

Legislative Council—No 20A

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South Australia

Statutes Amendment (Misuse of Motor Vehicles) Bill 2004

A BILL FOR

An Act to amend the *Road Traffic Act 1961* and the *Summary Offences Act 1953*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Road Traffic Act 1961*

- 4 Substitution of heading to Part 3 Division 4
- 5 Insertion of section 44B
 - 44B Misuse of motor vehicle

Part 3—Amendment of *Summary Offences Act 1953*

- 6 Insertion of section 54
 - 54 Emitting excessive noise from vehicle by amplified sound equipment or other devices
- 7 Insertion of Part 14A

Part 14A—Impounding and forfeiture of motor vehicles

- 66 Interpretation
 - 66A Powers under Part in addition to other penalties
 - 66B Power of police to seize and impound motor vehicles
 - 66C Order for payment of impounding fees on conviction
 - 66D Court orders for impounding or forfeiture where offender has committed previous prescribed offence
 - 66E Commissioner may give notice prohibiting sale of motor vehicle
 - 66F Seizure and impounding
 - 66G Warrants for seizure etc
 - 66H Liability of the Crown
 - 66I Disposal of motor vehicles
 - 66J Evidentiary
 - 66K Service of notices
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Misuse of Motor Vehicles) Act 2004*.

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.

Part 2—Amendment of *Road Traffic Act 1961*

4—Substitution of heading to Part 3 Division 4

Heading to Part 3 Division 4—delete the heading to Division 4 and substitute:

Division 4—Vehicle misuse and careless and dangerous driving

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5—Insertion of section 44B

Before section 45 insert:

44B—Misuse of motor vehicle

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(1) For the purposes of this section, a person misuses a motor vehicle if the person—

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(a) drives a motor vehicle, in a public place, in a race between vehicles, a vehicle speed trial, a vehicle pursuit or any competitive trial to test drivers' skills or vehicles; or

(b) operates a motor vehicle in a public place so as to produce sustained wheel spin; or

(c) drives a motor vehicle in a public place so as to cause engine or tyre noise, or both, that is likely to disturb persons residing or working in the vicinity; or

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(d) drives a motor vehicle onto an area of park or garden (whether public or private) or a road related area so as to break up the ground surface or cause other damage.

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(2) However, conduct of a type described in subsection (1) does not constitute misuse of a motor vehicle if it occurs in a place with the consent of the owner or occupier of the place or the person who has the care, control and management of the place.

(3) A person who misuses a motor vehicle is guilty of an offence.

(4) A person who promotes or organises an event involving the misuse of a motor vehicle, knowing that it will involve the misuse of a motor vehicle, is guilty of an offence.

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(5) Where a court convicts a person of an offence against this section, the court must, if satisfied that the offending caused damage to, or the destruction of, any property or damage to an area of park or garden or a road related area, order the convicted person to pay to the owner of the property, or the owner, occupier or person who has the care, control and management of the area, such compensation as the court thinks fit.

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Part 3—Amendment of *Summary Offences Act 1953*

6—Insertion of section 54

After section 53 insert:

54—Emitting excessive noise from vehicle by amplified sound equipment or other devices

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- (1) If excessive noise is emitted from a vehicle by amplified sound equipment or other devices, a police officer may—
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- (a) require the vehicle to stop; and
- (b) require the driver and any other occupant of the vehicle to state his or her full name and address; and
- (c) issue, in writing, a direction to the driver and any other occupant of the vehicle to immediately abate the excessive noise.
- 15
- (2) A police officer who issues a direction to a person under subsection (1), must advise the person that, during the period of 6 months after the issue of the direction, it is an offence to cause or allow excessive noise to be emitted from a vehicle driven or otherwise occupied by the person by amplified sound equipment or other devices.
- 20
- (3) Noise emitted from a vehicle is excessive for the purposes of this section if it is such as is likely to unreasonably disturb persons in the vicinity of the vehicle.
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- (4) If a police officer suspects on reasonable grounds that a name or address as stated in response to a requirement under subsection (1)(b) is false, he or she may require the person making the statement to produce evidence of the correctness of the name or address as stated.
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- (5) A person who—
- (a) refuses or fails to comply with a requirement under subsection (1)(a) or (1)(b) or subsection (4); or
- (b) in response to a requirement under subsection (1)(b) or subsection (4)—
- (i) states a name or address that is false; or
- (ii) produces false evidence of his or her name or address,
- 35
- is guilty of an offence.
- Maximum penalty: \$1 250 or imprisonment for 6 months.
- (6) A person who refuses or fails to comply with a direction under subsection (1)(c) is guilty of an offence.
- Maximum penalty: \$1 250.

- 5 (7) A person who has been issued with a direction under subsection (1)(c) must not, during the period of 6 months after the issue of the direction, cause or allow excessive noise to be emitted from a vehicle driven or otherwise occupied by the person by amplified sound equipment or other devices.

Maximum penalty: \$1 250.

- 10 (8) In any proceedings for an offence against this section where it is alleged that excessive noise was emitted from a vehicle, evidence by a police officer that he or she formed the opinion based on his or her own senses that the noise emitted from a vehicle was such as was likely to unreasonably disturb persons in the vicinity of the vehicle constitutes proof, in the absence of proof to the contrary, that the noise was excessive.

7—Insertion of Part 14A

15 After section 65 insert:

Part 14A—Impounding and forfeiture of motor vehicles

66—Interpretation

- 20 (1) In this Part—

impounding authority means—

- 25 (a) in relation to seizure and impounding of a motor vehicle under section 66B—a police officer;
- (b) in relation to seizure and impounding or forfeiture of a motor vehicle in accordance with an order under section 66D—the Sheriff;

impounding offence means—

- 30 (a) an offence against section 54; or
- (b) an offence against section 44B of the *Road Traffic Act 1961*; or
- (c) any other prescribed offence involving the misuse of a motor vehicle;

motor vehicle means a vehicle built to be propelled by a motor that forms part of the vehicle;

prescribed offence means—

- 35 (a) an offence against section 54; or
- (b) an offence against any of the following provisions of the *Road Traffic Act 1961*:
- (i) section 44B;
 - (ii) section 46;

(iii) section 47;

(iv) section 47B; or

(c) an offence against section 19A of the *Criminal Law Consolidation Act 1935*;

5 **registered owner** of a motor vehicle means a person recorded in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth as an owner of the motor vehicle.

10 (2) An offence will be taken to involve the misuse of a motor vehicle for the purposes of paragraph (c) of the definition of **impounding offence** if the offence involves—

(a) driving a motor vehicle, in a public place, in a race between vehicles, a vehicle speed trial, a vehicle pursuit or any competitive trial to test drivers' skills or vehicles; or

15 (b) operating a motor vehicle in a public place so as to produce sustained wheel spin; or

(c) driving a motor vehicle in a public place so as to cause engine or tyre noise, or both, that is likely to disturb persons residing or working in the vicinity; or

20 (d) driving a motor vehicle onto an area of park or garden (whether public or private) or a road related area (within the meaning of the *Road Traffic Act 1961*) so as to break up the ground surface or cause other damage.

66A—Powers under Part in addition to other penalties

25 A power exercisable under this Part is exercisable in addition to any other penalty that may be imposed on a person in relation to an impounding offence.

66B—Power of police to seize and impound motor vehicles

30 (1) Subject to subsection (2), a police officer may seize and impound a motor vehicle that the officer reasonably believes has been the subject of an impounding offence committed after the commencement of this section.

35 (2) A police officer may only exercise a power under subsection (1) if the person driving or operating the motor vehicle at the time of the offence—

(a) is to be, or has been, reported for the relevant impounding offence and has been advised of that fact; or

(b) has been charged with, or arrested in relation to, the relevant impounding offence.

40 (3) Subject to this section, a motor vehicle seized and impounded under this section is liable to remain impounded for a period of 48 hours.

5 (4) If a motor vehicle is impounded under this section, the Commissioner must, as soon as is reasonably practicable (but in any case within the period of 48 hours referred to in subsection (3)) make reasonable attempts to contact all current registered owners of the motor vehicle (or, if there are no current registered owners of the motor vehicle, to contact the last registered owners) and advise them of the action taken under this section and provide any information the owner requires in relation to release of the motor vehicle at the end of the period of impoundment.

10 (5) At the end of the period of 48 hours referred to in subsection (3), the Commissioner—

(a) must, on the application of an owner of the motor vehicle, release the motor vehicle into the custody of the owner; and

15 (b) may, if satisfied that no owner of the motor vehicle is reasonably able to collect the motor vehicle, release the motor vehicle into the custody of a person authorised by the owner to collect the motor vehicle or a person legally entitled to possession of the motor vehicle.

20 (6) If the Commissioner is satisfied that a motor vehicle impounded under this section—

(a) was not the subject of an impounding offence; or

25 (b) was, at the time of the impounding offence, stolen or otherwise unlawfully in the possession of the driver or operator or was being used by the driver or operator in circumstances prescribed by regulation,

the motor vehicle is no longer liable to be impounded under this section and the Commissioner must release the motor vehicle as if the period of 48 hours referred to in subsection (3) had expired.

66C—Order for payment of impounding fees on conviction

30 If—

(a) a motor vehicle is impounded under section 66B in relation to an impounding offence; and

(b) a person is subsequently convicted of the impounding offence,

35 the convicting court must order that the person pay to the Commissioner the fees prescribed by regulation in relation to the impounding of the motor vehicle.

66D—Court orders for impounding or forfeiture where offender has committed previous prescribed offence

40 (1) This section applies in relation to a conviction for an impounding offence if—

(a) the offence was committed after the commencement of this section; and

- 5
- (b) the convicted person was the driver or operator of the motor vehicle at the time of the offence; and
- (c) the motor vehicle the subject of the offence was not, at the time of the offence, stolen or otherwise unlawfully in the possession of the convicted person and was not being used by the person in circumstances (if any) prescribed by regulation; and
- 10
- (d) the convicted person has, during the period of 5 years immediately preceding the date of the offence, been convicted of at least one other prescribed offence.
- (2) Subject to subsection (6), if this section applies in relation to a conviction for an impounding offence, the court that records the conviction must, on the application of the prosecution—
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- (a) order—
- (i) if the convicted person has, during the period of 5 years immediately preceding the date of the offence, been convicted of one previous prescribed offence—that the motor vehicle be impounded by the Sheriff for a period not exceeding 3 months; or
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- (ii) if the convicted person has, during the period of 5 years immediately preceding the date of the offence, been convicted of 2 previous prescribed offences—that the motor vehicle be impounded by the Sheriff for a period not exceeding 6 months; or
- 25
- (iii) if the driver or operator has, during the period of 5 years immediately preceding the date of the offence, been convicted of 3 or more previous prescribed offences—that the motor vehicle is forfeited to the Crown; and
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- (b) order that the convicted person pay to the Sheriff the fees prescribed by regulation in relation to the impounding or forfeiture of the motor vehicle.
- (3) Notice of an application for an order under this section relating to a motor vehicle must be given to—
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- (a) each registered owner of the motor vehicle; and
- (b) if the prosecution is aware that any other person claims ownership of the motor vehicle or is likely to suffer financial or physical hardship as a result of the making of an order under this section—that person.
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- (4) A court hearing an application for an order under this section relating to a motor vehicle—
- (a) must, if a person given notice of the application under subsection (3) so requests, hear representations from the person in relation to the application; and

- (b) may, at the request of any other person who is likely to be affected by the making of the order, hear representations from that person in relation to the application.
- 5 (5) If a court makes an order for the impounding or forfeiture of a motor vehicle under this section, the Sheriff is authorised to seize the motor vehicle and deal with it in accordance with this Part and the requirements (if any) specified in the order.
- 10 (6) A court that records a conviction for an impounding offence in relation to which this section applies may decline to make an order under subsection (2) if satisfied that—
- (a) the making of the order would cause severe financial or physical hardship to a person; or
- 15 (b) 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
- (c) the motor vehicle has, since the date of the offence, been sold to a genuine purchaser or otherwise disposed of to a person who did not, at the time of the sale or disposal, know or have reason to suspect that the motor vehicle might be the subject of proceedings under this section.
- 20 (7) If—
- (a) a court declines to make an order under subsection (2) on the ground that the making of the order would cause severe financial or physical hardship to the convicted person; and
- 25 (b) the court is satisfied that it would be reasonably practicable for the convicted person to instead perform community service,
- the court must order the convicted person to perform not more than 240 hours of community service.
- 30 (8) An order to perform community service under subsection (7) must be dealt with and enforced as if it were a sentence of community service (and in any enforcement proceedings the court may exercise any power that it could exercise in relation to a sentence of community service).
- 35 (9) A court making an order under this section may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

66E—Commissioner may give notice prohibiting sale of motor vehicle

- 40 (1) If—
- (a) the Commissioner reasonably believes that—

- 5
- (i) a motor vehicle has been the subject of an impounding offence committed after the commencement of this section; and
- (ii) the motor vehicle was not, at the time of the offence, stolen or otherwise unlawfully in the possession of the convicted person and was not being used by the person in circumstances (if any) prescribed by regulation; and
- 10 (iii) the person driving or operating the motor vehicle at the time of the offence has, during the period of 5 years immediately preceding the date of the offence, been convicted of at least one other prescribed offence; and

15 (b) the person driving or operating the motor vehicle at the time of the offence—

- (i) is to be, or has been, reported for the relevant impounding offence and has been advised of that fact; or
- 20 (ii) has been charged with, or arrested in relation to, the relevant impounding offence,

the Commissioner may serve the owner of the motor vehicle (or, if there is more than one owner of the motor vehicle, one or more of the owners of the motor vehicle) with a notice in the prescribed form prohibiting the sale or disposal of the motor vehicle until proceedings relating to the offence have been finalised.

25 (2) For the purposes of this section, proceedings relating to an offence are finalised if—

- (a) the charge of the offence is withdrawn or proceedings for the offence are otherwise discontinued; or
- 30 (b) a court has determined the charge.

(3) If—

- (a) the Commissioner serves an owner of a motor vehicle with a notice under this section; and
- 35 (b) that owner was not the person driving or operating the motor vehicle at the time of the offence,

the Commissioner must make reasonable efforts to notify the owner when proceedings relating to the offence have been finalised.

40 (4) An owner of a motor vehicle must not sell or otherwise dispose of the motor vehicle in contravention of a notice served under this section in relation to the motor vehicle.

Maximum penalty: \$2 000 or imprisonment for 6 months.

- (5) It is a defence to a charge of an offence under subsection (4) if the defendant proves that he or she—
- (a) was not served with a notice under this section in relation to the motor vehicle; and
 - (b) did not know and could not reasonably be expected to have known, that a notice had been served under this section in relation to the motor vehicle.
- (6) If—
- (a) a person is found guilty by a court of an offence against subsection (4); and
 - (b) the court is provided with evidence of the value of the motor vehicle sold or disposed of by the person,
- the court may (in addition to any other penalty imposed in respect of the offence) require payment by the person of an amount determined by the court to be a reasonable estimate of the value of the motor vehicle.
- (7) An amount paid in accordance with a requirement under subsection (6) must be paid into the Victims of Crime Fund established under the *Victims of Crime Act 2001*.

66F—Seizure and impounding

- (1) An impounding authority that is authorised under this Part to seize a motor vehicle may seize the motor vehicle from—
- (a) a public place; or
 - (b) any other place, with the consent of the owner or occupier of the place or under the authority of a warrant issued under this Part.
- (2) A motor vehicle seized under this Part may—
- (a) be moved to a place determined by the impounding authority and impounded there (and may, if the impounding authority so determines, be subsequently moved to and impounded at some other place); and
 - (b) be driven, towed or pushed, or moved in any other manner; and
 - (c) be moved by the impounding authority or by other persons acting at the direction of the impounding authority.
- (3) An impounding authority may do anything reasonably necessary for the purpose for seizing and moving a motor vehicle under this Part, including exercising any of the following powers:
- (a) requiring the motor vehicle to stop;
 - (b) causing a locking device or other feature of the motor vehicle to be removed, dismantled or neutralised;

- (c) if the driver or any other person will not surrender the keys to the vehicle, starting the vehicle by other means.

66G—Warrants for seizure etc

- (1) If an impounding authority is authorised under this Part to seize a motor vehicle, the impounding authority may, in order to seize the motor vehicle from a place other than a public place without the consent of the owner or occupier of the place, apply to a magistrate for a warrant under this section.
- (2) If a magistrate is satisfied that—
 - (a) an impounding authority is authorised under this Part to seize a motor vehicle; and
 - (b) there are reasonable grounds to suspect that the motor vehicle is at a place,
the magistrate may issue a warrant authorising the impounding authority—
 - (c) to enter the place; and
 - (d) to search the place for the motor vehicle; and
 - (e) to use reasonable force to break into or open any garage or other structure in which the motor vehicle may be stored at the place; and
 - (f) to seize the motor vehicle, and otherwise deal with it, in accordance with this Part.
- (3) An application under this section for the issue of a warrant may be made either personally or by telephone.
- (4) The grounds of an application for a warrant must be verified by affidavit.
- (5) An application for a warrant cannot be made by telephone unless, in the opinion of the applicant, a warrant is urgently required and there is not enough time to make the application personally.
- (6) If an application for a warrant is made by telephone—
 - (a) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and
 - (b) if it appears to the magistrate from the information given by the applicant that there are proper grounds to issue a warrant, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

- 5
- (c) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
- (d) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
- (e) the magistrate must inform the applicant of the terms of the warrant; and
- 10 (f) the applicant must fill out and sign a warrant form (the duplicate warrant) that—
- (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
- (ii) complies with any other requirements prescribed by regulation; and
- 15 (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (b) and a copy of the duplicate warrant.
- 20 (7) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.
- (8) An impounding authority may, in exercising powers in accordance with a warrant issued under this section, be accompanied by such
- 25 assistants as are reasonably necessary for the purpose.
- (9) A warrant issued under this section, if not executed at the expiration of 1 month from the date of its issue, then expires.

66H—Liability of the Crown

- 30 (1) Subject to subsection (2), no compensation is payable by the Crown or an impounding authority in respect of the seizure, impounding or forfeiture of a motor vehicle under this Part.
- (2) This section does not protect—
- 35 (a) an impounding authority from liability in respect of the seizure or impounding of a motor vehicle otherwise than in good faith; or
- (b) the Crown from liability in respect of damage to a motor vehicle caused otherwise than by the proper exercise of powers under this Part.

66I—Disposal of motor vehicles

- 40 (1) The Sheriff may sell a motor vehicle that is the subject of an order for forfeiture under this Part.

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- (2) If a motor vehicle that has been impounded under this Part is not collected by a person legally entitled to possession of the motor vehicle within 2 months of the motor vehicle ceasing to be liable to be so impounded, the Sheriff or, in the case of a motor vehicle impounded under section 66B, the Commissioner, may sell the motor vehicle.
- (3) A sale under this section is to be by public auction or public tender.
- (4) An impounded or forfeited motor vehicle may be disposed of otherwise than by sale if—
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- (a) the Sheriff or the Commissioner (as the case may be) believes on reasonable grounds that the motor vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of the sale; or
- (b) if the motor vehicle has been offered for sale and was not sold.
- 15
- (5) The proceeds of the sale of a motor vehicle under this section must, after deduction of the costs of the sale—
- (a) in the case of the proceeds of sale of an impounded vehicle—be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found; or
- 20
- (b) in the case of the proceeds of sale of a forfeited vehicle—be paid into the Victims of Crime Fund established under the *Victims of Crime Act 2001*.
- 25
- (6) The regulations may make further provision in relation to the sale or disposal of impounded or forfeited motor vehicles in accordance with this section.

66J—Evidentiary

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A apparently genuine document purporting to be an extract from, or copy of, an entry contained in the register of motor vehicles kept under the *Motor Vehicles Act 1959* and purporting to be certified as such an extract or copy by the Registrar of Motor Vehicles indicating that a person is recorded on that register as an owner of a motor vehicle must be accepted in any proceedings under this Part as proof that the person is an owner of the motor vehicle in the absence of proof to the contrary.

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66K—Service of notices

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- (1) A notice required or authorised to be given to, or served on, a person for the purposes of this Part may—
- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person—
- (i) at the person's last known address; or

- (ii) at the person's address for service; or
- (c) be left for the person at the person's last known address or address for service with someone apparently over the age of 16 years; or
- (d) be given to, or served on, the person in a manner prescribed by regulation.
- (2) If, in any proceedings, it is proved (on evidence by affidavit or otherwise) that a notice required to be given to, or served on, a registered owner of a motor vehicle under this Part was sent by ordinary prepaid post in an envelope addressed to the owner at the address recorded in relation to the owner in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth, the notice will be conclusively presumed to have been given to the owner at the time when it would, in the ordinary course of post, reach the address to which it was posted.