

South Australia

**Criminal Law (Clamping, Impounding and
Forfeiture of Vehicles) (Miscellaneous)
Amendment Bill 2009**

A BILL FOR

An Act to amend the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles)
Act 2007*.

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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 *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009*.

5 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.

10 **Part 2—Amendment of *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007***

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *credit provider* insert:

15 *forfeiture offence* means an indictable offence of a kind prescribed by regulation for the purposes of this definition;

- (2) Section 3(1), definition of *prescribed offence*—after "means" insert:
a forfeiture offence or

5—Amendment of section 5—Power to clamp or impound vehicle before proceedings finalised

5 Section 5(6)—after paragraph (a) insert:

- (ab) advise the owners that an application may be able to be made to the Commissioner under section 8 for a determination bringing the clamping or impounding period to an end; and

6—Amendment of section 6—Period of clamping or impoundment

10 Section 6—delete "7" and substitute:

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7—Amendment of section 7—Extension of clamping period

Section 7(2)(a)—delete "7" and substitute:

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15 **8—Amendment of section 8—Removal of clamps or release of impounded vehicle**

- (1) Section 8(2)—before "the clamping or impounding period" insert:
the Commissioner must determine that

- (2) Section 8—after subsection (2) insert:

20 (2a) If, in relation to a motor vehicle clamped or impounded under this Part, the Commissioner is satisfied that—

- (a) the offence occurred without the knowledge or consent of any person who was an owner of the motor vehicle at the time of the offence; or
25 (b) continued clamping or impounding of the motor vehicle would cause severe financial or physical hardship to a person other than the alleged offender or a person who was knowingly involved in, or who aided or abetted, the commission of the offence; or
30 (c) other grounds exist that warrant bringing the clamping or impounding period to an end,

the Commissioner may determine that the clamping or impounding period will be taken to have ended.

35 (2b) The Commissioner may make a determination under subsection (2) or (2a) on the Commissioner's own initiative or on application and, if an application for a determination is made, the Commissioner must determine the application as soon as is reasonably practicable.

- (2c) However, an application may not be made under subsection (2a) by or on behalf of the alleged offender.

(2d) If the Commissioner has not determined an application made under this section within 8 days after it is received, the Commissioner is to be taken to have refused the application.

(3) Section 8(3)(a)—after "period" insert:

for administrative reasons

9—Amendment of section 11—Application of Part

Section 11(b)—delete paragraph (b) and substitute:

(b) either—

(i) the offence is a forfeiture offence; or

(ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and

10—Amendment of section 12—Court order for impounding or forfeiture on conviction of prescribed offence

(1) Section 12(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) order that the motor vehicle specified in the application is forfeited to the Crown if—

(i) the offence is a forfeiture offence; or

(ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 12 months of the date of the offence; or

(iii) the convicted person has been found guilty of or expiated at least 2 other prescribed offences committed or allegedly committed within 10 years of the date of the offence; or

(b) order that the motor vehicle specified in the application be impounded by the relevant authority for a period not exceeding 6 months if—

(i) the convicted person has been found guilty of or expiated 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and

(ii) paragraph (a) does not apply.

(2) Section 12—after subsection (1) insert:

(1a) If the court makes an order under subsection (1), it must also order that the convicted person pay to the relevant authority fees calculated in accordance with the regulations in relation to the forfeiture or impounding of the motor vehicle.

Note—

If a motor vehicle has been clamped or impounded under Part 2 in relation to the offence, the court must also, on the application of the prosecution, order the payment of fees under section 9.

11—Amendment of section 20—Disposal of vehicles

- (1) Section 20(1) and (2)—delete "sell" wherever occurring and substitute in each case:
dispose of
- (2) Section 20(3)—delete "sold" and substitute:
disposed of
- (3) Section 20(3)—delete "sale" wherever occurring and substitute in each case:
disposal
- (4) Section 20(4)—delete the subsection and substitute:
(4) Subject to subsection (5), a disposal of a motor vehicle under this section is to be by sale by public auction or public tender.
- (5) Section 20(5)(b)—delete paragraph (b) and substitute:
(b) the motor vehicle has been offered for sale and was not sold; or
(c) the Commissioner directs (on such grounds as the Commissioner thinks fit) that the motor vehicle be destroyed or disposed of in some other way.
- (6) Section 20(7)—delete subsection (7) and substitute:
(7) Despite any other Act or law, if a motor vehicle is sold, destroyed or otherwise disposed of under this section—
(a) any interests in the motor vehicle existing prior to the sale, destruction or disposal are extinguished; and
(b) any purchaser of the motor vehicle, or of any part of the motor vehicle, acquires a good title.
- (7) Section 20(8)—delete "sale or disposal" and substitute:
sale, destruction or disposal

12—Amendment of section 21—Credit provider may apply to Magistrates Court for relief

- Section 21(1)(c)—delete "the proceeds" and substitute:
any proceeds

Schedule 1—Transitional provision

The amendments to sections 20 and 21 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* effected by this Act apply in relation to an impounded or forfeited motor vehicle whether the impounding or forfeiture occurred before or after the commencement of those amendments.