

South Australia

# Road Traffic (Roadworks) Amendment Act 2017

An Act to amend the *Road Traffic Act 1961*.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Road Traffic Act 1961*

- 4 Amendment of section 17—Installation etc of traffic control devices—general provision
- 5 Substitution of section 20
  - 20 Work areas and work sites
  - 20A Appeal to District Court
- 6 Amendment of section 21—Offences relating to traffic control devices
- 7 Substitution of section 22
  - 21A Payments to Highways Fund
  - 22 Proof of lawful installation etc of traffic control devices
  - 23 Regulations fixing expiation fees
- 8 Amendment of section 45A—Excessive speed
- 9 Amendment of section 176—Regulations and rules

### Schedule 1—Transitional provision

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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 *Road Traffic (Roadworks) Amendment Act 2017*.

#### 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 *Road Traffic Act 1961*

### 4—Amendment of section 17—Installation etc of traffic control devices—general provision

- (1) Section 17(1), (2) and (3)—after "the Minister" wherever occurring insert:  
(or in accordance with a roadworks permit issued under section 20)
- (2) Section 17—after subsection (3) insert:
  - (4) An approval of the Minister under this section may be issued—
    - (a) in relation to an authority, body or person of a class determined (from time to time) by the Minister; or
    - (b) in relation to an authority, body or person on an application under this section.
  - (5) An application for an approval of the Minister must be made in a manner determined by the Minister (which may differ between applications according to factors determined by the Minister) and be accompanied by a fee fixed by, or calculated in accordance with, the regulations.
  - (6) An approval issued by the Minister under this section may—
    - (a) be subject to such conditions as the Minister thinks fit; and
    - (b) be varied, suspended or revoked at any time by the Minister (including, without limitation, as a penalty for breach of conditions of the approval or while any alleged breach of conditions is under investigation).
  - (7) Without limiting the circumstances in which the Minister may refuse to issue an approval for the purposes of this section, the Minister may refuse to issue an approval if any person who has been found guilty of an offence against section 21 is to be responsible for installing, displaying, altering, operating or removing traffic control devices pursuant to the approval.

### 5—Substitution of section 20

Section 20—delete the section and substitute:

#### 20—Work areas and work sites

- (1) In this section—

*category 1 hazardous work area* means a work area that involves a hazard to workers or a greater than normal level of hazard for persons using the road;

*category 2 hazardous work area* means a work area that involves an unusually high level of hazard to workers or persons using the road;

**prescribed road** means—

- (a) a road that is under the care, control and management of the Commissioner of Highways; or
- (b) a road, or road of a class, prescribed by the regulations for the purposes of this definition;

**public authority** means any of the following:

- (a) a Minister of the Crown;
- (b) the Commissioner of Highways;
- (c) a council;
- (d) any other authority, body or person authorised by statute to carry out works on roads;
- (e) an authority, body or person prescribed by the regulations;

**roadworks permit**—see subsection (4)(a);

**speed limit signs** means signs placed on a road in accordance with subsection (3);

**work area** means a portion of road—

- (a) on which workers are, or may be, engaged; or
- (b) on which vehicles or equipment relating to any works are placed; or
- (c) that is otherwise affected by works in progress (whether those works are occurring on the road or elsewhere);

**work site** means a portion of road affected by works in progress, together with any additional portion of road used to regulate traffic in relation to those works or for associated purposes.

- (2) A person exercising powers or performing functions under, or for the purposes of, this section must, in doing so, seek to protect the safety of workers, road users and other members of the public whilst having due regard to the inconvenience caused by traffic disruptions and the need to maintain reasonable traffic flows.
- (3) An authority, body or person must, with a relevant authorisation and in accordance with this Part and any regulations made for the purposes of this Part, place signs on a road for the purpose of indicating a maximum speed to be observed by drivers while driving on, by or towards a work area or work site where workers are engaged, or works are in progress, at the direction of that authority, body or person.
- (4) An authority, body or person has a relevant authorisation, for the purposes of subsection (3), to place speed limit signs on a road—
  - (a) if the authority, body or person holds a permit issued by the Minister under this section (a **roadworks permit**) and the signs are placed on the road in accordance with the permit; or

- (b) if—
- (i) the authority, body or person is a public authority; and
  - (ii) the work is required to be undertaken by the public authority as a matter of urgency; and
  - (iii) the signs are placed on the road in accordance with an approval of the Minister under this Part; and
  - (iv) the Minister is notified of the placement of the signs as soon as is practicable (and, in any case, within 2 hours after the signs are placed on the road); and
  - (v) the signs are placed on the road for a period not exceeding 24 hours or such longer period as may be determined by the Minister on an application under subsection (9); or
- (c) if—
- (i) the signs will not relate to any prescribed roads; and
  - (ii) the signs are placed on the road in accordance with an approval of the Minister under this Part.

**Note—**

If any prescribed roads are to be affected by speed limit signs, a roadworks permit is required unless paragraph (b) applies (in which case an approval of the Minister is still required).

If no prescribed roads are to be affected by speed limit signs, only an approval of the Minister is required.

- (5) An authority, body or person must not close any portion of a prescribed road in connection with a work area or work site unless the authority, body or person holds a roadworks permit and closes the road in accordance with the permit.
- (6) An application for a roadworks permit must be made in a manner determined by the Minister (which may differ between applications according to factors determined by the Minister) and be accompanied by a fee fixed by, or calculated in accordance with, the regulations.
- (7) A roadworks permit—
- (a) must specify the period during which the permit remains in force; and
  - (b) may specify periods within which specified works are to be completed, or specified actions are to be taken, and may impose monetary penalties on the permit holder for a failure to complete such work, or to take such action, within the specified period (and such penalties will be recoverable by the Minister as a debt); and

- (c) must include conditions requiring the holder of the permit to undertake risk assessment and other work site planning processes in accordance with requirements specified in the permit, or a standard or other document specified in the permit; and
  - (d) may be subject to such other conditions as the Minister thinks fit; and
  - (e) may be varied at any time by the Minister (including, without limitation, by extending any period or periods specified in the permit); and
  - (f) may be suspended or revoked at any time by the Minister (including, without limitation, as a penalty for breach of conditions of the permit or while any alleged breach of conditions is under investigation).
- (8) Without limiting the circumstances in which the Minister may refuse to issue a roadworks permit, the Minister may refuse to issue such a permit if any person who has been found guilty of an offence against section 21 is to be responsible for installing, displaying, altering, operating or removing speed limit signs pursuant to the permit.
- (9) An application to the Minister for an extension of the 24 hour period referred to in subsection (4)(b)(v)—
- (a) may be made by telephone or any other manner prescribed by the regulations; and
  - (b) must be made at least 3 hours before the end of that 24 hour period (unless the Minister is satisfied that there were good reasons for a delay in making the application).
- (10) The maximum speed to be indicated by speed limit signs is as follows:
- (a) for a category 1 hazardous work area—40 kilometres an hour;
  - (b) for a category 2 hazardous work area—25 kilometres an hour;
  - (c) for a work site—
    - (i) if the speed limit signs are placed on a road in accordance with a roadworks permit and the Minister has, either in the permit or by notice in writing to the holder of the permit, specified a maximum speed limit for the purposes of this paragraph—a maximum speed not exceeding the speed limit so specified; or
    - (ii) in any other case—a maximum speed not exceeding 80 kilometres an hour.

- (11) An authority, body or person that has placed speed limit signs on a road must ensure—
- (a) that the speed limit signs, or at least 1 other sign placed in, or in the vicinity of, the work area or work site, make it clear to road users that the speed limit signs relate to such an area or site (whether by including relevant symbols, the words "work area", "work site" or "roadworks" or in some other way); and
  - (b) that the speed limit signs are not in place on the road during any period during which—
    - (i) workers are not engaged at the work area; and
    - (ii) the area of road affected by the works, or by vehicles or equipment relating to the works, does not involve a greater than normal level of hazard for persons using the road.
- (12) If subsection (11)(b) is not complied with in relation to any speed limit signs—
- (a) the speed limit signs are of no effect for the purposes of this Act or any other Act or law during the period of non-compliance; and
  - (b) an authorised officer may alter or remove the speed limit signs.
- (13) If a public authority has engaged a contractor to carry out works on behalf of the authority, the contractor will, in relation to those works, be treated as if they were the authority for the purposes of this Act (and if the public authority holds an approval under section 17, or a roadworks permit, in respect of those works, the contractor will be treated as if they were the holder of that approval or permit).
- (14) This section does not apply to or in relation to—
- (a) SA Police or police officers; or
  - (b) an authority, body or person, or class of authority, body or person, prescribed by regulation; or
  - (c) a work area or work site, or class of work area or work site, prescribed by regulation.
- (15) For the purposes of this section, workers will be taken to be *engaged* at a work area—
- (a) if the workers are present in the area or in the vicinity of the area; or
  - (b) if the workers are temporarily absent from the area for a period not exceeding 2 hours.

- (16) The regulations may prescribe standards or requirements for determining, for the purposes of this section—
- (a) whether or not a work area involves a hazard to workers or a greater than normal level of hazard for persons using the road; and
  - (b) whether or not a work area involves an unusually high level of hazard to workers or persons using the road; and
  - (c) the circumstances in which a portion of road will be taken to be—
    - (i) affected by works in progress; or
    - (ii) used to regulate traffic in relation to works or for associated purposes; and
  - (d) the circumstances in which work will be taken to be required to be undertaken by a public authority as a matter of urgency.
- (17) This section has effect despite any other Act or law.

### **20A—Appeal to District Court**

- (1) An authority, body or person who has applied for an approval of the Minister under section 17 or for a roadworks permit under section 20 and who is dissatisfied with a decision of the Minister in relation to the application, or in relation to an approval or permit granted as a result of the application, may appeal to the District Court against the decision.
- (2) If the Minister does not give reasons in writing for a decision when the decision is made, the Minister must do so within 1 month of the making of a request by the authority, body or person to whom the decision relates (provided that the request is made within 1 month of the making of the decision).
- (3) An appeal must be instituted—
- (a) within 1 month of the making of the decision being appealed against; or
  - (b) if a request for reasons in writing for the decision has been made under subsection (2)—within 1 month of the receipt of the reasons in writing.
- (4) The Minister will be a party to an appeal under this section.

### **6—Amendment of section 21—Offences relating to traffic control devices**

- (1) Section 21—after subsection (1) insert:
- (1a) An authority, body or person—
- (a) who contravenes section 20(3) by placing a speed limit sign on a road without obtaining the relevant authorisation required under that section; or

(b) who contravenes section 20(5) by closing a portion of a prescribed road without obtaining a roadworks permit, is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a subsequent offence—\$50 000.

(2) Section 21(2)—after "subsection (1)(a)" insert:

or subsection (1a)

(3) Section 21—after subsection (2) insert:

- (3) The holder of an approval under section 17 or a roadworks permit under section 20 must comply with any conditions of the approval or permit relating to signs placed on a road under section 20 in respect of a work area or work site or any other traffic control devices used in connection with the work area or work site.

Maximum penalty:

- (a) for a first offence—\$20 000;
- (b) for a subsequent offence—\$50 000.

- (4) In determining whether an offence is a first or subsequent offence for the purposes of subsection (1a) or (3), any previous offence against this section for which the defendant has been convicted or that the defendant has expiated will be taken into account, but only if the previous offence was committed or alleged to have been committed within the period of 5 years immediately preceding the date on which the offence under consideration was allegedly committed.

(5) If a court dealing with a charge of an offence against subsection (1a) or (3) is presented with evidence of—

- (a) any economic benefit to the defendant obtained by the commission of the offence; or
- (b) the estimated costs to government or to the community, or a section of the community, as a result of the commission of the offence (including, without limitation, costs relating to increased traffic congestion resulting from the commission of the offence),

the court may, on convicting the defendant of the offence, order the defendant to pay to the Crown (in addition to any penalty imposed) the amount of such economic benefit or of such costs, or any portion of such benefit or costs, that the court thinks fit in the circumstances.



## 7—Substitution of section 22

Section 22—delete the section and substitute:

### 21A—Payments to Highways Fund

The following amounts must be paid into the Highways Fund maintained under the *Highways Act 1926*:

- (a) all fees paid for the issue of roadworks permits under section 20;
- (b) all monetary penalties of a kind referred to in section 20(7)(b) recovered from the holders of roadworks permits;
- (c) all fines paid in respect of offences against section 21(1a) or (3);
- (d) all expiation fees recovered in respect of alleged offences against section 21(1a) or (3);
- (e) all amounts ordered to be paid to the Crown under section 21(5).

### 22—Proof of lawful installation etc of traffic control devices

- (1) Subject to subsection (2), in proceedings for an offence against this Act (other than an offence against section 21(1)(a), (1a) or (3)) commenced on the complaint of a police officer or otherwise on behalf of the Crown, or on the complaint of an officer or employee of a council, a traffic control device proved to have been on, above or near a road will be conclusively presumed to have been lawfully installed or displayed there under this Act.
- (2) In proceedings for an offence involving driving at a speed over a speed limit applying by virtue of signs placed on a road under section 20, subsection (1) only applies if it is proved that—
  - (a) workers were engaged at the relevant work area at the time of the alleged offence (determined in accordance with section 20(15)); or
  - (b) the area of road affected by the relevant works, or by vehicles or equipment relating to the relevant works, involved, at the time of the alleged offence, a greater than normal level of hazard for persons using the road (determined in accordance with any relevant standards or requirements prescribed under section 20(16)).

### 23—Regulations fixing expiation fees

Despite section 176(1a)(j), the regulations may fix expiation fees not exceeding \$5 000 for alleged offences against this Division.

## 8—Amendment of section 45A—Excessive speed

Section 45A(2)—delete subsection (2)

## **9—Amendment of section 176—Regulations and rules**

Section 176(1a)—after paragraph (g) insert:

- (ga) provide for the waiver, reduction or remission of any prescribed fees;
- and

## **Schedule 1—Transitional provision**

An approval of the Minister given under Part 2 Division 2 of the *Road Traffic Act 1961* before the commencement of this Act continues in operation after the commencement of this Act and has effect, in relation to a work area or work site in existence at the commencement of this Act, as if it were a permit or approval (as the case may require) referred to in section 20(4) of that Act as substituted by this Act.