

Transport Operations (Road Use Management–Interlocks) Amendment Bill 2009

Explanatory Notes

Short Title

The short title of the Bill is Transport Operations (Road Use Management–Interlocks) Amendment Bill 2009

Objective of Amendment

This Bill amends the *Transport Operations (Road Use Management) Act 1995* (Qld). It aims to improve road safety by introducing various preventative measures to curb problematic drink driving. The Bill establishes a regime of alcohol interlocks, combined with drink-driving education and rehabilitation. In addition it inserts a “3 strikes and you’re out” rule for drivers caught with high level blood alcohol more than three times in five years.

Reasons for the Bill

The road toll in Queensland remains unacceptably high. Between October 2008 and September 2009 348 people died on Queensland roads. Drink driving is a significant cause of this problem in Queensland. It is estimated drink-driving was a factor in around 81 of these deaths in Queensland or 23% of all road fatalities

Queensland's road safety problems resulted in the Queensland Road Safety Summit in February 2006. At this Summit, various recommendations were submitted by road safety experts, including the introduction of mandatory alcohol interlock laws. This recommendation was accepted by the government, but has not yet been implemented.

Additionally, the Queensland Government Travelsafe Committee released a report in October 2006 entitled “Getting Tough on Drink Drivers”. The report recommended that the *Transport Operations (Road Use Management) Act 1995* be amended to allow the courts to impose an alcohol interlock condition on the subsequent licence of drink driving offenders (or require the courts to make such an order, for serious recidivist offenders). The Committee also recommended that the *Act* be amended to require drink-driving offenders to attend either a brief rehabilitation intervention or (for serious recidivist offenders) an intensive rehabilitation program.

In addition of the around 30,000 drink-drivers caught in Queensland last year, over a third were repeat offenders.

Estimated Cost for Implementation

These amendments can be absorbed through existing Departmental arrangements

Fundamental Legislative Principals

This Bill brings in additional penalties including the imposition of alcohol interlocks on selected drink drivers and the cancellation of Queensland Drivers Licences for repeat offenders.

These provisions are considered appropriate to mitigate harm in society. In addition appropriate appeal provisions are included.

Consultation

Provisions included in the bill have been mooted for some time. For example alcohol interlocks have been long considered by the Queensland Government.

2001	Small QLD trial
2004	Minister for Transport announces consideration of alcohol interlocks
2006	Premier, Minister for Transport and Minister for Police announce alcohol interlocks in planning stage
2007	Police Minister states Transport Minister working on laws
2009	Transport Minister states she has given a direction to her department to move towards implementing – but nothing yet.

In addition this Bill implements 2006 recommendations of the respected Queensland Parliamentary Travelsafe Committee.

Clause 1 – Short title

Clause 1 provides that the short title of the Act is the *Transport Operations (Road Use Management – Interlocks) Amendment Act 2009*.

Clause 2 – Commencement

Clause 2 provides that the Bill commences on a day to be fixed by proclamation.

Clause 3 – Act amended

Clause 3 provides that this Act amends the *Transport Operations (Road Use Management) Act 1995*.

Clause 4 – Amendment of Section 86 (Disqualification of drivers of motor vehicles for certain offences)

Clause 4 provides if a person has been convicted of a drink driving offence three times in five years over the high alcohol level the person will be disqualified absolutely from holding a Queensland Drivers Licence.

Clause 5 – Amendment of Section 87 (Issue of restricted licence to disqualified person)

Clause 5 amends Section 87 of the *Transport Operations (Road Use Management) Act 1995* to allow the court the discretion to impose an alcohol interlock as a condition upon a restricted licence.

Clause 6 – Insertion of new Chapter 5, Part 3B

Clause 4 inserts a new Part 3B into chapter 5 of the *Transport Operations (Road Use Management) Act 1995* after section 91.

New Part 3B Alcohol Interlocks

New Division 1 Preliminary

New Section 91I Definitions for pt 3B

Section 91I defines an *alcohol interlock*, an *alcohol interlock condition*, an *alcohol interlock driver*, a *drink-driving offence*, a *prescribed alcohol interlock*, a *prescribed supplier*, a *subsequent licence* and *supply* for the purposes of part 3B.

New Division 2 Court order for alcohol interlock

New section 91J Court order about disqualification may include alcohol interlock condition

Section 91J provides that the court has the discretion to impose an alcohol interlock condition upon the subsequent driver licence of a person who the court disqualifies from holding or obtaining a Queensland driver licence as a result of either:

1. A high alcohol limit drink-driving offender who *has not* been convicted of another high alcohol limit drink-driving offence in the prior five years; or

2. A low-limit drink-driving offender who *has* been convicted of another low-limit drink-driving offence in the five years prior.

The court must specify a minimum duration of between one to four years for the alcohol interlock condition to apply and state whether the person must not be over the no alcohol limit or the general alcohol limit when starting and operating the vehicle.

New section 91K Court order about disqualification must include alcohol interlock condition

Section 91K provides that the court must impose an alcohol interlock condition upon the subsequent driver licence of a person who the court disqualifies from holding or obtaining a Queensland driver licence as a result of a drink-driving offence if the person has been convicted of a high alcohol limit drink-driving offence in the prior five years. This five year period may pre-date the commencement of the section.

The court must specify a minimum duration of between one and eight years for the alcohol interlock condition to apply and state whether the person must not be over the no alcohol limit or the general alcohol limit.

New Section 91L Duration of alcohol interlock condition

Section 91L provides that an alcohol interlock condition continues to apply until the earlier of the end of the maximum period (per the court's judgment) or a court order is made for the removal of the condition under new section 91R.

New Division 3 Drink driving education and rehabilitation

New Section 91M Alcohol intervention consultation

Section 91M applies to persons in relation to whom an alcohol interlock condition is imposed under section 91J (i.e. recidivist low-limit offenders or first-time high-limit offenders). Such persons must attend an alcohol intervention consultation with a doctor prescribed under a regulation before the end of the minimum period of the alcohol interlock order. The person must attend the consultation at his or her own expense and provide the chief executive with a certificate, or other evidence, of completion.

New Section 91N Drink driving rehabilitation course

Section 91N applies to a person in relation to whom an alcohol interlock condition is imposed under section 91K (i.e. those convicted of a drink-driving offence who have been convicted of a high alcohol limit drink-driving offence within the prior five years). Such persons must attend a drink driving rehabilitation course prescribed under a regulation before the end of the minimum period of the alcohol interlock order. The person must attend the course at his or her own expense and provide the chief executive with a certificate, or other evidence, of completion.

New Division 4 Offences and immobilisation orders

New Section 91O Offences

Section 91O provides that an alcohol interlock driver must not drive a motor vehicle in breach of the alcohol interlock condition imposed on the driver, or start a motor vehicle while the alcohol interlock is disengaged, in a way inconsistent with the manufacturer's instructions or in a way other than by blowing directly into the appropriate part of the interlock.

It is also an offence for a person to assist an alcohol interlock driver, or interfere with an alcohol interlock, in breach of the alcohol interlock condition.

These breaches are punishable by a maximum of 30 penalty units or 4 months imprisonment.

If an alcohol interlock driver is charged with an offence for driving a motor vehicle with a non-approved alcohol interlock (or an interlock supplied by a non-prescribed supplier), it is a defence if the person can prove that he or she reasonably believed that the interlock or supplier was prescribed at the time of the contravention.

New Section 91P Immobilisation orders

Section 91P provides that, in relation to a person convicted of an offence under new section 91P(1), the court may order that the relevant motor vehicle be immobilised.

The immobilisation order may be made subject to stated conditions, and be for a period of up to one year and state a way of immobilising the motor vehicle (for example, by using wheel clamps). The order must also state that the alcohol interlock driver is liable to pay the costs of immobilising the vehicle, keeping it while immobilised and for removing the immobilising device.

The court may immobilise the vehicle of a third party ("other person"). In exercising such discretion (or if another person would be substantially affected by an immobilisation order), the court must not make the order unless the other person is present before the court and is given the opportunity to give evidence about his or her interest in the vehicle and the effect of an immobilisation order, or the court is satisfied that the other person has been given written notice about the time and date of the proceeding, that the court may order the immobilisation of the relevant vehicle and informing the other person of his or her right to appear before the court and give evidence. If the other person is not present or has not been given such written notice, the court may adjourn the proceeding until the other person has been given satisfactory notice.

The section specifies that in making an immobilisation order, the court must have regard to whether the relevant offence against section 91P(1) happened without the knowledge or consent of the other person, and evidence about the nature of the other person's interest in the motor vehicle or the way the other person will be substantially affected by the order. If the other person gives evidence in relation to this section, he or she is to be treated as a witness and may be cross examined.

New Division 5 Arranging for the supply or removal of prescribed alcohol interlock

New Section 91Q Prescribed supplier to fit prescribed alcohol interlocks

Section 91Q provides that an alcohol interlock driver, who has no outstanding fines associated with the relevant drink-driving offence, may ask the chief executive to arrange for the supply of a prescribed alcohol interlock.

A regulation may provide how the chief executive deals with such a request, including matters such as the extent to which the fee will be discounted by the amount paid in fines by the driver for the offence and the fee payable if the driver asks for multiple vehicles to be supplied with an alcohol interlock. A regulation may also specify how arrangements are to be made for supplying a motor vehicle with a prescribed interlock.

“Relevant drink-driving offence” is defined for the purposes of this section.

New Section 91R Application at the end of the minimum period stated in alcohol interlock condition

Section 91R provides that after the minimum alcohol interlock period imposed on the driver (under an order pursuant to section 91J or 91K) expires, the person may apply to the court to have the alcohol interlock condition removed.

The application must be accompanied by a certificate from a prescribed supplier that data collected by the interlock does not indicate any improper attempt was made within the period of 6 months before the date of the certificate. If there has been an improper attempt, the person's application must also include an affidavit by the alcohol interlock driver about any improper attempts mentioned in the certificate.

If the alcohol interlock driver is a person to whom section 91J applies, the application must be accompanied by a certificate or other evidence that the person has undertaken an alcohol intervention consultation (see section 91M).

If the alcohol interlock driver is a person to whom section 91K applies, the application must be accompanied by a certificate or other evidence that the person has undertaken a prescribed drink driving rehabilitation course (see section 91N).

The registrar of the court must ensure that a copy of the application and accompanying documents are provided to the commissioner of police.

The court may only make an order to remove the alcohol interlock condition if the court is satisfied that the person has complied with the alcohol interlock condition and completed the relevant consultation or course. The court must consider the application and all evidence tendered by the person or the commissioner of police or any relevant medical evidence. The court must have regard to the person's use of alcohol since the condition was imposed, the person's physical and mental condition and the effect of any order upon the safety of the driver and the public.

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“Improper attempt” is defined for the purposes of this section.

Clause 7 – Amendment of s131 (Reviews and appeals with respect of issue of licences etc.)

Clause 7 amends the appeals provision to provide that if you have been disqualified from holding a Queensland Drivers Licence under section 86(1H) must wait 5 years before they can apply for that disqualification to be removed. In all other cases this application remains at 2 years.

Clause 8 – Amendment of sch 4 (Dictionary)

Clause 8 inserts various definitions contained in the Bill into the Schedule 4 dictionary.