

South Australia

# Road Traffic (Notices of Licence Disqualification or Suspension) Amendment Act 2006

An Act to amend 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 *Road Traffic (Notices of Licence Disqualification or Suspension) Amendment Act 2006*.

### 2—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*

### 3—Amendment of section 45B—Power of police to impose licence disqualification or suspension

(1) Section 45B(7)—delete subsection (7) and substitute:

(7) If—

- (a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of licence disqualification or suspension under this section; and
- (b) a court convicts the person of the offence in relation to which the notice was given or another offence arising out of the same course of conduct; and
- (c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,

then—

- (d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and
- (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 impose a period that is less than the mandatory minimum period of disqualification (provided that the period imposed is not less than the difference between the mandatory minimum and the period that has applied as a result of the notice).

(2) Section 45B(8)—after "exercise" insert:

, or purported exercise,

(3) Section 45B(9)—after "exercise" insert:

, or purported exercise,

(4) Section 45B—after subsection (10) insert:

- (11) A regulation made before the commencement of this subsection prescribing the form of a notice of licence disqualification or suspension under this section or varying such a form is declared to be, and to have always been, valid.

- (12) A notice given to a person by a police officer before the commencement of this subsection that purported to be a notice of licence disqualification or suspension under this section is declared to be, and to have always been, valid if the notice was completed in the prescribed form and was given in the circumstances specified in subsection (1).

#### **4—Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension**

- (1) Section 47IAA—after subsection (7) insert:

(7a) If a person is given a notice of immediate licence disqualification or suspension under this section, the Commissioner of Police must ensure—

- (a) that a determination is made, within a reasonable time, as to whether to charge the person with an offence to which this section applies; and
- (b) if a determination is made that the person should not be charged with any offence to which this section applies, that the person is given, or sent by post, written notice of that determination.

(7b) The laying of charges against a person is not prevented by a failure to comply with subsection (7a) in relation to the person or by the making of a determination referred to in that subsection or the notification of such a determination.

(7c) Subject to the making of an order under section 47IAB(2)(a)(ii), the operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (7a).

- (2) Section 47IAA(8)—after "applies" insert:

arising out of the same course of conduct

- (3) Section 47IAA(9)—delete subsection (9) and substitute:

(9) If—

- (a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of immediate licence disqualification or suspension under this section; and
- (b) a court convicts the person of the offence to which the notice relates or another offence arising out of the same course of conduct; and
- (c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,

then—

- (d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and
  - (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 impose a period that is less than the mandatory minimum period of disqualification (provided that the period imposed is not less than the difference between the mandatory minimum and the period that has applied as a result of the notice).
- (4) Section 47IAA(10)—after "exercise" insert:
  - , or purported exercise,
- (5) Section 47IAA(11)—after "exercise" insert:
  - , or purported exercise,
- (6) Section 47IAA(12)(a)(i)—delete subparagraph (i) and substitute:
  - (i) at the time at which the person is given the notice of immediate licence disqualification or suspension or, if the police officer giving the notice is satisfied that, in the circumstances, it would be appropriate to postpone the commencement of the relevant period and indicates in the notice that the commencement is to be postponed, 48 hours after the time at which the person is given the notice; or
- (7) Section 47IAA(12)(b)—after subparagraph (ii) insert:
  - (iia) if the person given the notice is notified in writing by or on behalf of the Commissioner of Police (whether that notification is given personally or by post) that he or she is not to be charged with any offence to which this section applies arising out of the course of conduct to which the notice of immediate licence disqualification or suspension relates; or
- (8) Section 47IAA(13)—delete subsection (13)
- (9) Section 47IAA(14)—delete "and the conditions (if any) on which the postponement should be granted"
- (10) Section 47IAA—after subsection (14) insert:
  - (15) A regulation made before the commencement of this subsection prescribing the form of a notice of immediate licence disqualification or suspension under this section or varying such a form is declared to be, and to have always been, valid.

- (16) A notice given to a person by a police officer before the commencement of this subsection that purported to be a notice of immediate licence disqualification or suspension under this section is declared to be, and to have always been, valid if the notice was completed in the prescribed form and was given in the circumstances specified in subsection (2).
- (17) The following provisions apply in relation to a prescribed notice:
- (a) if the notice specified that the person was alleged to have had a blood alcohol concentration of 0.08 - 0.149, the notice will be taken to have specified that the person was alleged to have committed a category 2 offence;
  - (b) if the notice specified that the person was alleged to have had a blood alcohol concentration of or above 0.15, the notice will be taken to have specified that the person was alleged to have committed a category 3 offence;
  - (c) the relevant period under such a notice will be taken to have ended on 26 June 2006 (unless the period ended before that date in accordance with subsection (12)).
- (18) For the purposes of subsection (17)—

*prescribed notice* means a notice that purported to be a notice of immediate licence disqualification or suspension under this section and that was given to a person before 27 June 2006, other than a notice that specified, as the offence to which the notice relates, an offence described in subsection (1)(c) or (d).

### **5—Amendment of section 47IAB—Application to Court to have disqualification or suspension lifted**

- (1) Section 47IAB(2)(a)—delete paragraph (a) and substitute:
- (a) that the person is not disqualified, or the person's driver's licence is not suspended, by the notice if—
    - (i) the Court is satisfied, on the basis of oral evidence given on oath by the applicant that there is a reasonable prospect that the applicant would, in proceedings for the offence to which the notice relates, be acquitted of the offence and the evidence before the Court does not suggest that the applicant may be guilty of another offence to which section 47IAA applies; or
    - (ii) the Court is satisfied that the person has not been charged with any offence to which section 47IAA applies and that the prosecution authorities have had a reasonable time, in the circumstances, within which to make a determination as to the laying of charges against the person; or
- (2) Section 47IAB(2)(b)—delete "evidence given by or on behalf of the applicant" wherever occurring and substitute in each case:
- oral evidence given on oath by the applicant

(3) Section 47IAB—after subsection (4) insert:

(4a) Any legal counsel or police officer representing the Commissioner of Police at the hearing may make submissions in relation to the application but is not entitled to cross-examine the applicant.

## **6—Amendment of section 47J—Recurrent offenders**

(1) Section 47J—after subsection (4) insert:

(4a) A court that convicts a person of a prescribed offence and makes an order under subsection (4) must also determine a period, being not less than 6 months, that must elapse before the person may make an application for revocation of the disqualification (and the court must, in determining the length of such period, have regard to the minimum period of disqualification applicable to the offence and the effect (if any) of section 45B(7) or 47IAA(9) on that period).

(2) Section 47J(5)—after "may" insert:

, at any time after the period determined by the court in accordance with subsection (4a) has elapsed,

(3) Section 47J(6)—delete subsection (6)

## **Schedule 1—Transitional provision**

The amendments to the *Road Traffic Act 1961* effected by this Act apply in relation to a notice given, or purportedly given, under section 45B or 47IAA of that Act before or after the commencement of this Act (but not so as to affect any proceedings determined before the commencement of this Act).