on a road while having no authorisation to drive;
- (b) alcohol offenders who drive a motor vehicle on a road in breach of condition I.

69C. Extension of RTA section 64A offence to alcohol offenders

Alcohol offenders are prescribed as a class of persons for the purposes of RTA section 64A(2)(g).

69D. Endorsement of driver's licence

- (1) If a driver's licence is granted to an alcohol offender, the CEO must endorse the licence with condition I.
- (2) Subregulation (1) applies to an extraordinary licence regardless of the terms of the court order directing the grant of the extraordinary licence.
- (3) This regulation is subject to regulation 69E.

69E. Exempt persons

- (1) This regulation applies to an alcohol offender who the CEO is satisfied —
 - (a) resides in a place that is more than 150 kilometres from any premises at which the services of an accredited service provider are provided; or
 - (b) suffers from a medical condition that, in the opinion of the CEO, would prevent the person from operating an alcohol interlock.
- (2) When the CEO is granting a driver's licence to an alcohol offender to whom this regulation applies, the CEO must not endorse the licence with condition I except at the written request of the alcohol offender.
- (3) At the written request of an alcohol offender to whom this regulation applies who holds a driver's licence not endorsed with condition I, the CEO must vary the licence by endorsing it with condition I.
- (4) At the written request of an alcohol offender to whom this regulation applies who holds a driver's licence endorsed with condition I —

- (a) the CEO must vary the licence by revoking condition I; and
- (b) on revocation of condition I the holder of the licence ceases to be an interlock-restricted driver.

69F. Cancellation of alcohol interlock condition

If an interlock-restricted driver is taken under regulation 69Q to have demonstrated the separation of drinking and driving behaviour —

- (a) the interlock-restricted driver ceases to be an alcohol offender; and
- (b) the CEO must vary any driver's licence held by the interlock-restricted driver by revoking condition I.

Division 3 — Accreditations and approvals for the purposes of the alcohol interlock scheme

69G. Accreditation of service providers

- (1) The CEO may, in writing, accredit a person as a service provider for the purposes of the alcohol interlock scheme.
- (2) In deciding whether or not to accredit a person, the CEO must have regard to the person's capacity to provide the services and discharge the functions mentioned in regulation 69H.
- (3) The CEO may accredit a person subject to the person complying with stated conditions.
- (4) By notice in writing to an accredited service provider, the CEO may amend, cancel or suspend —
 - (a) the accredited service provider's accreditation; or
 - (b) any condition to which the accreditation is subject.
- (5) Subject to any conditions imposed under subregulation (3), an accredited service provider may provide services and discharge functions directly or through agents it appoints for the purpose.

69H. Approval of interlock contract terms

- (1) On the application of an accredited service provider the CEO may, in writing, approve terms for the contracts which the accredited service provider proposes to enter into with interlock-restricted drivers.

- (2) The CEO may not approve a contract under subregulation (1) unless it provides —
- (a) for the accredited service provider to supply and install an approved alcohol interlock in a vehicle that is owned by or available to the interlock-restricted driver, and to report to the CEO for the purposes of the scheme that they have done so; and
 - (b) for the accredited service provider to train the interlock-restricted driver and others in the proper use of the approved alcohol interlock and in the proper use and control of a vehicle in which the approved alcohol interlock is installed; and
 - (c) for each restricted driving period of the interlock-restricted driver during the currency of the contract to be divided into consecutive inspection periods; and
 - (d) for the interlock-restricted driver to present the vehicle in person to the accredited service provider for inspection of the approved alcohol interlock in respect of each inspection period; and
 - (e) for the accredited service provider to inspect the approved alcohol interlock when the vehicle is presented and, after each inspection, to report to the CEO for the purposes of the alcohol interlock scheme —
 - (i) identifying the vehicle in which the interlock is installed, the interlock-restricted driver on whose behalf the interlock was installed and the person who presented the vehicle for inspection; and
 - (ii) stating whether the interlock was found to be functioning properly; and
 - (iii) stating whether there was any indication of tampering or attempting to tamper with the interlock; and
 - (iv) setting out the data recorded by the interlock since the previous inspection; and
 - (f) for the accredited service provider to provide other information to the CEO regarding the operation or attempted operation of an approved alcohol interlock; and
 - (g) on behalf of the interlock-restricted driver, for the accredited service provider to remove the

approved alcohol interlock from the vehicle and to report to the CEO that it has done so; and

- (h) for the accredited service provider to charge the interlock-restricted driver for the performance of these functions —
 - (i) according to a scale of charges; or
 - (ii) on another basis,
agreed from time to time between the service provider and the CEO; and
- (i) for the accredited service provider to perform any other functions that are specified in conditions attaching to their accreditation.

69I. Approval of alcohol interlocks

- (1) For the purposes of the alcohol interlock scheme, the CEO may, by notice in writing to an accredited service provider, approve —
 - (a) a specified alcohol interlock; or
 - (b) a class of alcohol interlocks that meet specified criteria.
- (2) Approval under subregulation (1) may be —
 - (a) unconditional; or
 - (b) conditional upon the device continuing to comply with specified requirements relating to all or any of the following matters —
 - (i) the manner in which the device will record instances of its use and operation;
 - (ii) the occasions on which, or the frequency with which, the device is to be inspected by an accredited service provider to ensure that it is functioning properly;
 - (iii) the occasions on which or frequency with which the device will require a specimen of breath to be provided;
 - (iv) the concentration of alcohol that will cause the device to prevent the operation of the vehicle or to signal that the vehicle ought not to be operated;
 - (v) other circumstances in which the device is to prevent the operation of the vehicle or to signal that the vehicle ought not to be operated;
 - (vi) any other matter that seems desirable to the CEO.

69J. Alcohol assessment and treatment

- (1) In this regulation —
- CEO (Mental Health Commission)** means the chief executive officer of the Department of the Public Service principally assisting the Minister responsible for the administration of the *Alcohol and Other Drugs Act 1974*.
- (2) The CEO (Mental Health Commission) may, in writing, do any of the following —
- (a) approve providers of alcohol assessment and treatment for the purposes of the alcohol interlock scheme;
 - (b) give an approval under paragraph (a) subject to conditions with which the approved provider is to comply;
 - (c) cancel or amend an approval given under paragraph (a).

Division 4 — Restricted driving period

69K. Terms used

In this Division —

inspection period, in relation to an interlock-restricted driver, means an inspection period provided for under an interlock contract to which the interlock-restricted driver is a party;

relevant vehicle, in relation to an interlock-restricted driver, means a vehicle in which an approved alcohol interlock is installed under an interlock contract to which the interlock-restricted driver is a party.

69L. Start of restricted driving period

An interlock-restricted driver's restricted driving period starts when, following the driver's most recent conviction for an alcohol interlock offence, the driver has an approved alcohol interlock installed under an interlock contract in a vehicle that the driver is authorised to drive.

69M. Inspection obligation

- (1) Throughout a restricted driving period, an interlock-restricted driver must periodically present in person the relevant vehicle for inspection of the approved alcohol interlock in respect of each inspection period in accordance with the terms of the interlock contract.

- (2) An interlock-restricted driver who holds an extraordinary licence may, despite any conditions imposed under section 32(1)(b) of the Act, drive the relevant vehicle by the most direct convenient route to and from the premises of an accredited service provider or its agent as reasonably necessary for the purpose of having the approved alcohol interlock inspected as required by subregulation (1).

69N. Alcohol assessment and treatment during restricted driving period

Throughout a restricted driving period, the CEO may require the interlock-restricted driver, by notice in writing to the driver, to participate in alcohol assessment and treatment if —

- (a) the CEO reasonably believes that any person has tampered with or attempted to tamper with the alcohol interlock installed in the driver’s relevant vehicle; or
- (b) the CEO reasonably believes that, within any inspection period, the alcohol interlock installed in the driver’s relevant vehicle has been triggered on 3 or more occasions; or
- (c) the CEO reasonably believes that the driver has failed to comply with a periodic inspection obligation under regulation 69M(1).

69O. Termination and restart of restricted driving period

- (1) An interlock-restricted driver’s restricted driving period terminates and immediately restarts on the occurrence of an event mentioned in column 1 of the Table with effect from the date mentioned opposite that event in column 2 of the Table.

Table

Event	Effective date
The alcohol interlock installed in the driver’s relevant vehicle records that a person has tampered or attempted to tamper with it, and the recorded details are reported to the CEO in accordance with the interlock contract.	The recorded date of the tampering or attempted tampering.
An inspection by an accredited service	The date of the inspection.

Event	Effective date
<p>provider of an alcohol interlock installed in the driver's relevant vehicle discloses physical evidence of tampering or attempted tampering which the interlock has not recorded, and the evidence is reported to the CEO in accordance with the interlock contract.</p>	
<p>The alcohol interlock installed in the driver's relevant vehicle records that, within any inspection period, the alcohol interlock installed in the driver's relevant vehicle has been triggered on 3 or more occasions, and the recorded details are reported to the CEO in accordance with the interlock contract.</p>	<p>The recorded date of the last occasion within the inspection period on which the alcohol interlock was triggered.</p>
<p>Since the most recent occasion on which a restricted driving period for the driver has either started under regulation 69L, the driver fails to comply with more than one periodic inspection obligation under regulation 69M(1).</p>	<p>If the failure arises because, although the vehicle is presented for inspection within the time required under the terms of the interlock contract, it is not presented personally by the driver — the date on which it is presented for inspection.</p> <p>If the failure arises because the vehicle is not presented for inspection within the time required under the terms of the interlock contract — the next date on which it is presented for inspection.</p>

- (2) An interlock-restricted driver's restricted driving period —
- (a) terminates if —

- (i) the driver's licence is suspended; or
- (ii) the driver's licence expires, unless a new licence is immediately granted to the driver; or
- (iii) the driver ceases to have a relevant vehicle;

and

- (b) restarts if and when the driver has both a valid and effective licence and a relevant vehicle.

69P. Termination of restricted driving period without restart

- (1) An interlock-restricted driver's restricted driving period terminates if —
 - (a) the driver is convicted of a further alcohol interlock offence; or
 - (b) the driver's licence is cancelled in any other circumstances.
- (2) A restricted driving period that terminates under subregulation (1) does not restart, but a new restricted driving period may start on the driver again becoming an interlock-restricted driver and having a relevant vehicle.

Division 5 — Demonstrating separation of drinking and driving behaviour

69Q. Demonstrating the separation of drinking and driving behaviour

An interlock-restricted driver is taken to have demonstrated the separation of drinking and driving behaviour when the following conditions are satisfied —

- (a) in the case of a driver who has been permanently disqualified, the driver has completed one or more restricted driving periods totalling in aggregate at least 3 years since the most recent date on which —
 - (i) a disqualification was imposed on the driver; or
 - (ii) an extraordinary licence held by the driver was cancelled;
- (b) in the case of any other driver, every period of disqualification imposed on the driver has ended;

- (c) the driver has started or restarted a restricted driving period that has continued for at least 180 days up to and including the current date;
- (d) the CEO is reasonably satisfied that the driver has complied with any requirement under regulation 69N to participate in alcohol assessment and treatment.

Division 6 — Miscellaneous

69R. Offences

- (1) A person must not tamper, or cause or permit another person to tamper, with an approved alcohol interlock installed in —
 - (a) a relevant vehicle; or
 - (b) a vehicle that is being driven or is intended or expected to be driven by an interlock-restricted driver.

Penalty for this subregulation: 50 PU.

- (2) A person must not circumvent, or cause or permit another person to circumvent, the operation of an approved alcohol interlock installed in —
 - (a) a relevant vehicle; or
 - (b) a vehicle that is being driven or is intended or expected to be driven by an interlock-restricted driver.

Penalty for this subregulation: 50 PU.

- (3) Without limiting subregulation (2), a person circumvents the operation of an approved alcohol interlock if —
 - (a) the person provides a sample of breath for analysis by the interlock; and
 - (b) the breath is not that of the driver or intended or expected driver of the vehicle in which the interlock is installed.

7. Regulation 77A inserted

After regulation 77 insert:

77A. Additional fees for licences endorsed with alcohol interlock condition

- (1) On the grant of an extraordinary licence endorsed with condition I a further fee of \$129.00 is payable in addition to the fee payable under regulation 77, unless

the grant is by way of renewal of an extraordinary licence that is endorsed with condition I.

- (2) On the grant of a driver's licence (other than an extraordinary licence) endorsed with condition I a further fee of \$129.00 is payable in addition to the fee payable under Schedule 9 item 6, unless the grant is by way of renewal of a driver's licence (other than an extraordinary licence) that is endorsed with condition I.

8. Schedule 7 amended

In Schedule 7 insert in alphabetical order:

- I The authorisation to drive a motor vehicle applies only if an approved alcohol interlock is installed in the vehicle and is in operation

K. H. ANDREWS, Clerk of the Executive Council.
