

South Australia

# Road Traffic (Excessive Speed) Amendment Act 2005

An Act to amend the *Road Traffic Act 1961*; and to make related amendments to 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 *Road Traffic (Excessive Speed) Amendment Act 2005*.

### 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—Insertion of sections 45A and 45B

After section 45 insert:

#### 45A—Excessive speed

- (1) A person who drives a vehicle at a speed exceeding, by 45 kilometres an hour or more, a speed limit that applies under this Act or the *Motor Vehicles Act 1959* is guilty of an offence.

Maximum penalty:

For a first offence—a fine of not less than \$600 and not more than \$1 000;

For a subsequent offence—a fine of not less than \$700 and not more than \$1 200.

Expiation fee: \$500.

- (2) For the purposes of this section, signs placed on a road for the purpose of indicating a maximum speed to be observed by drivers while driving on, by or towards a work area or work site in accordance with section 20 will not be taken to be of any effect unless one or more workers are present at the work area or work site.
- (3) Where a court convicts a person of an offence against subsection (1), the following provisions apply:
- (a) the court must order that the person be disqualified from holding or obtaining a driver's licence—
    - (i) in the case of a first offence—for such period, being not less than 6 months, as the court thinks fit; or
    - (ii) in the case of a subsequent offence—for such period, being not less than 2 years, as the court thinks fit;
  - (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;
  - (c) if the person is the holder of a driver's licence—the disqualification operates to cancel the licence as from the commencement of the period of disqualification.
- (4) In determining whether an offence is a first or subsequent offence for the purposes of this section—
- (a) any previous offence against subsection (1); and
  - (b) any previous offence against section 46 (whether committed before or after the commencement of this section),

for which the defendant has been convicted or that the defendant has expiated will be taken into account, but only if the previous offence was committed or alleged to have been committed within the period of 5 years immediately preceding the date on which the offence under consideration was allegedly committed.

- (5) This section is in addition to, and does not derogate from, any other provision relating to speed limits contained in this or any other Act or in any regulation, rule or by-law made under this or any other Act.

#### **45B—Power of police to impose licence disqualification or suspension**

- (1) Subject to this section, if a person is given an expiation notice for—
- (a) an offence against section 45A; or
  - (b) an offence against section 79B constituted of being the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in the commission of an offence against section 45A,

a member of the police force may give the person a notice of licence disqualification or suspension in the prescribed form.

- (2) If a person is given a notice of licence disqualification or suspension under subsection (1)—
- (a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the relevant period; or
  - (b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the relevant period.
- (3) The Commissioner of Police must ensure that prescribed particulars of a notice of licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.
- (4) The Registrar of Motor Vehicles must, on receiving particulars of a notice of licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of licence disqualification or suspension.
- (5) The operation of a notice of licence disqualification or suspension is not affected by any failure to comply with subsection (4).

- (6) If a person is given a notice of licence disqualification or suspension in accordance with subsection (1) and the expiation notice referred to in that subsection is withdrawn or the person elects to be prosecuted in accordance with the *Expiation of Offences Act 1996*—
  - (a) the notice of licence disqualification or suspension is cancelled (and, if the relevant period has commenced, any licence held by the person at the commencement of the relevant period is taken to be in force again); and
  - (b) the Commissioner must give written notice of the cancellation to the Registrar of Motor Vehicles.
- (7) The period for which a disqualification or suspension has applied to a person under this section as a result of the person having been given a notice of licence disqualification or suspension will be counted as part of any period of disqualification that is imposed on the person in relation to the offence by order of a court under section 45A.
- (8) Subject to subsection (9), no compensation is payable by the Crown or a police officer in respect of the exercise of powers under this section.
- (9) Subsection (8) does not protect a police officer from liability in respect of the exercise of powers otherwise than in good faith.
- (10) For the purposes of this section—
  - (a) the *relevant period* commences—
    - (i) in the case of a notice given to a person who has been given an expiation notice for an offence against section 45A—
      - (A) 24 hours after the notice of licence disqualification or suspension is given to the person; or
      - (B) if, at the time referred to in subparagraph (A), the person is already disqualified from holding or obtaining a driver's licence or holds a driver's licence that is suspended—at the end of that period of disqualification or suspension; or
    - (ii) in the case of a notice given to a person who has been given an expiation notice for an offence against section 79B—
      - (A) 28 days after the notice of licence disqualification or suspension is given to the person; or

- (B) if, at the time referred to in subsubparagraph (A), the person is already disqualified from holding or obtaining a driver's licence or holds a driver's licence that is suspended—at the end of that period of disqualification or suspension;
- (b) the *relevant period* ends—
  - (i) if the notice is cancelled in accordance with subsection (6); or
  - (ii) if the notice is not cancelled—at the end of 6 months from the commencement of the relevant period.

### **5—Amendment of section 46—Reckless and dangerous driving**

- (1) Section 46(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

For a first offence—a fine of not less than \$700 and not more than \$1 200;

For a subsequent offence—

  - (a) a fine of not less than \$800 and not more than \$1 200; or
  - (b) 3 months imprisonment.
- (2) Section 46(3)(a)(i)—delete "six months" and substitute:

12 months

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

- (1) Section 79B(1), definition of *prescribed offence*—delete the definition and substitute:

*prescribed offence* means—

  - (a) an offence against section 45A; or
  - (b) any other offence against a prescribed provision of this Act;
- (2) Section 79B—after subsection (2a) insert:
  - (2b) Where a court convicts a natural person of an offence against this section constituted of being the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in the commission of an offence against section 45A, the following provisions apply:
    - (a) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 6 months, as the court thinks fit;
    - (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;

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

## 7—Insertion of section 110AAA

After section 110 insert:

### **110AAA—Certain provisions not to apply to drivers of emergency vehicles**

- (1) Sections 44B, 45A, 82, 83 and 110 do not apply to the driver of an emergency vehicle if—
  - (a) in the circumstances—
    - (i) the driver is taking reasonable care; and
    - (ii) it is reasonable that the provision should not apply; and
  - (b) if the vehicle is a motor vehicle that is moving—the vehicle is displaying a blue or red flashing light or sounding an alarm.
- (2) Subsection (1)(b) does not apply to a vehicle used by a member of the police force if, in the circumstances, it is reasonable—
  - (a) not to display the light or sound the alarm; or
  - (b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.
- (3) In this section—

*emergency vehicle* means a vehicle used by—

  - (a) a member of the police force; or
  - (b) a person who is an emergency worker as defined by the regulations for the purposes of this section.

## **Schedule 1—Related amendment to *Summary Offences Act 1953***

### **1—Amendment of section 66—Interpretation**

Section 66(1), definition of *prescribed offence*, (b)—after subparagraph (i) insert:

- (ia) section 45A;