

South Australia

Private Parking Areas Act 1986

An Act to regulate, restrict or prohibit the use by the public of private access roads, private walkways, and private parking areas; to make special provision for the enforcement of provisions relating to private parking areas; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Private Parking Areas Act 1986*.

4—Interpretation

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

authorised officer means a person who is an authorised person for the purposes of the *Local Government Act 1934* and includes a member of the police force;

council means a council as defined in the *Local Government Act 1934*;

council area means the area in relation to which a council is constituted;

disabled persons parking area means any part of a private parking area marked out by signs or a combination of signs and lines, as a disabled persons parking area;

disabled persons parking permit means—

- (a) a permit issued under section 98R of the *Motor Vehicles Act 1959*; or
- (b) a similar permit or authority issued under the law of another State, or a Territory, of the Commonwealth;

driver includes a rider;

exempt vehicle means—

- (a) a vehicle that is being used by an authorised officer in the course of official duties; or
- (b) a fire services vehicle that is being used for purposes related to fire fighting or fire prevention; or
- (c) an ambulance or similar vehicle; or
- (d) a police vehicle; or
- (e) a vehicle that is being used for the purposes of the South Australian State Emergency Service; or
- (f) a vehicle that is being used for purposes related to road safety or road maintenance or repair;

loading area means any part of a private parking area marked out by signs or a combination of signs and lines as a loading area;

no standing area means any part of a private parking area marked out by signs or a combination of signs and lines as a no standing area;

owner, in relation to land, means—

- (a) the holder of an estate in fee simple in that land;
- (b) where the land is subject to a registered estate or interest conferring a right to possession—the proprietor of that estate or interest;

- (c) where the land consists of a registered easement or right of way—the proprietor of the easement or right of way;
- (d) where the land is not alienated from the Crown—the Minister or instrumentality of the Crown that has the care, control and management of the land,

and reference to the **owner** of a private walkway, private access road or private parking area is a reference to the owner of the land on which the walkway, access road or parking area is situated;

owner, in relation to a motor vehicle, means—

- (a) the person registered as the owner of the motor vehicle; or
- (b) a person to whom ownership of a motor vehicle has been transferred (notwithstanding that the motor vehicle has not yet been registered in the name of that person); or
- (c) a person who has possession of the motor vehicle by virtue of the hire or bailment of the motor vehicle;

to park includes to leave standing;

permit parking area means a part of a private parking area marked out by signs or a combination of signs and lines as a permit parking area;

private access road means a road—

- (a) provided on land by the owner for access by vehicles or pedestrians (or both) to premises of the owner; and
- (b) marked by a notice denoting it as a private access road;

private parking area means an area—

- (a) provided on land by the owner for the parking of vehicles used by persons frequenting premises of the owner; and
- (b) marked by a notice denoting it as a private parking area,

(and an area is capable of constituting a private parking area notwithstanding that certain parts of that area are no standing areas);

private walkway means a pedestrian thoroughfare—

- (a) provided on land by the owner for use by pedestrians for access to premises of the owner; and
- (b) marked by a notice denoting it as a private walkway;

restricted parking area means a part of a private parking area marked by signs or a combination of signs and lines as a parking area reserved for the use of a stipulated class of motor vehicle;

vehicle does not include a wheel chair.

- (2) If there are two or more owners of the same land, the powers conferred on the owners by this Act can only be exercised—
 - (a) by the owners acting jointly; or

- (b) by one of the owners who is, by the agreement of all, empowered to act on behalf of all of them.

Part 2—Conditions of use of private walkways and private access roads

5—Conditions for use of private walkway or private access roads

- (1) The owner of a private walkway may impose any one or more of the following conditions in relation to the private walkway:
 - (a) a condition regulating or restricting access to or egress from the private walkway;
 - (b) a condition prohibiting use of the private walkway for any purpose except access to or egress from premises of the owner;
 - (c) a condition limiting the times within which pedestrians may enter or remain in the private walkway.
- (2) The owner of a private access road may impose any one or more of the following conditions in relation to the private access road:
 - (a) a condition regulating or restricting access to or egress from the private access road;
 - (b) a condition prohibiting use of the private access road for any purpose except access to or egress from premises of the owner;
 - (c) a condition regulating, restricting or prohibiting the parking of vehicles on the private access road or any part of the private access road;
 - (d) a condition limiting the times within which pedestrians or vehicles may enter or remain in the private access road.
- (3) Any conditions imposed under this section in relation to a private walkway or private access road must be clearly shown on a notice at each entrance to the private walkway or private access road.

6—Offences

- (1) A pedestrian who uses a private walkway or private access road in breach of a condition imposed under this Part is guilty of an offence.
Maximum penalty: \$200.
- (2) If a vehicle—
 - (a) is parked or driven in breach of a condition imposed under this Part; or
 - (b) is parked or driven on a private pedestrian walkway,the owner of that vehicle is guilty of an offence and if the owner is not the driver of the vehicle the owner and the driver are each guilty of an offence.
Maximum penalty: \$1 250.

Part 3—Parking on private parking areas

7—Owner of private parking area may impose time limits and may set aside any part as a disabled persons parking area, no parking area etc

- (1) The owner of a private parking area may by a notice or notices exhibited at or near each entrance to the private parking area impose time limits on the parking of vehicles in the private parking area.
- (2) The owner of a private parking area may set aside any part of the private parking area as—
 - (a) a disabled persons parking area;
 - (b) a loading area;
 - (c) a no standing area;
 - (d) a restricted parking area;
 - (e) a permit parking area.

8—Offences—driver and owner to be guilty

- (1) A motor vehicle must not be parked in a no standing area.
- (2) A motor vehicle must not be parked in a disabled persons parking area unless a disabled persons parking permit is exhibited in the vehicle.
- (3) A motor vehicle must not be parked in a permit parking area unless a permit issued by the owner authorising the parking of the vehicle in the permit parking area is exhibited in the vehicle.
- (4) A motor vehicle must not be parked in a loading area unless the vehicle is a commercial vehicle that is being used for the delivery of goods to premises of the owner.
- (5) A motor vehicle must not be parked in a restricted parking area unless the vehicle is of the class for which the restricted area is established.
- (6) Subject to subsection (7), where a time limit is in force under this Act in relation to the parking of vehicles in a private parking area, a motor vehicle must not be parked in the private parking area for a period in excess of the time limit (unless a permit issued by the owner authorising the parking of the vehicle beyond the time limit is exhibited in the vehicle).
- (7) Where a motor vehicle in which a disabled persons parking permit is exhibited is parked in a private parking area in excess of a time limit, a contravention of subsection (6) does not arise until the vehicle has been parked for 90 minutes in excess of the limit.
- (8) For the purposes of this section a permit is exhibited in a vehicle if, and only if, the permit is exhibited—
 - (a) in the case of a disabled person's parking permit—in accordance with any requirements of the *Motor Vehicles Act 1959*; or
 - (b) in any other case—so that it is easily legible by a person standing beside the vehicle and otherwise in accordance with any conditions of the permit.

- (9) If a motor vehicle is parked in contravention of this section the owner is guilty of an offence and if the owner is not the driver, the owner and the driver are each guilty of an offence.

Maximum penalty: \$1 250.

8A—Enforcement in disabled persons parking areas

Notwithstanding that an agreement is not in force under section 9 in relation to a private parking area that includes a disabled persons parking area, section 8(2) is enforceable in accordance with section 9 as if such an agreement were in force.

Part 4—Agreements

9—Agreements by owner of private parking area and council for the area

- (1) The owner of a private parking area and the council for the area in which the private parking area is situated may make an agreement for the enforcement by the council of the provisions of Part 3 of this Act in relation to that private parking area.
- (2) Where an agreement is in force under subsection (1)—
- (a) if an offence is alleged to have been committed in the private parking area against Part 3 of this Act, no person except an authorised officer shall commence a prosecution in relation to the alleged offence without the prior approval of the Commissioner of Police or the chief executive officer of the council; and
 - (b) an authorised officer is empowered to exercise in relation to the private parking area any of the powers of the authorised officer in relation to the enforcement of the *Local Government Act 1934*; and
 - (c) any fine, penalty or expiation fee recovered in respect of offences relating to the private parking area shall be paid to the council.
- (5) An agreement under subsection (1) may be revoked by either party to that agreement on giving 3 months notice in writing to the other party of the revocation.

Part 5—Miscellaneous

10—Proof of private walkway etc

In proceedings for an offence against this Act an allegation in a complaint that certain land referred to in the complaint constitutes a private walkway, private access road or private parking area shall be accepted as proved in the absence of proof to the contrary.

11—Exemption of fire, ambulance and police vehicles

Notwithstanding any other provisions of this Act, no offence arises from the driving or parking of an exempt vehicle on a private access road, private parking area or private pedestrian walkway.

12—Effect of user by public of private access road etc

The use of a private access road, private parking area or private walkway—

- (a) does not create any right by prescription or adverse possession in or over the private access road, private parking area, or private walkway; and
- (b) does not constitute, or provide ground for constituting, the private access road, private parking area or private walkway, a highway, street or road.

14—Summary offences

- (1) The offences constituted by this Act are summary offences.
- (2) In proceedings for an offence against this Act, an allegation in the complaint—
 - (a) that the complainant is an authorised officer; or
 - (b) that, at the time of the alleged offence—
 - (i) a specified thoroughfare was a private walkway; or
 - (ii) a specified road was a private access road; or
 - (iii) a specified area was a private parking area; or
 - (iv) a specified part of a private parking area was—
 - (A) a disabled persons parking area; or
 - (B) a loading area; or
 - (C) a no standing area; or
 - (D) a permit parking area; or
 - (E) a restricted parking area,(and was duly marked as such); or
 - (c) that, at the time of the alleged offence, a condition set out in the complaint was in force under this Act and was exhibited as required by this Act in relation to a particular private walkway or private access road; or
 - (d) that, at the time of the alleged offence, a time limit was in force under this Act and was exhibited as required by this Act in relation to a particular private parking area; or
 - (e) that, at the time of the alleged offence, a person named in the complaint was the owner or driver of a motor vehicle referred to in the complaint; or
 - (f) that, at the time of the alleged offence, an agreement for the enforcement of Part 3 by a council was in force in relation to a specified private parking area,will be accepted as proved in the absence of proof to the contrary.
- (3) The owner and driver of a motor vehicle are not both liable to be convicted of an offence arising out of the same circumstances and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

- (4) Before proceedings are commenced against the owner of a motor vehicle for an offence against this Act, a notice must be sent to the owner by the person who proposes to commence the proceedings (the *prosecutor*)—
 - (a) setting out particulars of the alleged offence; and
 - (b) inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the prosecutor, within 21 days of the date of the notice, with a statutory declaration setting out the name and address of the driver.
- (5) In proceedings against the owner of a motor vehicle for an offence against this Act, it is a defence to prove—
 - (a) that, in consequence of some unlawful act, the motor vehicle was not in the possession or control of the owner at the time of the alleged offence; or
 - (b) that the owner provided the prosecutor with a statutory declaration setting out the name and address of the driver in accordance with an invitation under subsection (4)(b).

15—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations—
 - (a) providing for the establishment by the Minister of a code of notices, signs, road markings and other devices to denote areas, parking spaces, conditions, limitations, restrictions or prohibitions relating to private parking areas, private access roads, or private walkways; and
 - (b) prescribing penalties, not exceeding \$1 250, for contravention of, or non-compliance with, a regulation; and
 - (c) fixing expiation fees for alleged offences against the Act or regulations.

16—Incorporation of standards

- (1) A regulation or code established under this Act may apply, adopt or incorporate, with or without modification, any code, standard or other document prepared or approved by a body or authority referred to in the regulation or code as in force from time to time or as in force at a specified time.
- (2) The Minister must cause a copy of any code, standard or document applied, adopted or incorporated in a regulation or code to be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations.
- (3) In any legal proceedings, a document—
 - (a) that appears to be a copy of a code, standard or other document applied, adopted or incorporated in a regulation or code in accordance with this section; and
 - (b) that is apparently endorsed with a certificate of its authenticity by the Minister,

is, in the absence of proof to the contrary, to be accepted as such a copy.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|---|-------------------|---|
| 1986 | 118 | <i>Private Parking Areas Act 1986</i> | 18.12.1986 | 11.1.1988 (<i>Gazette 17.12.1987 p1850</i>) |
| 1991 | 24 | <i>Private Parking Areas (Disabled Persons Parking) Amendment Act 1991</i> | 18.4.1991 | 18.4.1991 |
| 1996 | 34 | <i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i> | 2.5.1996 | Sch (cl 28)—3.2.1997 (<i>Gazette 19.12.1996 p1923</i>) |
| 2005 | 40 | <i>Fire and Emergency Services Act 2005</i> | 14.7.2005 | Sch 6 (cl 11)—1.10.2005 (<i>Gazette 29.9.2005 p3547</i>) |
| 2007 | 55 | <i>Private Parking Areas (Penalties) Amendment Act 2007</i> | 29.11.2007 | 13.12.2007 (<i>Gazette 13.12.2007 p4812</i>) |
| 2009 | 84 | <i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i> | 10.12.2009 | Pt 120 (s 276)—1.2.2010 (<i>Gazette 28.1.2010 p320</i>) |
| 2010 | 22 | <i>Statutes Amendment (Budget 2010) Act 2010</i> | 18.11.2010 | Pt 10 (s 59)—1.7.2011 (<i>Gazette 29.4.2011 p1289</i>) |

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|---------------------|--|------------------|
| Long title | amended under <i>Legislation Revision and Publication Act 2002</i> | 1.10.2005 |
| Pt 1 | | |
| <i>ss 2 & 3</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.10.2005</i> |
| s 4 | | |
| s 4(1) | | |
| exempt vehicle | amended by 40/2005 Sch 6 cl 11 | 1.10.2005 |
| Pt 2 | | |
| s 6 | | |

Private Parking Areas Act 1986—1.7.2011

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| | | |
|----------------|---|-----------------|
| s 6(2) | amended by 55/2007 s 4 | 13.12.2007 |
| Pt 3 | | |
| s 8 | | |
| s 8(8) | substituted by 22/2010 s 59 | 1.7.2011 |
| s 8(9) | amended by 55/2007 s 5 | 13.12.2007 |
| s 8A | inserted by 24/1991 s 2 | 18.4.1991 |
| Pt 4 | | |
| s 9 | | |
| s 9(2) | amended by 34/1996 s 4 (Sch cl 28) | 3.2.1997 |
| | (d) deleted by 34/1996 s 4 (Sch cl 28) | 3.2.1997 |
| s 9(3) and (4) | <i>deleted by 34/1996 s 4 (Sch cl 28)</i> | <i>3.2.1997</i> |
| Pt 5 | | |
| s 13 | <i>deleted by 84/2009 s 276</i> | <i>1.2.2010</i> |
| s 15 | | |
| s 15(2) | amended by 24/1991 s 3 | 18.4.1991 |
| | amended by 34/1996 s 4 (Sch cl 28) | 3.2.1997 |
| | amended by 55/2007 s 6 | 13.12.2007 |
| s 16 | inserted by 24/1991 s 4 | 18.4.1991 |

Transitional etc provisions associated with Act or amendments

Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996

5—Transitional provision

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

Historical versions

Reprint No 1—15.11.1991

Reprint No 2—3.2.1997

1.10.2005

13.12.2007

1.2.2010