

House of Assembly—No 265

As laid on the table and read a first time, 15 November 2017

South Australia

**Statutes Amendment (Transport Portfolio)
Bill 2017**

A BILL FOR

An Act to amend the *Expiation of Offences Act 1996*, the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

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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 (Transport Portfolio) Act 2017*.

2—Commencement

5 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 11—Expiation reminder notices

(1) Section 11(1)—before "statutory declaration" insert:

nomination,

(2) Section 11(1a)—delete subsection (1a) and substitute:

(2) An expiation reminder notice—

15 (a) must specify the amount of the expiation fee and to whom the expiation fee is payable; and

(b) must be accompanied by—

20 (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

25 (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 nomination, statutory declaration or other document—a form suitable for use as the nomination, statutory declaration or other document (as the case may require).

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5—Amendment of section 11A—Expiation enforcement warning notices

(1) Section 11A(1)—before "statutory declaration" insert:

nomination,

(2) Section 11A(2)(a)—before "statutory declaration" insert:

35 nomination,

6—Amendment of section 16—Withdrawal of expiation notices

Section 16(1)(ab)—before "statutory declaration" insert:

nomination,

Part 3—Amendment of *Motor Vehicles Act 1959*

7—Amendment of section 5—Interpretation

Section 5—after subsection (7) insert:

- (8) For the purposes of this Act (other than section 81A), in determining the period for which a person has held a licence, learner's permit, foreign licence, interstate licence or interstate learner's permit, any period during which the person's licence or permit has been suspended under this Act or another law of this State is not to be taken into account (unless the suspension came into operation before the commencement of this subsection).

8—Amendment of section 81A—Provisional licences

Section 81A—after subsection (21) insert:

- (22) For the purposes of this section—
- (a) in determining the period for which a person has held a P1 licence or P2 licence or whether a person has completed a P1 qualifying period or a P2 qualifying period, any period during which the person's licence has been suspended under this Act or another law of this State is not to be taken into account; and
- (b) in determining the period for which a person has held a non-provisional licence or non-provisional interstate licence, any period during which the person's licence has been suspended under this Act or another law of this State is not to be taken into account,

unless the suspension came into operation before the commencement of this subsection.

9—Amendment of section 81AB—Probationary licences

Section 81AB—after subsection (7) insert:

- (8) For the purposes of this section, in determining the period for which conditions imposed under this section have been effective on a licence, any period during which the licence has been suspended under this Act or another law of this State is not to be taken into account (unless the suspension came into operation before the commencement of this subsection).

10—Amendment of section 81E—Circumstances in which licence will be subject to mandatory alcohol interlock scheme conditions

(1) Section 81E(3)(c)(i)(A)—before "a period" insert:

subject to subsubparagraph (AB),

(2) Section 81E(3)(c)(i)—after subsubparagraph (A) insert:

(AB) in the case of an order made under section 47IAA(9)(e)(i) of the *Road Traffic Act 1961*—the period equal to the period of disqualification for the offence ordered by the court; or

(3) Section 81E(6)—after paragraph (b) insert:

(c) any period during which the person's licence was suspended under this Act or another law of this State (unless the suspension came into operation before the commencement of this paragraph).

11—Amendment of section 81G—Cessation of licence subject to mandatory alcohol interlock scheme conditions

Section 81G—after its present contents (now to be designated as subsection (1)) insert:

(2) For the purposes of subsection (1)—

(a) a person ceases to hold a licence if the licence is suspended under this Act or another law of this State;

(b) in determining a period for which mandatory alcohol interlock scheme conditions have applied in relation to a person, any period during which the person's licence has been suspended under this Act or another law of this State is not to be taken into account (unless the suspension came into operation before the commencement of this subsection).

12—Amendment of section 83—Consequences of certain orders or administrative actions outside State

(1) Section 83(2)—delete subsection (2) and substitute:

(2) If the Registrar becomes aware that, under a law of another State or Territory of the Commonwealth, an order has been made or administrative action has been taken that results in—

(a) a person's licence or other authority to drive a motor vehicle in that State or Territory being suspended; or

(b) a person being disqualified from holding or obtaining a licence or other authority to drive a motor vehicle in that State or Territory,

the Registrar must refuse to issue a licence or learner's permit to the person during the period of suspension or disqualification.

(2) Section 83(4)—delete subsection (4) and substitute:

(4) If the Registrar becomes aware that, under a law of another country, an order has been made or administrative action has been taken that results in—

(a) a person's licence or other authority to drive a motor vehicle in that country being suspended; or

(b) a person being disqualified from holding or obtaining a licence or other authority to drive a motor vehicle in that country,

the Registrar may refuse to issue a licence or learner's permit to the person during the period of suspension or disqualification.

13—Amendment of Schedule 1—Evidence obtained by photographic detection device

(1) Schedule 1, clause 2(1)—delete "7" and substitute:

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(2) Schedule 1, clause 2(2)—delete "7" and substitute:

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Part 4—Amendment of *Road Traffic Act 1961*

14—Amendment of section 40J—Direction to move vehicle if danger, obstruction or unlawfully standing on road

(1) Section 40J(1)—after paragraph (c) insert:

or

(d) unlawfully standing on a portion of a prescribed road that is a prescribed place.

(2) Section 40J(2)—delete subsection (2) and substitute:

(2) The officer may direct the driver or operator of the vehicle to do either or both of the following:

(a) to move the vehicle, or cause it to be moved or towed, to the extent necessary to—

(i) avoid the harm or obstruction; or

(ii) ensure that the vehicle is not unlawfully standing on a road;

(b) to do anything else reasonably required by the officer, or to cause anything else reasonably required by the officer to be done, to—

(i) avoid the harm or obstruction; or

(ii) ensure that the vehicle is not unlawfully standing on a road.

(3) Section 40J—after subsection (4) insert:

(5) In this section—

authorised officer has the meaning assigned to the term by section 5, and includes a person, or person of a class, authorised by the Minister for the purposes of this section;

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 section.

15—Amendment of section 40L—Manner of giving directions under Subdivision

Section 40L(1)—delete the subsection and substitute:

- (1) A direction under this Subdivision may be given to a driver orally, by telephone or electronic mail, by means of a sign or signal (electronic or otherwise), or in any other manner.

16—Substitution of heading to Part 2 Division 5 Subdivision 3

Heading to Part 2 Division 5 Subdivision 3—delete the heading and substitute:

Subdivision 3—Power to move or remove vehicles if danger, obstruction or unlawfully standing at certain places

17—Insertion of section 40NA

After section 40N insert:

40NA—Removal of unattended vehicles unlawfully standing at certain places

- (1) If an authorised officer believes on reasonable grounds that a light vehicle is unattended and unlawfully standing on a portion of a prescribed road that is a prescribed place—
 - (a) the officer may authorise a person to remove the vehicle by moving or towing it to a place (not being more than 1 kilometre away from the place where the vehicle was found unattended) that, in the opinion of the officer, is the nearest convenient place at which the vehicle may lawfully stand without—
 - (i) causing harm, or creating a risk of harm, to public safety, the environment or road infrastructure; or
 - (ii) causing or being likely to cause an obstruction to traffic or any event lawfully authorised to be held at that place; or

(iii) obstructing or hindering, or being likely to obstruct or hinder, vehicles from entering or leaving land adjacent to the place; or

(b) if—

(i) in the opinion of the officer, there is no convenient place within 1 kilometre from the place where the vehicle was found unattended at which the vehicle may lawfully stand; or

(ii) the vehicle cannot be secured against theft of the vehicle or its contents,

the officer may authorise a person to remove the vehicle by moving or towing it to a place that is used as a repository for vehicles that are removed under this section.

(2) If an authorised officer authorises the removal of a vehicle under this section, the officer may—

(a) authorise a person to enter the vehicle for the purpose of removing the vehicle; or

(b) in the case of a vehicle that is a combination—authorise a person to separate any or all of the vehicles forming part of the combination for the purpose of removing any or all of the vehicles.

(3) If an authorised officer authorises the removal of a vehicle under this section, a person engaged to move or tow away the vehicle may take such action as is necessary or reasonable to facilitate the moving or towing of the vehicle in a manner that does the least damage to the vehicle.

(4) A person engaged to move or tow away a vehicle under this section must not remove the vehicle unless there is in force a current policy of public liability insurance indemnifying the owner of the vehicle being removed in an amount not less than the prescribed amount in relation to any damage to the vehicle or other property belonging to the owner of the vehicle caused by, or arising out of, the driving or towing of the vehicle in connection with its removal under this section.

Maximum penalty: \$10 000.

(5) A person engaged to move or tow away a vehicle under this section must—

(a) take all reasonable steps to secure the vehicle against theft of the vehicle or its contents; and

(b) take all reasonable steps to ensure that the vehicle is not damaged by moving or towing it; and

(c) take photographs showing the condition of the vehicle at the place to which it had been moved or towed.

- (6) If a vehicle—
- (a) is removed by towing under this section; or
 - (b) is attached to a towtruck for the purpose of being removed under this section,

5 the owner of the vehicle must pay to the Minister a tow-away charge of an amount determined by the Minister.

- (7) A tow-away charge must be paid within such period, and in such manner, as is determined by the Minister.
- (8) A person engaged to tow away a vehicle under this section must ensure that a written notice specifying the tow-away charge payable by the owner of the vehicle and the period within which it must be paid is attached to the vehicle after it has been removed under this section.
- (9) The Minister may waive or reduce a tow-away charge if satisfied that it is appropriate to do so in a particular case.
- (10) A tow-away charge payable under this section may be recovered by the Minister as a debt.
- (11) In this section—

20 *authorised officer* has the meaning assigned to the term by section 5, and includes, in relation to a vehicle that is unattended and unlawfully standing on a portion of a prescribed road that is a prescribed place, a person, or person of a class, authorised by the Minister for the purposes of this section;

prescribed road means—

- 25 (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 section.

30 **18—Amendment of section 40P—Notice of removal and disposal of vehicle if unclaimed**

(1) Section 40P(1) and (2)—delete subsections (1) and (2) and substitute:

(1) This section applies if a light vehicle is removed under section 40N or 40NA.

(2) The person who removed the vehicle—

35 (a) must ensure that, forthwith after the removal of the vehicle, the owner of the vehicle is notified, in the prescribed manner—

- (i) of the removal of the vehicle and of the place to which the vehicle was removed; and

(ii) if the owner of the vehicle is liable to pay the Minister a tow-away charge in connection with the removal of the vehicle—of the amount of the tow-away charge and the period within which it must be paid; and

(b) must comply with any requirements prescribed by the regulations.

(2) Section 40P(7), definition of *relevant authority*, (c)—delete paragraph (c) and substitute:

(c) in relation to a vehicle removed—

(i) by a person, or a person of a class, authorised by the Minister; or

(ii) by a person authorised by a person referred to in subparagraph (i),

the Minister.

19—Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension

(1) Section 47IAA(9)(e)—delete paragraph (e) and substitute:

(e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose—

(i) if the relevant period of licence disqualification or suspension under the notice has not ended, order that the period imposed be taken to have commenced on the day on which the relevant period commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification); or

(ii) if the relevant period of licence disqualification or suspension under the notice has ended, impose a period that is less than the mandatory period of disqualification (provided that the period imposed is not less than the difference between the mandatory minimum of disqualification and the period that has applied as a result of the notice),

and if the person is the holder of a driver's licence, the licence will be taken to have been cancelled—

(iii) where subparagraph (i) applies—from the day on which the order of the court is made; or

(iv) where subparagraph (ii) applies—from the commencement of the period of disqualification ordered by the court.

(2) Section 47IAA—after subsection (18) insert:

(19) If the Commissioner of Police is satisfied that a notice of immediate licence disqualification or suspension under this section should not have been given because—

- (a) the notice has been given to a particular person in error; or
- (b) the notice is defective; or
- (c) there is other proper cause for which the notice should not have been given,

the Commissioner may authorise the withdrawal of the notice.

(20) A withdrawal referred to in subsection (19) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner, to the person to whom the notice of immediate licence disqualification or suspension was given.

(21) The notice of withdrawal must specify the reason for withdrawal.

(22) If a notice of immediate licence disqualification or suspension under this section is withdrawn in accordance with subsection (19), the Commissioner of Police may, if satisfied that there are proper grounds to give a fresh notice of immediate licence disqualification or suspension to any person, authorise the giving of such a notice (provided that the relevant period for the fresh notice must, if it is given to the same person as was given the withdrawn notice, be reduced by the period for which the withdrawn notice was (or purported to be) in operation).

(23) If a notice of immediate licence disqualification or suspension under this section is withdrawn in accordance with subsection (19), or a fresh notice is given in accordance with subsection (22), the Commissioner must, by further notice given in a manner and form determined by the Commissioner, advise the Registrar forthwith of the action so taken and the reason for it.

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

(1) Section 79B(2)(b)—delete paragraph (b) and substitute:

- (b) that a nomination made in a manner and form approved by the Minister and stating the name and address of some person other than the owner who was driving the vehicle at the time has been given—
 - (i) by the owner; or
 - (ii) if the owner is a body corporate—by an officer of the body corporate acting with the authority of the body corporate, to the Commissioner of Police—
 - (iii) within 28 days after an expiation notice in respect of the offence is given to the owner; or

(iv) if an expiation notice is not given—within 28 days after a summons in respect of the offence is given to the owner, (or within such longer period as the Commissioner may allow if satisfied that exceptional circumstances exist in the particular case); or

5 (2) Section 79B(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) where the owner is a body corporate—\$10 000;
- (b) where the owner is a natural person—\$5 000.

10 (3) Section 79B(2a)(a)(i)—delete subparagraph (i) and substitute:

- (i) where the owner is a body corporate—the amount obtained by multiplying by 5 an amount equal to the sum of the amount of the expiation fees for such alleged offences where the owner is a natural person;

15 (4) Section 79B(2a)(b)(i)—delete subparagraph (i) and substitute:

- (i) where the owner is a body corporate—the amount obtained by multiplying by 5 an amount equal to the amount of the expiation fee for the alleged offence in which the vehicle appears to have been involved where the owner is a natural person;

20 (5) Section 79B(5)(b)—delete paragraph (b) and substitute:

- (b) a statement that the Commissioner of Police will, in relation to the question of withdrawal of the expiation notice, reminder notice or complaint, give due consideration to any exculpatory evidence that—
 - (i) is given to the Commissioner within a period specified in the notice; and
 - (ii) if required by the Commissioner—is verified by statutory declaration; and

25 (6) Section 79B(6a) and (6b)—delete subsections (6a) and (6b) and substitute:

(6a) If—

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

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

- (6b) The particulars of the nomination provided to the person named as the alleged driver must not include the address of the person who made the nomination.
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(7) Section 79B—after subsection (11) insert:

(12) The Commissioner of Police may require a person who makes a nomination under this section to verify the information contained in the nomination by statutory declaration.

5 (13) If the Commissioner of Police believes that a nomination under this section has been made in error, the Commissioner may permit the nomination to be withdrawn and a new nomination to be made.

10 (14) A person must not, in making a nomination for the purposes of this section, make a statement that is false or misleading in a material particular.

Maximum penalty: \$25 000 or imprisonment for 4 years.

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

15 (1) Section 174A—delete "statutory declaration" wherever occurring and substitute in each case:

nomination

(2) Section 174A—after subsection (4) insert:

20 (4a) If the council or officer specified in the notice under subsection (4) believes that a nomination made in response to the notice has been made in error, the council or officer (as the case may be) may permit the nomination to be withdrawn and a new nomination to be made.

(3) Section 174A—after subsection (5) insert:

25 (5a) A council or officer to whom a nomination is provided in response to a notice under subsection (4) or (5) may require the person who made the nomination to verify the information contained in the nomination by statutory declaration.

30 (5b) If the complainant believes that a nomination made in response to the notice under subsection (5) has been made in error, the complainant may permit the nomination to be withdrawn and a new nomination to be made.

(4) Section 174A(8)—delete "declaration" and substitute:

nomination

(5) Section 174A(10)—delete "declaration" second occurring and substitute:

nomination

35 (6) Section 174A—after subsection (11) insert:

(12) A nomination under this section must be made in a manner and form approved by the Minister.

40 (13) A person must not, in making a nomination for the purposes of this section, make a statement that is false or misleading in a material particular.

Maximum penalty: \$25 000 or imprisonment for 4 years.

22—Insertion of section 174CA

After section 174C insert:

174CA—Council may fix expiation fees for offences against prescribed provisions

- 5 (1) Subject to this section, a council may—
- (a) fix an expiation fee for an alleged offence against a prescribed provision of this Act that is committed within the area of the council; or
- (b) vary or revoke such a fee.
- 10 (2) An expiation fee under subsection (1) must be fixed, varied or revoked in a manner and form prescribed by, and in accordance with, the regulations.
- (3) If an expiation fee is fixed under this section for an alleged offence against a prescribed provision of this Act that is committed within the area for which the expiation fee is so fixed, that fee will be taken to be the expiation fee for the alleged offence if committed within that area despite any other expiation fee that may be fixed for the alleged offence under a provision of this Act other than this section.
- 15 (4) This section applies despite any other provision of this Act.
- (5) The Governor may make regulations dealing with matters relating to fixing, varying or revoking expiation fees under this section.
- 20