

Legislative Council—No 288

As received from the House of Assembly and read a first time, 28 November 2017

South Australia

**Passenger Transport (Miscellaneous) Amendment
Bill 2017**

A BILL FOR

An Act to amend the *Passenger Transport Act 1994*; and to make related amendments to the *Motor Vehicles Act 1959*.

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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 *Passenger Transport (Miscellaneous) Amendment Act 2017*.

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 *Passenger Transport Act 1994*

4—Amendment of section 3—Objects

Section 3(b)(iii)—delete "centralised" and substitute:
transport

5—Amendment of section 4—Interpretation

15 (1) Section 4(1), definition of *centralised booking service*—delete the definition

(2) Section 4(1)—after the definition of *District Court* insert:

driver's licence means a licence under the *Motor Vehicles Act 1959* and includes a learner's permit;

(3) Section 4(1)—after the definition of *road maintenance authority* insert:

20 *screenshot* means an image (created by taking a photograph or in some other way) of material that was, at a particular time, visible on a monitor, tablet, mobile phone or other visual output device;

(4) Section 4(1)—after the definition of *temporary licence* insert:

transport booking service—see section 28B;

25 6—Insertion of section 6

After section 5 insert:

6—Extraterritorial operation

(1) This Act applies in relation to—

30 (a) a passenger transport service even if part of that service is provided outside South Australia; and

(b) a passenger transport service where payment for the service occurs outside South Australia; and

(c) a transport booking service provided wholly or partly outside South Australia (and whether in or outside Australia).

(2) For the purposes of subsection (1), this Act applies outside South Australia to the full extent of the extraterritorial legislative power of the Parliament.

7—Amendment of section 27—Accreditation of operators

(1) Section 27(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a first offence—\$35 000;
(b) for a subsequent offence—\$50 000.

(2) Section 27—after subsection (1) insert:

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

(3) Section 27—after subsection (5) insert:

(6) Without limiting the matters that may be taken into account in granting an accreditation under this Division—

- (a) a natural person is not entitled to be accredited under this Division if—
- (i) the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (ii) the person has, during the period of 5 years preceding the application for accreditation, been a director of a body corporate wound up for the benefit of creditors—
- (A) when the body corporate was being so wound up; or
- (B) within the period of 6 months preceding the commencement of the winding up; and

(b) a body corporate is not entitled to be accredited under this Division if—

- (i) the body corporate is being wound up or is under official management or in receivership; or
- (ii) any director of the body corporate has, during the period of 5 years preceding the application for accreditation, been a director of a body corporate wound up for the benefit of creditors—

- (A) when the body corporate was being so wound up; or
- (B) within the period of 6 months preceding the commencement of the winding up.

5 **8—Amendment of section 28—Accreditation of drivers**

Section 28(1)—delete subsection (1) and substitute:

- (1) A person who drives a public passenger vehicle for the purposes of a passenger transport service and—

- 10 (a) does not hold an appropriate accreditation under this Division; but
- (b) has, within the preceding period of 3 months, held an accreditation under this Division that has lapsed,

is guilty of an offence.

Maximum penalty: \$10 000.

15 Expiation fee: \$500.

- (1a) A person who drives a public passenger vehicle for the purposes of a passenger transport service—

- (a) while the person's accreditation under this Division is suspended; or
- 20 (b) without holding an appropriate accreditation under this Division (other than in circumstances referred to in subsection (1)),

is guilty of an offence.

Maximum penalty: \$15 000.

25 Expiation fee: \$500.

- (1b) If a court convicts a person of an offence against subsection (1a), the following provisions apply:

- (a) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 3 months, as the court thinks fit;
- 30 (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;
- (c) if the person is the holder of a driver's licence—the disqualification operates to suspend the licence as from the commencement of the period of disqualification.
- 35

9—Insertion of section 28A

After section 28 insert:

28A—Automatic suspension of accreditation

- 5 (1) An accreditation held by a person under this Division is suspended (by force of this section) if—
- (a) the person is disqualified, in South Australia or under the law of any other jurisdiction, from holding or obtaining a driver's licence; or
 - (b) the person is charged with a serious offence; or
 - 10 (c) the Registrar of Motor Vehicles directs the person to submit to an examination under section 79B of the *Motor Vehicles Act 1959*.
- (2) A person whose accreditation is suspended under this section must give notice in writing of the suspension, and of the grounds of the suspension, to the operator of any passenger transport service for which the person drives a public passenger vehicle as soon as practicable (and in any case not more than 4 weeks after the suspension).
- Maximum penalty: \$1 250
Expiation fee: \$160.
- (3) The Standards Committee must, at such time as the Standards Committee thinks fit, hold an inquiry, in accordance with section 36, for the purpose of determining whether proper cause exists for disciplinary action against a person whose accreditation has been suspended under this section and the person's accreditation remains suspended until—
- (a) the Standards Committee determine action that should be taken in respect of the person's accreditation; or
 - (b) the person surrenders the accreditation.
- 30 (4) In this section—
- serious offence* means—
- (a) an offence against Part 3 Division 6 of the *Criminal Law Consolidation Act 1935*; or
 - (b) an offence against Part 3 Division 11 of the *Criminal Law Consolidation Act 1935*; or
 - 35 (c) an offence against Part 5 of the *Criminal Law Consolidation Act 1935*; or
 - (d) an offence prescribed by the regulations.

10—Amendment of heading to Part 4 Division 3

Heading to Part 4 Division 3—delete "Centralised" and substitute:

Transport

11—Insertion of section 28B

Before section 29 insert:

28B—Transport booking services

- (1) For the purposes of this Act, a person operates a transport booking service if the person carries on the business of—
- (a) receiving requests for persons to be provided with passenger transport services that are—
 - (i) taxi services; or
 - (ii) passenger transport services of a kind prescribed by the regulations; and
 - (b) arranging or facilitating the acceptance of those requests by or on behalf of drivers of passenger transport vehicles.
- (2) In determining whether a person (the *service provider*) operates a transport booking service, it does not matter—
- (a) whether or not the passenger transport service is provided by the driver as an agent or employee of the service provider; or
 - (b) whether the agreement or arrangement in accordance with which the passenger transport service is provided is between—
 - (i) the driver and the passenger; or
 - (ii) the service provider and either the driver or the passenger; or
 - (iii) any other persons; or
 - (c) whether the fare or other consideration for the passenger transport service is paid to the driver by—
 - (i) the service provider; or
 - (ii) the passenger; or
 - (iii) any other person; or
 - (d) whether or not an act referred to in subsection (1)(a) or (b) involves the use of a wholly or partly automated electronic system; or
 - (e) whether or not the service provider is located outside South Australia; or

(f) whether or not the fare or other consideration for the passenger transport service is paid outside South Australia; or

(g) whether or not the service provider also receives requests for persons to be carried as passengers outside South Australia.

(3) A person who owns, operates or controls a wholly or partly automated electronic system that performs the acts referred to in subsection (1)(a) or (b) is taken to provide a transport booking service.

(4) A person, or class of person, prescribed by the regulations for the purposes of this subsection is taken to provide a transport booking service.

(5) A person, or class of person, prescribed by the regulations for the purposes of this subsection is taken not to provide a transport booking service despite anything to the contrary in the other provisions of this section.

12—Amendment of section 29—Accreditation of transport booking services

(1) Section 29(1) and (2)—delete subsections (1) and (2) and substitute:

(1) A person must not operate a transport booking service unless the person holds an accreditation for that service under this Division.

Maximum penalty:

(a) for a first offence—\$35 000;

(b) for a subsequent offence—\$50 000.

(2) In determining whether an offence is a first or subsequent offence for the purposes of subsection (1), any previous offence against this section for which the accused person has been convicted will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.

(2) Section 29(3)—delete "centralised" wherever occurring and substitute in each case:

transport

13—Insertion of section 35AA

After section 35 insert:

35AA—Miscellaneous offences relating to accreditation

(1) A person who represents, by any form of words or conduct, that the person—

(a) operates a passenger transport service within (or partly within) the State; or

(b) drives a public passenger vehicle for the purposes of a passenger transport service; or

(c) operates a transport booking service,

and does not hold the accreditation required to undertake that activity under this Act, is guilty of an offence.

Maximum penalty: \$35 000.

(2) A driver who—

- (a) accepts bookings for the provision of passenger transport services from a person who operates a transport booking service; and
- (b) fails to take reasonable steps to ensure that the person operating that service holds an accreditation under Division 3,

is guilty of an offence.

Maximum penalty: \$10 000.

(3) If a court convicts a person of an offence against subsection (2) (other than a first offence against that section), the following provisions apply:

- (a) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 6 months, as the court thinks fit;
- (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;
- (c) if the person is the holder of a driver's licence—the disqualification operates to suspend the licence as from the commencement of the period of disqualification.

(4) In determining whether an offence is a first or subsequent offence for the purposes of subsection (2) or (3), any previous offence against subsection (2) for which the accused person has been convicted or that the accused person has expiated will be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.

(5) If—

- (a) a driver accepts a booking for the provision of a passenger transport service from a person operating a transport booking service; and
- (b) the person operating that service does not hold an accreditation under Division 3,

the driver is guilty of an offence.

Maximum penalty: \$20 000.

Expiation fee: \$500.

(6) It is a defence to a charge of an offence against subsection (5) if the defendant proves that the defendant did not know, and had no reason to suspect, that the person operating that service does not hold an accreditation under Division 3.

(7) If a court convicts a person of an offence against subsection (5), the following provisions apply:

(a) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 6 months, as the court thinks fit;

(b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;

(c) if the person is the holder of a driver's licence—the disqualification operates to suspend the licence as from the commencement of the period of disqualification.

14—Amendment of section 52C—Overcharging for non-cash payment surcharge

Section 52C(3)—delete "centralised" and substitute:

transport

15—Amendment of section 53—Authorised officers

(1) Section 53(5)(e)—after "or take" insert:

screenshots of or

(2) Section 53(5)—after paragraph (f) insert:

(fa) take photographs or films or make any other records;

(3) Section 53(5)(g)—after "questions" insert:

, to state the person's full name, usual place of residence and date of birth and to produce evidence of the person's identity

16—Amendment of section 54—Inspections

(1) Section 54(12)—delete subsection (12) and substitute:

(12) An authorised officer who is authorised by the Minister to exercise the powers under this subsection may at any time, by notice given to an owner or operator of a vehicle to which this section applies, direct that the vehicle—

(a) be presented for inspection under this section at such place and time as is specified in the notice; or

(b) be presented for inspection under this section at such place and time as is specified in the notice and not be used as a public passenger vehicle until the inspection is carried out.

(2) Section 54(14)—after "under this section," insert:

the operator of the passenger transport service,

- (3) Section 54(14), penalty provision—delete the penalty provision and substitute:
Maximum penalty: \$20 000.
Expiation fee: \$500.

17—Insertion of sections 57A to 57E

5 After section 57 insert:

57A—Offences by persons involved in management of corporations

- 10 (1) If a corporation is guilty of an offence against this Act, a person who is concerned in, or takes part in, the management of the corporation is guilty of an offence and liable to the same penalty as may be imposed for the principal offence when committed by a natural person unless the person proves that the person could not by the exercise of due diligence have prevented the commission of the offence.
- 15 (2) A person may be convicted of a contravention of a provision of this Act whether or not the corporation has been convicted of its contravention.
- (3) This section does not affect a liability imposed on a corporation for an offence committed by it against this Act.
- 20 (4) For the purposes of this section, the following are persons who are concerned in, or take part in, the management of a corporation:
- (a) a director of the corporation;
 - (b) a secretary of the corporation;
 - (c) a receiver and manager of property of the corporation;
 - 25 (d) an official manager or deputy official manager of the corporation;
 - (e) a liquidator of the corporation appointed in a voluntary winding up of the corporation;
 - (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.
- 30 (5) The regulations may make provision in relation to the criminal liability of a person who is concerned in, or takes part in, the management of a corporation that is guilty of an offence against the regulations.
- 35

57B—Penalties for corporations

40 The maximum penalty that a court may impose for an offence against this Act that is committed by a corporation is 5 times the maximum penalty that the court could, but for this section, impose as a penalty for the offence.

57C—Continuing offences

- 5
- (1) A person may be convicted of a second or subsequent offence for a failure to do an act (where the failure constitutes an offence against this Act) if the failure continues beyond the period or date in respect of which the person is convicted for the failure.
 - (2) The maximum penalty for the offence is the same whether it is a second or subsequent offence.

57D—Recovery of economic benefit

- 10
- (1) If in any proceedings under this Act, a court finds that a person has contravened this Act, the court may, in addition to any penalty that it may impose, order the person to pay to the Minister an amount not exceeding the court's estimation of the amount of economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.
 - 15 (2) For the purposes of subsection (1), an economic benefit obtained by delaying or avoiding costs will be taken to be an economic benefit acquired as a result of a contravention if the contravention can be attributed (in whole or in part) to that delay or avoidance.
 - 20 (3) A court may, by an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.
 - (4) An amount paid to the Minister in accordance with an order under this section must be applied by the Minister for the benefit of the point to point transport service industry.

57E—Enforceable voluntary undertakings

- 25
- (1) The Minister may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.
 - 30 (2) The giving of an undertaking does not constitute an admission of guilt by the person giving the undertaking in respect of the contravention or alleged contravention to which the undertaking relates.
 - (3) A person must not contravene an undertaking made by the person that is in effect.
35 Maximum penalty: \$20 000.
 - (4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the Magistrates Court for enforcement of the undertaking.
 - 40 (5) If the Magistrates Court is satisfied that the person has contravened the undertaking, the Magistrates Court, in addition to the imposition of any penalty, may make any of the following orders:
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;

- 5
- (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to the Minister—
 - (i) the costs of the proceedings; and
 - (ii) the reasonable costs of the Minister in monitoring compliance with the undertaking in the future;
 - (d) any other order that the Court considers appropriate in the circumstances.
- 10
- (6) A person must not fail to comply with an order under subsection (5).
Maximum penalty: \$35 000.
- (7) A person who has made an undertaking may, at any time, with the written agreement of the Minister—
- (a) vary the undertaking; or
 - (b) withdraw the undertaking.
- 15
- (8) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act.
- (9) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- 20
- (10) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an undertaking in respect of that contravention and has completely discharged the undertaking.
- 25
- (11) The Minister may accept an undertaking in respect of a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.
- (12) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.
- 30
- (13) The Minister must publish, on a website determined by the Minister, notice of—
- (a) the giving of an undertaking under this section; or
 - (b) the variation or withdrawal of an undertaking under this section.

18—Amendment of section 61—Evidentiary provision

Section 61—after the present contents of the section (now to be designated as subsection (1)) insert:

- (2) In proceedings, a document certified by an authorised officer as being a screenshot taken by the authorised officer and which the authorised officer also certifies was taken in the course of a transaction for the purposes of a passenger transport service, is admissible in evidence in the proceedings and is proof, in the absence of proof to the contrary, of the following:
 - (a) that the screenshot was taken in the course of a transaction for the purposes of a passenger transport service;
 - (b) that a person identified in the screenshot as the driver of a vehicle was the driver of a public passenger vehicle for the purposes of the passenger transport service to which the transaction related;
 - (c) that any payment identified in the screenshot was a fare or other consideration for the passenger transport service to which the transaction related (regardless of whether that payment was to be made to the operator of the passenger transport service or to some other person).

19—Amendment of Schedule 2—Point to point transport service transaction levy

- (1) Schedule 2, clause 1, definition of *booking service*, (a)—delete "centralised" and substitute:

transport

- (2) Schedule 2, clause 1—after the definition of *point to point transport service transaction levy* insert:

rank and hail taxi service means a taxi service provided by a hiring made other than by use of a booking service;

- (3) Schedule 2, clause 1, definition of *relevant provider*—after paragraph (a) insert:

- (ab) in the case of a point to point transport service consisting of a rank and hail taxi service—the primary booking service determined in accordance with the regulations; or

- (4) Schedule 2, clauses 7 to 9—delete clauses 7 to 9

20—Repeal of Schedule 4

Schedule 4—delete the Schedule

Schedule 1—Related amendments and transitional provisions

Part 1—Related amendments to *Motor Vehicles Act 1959*

1—Insertion of section 81DA

After section 81D insert:

5 **81DA—Disqualification for certain offences under the *Passenger Transport Act 1994***

- (1) This section applies to the following offences under the *Passenger Transport Act 1994* (the *Act*):
- 10 (a) an alleged offence against section 28(1a); or
- (b) an alleged offence against section 35AA(2) that is not a first offence; or
- (c) an alleged offence against section 35AA(5).
- (2) If a person expiates an offence to which this section applies, the Registrar must, on becoming aware of that fact, give the person
- 15 written notice—
- (a) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a licence or learner's permit for—
- 20 (i) in the case of an alleged offence against section 28(1a) of the Act—3 months; or
- (ii) in the case of offence against section 35AA(2) or 35AA(5) of the Act—6 months; and
- (b) that, if the person holds any licence or learner's permit when
- 25 the notice takes effect, the licence or permit is suspended during the period of the disqualification.
- (3) In determining whether an offence is a first or subsequent offence against a provision of the Act for the purposes of this section, any previous offence against the same provision of the Act for which the
- 30 person has been convicted or that the person has expiated will be taken into account, but only if the previous offence was committed or, in the case of an offence that has been expiated, was alleged to have been committed, by the person within the prescribed period immediately preceding the date on which the offence to which this
- 35 section applies is alleged to have been committed.
- (4) For the purposes of subsection (3), the *prescribed period* is 5 years.

2—Amendment of section 99A—Insurance premium to be paid on applications for registration

Section 99A—after subsection (7) insert:

(7a) Where—

(a) by reason of a motor vehicle being used for the provision of a passenger transport service (within the meaning of the *Passenger Transport Act 1994*) a greater premium becomes payable to the insurer in respect of the motor vehicle; and

(b) the insured person fails to give the insurer notice of that fact, the insured person and any person who drives the motor vehicle for the provision of such a passenger transport service are both guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$500.

3—Amendment of section 124A—Recovery by insurer

(1) Section 124A(2)—after paragraph (a) insert:

(ab) contravened this Act by committing an offence against section 99A(7a); or

(2) Section 124A—after subsection (2b) insert:

(2c) For the purposes of this section, a person will be taken to have committed an offence against section 99A(7a) if the person has been found guilty of, or has expiated, the offence.

Part 2—Transitional provision

4—Centralised booking services

(1) A service that was, immediately before the commencement of section 12, accredited as a centralised booking service under Part 4 Division 3 of the *Passenger Transport Act 1994* will be taken, on the commencement of that section, to be accredited as a transport booking service under Part 4 Division 3 of the *Passenger Transport Act 1994*.

(2) A reference in any Act or instrument to a centralised booking service will, on and after the commencement of section 12, be read as a reference to a transport booking service.

Schedule 2—Further amendment of *Passenger Transport Act 1994*

Section amended

Section 5(5), penalty provision

How amended

Delete the penalty provision and substitute:

Maximum penalty: \$20 000.

Section 31(7), penalty and expiation provisions	Delete the penalty and expiation provisions and substitute: Maximum penalty: (a) in the case of an accreditation under Division 1—\$35 000; (b) in the case of an accreditation under Division 2—\$10 000; (c) in the case of an accreditation under Division 3—\$35 000. Expiation fee: \$500.
Section 35(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 36(9), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 37(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$10 000.
Section 39(4), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 42(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 45(8), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 49(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$35 000.
Section 52(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 52C(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 52C(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 52C(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 53(8), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 53(9), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 53(12), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 54(15), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.

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Section 54(18), penalty and expiation provisions	Delete the penalty and expiation provisions and substitute: Maximum penalty: \$10 000. Expiation fee: \$500.
Section 55(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 55(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$10 000.
Section 56(1), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Section 56(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Section 56(5), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$1 250.
Section 56(7), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$1 250.
Section 57(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$5 000.
Schedule 1, item 50	Delete "a division 4 fine" and substitute \$20 000
Schedule 2, clause 4(1), penalty provision	Delete "Division 4 fine" and substitute: \$20 000
Schedule 2, clause 4(2), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.
Schedule 2, clause 4(3), penalty provision	Delete the penalty provision and substitute: Maximum penalty: \$20 000.