

South Australia

Expiation of Offences Act 1996

An Act to provide for the expiation of minor offences.

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Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Expiation of Offences Act 1996*.

3—Application of Act

- (1) This Act applies only in relation to an expiation notice issued after the commencement of this Act.
- (2) The provisions of this Act relating to trifling offences do not apply to offences of a class prescribed by regulation.

4—Interpretation

- (1) In this Act, unless the contrary intention appears—

child, in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed;

community corrections officer means an officer or employee of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* whose duties include the supervision of offenders in the community;

council means a council established under the *Local Government Act 1934* and includes a controlling authority established under that Act;

Court means—

- (a) in relation to an expiation notice issued to a person who was under the age of 18 years at the time of the alleged offence—the Youth Court;
- (b) in relation to any other expiation notice—the Magistrates Court;

expiation period means the period specified in an expiation notice for payment of the expiation fee (in the absence of an arrangement under section 9);

Fines Enforcement and Recovery Officer means the Fines Enforcement and Recovery Officer under the *Criminal Law (Sentencing) Act 1988*;

issuing authority means—

- (a) if an expiation notice is given by a member of the police force—the Commissioner of Police;
- (b) in any other case—the Minister, statutory authority or council on whose behalf an expiation notice is given;

protected person has the same meaning as in the *Intervention Orders (Prevention of Abuse) Act 2009*.

- (2) An alleged offence will, for the purposes of this Act, be regarded as trifling if, and only if, the circumstances surrounding the commission of the offence were such that the alleged offender ought to be excused from being given an expiation notice on the ground that—
 - (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the offence; or
 - (b) the alleged offender could not, in all the circumstances, reasonably have averted committing the offence; or
 - (c) the conduct allegedly constituting the offence was merely a technical, trivial or petty instance of a breach of the relevant enactment.

- (3) Subject to this Act, a person *expiates* an offence if a person pays all of the amounts due under the expiation notice (including any levy payable under the *Victims of Crime Act 2001*) or such amounts are recovered from the person in accordance with this Act.

5—Certain offences may be expiated

- (1) If an expiation fee is fixed by or under an Act, regulation or by-law in respect of an offence, an expiation notice may be given under this Act to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with this Act.
- (2) Subsection (1) applies in relation to offences committed before or after the commencement of this Act.
- (3) Subject to subsection (4), a power under an Act to impose a penalty for the contravention of a regulation or by-law will be taken to include the power—
- (a) to provide that an alleged offence against the regulation or by-law may be expiated in accordance with this Act; and
 - (b) to fix for that purpose an expiation fee not exceeding—
 - (i) if the maximum fine prescribed for the offence is expressed as a divisional fine—a divisional expiation fee of the same division; or
 - (ii) in any other case—
 - (A) \$315; or
 - (B) 25% of the maximum fine prescribed for the offence,whichever is the lesser.
- (4) An offence against a regulation or by-law that is an offence involving violence is not and cannot be, despite subsection (3) or the provisions of any other Act, an expiable offence.

Notes—

- Various other Acts (eg the *Controlled Substances Act 1984*) provide that certain offences may be expiated in accordance with this Act.
- Section 28A of the *Acts Interpretation Act 1915* sets out a scale of divisional expiation fees for use when an expiation fee is expressed as a divisional fee (ie not in dollars).

6—Expiation notices

- (1) An expiation notice—
- (a) may relate to up to 3 alleged offences arising out of the same incident (ie if they are committed contemporaneously, or in succession, one following immediately upon another); and
 - (b) must be in the prescribed form; and
 - (c) must specify that the expiation fee is to be paid within 28 days from (and including) the date of the notice unless an arrangement is entered into under section 9; and
 - (d) must specify to whom the expiation fee is payable; and

- (e) cannot be given after the expiry of the period of 6 months from the date on which the offence was, or offences were, alleged to have been committed; and
- (f) cannot be given to a person if a prosecution has been commenced against the person for the alleged offence or offences; and
- (g) cannot (except where some other Act provides otherwise) be given to a child; and
- (h) cannot, if the regulations or some other Act so provides in relation to a particular offence, be given to a person under the age of 18 years; and
- (ha) should not be issued in respect of a trifling offence; and
- (i) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—may be addressed to the owner or driver of the vehicle without naming or otherwise identifying him or her; and
- (j) may be given—
 - (i) personally or by service on an employee or agent of the alleged offender; or
 - (ii) by post addressed to the alleged offender's last known place of business or residence; or
 - (iii) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—by affixing or placing the notice on that vehicle; and
- (k) must be accompanied by 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 expiation notice relates.

Note—

Certain other Acts (eg the *Local Government Act 1934* section 789D and the *Road Traffic Act 1961* section 174A) require that an expiation notice given to the registered owner of a motor vehicle must be accompanied by a notice relating to the question of whether the owner was the driver at the time of the alleged offence.

- (2) If an expiation notice is served on an employee or agent of the alleged offender, the employee or agent must, as soon as is reasonably practicable after receiving the notice, give the notice to his or her employer or principal.

Maximum penalty: \$50.

- (3) An expiation notice may only be given by—
 - (a) a member of the police force; or
 - (b) a person who is authorised in writing by—
 - (i) the Minister responsible for the administration of the Act against which the offence is alleged to have been committed; or
 - (ii) the statutory authority or council responsible for the enforcement of the provision against which the offence is alleged to have been committed,
- to give expiation notices for the alleged offence; or

- (c) a person who is authorised to give expiation notices for the alleged offence by or under the Act against which the offence is alleged to have been committed.
- (4) If an officer or employee of a council is authorised by or under an Act to exercise powers as an inspector (or other authorised person) for the purposes of the enforcement of a provision of that Act, the officer or employee—
 - (a) is authorised to give an expiation notice for an alleged offence against that provision; and
 - (b) in giving such a notice, will be taken to be doing so on behalf of the council.
- (5) Subject to subsection (6), if an expiation notice is given to an alleged offender, no further expiation notice can be given to that person in respect of any other alleged expiable offence arising out of the same incident.
- (6) If the expiation notice already given to the alleged offender relates to an offence, or offences, against the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959*, a further expiation notice may be given to him or her in respect of an alleged offence against section 74, 75A, 81, 81A or 81AB of the *Motor Vehicles Act 1959*.

7—Payment by card

Any amount payable under an expiation notice may be paid by using a credit card, charge card or debit card, if facilities for their use are available in relation to the payment to be made.

8—Alleged offender may elect to be prosecuted etc

- (1) An alleged offender may, by notice in the prescribed form given personally or by post to the issuing authority, elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.
- (2) An election to be prosecuted for an offence cannot be made after—
 - (a) if the alleged offender enters into an arrangement under section 9—the day on which the arrangement is entered into; or
 - (b) in any other case—the day on which an enforcement determination is made under section 13 in relation to the expiation notice.
- (3) If an election is made under this section, the expiation notice will be taken to have been withdrawn in respect of the offence to which the election relates.

8A—Review of notices on ground that offence is trifling

- (1) A person who has been given an expiation notice issued after the commencement of this section may apply to the issuing authority for a review of the notice on the ground that an offence to which the notice relates is trifling.
- (2) The issuing authority is not obliged to conduct an inquiry on the application but may require the applicant to provide further information.
- (3) An issuing authority may require information contained in, or supporting, an application for review to be verified by statutory declaration.
- (4) An application made under this section must be determined by the issuing authority before it can issue a certificate for an enforcement determination under section 13 in respect of the offence to which the application relates.

- (5) If the issuing authority is satisfied that the offence is trifling, the authority must, by notice in writing given personally or by post to the alleged offender, withdraw the notice in respect of that offence.
- (6) However, an expiation notice cannot be withdrawn under this section in respect of an offence if—
 - (a) any amount due under the notice in respect of that offence has been paid; or
 - (b) the alleged offender has entered into an arrangement under section 9; or
 - (c) an enforcement determination has been made under section 13 in relation to the expiation notice.
- (7) If an expiation notice is withdrawn under this section in respect of an offence, no further expiation notice may be issued in respect of that offence.

9—Arrangements as to manner and time of payment

- (1) Subject to this section, an alleged offender who has been given an expiation notice and who pays to the Fines Enforcement and Recovery Officer the prescribed fee—
 - (a) may, at any time during the expiation period, enter into an arrangement with the Fines Enforcement and Recovery Officer for payment of the amount due under the notice by direct debit instalments in accordance with subsection (3); or
 - (b) if the Fines Enforcement and Recovery Officer agrees, may enter into some other kind of arrangement with the Fines Enforcement and Recovery Officer in relation to the amount due under the notice in accordance with subsection (4).
- (2) The Fines Enforcement and Recovery Officer must give the issuing authority notice (in a manner agreed between the Fines Enforcement and Recovery Officer and the issuing authority) of any arrangement entered into under this section.
- (3) An arrangement for payment by instalments referred to in subsection (1)(a)—
 - (a) may not be entered into after an enforcement determination has been made under section 13 in respect of the expiation notice; and
 - (b) must provide for instalments to be paid to the Fines Enforcement and Recovery Officer by direct debits by or through some other person or agency (eg deductions from an ADI account or wages); and
 - (c) must require payment in full within a period determined by the Fines Enforcement and Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into).
- (4) Other kinds of arrangements referred to in subsection (1)(b) may consist of or include—
 - (a) payment by instalments (including instalments paid over a period exceeding 12 months);
 - (b) an extension of time to pay;
 - (c) the taking of a charge over land;
 - (d) the surrender of property to the Fines Enforcement and Recovery Officer;

- (e) payment of any amount, including by direct credit, by or through some other person or agency (eg deductions from an ADI account or wages);
 - (f) subject to subsection (5)—requirements for the performance of community service by the alleged offender (in accordance with a scheme prescribed by the regulations);
 - (g) any other form of arrangement agreed by the Fines Enforcement and Recovery Officer and the alleged offender.
- (5) The Fines Enforcement and Recovery Officer may only agree to an arrangement requiring the performance of community service if—
- (a) the Fines Enforcement and Recovery Officer is satisfied that the alleged offender does not have, and is not likely within a reasonable time to have, the means to satisfy the amount due under an expiation notice without the alleged offender or his or her dependants suffering hardship; and
 - (b) an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to the expiation notice.
- (6) If—
- (a) an alleged offender has previously been subject to enforcement action under this Act (whether in relation to the same, or a different, expiation notice) or under Part 9 Division 3 Subdivision 4 of the *Criminal Law (Sentencing) Act 1988*; or
 - (b) an alleged offender is an undischarged bankrupt or is subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; or
 - (c) an alleged offender is of a class prescribed by the regulations,
- the Fines Enforcement and Recovery Officer may—
- (d) refuse to enter into an arrangement under this section, or a particular type of arrangement under this section, with the alleged offender; or
 - (e) require the alleged offender to provide an irrevocable authority to obtain (in accordance with any prescribed requirements) financial and contact information about the alleged offender from any Commonwealth, State or Local Government agency, any ADI or an employer of the alleged offender; or
 - (f) require the alleged offender to provide security or obtain guarantees (as the Fines Enforcement and Recovery Officer thinks fit).
- (7) An arrangement under this section may be varied by agreement between the alleged offender and the Fines Enforcement and Recovery Officer.
- (8) If an arrangement is entered into or varied under this section, the Fines Enforcement and Recovery Officer must give a copy of the arrangement or varied arrangement (as the case requires) to the alleged offender personally or by post.
- (9) For the purposes of entering into, or varying, an arrangement, any number of amounts due under expiation notices given to the alleged offender may be aggregated.
- (10) If an alleged offender fails to comply with an arrangement under this section and the failure has endured for 14 days, the arrangement terminates.

- (11) If the Fines Enforcement and Recovery Officer determines that an alleged offender who is subject to an arrangement requiring the performance of community service has the means to satisfy an enforcement amount without the alleged offender or his or her dependants suffering hardship, the arrangement terminates.
- (12) If an arrangement terminates under subsection (10) or (11), the Fines Enforcement and Recovery Officer must give the issuing authority notice (in a manner agreed between the Fines Enforcement and Recovery Officer and the issuing authority) of the termination and the amount then outstanding (taking into account, where the arrangement required the performance of community service, the number of hours of community service so performed).
- (13) If an alleged offender complies with an arrangement under this section or pays to the Fines Enforcement and Recovery Officer, at any time, the amount then outstanding, the arrangement is discharged.
- (14) Subject to the regulations, an alleged offender who enters into an arrangement under this section will, for the purposes of any other Act or law, be taken to expiate the offence or offences to which the arrangement relates on the day on which the arrangement is entered into (unless the alleged offender is already taken to have expiated the offence in accordance with section 13 or in accordance with section 61 of the *Criminal Law (Sentencing) Act 1988*) regardless of whether the arrangement is subsequently discharged or terminates before being discharged.

11—Expiation reminder notices

- (1) If, by the end of the expiation period, an alleged offender has neither paid the expiation fee nor entered into an arrangement under section 9 and the issuing authority has not received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice, the issuing authority must, before it takes any action under this Act to enforce the expiation notice, send an expiation reminder notice, in the prescribed form, to the alleged offender by post.
 - (1a) An expiation reminder notice—
 - (a) must specify the amount of the expiation fee and to whom the expiation fee is payable; and
 - (b) must be accompanied by—
 - (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
 - (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 statutory declaration—a form suitable for use as a statutory declaration.

Note—

Certain other Acts and regulations (eg the *Local Government Act 1934* section 789D and the *Road Traffic Act 1961* section 174A) require that the expiation reminder notice sent to the registered owner of a motor vehicle must be accompanied by a notice relating to the question of whether the owner was the driver at the time of the alleged offence.

- (3) If a reminder notice is given to an alleged offender, the prescribed reminder notice fee will be added to the unpaid expiation fee and, for the purposes of this Act, forms part of that fee.

11A—Expiation enforcement warning notices

- (1) If the issuing authority has received a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice, the issuing authority must, before taking action under this Act to enforce the expiation notice, send an expiation enforcement warning notice, in the prescribed form, to the alleged offender by post.
- (2) The expiation enforcement warning notice—
 - (a) must contain a statement that the statutory declaration or other document is not accepted by the authority as a defence to the alleged offence or offences; and
 - (b) must specify the amount of the expiation fee and to whom the expiation fee is payable; and
 - (c) must be accompanied by 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 expiation notice relates.
- (4) If an expiation enforcement warning notice is given to an alleged offender, the prescribed warning notice fee will be added to the unpaid expiation fee and, for the purposes of this Act, forms part of that fee.
- (6) An expiation enforcement warning notice is not to be regarded as an expiation reminder notice for the purposes of any other law.

12—Late payment

The issuing authority may accept late payment of the amount due under an expiation notice at any time before an enforcement determination is made under section 13.

13—Enforcement determinations

- (1) An expiation notice may be enforced against the alleged offender by the issuing authority sending to the Fines Enforcement and Recovery Officer—
 - (a) a certificate that contains the particulars determined by the Fines Enforcement and Recovery Officer relating to—
 - (i) the alleged offender; and
 - (ii) the offence or offences that remain unexpiated; and
 - (iii) the amount due under the notice; and
 - (iv) compliance by the authority with the requirements of this Act and any other Act; and
 - (b) the prescribed fee.

- (2) The Fines Enforcement and Recovery Officer may make an enforcement determination in relation to an expiation notice given to a person—
 - (a) if the Fines Enforcement and Recovery Officer has, within the relevant period, received a certificate under subsection (1) and—
 - (i) 14 clear days have elapsed from the date on which a reminder notice relating to the expiation notice was sent by post in accordance with section 11; or
 - (ii) 14 clear days have elapsed from the date on which an expiation enforcement warning notice relating to the expiation notice was sent by post in accordance with section 11A; or
 - (b) if an arrangement under section 9 relating to the notice has terminated in accordance with that section and the Fines Enforcement and Recovery Officer has, within the relevant period, received a certificate under subsection (1) following that termination.
- (3) Subject to the regulations, on the making of an enforcement determination the alleged offender will, for the purposes of any other Act or law, be taken to have expiated the offence or offences to which the enforcement determination relates (unless the alleged offender is already taken to have expiated the offence in accordance with section 9(14) or in accordance with section 61 of the *Criminal Law (Sentencing) Act 1988*).
- (4) The Fines Enforcement and Recovery Officer may—
 - (a) vary an enforcement determination at any time; and
 - (b) on application under this section made within 30 days of notice of an enforcement determination being given, sent or published in accordance with this section—revoke the enforcement determination.
- (5) An application under subsection (4)(b) must be accompanied by the prescribed fee.
- (6) The Fines Enforcement and Recovery Officer may entertain an application under subsection (4)(b) made out of time if he or she thinks good reason exists for doing so.
- (7) The Fines Enforcement and Recovery Officer may refuse to entertain an application under subsection (4)(b) if the Fines Enforcement and Recovery Officer considers that the application is frivolous or vexatious or is not made in good faith.
- (8) An application under subsection (4)(b) for the revocation of an enforcement determination can only be made on the ground that—
 - (a) the expiation notice to which the determination relates should not have been given to the applicant in the first instance; or
 - (b) the procedural requirements of this Act or any other Act were not complied with; or
 - (c) the applicant failed to receive a notice required by this Act or any other Act; or
 - (d) the issuing authority failed to receive—
 - (i) a notice sent to the authority by the applicant electing to be prosecuted for the offence; or

- (ii) a statutory declaration or other document sent to the authority by the applicant in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
 - (e) the applicant has expiated the offence, or offences, under the notice.
- (9) If the Fines Enforcement and Recovery Officer revokes an enforcement determination—
 - (a) the determination will be taken to be void and of no effect (and subsection (3) is taken never to have applied in relation to the determination); and
 - (b) any enforcement action taken under section 14A in relation to the determination will be taken to have been revoked; and
 - (c) the Fines Enforcement and Recovery Officer may, if he or she thinks fit, refund the fee paid in accordance with subsection (5).
- (10) Despite any other provision of this Act, if the Fines Enforcement and Recovery Officer revokes an enforcement determination on a ground referred to in subsection (8)(b), (c) or (d), the following provisions apply:
 - (a) if the period of 1 year from the date of commission of the alleged offence, or offences, has not expired, the applicant will be taken to have been given an expiation notice by the issuing authority in respect of the alleged offence, or offences, for the first time on the day on which the determination was revoked; and
 - (b) the expiation notice will also be taken to have been issued on that day; and
 - (c) the expiation period will be taken to be the period of 28 days from (and including) that day; and
 - (d) a prosecution can be commenced for the alleged offence, or offences, within 6 months of the expiry of that expiation period (despite the fact that the time for the commencement of the prosecution may have already otherwise expired).
- (11) Subject to subsection (12), on an enforcement determination being made, varied or revoked, the Fines Enforcement and Recovery Officer must cause a written notice of the determination, variation or revocation containing the particulars (if any) prescribed by the regulations—
 - (a) to be—
 - (i) given personally or by post to the alleged offender; or
 - (ii) if the whereabouts of the alleged offender cannot, after reasonable enquiries, be ascertained—published on a website determined by the Fines Enforcement and Recovery Officer; and
 - (b) to be given to the issuing authority.
- (12) If—
 - (a) the alleged offender was under the age of 18 years at the time the offence is alleged to have been committed or is a protected person; and
 - (b) the whereabouts of the alleged offender cannot, after reasonable enquiries, be ascertained,

the Fines Enforcement and Recovery Officer may not publish the written notice in accordance with subsection (11)(a)(ii) but may, if he or she is satisfied that other reasonable means of contacting the alleged offender (not involving public disclosure of the alleged offender's name) are available, cause the written notice to be given to the alleged offender by such other means.

(13) The Fines Enforcement and Recovery Officer is not required to conduct a hearing for the purposes of making, varying or revoking an enforcement determination.

(14) In this section—

relevant period, in relation to an expiation notice, means—

(a) for the purposes of subsection (2)(a)—

- (i) the period ending 90 days after the end of the expiation period; or
- (ii) such longer period as the Fines Enforcement and Recovery Officer may allow (provided that the Fines Enforcement and Recovery Officer may not extend the period so as to allow a certificate to be received after the time for commencement of a prosecution against the person for the unexpiated offence or offences to which the certificate relates has expired); and

(b) for the purposes of subsection (2)(b)—the period of 30 days after the day on which the arrangement terminated.

14—Review of enforcement determinations by Court

(1) Subject to this section, if an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to an expiation notice, the alleged offender may appeal to the Court within 30 days of notice of the determination being given, sent or published under section 13.

(2) The Court may entertain an appeal made out of time if it thinks good reason exists for doing so.

(3) An appeal can only be made on the ground that the expiation notice to which the determination relates should not have been given to the alleged offender in the first instance because the alleged offender did not commit an offence or offences to which the expiation notice relates.

(4) The issuing authority is a party to an appeal under this section.

(5) On an appeal under this section, the Court may—

- (a) confirm the enforcement determination relating to the expiation notice; or
- (b) vary or revoke the enforcement determination relating to the expiation notice,

and the Court may make any consequential or ancillary order that the Court considers necessary or expedient.

(6) If the Court revokes an enforcement determination—

- (a) the determination will be taken to be void and of no effect (and section 13(3) is taken never to have applied in relation to the determination); and
- (b) any subsequent enforcement action taken under section 14A will be taken to have been revoked.

- (7) A decision of the Court made on an appeal under this section is not subject to further appeal by the alleged offender.

14A—Enforcement actions by Fines Enforcement and Recovery Officer

- (1) If an enforcement determination has been made by the Fines Enforcement and Recovery Officer under section 13 in relation to an expiation notice (and has not been revoked), the Fines Enforcement and Recovery Officer may take enforcement action against the alleged offender to secure payment of the amount due under the notice.
- (2) The Fines Enforcement and Recovery Officer may take enforcement action against a person by doing any of the following:
- (a) entering into an arrangement, or further arrangement, with the person under section 9(1)(b);
 - (b) registering a charge on land under Part 9 Division 3 Subdivision 3 of the *Criminal Law (Sentencing) Act 1988* or exercising any 1 or more of the powers under Part 9 Division 3 Subdivision 4 or Subdivision 5 of that Act as if—
 - (i) references to a pecuniary sum were references to the amount due; and
 - (ii) references to the debtor were references to the person against whom the enforcement action is being taken;
 - (c) waiving payment of the amount due or any part of the amount due.
- (3) If the Fines Enforcement and Recovery Officer takes enforcement action of a kind described in subsection (2)(b), any costs, fees or other charges that would be recoverable by the Fines Enforcement and Recovery Officer under the *Criminal Law (Sentencing) Act 1988* in respect of such action are recoverable by the Fines Enforcement and Recovery Officer for the purposes of this Act (and will be added to, and form part of, the amount due).
- (4) Where more than 1 enforcement determination has been made in respect of expiation notices issued to a person, the amounts due under the notices may be aggregated for the purposes of taking enforcement action.

14B—Amounts unpaid or unrecovered for more than certain period

- (1) Subject to subsection (2), if any part of an expiation fee remains unpaid by, or unrecovered from, the alleged offender at the end of the expiation period, an amount prescribed by, or calculated in accordance with, the regulations is added to, and forms part of, the amount due under the notice.
- (2) The Fines Enforcement and Recovery Officer may, in such circumstances as he or she thinks just, waive payment of the whole or part of an amount payable by an alleged offender in accordance with this section.

15—Effect of expiation

- (1) Subject to this Act, if the offence, or offences, to which an expiation notice relates are expiated in accordance with this Act, the alleged offender is not liable to prosecution for that offence or those offences or any other expiable offence arising out of the same incident.

- (2) Subject to this Act, if an expiation notice is given in respect of an offence, or offences, arising out of the use of a motor vehicle and that offence, or those offences, are expiated in accordance with this Act, no person is liable to prosecution for that offence, or those offences, or any other expiable offence arising out of the same incident except for an offence that is the subject of another expiation notice.
- (3) If—
- (a) an expiation notice relates to more than one offence; and
 - (b) the alleged offender expiates one or more of those offences but not all of them,
- the alleged offender is liable to prosecution for any offence that is not expiated.
- (4) The expiation of an offence under this Act (or the entry into an arrangement under this Act)—
- (a) does not constitute an admission of guilt or of any civil liability; and
 - (b) will not be regarded as evidence tending to establish guilt or any civil liability; and
 - (c) cannot be referred to in any report furnished to a court for the purposes of determining sentence for any offence.
- (5) However, if anything seized under an Act in connection with the alleged offence would be liable to forfeiture in the event of a conviction or finding of guilt, that thing is, on expiation of the alleged offence under this Act, forfeited to the Crown.

16—Withdrawal of expiation notices

- (1) The issuing authority may withdraw an expiation notice with respect to all or any of the alleged offences to which the notice relates if—
- (a) the authority is of the opinion that the alleged offender did not commit the offence, or offences, or that the notice should not have been given with respect to the offence, or offences; or
 - (ab) the authority receives a statutory declaration or other document sent to the authority by the alleged offender in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
 - (ac) the notice is defective; or
 - (b) the authority decides that the alleged offender should be prosecuted for the offence, or offences.
- (2) An expiation notice may be withdrawn under subsection (1) despite payment of an expiation fee or an instalment, but in that event the amount paid must be refunded.
- (3) However, an expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence if—
- (a) an enforcement determination has been made under section 13 in relation to the expiation notice; or
 - (b) the period of 60 days from the date of the notice has expired.

- (5) If an expiation notice is withdrawn under subsection (1), a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee or entered into arrangement under section 9 is not admissible in those proceedings as evidence against the defendant.
- (6) Subject to subsection (7), the issuing authority must withdraw an expiation notice if it becomes apparent that the alleged offender did not receive the notice until after the expiation period, or has never received it, as a result of error on the part of the authority or failure of the postal system.
- (7) An expiation notice cannot be withdrawn under subsection (6) if the alleged offender has paid the expiation fee or any instalment or other amount due under the notice.
- (9) The withdrawal of an expiation notice under this section is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.
- (10) The notice of withdrawal must specify the reason for withdrawal.
- (11) If an expiation notice is withdrawn under this section and the notice of withdrawal does not specify that the notice is withdrawn for the purposes of prosecuting the alleged offender—
- (a) the issuing authority must, if an enforcement determination has been made under section 13, inform the Fines Enforcement and Recovery Officer of the withdrawal of the notice; and
 - (b) any aggregation determination under section 61 of the *Criminal Law (Sentencing) Act 1988* in relation to the notice will be taken to have been revoked; and
 - (ba) any enforcement determination made under this Act in respect of the notice will be taken to have been revoked (and any subsequent enforcement action is discontinued or rescinded); and
 - (c) the issuing authority cannot prosecute the alleged offender for an alleged offence to which the withdrawal related unless the alleged offender has been given a fresh expiation notice and allowed the opportunity to expiate the offence.
- (11a) If an expiation notice is withdrawn—
- (a) after an arrangement has been entered into under section 9 in relation to the notice—section 9(14) is taken never to have applied in relation to that arrangement; or
 - (b) after an enforcement determination has been made under section 13 in relation to the notice—section 13(3) is taken never to have applied in relation to that determination.
- (12) If an expiation notice for an offence against section 79B of the *Road Traffic Act 1961* is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (1)(ab), the period within which—
- (a) a fresh expiation notice may be given to the alleged offender in respect of the offence; or
 - (b) an expiation notice may be given in respect of the prescribed offence (within the meaning of that section) that gave rise to the offence,

is extended to 1 year from the date of commission of the alleged offence.

- (13) If an expiation notice is withdrawn and the notice of withdrawal specifies that the notice is withdrawn under subsection (6), the period within which a fresh expiation notice may be given to the alleged offender in respect of the offence or offences to which the withdrawal related is extended to 1 year from the date of commission of the alleged offence or offences.

17—Application of payments

- (1) Unless a contrary intention is indicated in a particular Act and subject to subsection (2), money received by way of amounts due under expiation notices (other than any part of such amounts attributable to the levy under the *Victims of Crime Act 2001*) will be paid into the Consolidated Account.
- (2) Subject to subsection (3), a statutory authority or council is entitled to any expiation fee paid under this Act pursuant to an expiation notice, or recovered on enforcement of an expiation notice, that was issued by or on behalf of the authority or council.
- (3) If an expiation notice is issued by or on behalf of a statutory authority or council as a result of the reporting of an offence by a member of the police force or other officer of the Crown, half of the amount of any expiation fee paid pursuant to the notice or recovered on enforcement of the notice must be paid into the Consolidated Account.

18—Provision of information

- (1) Each issuing authority must enter into an agreement with the Fines Enforcement and Recovery Officer in relation to—
- (a) the manner in which the Fines Enforcement and Recovery Officer is to provide information to the issuing authority in relation to action taken by the Fines Enforcement and Recovery Officer under this Act in respect of an expiation notice issued by the issuing authority; and
 - (b) the manner in which the issuing authority is to provide information to the Fines Enforcement and Recovery Officer in relation to the issuing of an expiation notice by the issuing authority or any other action taken by the issuing authority in respect of an expiation notice so issued.
- (2) An agreement will be taken to contain any provisions prescribed by the regulations.

18A—Minister may declare amnesty from payment of costs, fees and charges

- (1) The Minister may from time to time declare an amnesty from the payment of the whole or any part of 1 or more of the following:
- (a) costs, fees (other than an expiation fee) and charges under this Act;
 - (b) costs and fees (other than an expiation fee) under this Act as in force immediately before the commencement of Part 5 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013*.
- (2) An amnesty—
- (a) must be declared by notice in the Gazette; and
 - (b) applies—
 - (i) in relation to an alleged offender, or a class of alleged offenders; and

- (ii) to the extent,
specified in the notice; and
 - (c) is subject to the terms and conditions (if any) set out in the notice.
- (3) The Minister may vary or revoke the declaration of an amnesty under subsection (1) by notice in the Gazette.

18B—Investigation of alleged offender's financial position

- (1) The Fines Enforcement and Recovery Officer may, at any time, investigate an alleged offender's means of paying an amount due under an expiation notice and may give a written notice to a person requiring the person to produce to the Fines Enforcement and Recovery Officer, within a period stated in the notice, documents or other material relevant to the investigation.
 - (2) A notice under subsection (1) may be given personally or by post.
 - (3) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty: \$10 000.

18C—Power to require information

- (1) If a public sector agency within the meaning of the *Public Sector Act 2009* is in possession of the contact details of an alleged offender, the agency must, on request from the Fines Enforcement and Recovery Officer, provide those details to the Fines Enforcement and Recovery Officer.
- (2) This section does not apply to a public sector agency excluded from the application of this section by the regulations.

18D—Disclosure of information to prescribed interstate authority

The Fines Enforcement and Recovery Officer may disclose prescribed particulars of an alleged offender to a prescribed interstate authority.

18E—Power to require identification

- (1) The Fines Enforcement and Recovery Officer may require a person who the Fines Enforcement and Recovery Officer has reasonable cause to suspect may be a person to whom an expiation notice has been given to produce evidence of the person's identity.
 - (2) A person who, without reasonable excuse (proof of which lies on the person), refuses or fails to comply with a requirement under this section is guilty of an offence.
- Maximum penalty: \$10 000.

19—Non-derogation

This Act does not derogate from the provisions of any other Act that relate to the expiation of offences.

20—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prescribe, or provide for the calculation of, any costs, fees or charges for the purposes of this Act;
 - (b) exempt any person or class of persons from the obligation to pay costs, fees or charges so prescribed;
 - (c) prescribe penalties, not exceeding \$5 000, for breach of, or non-compliance with, a regulation.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
 - (c) provide that a specified provision of this Act does not apply, or applies with prescribed variations, to any person, circumstance or situation (or person, circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
 - (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Fines Enforcement and Recovery Officer or another prescribed person.
- (4) The regulations may make provisions of a savings or transitional nature consequent on the commencement of any provisions of this Act (including provisions of a transitional nature modifying any provisions of this Act).

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	27	<i>Expiation of Offences Act 1996</i>	2.5.1996	3.2.1997 (<i>Gazette 19.12.1996 p1922</i>)
1998	60	<i>Statutes Amendment (Fine Enforcement) Act 1998</i>	3.9.1998	Pt 6 (ss 31—38)—6.3.2000 (<i>Gazette 18.11.1999 p2358</i>)
1999	52	<i>Motor Vehicles (Miscellaneous) Amendment Act 1999</i>	12.8.1999	s 95—17.6.2001 (<i>Gazette 7.6.2001 p2144</i>)
2000	57	<i>Statutes Amendment and Repeal (Attorney-General's Portfolio) Act 2000</i>	20.7.2000	Pt 12 (ss 26 and 27)—1.10.2000 (<i>Gazette 28.9.2000 p2221</i>)
2001	11	<i>Expiation of Offences (Trifling Offences) Amendment Act 2001</i>	12.4.2001	29.10.2001 (<i>Gazette 25.10.2001 p4686</i>)
2001	58	<i>Victims of Crime Act 2001</i>	15.11.2001	Sch 2 (cl 5)—1.1.2003 (<i>Gazette 19.12.2002 p4736</i>)
2002	33	<i>Statutes Amendment (Attorney-General's Portfolio) Act 2002</i>	28.11.2002	Pt 7 (s 11)—3.3.2003 (<i>Gazette 27.2.2003 p807</i>)
2003	53	<i>Statutes Amendment (Expiation of Offences) Act 2003</i>	4.12.2003	Pt 2—18.12.2003 (<i>Gazette 18.12.2003 p4527</i>) except ss 5 & 6—4.12.2005 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2013	31	<i>Statutes Amendment (Fines Enforcement and Recovery) Act 2013</i>	1.8.2013	Pt 6 (ss 18—32)—3.2.2014 (<i>Gazette 30.1.2014 p422</i>)
2017	71	<i>Fines Enforcement and Debt Recovery Act 2017</i>	12.12.2017	Sch 1 (cl 36)—12.12.2017; Sch 1 (cll 11 to 24) & (cl 35)—30.4.2018 (<i>Gazette 6.2.2018 p609</i>)

Provisions amended

New entries appear in bold.

Provision	How varied	Commencement
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	18.12.2003

s 3		
s 3(1)	s 3 redesignated as s 3(1) by 11/2001 s 3	29.10.2001
s 3(2)	inserted by 11/2001 s 3	29.10.2001
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 11/2001 s 4	29.10.2001
community corrections officer	inserted by 31/2013 s 18(1)	3.2.2014
expiation period	amended by 31/2013 s 18(2)	3.2.2014
Fines Enforcement and Recovery Officer	inserted by 31/2013 s 18(3)	3.2.2014
<i>the Manager, Penalty Management</i>	<i>inserted by 60/1998 s 31</i>	<i>6.3.2000</i>
	<i>deleted by 31/2013 s 18(4)</i>	<i>3.2.2014</i>
protected person	inserted by 31/2013 s 18(4)	3.2.2014
Registrar	<i>deleted by 31/2013 s 18(4)</i>	<i>3.2.2014</i>
s 4(2)	inserted by 11/2001 s 4	29.10.2001
s 4(3)	inserted by 31/2013 s 18(5)	3.2.2014
s 6		
s 6(1)	amended by 60/1998 s 32	6.3.2000
	amended by 11/2001 s 5	29.10.2001
	amended by 31/2013 s 19	3.2.2014
s 6(5)	amended by 52/1999 s 95	17.6.2001
	amended by 53/2003 s 4(1), (2)	18.12.2003
s 6(6)	s 6(5) dot point designated as s 6(6) by 53/2003 s 4(3)	18.12.2003
s 7	amended by 60/1998 s 33	6.3.2000
	amended by 31/2013 s 20	3.2.2014
s 8		
s 8(2)	substituted by 31/2013 s 21	3.2.2014
s 8A	inserted by 11/2001 s 6	29.10.2001
s 8A(4)	amended by 31/2013 s 22(1)	3.2.2014
s 8A(6)	substituted by 31/2013 s 22(2)	3.2.2014
<i>s 9 before substitution by 31/2013</i>		
s 9(4)	<i>amended by 60/1998 s 34(a)</i>	<i>6.3.2000</i>
s 9(6)	<i>substituted by 60/1998 s 34(b)</i>	<i>6.3.2000</i>
s 9(7) and (8)	<i>deleted by 60/1998 s 34(b)</i>	<i>6.3.2000</i>
s 9(9)	<i>amended by 60/1998 s 34(c)</i>	<i>6.3.2000</i>
s 9(16)	<i>deleted by 60/1998 s 34(d)</i>	<i>6.3.2000</i>
s 9(18)	<i>deleted by 60/1998 s 34(e)</i>	<i>6.3.2000</i>
s 9	substituted by 31/2013 s 23	3.2.2014
s 10	<i>deleted by 31/2013 s 23</i>	<i>3.2.2014</i>
s 11		

s 11(1)	amended by 53/2003 s 5(1)	4.12.2005
	amended by 31/2013 s 24(1)	3.2.2014
s 11(1a)	inserted by 53/2003 s 5(2)	4.12.2005
	amended by 31/2013 s 24(2)	3.2.2014
<i>s 11(2)</i>	<i>deleted by 31/2013 s 24(3)</i>	<i>3.2.2014</i>
<i>s 11(4)</i>	<i>deleted by 31/2013 s 24(4)</i>	<i>3.2.2014</i>
s 11A	inserted by 53/2003 s 6	4.12.2005
s 11A(2)	amended by 31/2013 s 25(1)	3.2.2014
<i>s 11A(3)</i>	<i>deleted by 31/2013 s 25(2)</i>	<i>3.2.2014</i>
<i>s 11A(5)</i>	<i>deleted by 31/2013 s 25(3)</i>	<i>3.2.2014</i>
s 12	amended by 58/2001 Sch 2 cl 5	1.1.2003
	substituted by 31/2013 s 26	3.2.2014
<i>s 13 before substitution by 31/2013</i>		
<i>s 13(1)</i>	<i>amended by 60/1998 s 35(a)</i>	<i>6.3.2000</i>
<i>s 13(2)</i>	<i>amended by 60/1998 s 35(b)</i>	<i>6.3.2000</i>
<i>s 13(6)</i>	<i>amended by 60/1998 s 35(c)</i>	<i>6.3.2000</i>
	<i>amended by 53/2003 s 7</i>	<i>18.12.2003</i>
s 13	substituted by 31/2013 s 26	3.2.2014
<i>s 14 before substitution by 31/2013</i>		
<i>s 14(1)</i>	<i>amended by 33/2002 s 11(a)</i>	<i>3.3.2003</i>
<i>s 14(3)</i>	<i>amended by 60/1998 s 36</i>	<i>6.3.2000</i>
	<i>amended by 57/2000 s 26(a)</i>	<i>1.10.2000</i>
<i>s 14(5)</i>	<i>substituted by 57/2000 s 26(b)</i>	<i>1.10.2000</i>
<i>s 14(5a)</i>	<i>inserted by 57/2000 s 26(b)</i>	<i>1.10.2000</i>
	<i>amended by 53/2003 s 8</i>	<i>18.12.2003</i>
<i>s 14(6)</i>	<i>amended by 33/2002 s 11(b)</i>	<i>3.3.2003</i>
<i>s 14(7) and (8)</i>	<i>inserted by 33/2002 s 11(c)</i>	<i>3.3.2003</i>
s 14	substituted by 31/2013 s 26	3.2.2014
ss 14A and 14B	inserted by 31/2013 s 26	3.2.2014
s 15		
s 15(4)	amended by 31/2013 s 27(1)	3.2.2014
s 15(5)	amended by 31/2013 s 27(2)	3.2.2014
s 16		
s 16(1)	amended by 53/2003 s 9(1), (2)	18.12.2003
s 16(2)	amended by 57/2000 s 27(a)	1.10.2000
s 16(3)	substituted by 60/1998 s 37	6.3.2000
	amended by 31/2013 s 28(1), (2)	3.2.2014
<i>s 16(4)</i>	<i>deleted by 57/2000 s 27(b)</i>	<i>1.10.2000</i>
s 16(5)	amended by 57/2000 s 27(c)	1.10.2000
	amended by 31/2013 s 28(3)	3.2.2014

s 16(6)—(9)	inserted by 57/2000 s 27(d)	1.10.2000
s 16(8)	<i>deleted by 53/2003 s 9(3)</i>	18.12.2003
s 16(10)	inserted by 53/2003 s 9(4)	18.12.2003
s 16(11)	inserted by 53/2003 s 9(4)	18.12.2003
	amended by 31/2013 s 28(4)	3.2.2014
s 16(11a)	inserted by 31/2013 s 28(5)	3.2.2014
s 16(12) and (13)	inserted by 53/2003 s 9(4)	18.12.2003
s 17		
s 17(1)	amended by 31/2013 s 29	3.2.2014
s 18	substituted by 31/2013 s 30	3.2.2014
s 18A	inserted by 60/1998 s 38	6.3.2000
	substituted by 31/2013 s 30	3.2.2014
s 18B	inserted by 11/2001 s 7	29.10.2001
	substituted by 31/2013 s 30	3.2.2014
ss 18C—18E	inserted by 31/2013 s 30	3.2.2014
s 20		
s 20(1)	s 20 redesignated as s 20(1) by 31/2013 s 31	3.2.2014
s 20(2)—(4)	inserted by 31/2013 s 31	3.2.2014

Transitional etc provisions associated with Act or amendments

Statutes Amendment (Fine Enforcement) Act 1998, Sch

10—Community service under repealed s 9(4)(b)

If an order for community service made under section 9(4)(b) of the principal Act in respect of a person was in force immediately before the commencement of this Act, the order continues in force and, for that purpose, the principal Act (as in force immediately before the commencement of this Act) continues to apply.

Statutes Amendment (Fines Enforcement and Recovery) Act 2013

32—Transitional provisions

- (1) Subject to this section and to any regulations made under section 20(4) of the principal Act (as inserted by this Act), the principal Act as in force immediately after the commencement day applies in relation to an expiation notice whether given before or after the commencement day.
- (2) If an order for relief has been made in relation to an expiation notice given before the commencement day, the principal Act as in force before the commencement day continues to apply in relation to the expiation notice unless the order for relief is cancelled (in which case the principal Act as in force immediately after the commencement day applies in relation to the expiation notice as if an arrangement under section 9 of the principal Act relating to the expiation notice had terminated).
- (3) For the avoidance of doubt, if an order for relief referred to in subsection (2) is cancelled, section 10 of the principal Act (as in force immediately before the commencement day) does not apply in relation to the cancellation.

- (4) The Registrar (within the meaning of the principal Act as in force immediately before the commencement day) may—
- (a) with the agreement of the alleged offender, vary an order for relief referred to in subsection (2); and
 - (b) delegate any functions and powers relating to an order for relief referred to in subsection (2) to the Fines Enforcement and Recovery Officer.
- (5) A power or function delegated under subsection (4)(b) may, if the instrument of delegation so provides, be further delegated.
- (6) A delegation under subsection (4)(b)—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the delegator to act personally in a matter; and
 - (c) is revocable at will; and
 - (d) operates despite any direction under section 18A of the principal Act (as in force before the commencement day).
- (7) In this section—

principal Act means the *Expiation of Offences Act 1996*;

commencement day means the day on which this Part comes into operation.

Fines Enforcement and Debt Recovery Act 2017, Sch 1 Pt 8—Transitional provisions etc

36—Validation provision

Any enforcement determination purportedly made by the Fines Enforcement and Recovery Officer under section 13 of the *Expiation of Offences Act 1996* before the day on which this clause comes into operation is declared to have been validly made notwithstanding that there was not compliance with the requirements of subsection (1) or (2) of that section.

Historical versions

Reprint No 1—6.3.2000

Reprint No 2—1.10.2000

Reprint No 3—17.6.2001

Reprint No 4—29.10.2001

Reprint No 5—1.1.2003

Reprint No 6—3.3.2003

18.12.2003

4.12.2005