

**Legislative Council—No 82A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 24 March 2011

South Australia

**Summary Offences (Prescribed Motor Vehicles)  
Amendment Bill 2010**

A BILL FOR

An Act to amend the *Summary Offences Act 1953*.

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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 *Summary Offences (Prescribed Motor Vehicles) Amendment Act 2010*.

### 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 *Summary Offences Act 1953***

### **4—Amendment of section 4—Interpretation**

Section 4—after subsection (1) insert:

- (1a) A reference in this Act to drivers or the driving of vehicles includes a reference to riders or the riding of vehicles unless it is otherwise expressly stated.

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### **5—Insertion of section 55**

After section 54 insert:

#### **55—Driving etc certain motor vehicles prohibited**

- (1) A person must not drive a prescribed motor vehicle, or cause a prescribed motor vehicle to stand, on a road.

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Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) If a prescribed motor vehicle is driven or found standing on a road, the owner of the vehicle is guilty of an offence.  
Maximum penalty: \$5 000.  
Expiation fee: \$315.
- 5 (3) It is a defence to a charge of an offence against subsection (1) or (2) to prove that the motor vehicle was driven or left standing on a road in circumstances in which the *Motor Vehicles Act 1959* permits an unregistered motor vehicle to be driven or left standing on a road.
- 10 (3a) It is a defence to a charge of an offence against subsection (2) to prove that—
- (a) the vehicle was not driven or left standing on the road by the defendant; and
- (b) the defendant did not consent to the vehicle being driven, or left standing, in contravention of this section; and
- 15 (c) the defendant had taken reasonable steps to ensure that any person lawfully entitled to use the vehicle was aware that the defendant did not consent to the vehicle being driven, or left standing, in contravention of this section.
- 20 (4) It is a defence to a charge of an offence against subsection (2) to prove that, in consequence of some unlawful act, the vehicle was not in the possession or control of the defendant at the time it was driven or left standing on the road.
- (5) If a person has been charged with an offence against this section relating to a motor vehicle, a police officer may seize and retain the
- 25 motor vehicle until proceedings relating to the offence are finalised.
- (6) Subject to this section, if a person is convicted by a court of an offence against this section, the court must, on the application of the prosecution, order that the motor vehicle the subject of the offence is forfeited to the Crown.
- 30 (6a) A motor vehicle forfeited to the Crown under subsection (6) may be dealt with in accordance with section 20 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* as if it had been forfeited by order of a court under that Act.
- 35 (6b) Notice of an application for an order under subsection (6) relating to a motor vehicle must be given to—
- (a) if the prosecution is aware of any person (other than the defendant) who claims ownership of the motor vehicle—that person; and
- 40 (b) if the prosecution is aware that any other person is likely to suffer financial or physical hardship as a result of the making of an order under subsection (6)—that person; and
- (c) each holder of a registered security interest in respect of the motor vehicle under the *Goods Securities Act 1986*.

(6c) A court hearing an application for an order under subsection (6) relating to a motor vehicle—

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- (a) must, if a person given notice of the application under subsection (6b) 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.

10 (6d) A court making an order under subsection (6) may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

(6e) A court may decline to make an order for forfeiture under subsection (6) if satisfied that—

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- (a) the making of the order would cause severe financial or physical hardship to a person; or
  - (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 making of the order would significantly prejudice the rights of a credit provider; or
  - (d) the motor vehicle the subject of the application 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.
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(6f) If—

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- (a) a court declines to make an order for forfeiture under subsection (6); and
  - (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.

35 (6g) An order to perform community service under subsection (6f) 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).

40 (8) 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

- (b) the offence is expiated; or
- (d) a court has determined the charge.

(9) In this section—

*owner* has the same meaning as in the *Motor Vehicles Act 1959*;

5            *prescribed motor vehicle* means a motor vehicle of a class prescribed by regulation for the purposes of this section, being a class of motor vehicles that are not able to be registered, or conditionally registered, under the *Motor Vehicles Act 1959*;

10           *road* has the same meaning as in the *Motor Vehicles Act 1959* (and a reference to a road includes a reference to a road related area within the meaning of that Act).