

South Australia

Statutes Amendment (Expiation of Offences) Act 2003

An Act to amend the *Expiation of Offences Act 1996*, the *Road Traffic Act 1961* and the *Summary Procedure Act 1921*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Expiation of Offences) Act 2003*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Expiation of Offences Act 1996*

4—Amendment of section 6—Expiation notices

- (1) Section 6(5)—delete "If" and substitute:

Subject to subsection (6), if
- (2) Section 6(5)—delete ", except in the following circumstances:"
- (3) Section 6(5)—designate the dot point as subsection (6).

5—Amendment of section 11—Expiation reminder notices

- (1) Section 11(1)—after "been granted relief under this Act" insert:

and the issuing authority has not received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice
- (2) After the first sentence (and before the note) in section 11(1)—insert:
 - (1a) An expiation reminder notice—
 - (a) must specify the amount of the expiation fee, to whom the expiation fee is payable and the period within which it is payable; and
 - (b) must be accompanied by—
 - (i) a notice in the prescribed form by which the alleged offender may elect to be prosecuted for the offence or any of the offences to which the notice relates; and
 - (ii) if the notice is issued to the owner of a motor vehicle involved in the alleged offence and the expiation reminder notice is required to be accompanied by a notice relating to the owner sending the issuing authority a statutory declaration—a form suitable for use as a statutory declaration.

6—Insertion of section 11A

After section 11—insert:

11A—Expiation enforcement warning notices

- (1) If the issuing authority has received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice, the issuing authority must, before taking action under this Act to enforce the expiation notice, send an expiation enforcement warning notice, in the prescribed form, to the alleged offender by post.
- (2) The expiation enforcement warning notice—
 - (a) must contain a statement that the statutory declaration or other document is not accepted by the authority as a defence to the alleged offence or offences; and
 - (b) must specify the amount of the expiation fee, to whom the expiation fee is payable and the period within which it is payable; and
 - (c) must be accompanied by a notice in the prescribed form by which the alleged offender may elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.
- (3) No enforcement action can be taken under this Act in respect of an expiation notice until 14 clear days have elapsed from the date of the expiation enforcement warning notice.
- (4) If an expiation enforcement warning notice is given to an alleged offender, the prescribed warning notice fee will be added to the unpaid expiation fee and, for the purposes of this Act, forms part of that fee.
- (5) The prescribed warning notice 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.
- (6) An expiation enforcement warning notice is not to be regarded as an expiation reminder notice for the purposes of any other law.

7—Amendment of section 13—Enforcement procedures

Section 13(6)—after paragraph (b) insert:

- (ba) if anything seized under an Act in connection with the alleged offence would be liable to forfeiture in the event of a conviction, that thing is forfeited to the Crown, subject to an order to the contrary made by the court conducting a review of the enforcement order or hearing an appeal against the conviction; and

8—Amendment of section 14—Review of enforcement orders and effect on right of appeal against conviction

Section 14(5a)(c)—delete paragraph (c) and insert:

- (c) the expiation period will be taken to be the period of 28 days from (and including) that day; and
- (d) a prosecution can be commenced for the alleged offence, or offences, within 6 months of the expiry of that expiation period (despite the fact that the time for the commencement of the prosecution may have already otherwise expired).

9—Amendment of section 16—Withdrawal of expiation notices

(1) Section 16(1)(a)—after "opinion" insert:

that the alleged offender did not commit the offence, or offences, or

(2) Section 16(1)—after paragraph (a) insert:

- (ab) the authority receives a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
- (ac) the notice is defective; or

(3) Section 16(8)—delete subsection (8)

(4) Section 16—after subsection (9) insert:

- (10) The notice of withdrawal must specify the reason for withdrawal.
- (11) If an expiation notice is withdrawn under this section and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of prosecuting the alleged offender—
 - (a) the issuing authority must, if a certificate has been sent to the Court under section 13 for enforcement of the notice, inform the Court of the withdrawal of the notice; and
 - (b) any enforcement order made under this Act in respect of the notice and all subsequent orders made under Division 3 of Part 9 of the *Criminal Law (Sentencing) Act 1988* will be taken to have been revoked; and
 - (c) the issuing authority cannot prosecute the alleged offender for an alleged offence to which the withdrawal related unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence.
- (12) If an expiation notice for an offence against section 79B of the *Road Traffic Act 1961* is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (1)(ab), the period within which—
 - (a) a fresh expiation notice may be given to the alleged offender in respect of the offence; or

- (b) an expiation notice may be given in respect of the prescribed offence (within the meaning of that section) that gave rise to the offence,

is extended to 1 year from the date of commission of the alleged offence.

- (13) If an expiation notice is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (6), the period within which a fresh expiation notice may be given to the alleged offender in respect of the offence or offences to which the withdrawal related is extended to 1 year from the date of commission of the alleged offence or offences.

Part 3—Amendment of *Road Traffic Act 1961*

10—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

Section 79B—after subsection (6) insert:

(6a) If—

- (a) an expiation notice for a prescribed offence is given to a person named as the alleged driver in a statutory declaration under this section; or
- (b) proceedings for a prescribed offence are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

- (6b) The particulars of the statutory declaration provided to the person named as the alleged driver must not include the address of the person who provided the statutory declaration.

11—Amendment of section 174A—Liability of vehicle owners and expiation of certain offences

Section 174A—after subsection (9) insert:

- (9a) The particulars of the statutory declaration provided to the person named as the alleged driver must not include the address of the person who provided the statutory declaration.

Part 4—Amendment of *Summary Procedure Act 1921*

12—Amendment of section 52—Limitation on time in which proceedings may be commenced

- (1) Section 52(a)(i)—delete "(whether or not the notice was subsequently withdrawn)"

- (2) Section 52—after its present contents as amended by this section (now to be designated as subsection (1)) insert:
- (2) For the purposes of subsection (1), an expiation notice is to be taken into account despite its subsequent withdrawal except if the notice of withdrawal specifies that it is withdrawn because—
 - (a) the issuing authority has received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
 - (b) it has become apparent that the alleged offender did not receive the notice until after the expiation period, or has never received it, as a result of error on the part of the authority or failure of the postal system,(in which case the withdrawn expiation notice is to be disregarded).