

SOUTH AUSTRALIA

EXPIATION OF OFFENCES ACT, 1987

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **1 March 1993**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

Section

1. Short title
2. Commencement
3. Preliminary
4. Expiation notice may be issued
5. Effect of expiation
6. Expiation notice may be withdrawn
- 6a. Late payment
7. Application of payments
8. Non-derogation
9. Regulations

APPENDIX 1 LEGISLATIVE HISTORY

APPENDIX 2 DIVISIONAL PENALTIES AND EXPIATION FEES

EXPIATION OF OFFENCES ACT, 1987

being

Expiation of Offences Act, 1987, No. 85 of 1987
[Assented to 3 December 1987]¹

as amended by

Pastoral Land Management and Conservation Act, 1989, No. 51 of 1989 [Assented to 7 September 1989]²

South Australian Metropolitan Fire Service (Miscellaneous Powers) Amendment Act 1991 No. 32 of 1991 [Assented to 24 April 1991]³

Expiation of Offences (Divisional Fees) Amendment Act 1992 No. 72 of 1992 [Assented to 19 November 1992]⁴

¹ Came into operation 1 August 1988: *Gaz.* 2 June 1988, p. 1798.

² Came into operation 7 March 1990: s. 2(1).

³ Came into operation 1 June 1991: *Gaz.* 9 May 1991, p. 1484.

⁴ Came into operation 1 March 1993: *Gaz.* 18 February 1993, p. 596.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

An Act to provide for the expiation of minor offences.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Expiation of Offences Act, 1987*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Preliminary

3. (1) In this Act, unless the contrary intention appears—

"child", in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed:

"council" means a council established under the *Local Government Act 1934* and includes a controlling authority established under that Act:

"responsible authority", in relation to the issue of an expiation notice for an alleged offence, means—

- (a) the Minister responsible for the administration of the Act against which the offence is alleged to have been committed;

or

- (b) the statutory authority or council that is responsible for the enforcement of the provision against which the offence is alleged to have been committed.

(2) Where an officer or employee of a council is authorized by an Act to exercise powers as an inspector or other authorized officer or person for the enforcement of a provision of that Act, the council will be taken for the purposes of this Act to be responsible for the enforcement of the provision in addition to the Minister or statutory authority (if any) otherwise responsible for the enforcement of the provision.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Expiation notice may be issued

4. (1) Subject to this Act, where at the foot of a provision of an Act or regulation the words "Expiation Fee" appear, those words signify that an alleged offence against or under that provision, or against or under that provision in the indicated circumstances, may be expiated if an expiation notice is given to the alleged offender in accordance with this Act and the appropriate fee (as specified as an expiation fee under that provision) is paid in accordance with the requirements of the notice within 60 days of the date of the notice.

(Note: Section 28a of the Acts Interpretation Act 1915 sets out a scale of fees for the purposes of this Act.)

(1a) An expiation notice may relate to a number of alleged offences (not exceeding three) provided that all of the alleged offences arise out of the same incident.

3.

(2) For the purposes of subsection (1a), two or more offences arise out of the same incident if they are committed contemporaneously, or in succession, one following immediately upon another.

(3) An expiation notice—

- (a) must be in a form, based on the model form prescribed by the regulations, approved by the responsible authority;
- (b) must specify to whom the expiation fee is payable;
- (ba) may not be issued after the commencement of a prosecution for the alleged offence;
- (c) may not be given to a child;
- (d) where a vehicle is involved in the commission of the alleged offence and is found unattended—may be addressed to the owner or driver of the vehicle without naming or otherwise identifying him or her;

and

- (e) may be given—
 - (i) personally or by service on an employee or agent of the alleged offender;
 - (ii) by post addressed to the alleged offender's last known place of business or residence;
- or
- (iii) where a vehicle is involved in the commission of the alleged offence and is found unattended—by affixing or placing the notice on that vehicle.

(3a) Where an expiation notice is served on an employee or agent of the alleged offender, the employee or agent must, as soon as is reasonably practicable after receiving the notice, give the notice to his or her employer or principal.

Penalty: Division 12 fine.

(4) An expiation notice may only be issued by—

- (a) a member of the police force;
- (b) a person who is authorized in writing by the responsible authority to issue expiation notices for the alleged offence;

or

- (c) a person who is authorized to issue expiation notices for the alleged offence by or under the Act against which the offence is alleged to have been committed.

4.

(5) A power under an Act to prescribe a penalty for the contravention of a regulation will be taken to include the power—

(a) to provide that an alleged offence against or under the regulation may be expiated in accordance with this Act;

and

(b) to prescribe an expiation fee not exceeding a Division 9 fee for that purpose.

Effect of expiation

5. (1) Subject to this Act, where the offence or offences to which an expiation notice relates are expiated in accordance with the notice, the alleged offender is not liable to prosecution for that offence or those offences.

(2) Where—

(a) an expiation notice relates to more than one offence;

and

(b) the alleged offender expiates one or more of those offences but not all of them,

the alleged offender is liable to prosecution for any offence that is not expiated.

(3) The payment of an expiation fee does not constitute an admission of guilt or of any civil liability and will not be regarded as evidence tending to establish guilt or any civil liability.

Expiation notice may be withdrawn

6. (1) The appropriate authority may withdraw an expiation notice if—

(a) the authority is of the opinion that the notice should not have been given;

or

(b) the authority decides that the alleged offender should be prosecuted for an offence to which the notice relates.

(2) An expiation notice may be withdrawn under subsection (1) notwithstanding payment of an expiation fee but in that event the expiation fee must be refunded.

(3) An expiation notice cannot be withdrawn under subsection (1)(b) after the expiration of 60 days from the date of the notice.

(4) The withdrawal of an expiation notice under subsection (1) is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.

(5) Where an expiation notice is withdrawn, a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee is not admissible in those proceedings as evidence against the defendant.

(6) In this section—

"appropriate authority", in relation to the withdrawal of an expiation notice, means—

- (a) if the notice was issued by a member of the police force—the Commissioner of Police;
- (b) in any other case—a responsible authority for the issue of the expiation notice, or a person who is authorized in writing by that responsible authority to withdraw expiation notices issued under this Act.

Late payment

6a. (1) The responsible authority, or a person authorized in writing by the responsible authority for the purposes of this section, may accept or authorize late payment of an expiation fee—

- (a) if proceedings have been commenced in respect of the alleged offence—on payment of the fee and costs and expenses incurred in relation to the prosecution of those proceedings;
- (b) in any other case—on payment of the fee and the prescribed late payment fee.

(2) For the purposes of subsection (1), the late payment fee may consist of two components—

- (a) one being a prescribed amount payable in every case;

and

- (b) the other being an amount attributable to costs and expenses of a prescribed class (if any) incurred in relation to the matter.

(3) Where late payment of an expiation fee is accepted under subsection (1)—

- (a) the alleged offender is not liable to prosecution for the alleged offence;

and

- (b) any proceedings that have been commenced against him or her for the offence must be discontinued.

Application of payments

7. (1) Unless a contrary intention is indicated in a particular Act and subject to subsection (2), money received by way of expiation fees will be paid into the Consolidated Account.

(2) Subject to subsection (3), a council is entitled to any fee paid under this Act in respect of an expiation notice issued by or on the authority of the council, or by an officer or employee of the council.

(3) If an expiation notice is issued by or on the authority of a council, or by an officer or employee of a council, as a result of the reporting of an offence by a member of the police force or other officer of the Crown, half of the amount of any expiation fee paid pursuant to the notice must be paid into the Consolidated Account.

Non-derogation

8. This Act does not affect the operation of any other Act that provides for the expiation of offences.

Regulations

9. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

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APPENDIX 1

LEGISLATIVE HISTORY

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	substituted by 72, 1992, s. 3
Section 4(1):	substituted by 72, 1992, s. 4(a)
Section 4(1a):	inserted by 72, 1992, s. s. 4(a)
Section 4(2):	amended by 72, 1992, s. 4(b)
Section 4(3):	amended by 72, 1992, s. 4(c)-(f)
Section 4(3a):	inserted by 72, 1992, s. 4(g)
Section 4(4):	amended by 72, 1992, s. 4(h)
Section 4(5):	inserted by 72, 1992, s. 4(i)
Section 6(6):	definition of "appropriate authority" amended by 72, 1992, s. 5
Section 6a:	inserted by 72, 1992, s. 6
Section 7:	substituted by 72, 1992, s. 7
Section 9:	inserted by 72, 1992, s. 8
Schedule:	amended by 51, 1989, Sched. (Div. II); 32, 1991, Sched.; repealed by 72, 1992, s. 9

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.