

South Australia

Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009

An Act to amend the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*; and to make a related amendment 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 *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009*.

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 *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *credit provider* insert:

forfeiture offence means an indictable offence of a kind prescribed by regulation for the purposes of this definition;

- (2) Section 3(1), definition of *prescribed offence*—after "means" insert:

a forfeiture offence or

5—Amendment of section 5—Power to clamp or impound vehicle before proceedings finalised

- (1) Section 5(5)—delete "A motor" and substitute:

Except as provided in section 16(3), a motor

- (2) Section 5(6)—after paragraph (a) insert:

(ab) advise the owners that an application may be able to be made to the Commissioner under section 8 for a determination bringing the clamping or impounding period to an end; and

- (3) Section 5(6)(b)—delete "prescribed" and substitute:

clamping or impounding

6—Amendment of section 6—Period of clamping or impoundment

Section 6—delete "7" and substitute:

28

7—Amendment of section 7—Extension of clamping period

Section 7(2)(a)—delete "7" and substitute:

28

8—Amendment of section 8—Removal of clamps or release of impounded vehicle

(1) Section 8(1)—delete subsection (1) and substitute:

(1) When the clamping or impounding period for a motor vehicle ends—

- (a) a person entitled to custody of the motor vehicle must, after the end of the period and during ordinary business hours, apply for removal of the clamps or release of the motor vehicle; and
- (b) on the making of such an application the relevant authority must release the motor vehicle, as soon as is reasonably practicable, into the custody of that person.

(2) Section 8(2)—before "the clamping or impounding period" insert:

the Commissioner must determine that

(3) Section 8—after subsection (2) insert:

(2a) If, in relation to a motor vehicle clamped or impounded under this Part, the Commissioner is satisfied that—

- (a) 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
- (b) continued clamping or impounding of the motor vehicle would cause severe financial or physical hardship to a person other than the alleged offender or a person who was knowingly involved in, or who aided or abetted, the commission of the offence; or
- (c) other grounds exist that warrant bringing the clamping or impounding period to an end,

the Commissioner may determine that the clamping or impounding period will be taken to have ended.

(2b) The Commissioner may make a determination under subsection (2) or (2a) on the Commissioner's own initiative or on application and, if an application for a determination is made, the Commissioner must determine the application as soon as is reasonably practicable.

(2c) However, an application may not be made under subsection (2a) by or on behalf of the alleged offender.

(2d) If the Commissioner has not determined an application made under this section within 8 days after it is received, the Commissioner is to be taken to have refused the application.

- (4) Section 8(3)(a)—after "period" insert:
for administrative reasons
- (5) Section 8(3)—after paragraph (b) insert:
or
- (c) obliges the relevant authority to remove clamps from a motor vehicle or release a motor vehicle into the custody of a person if the relevant authority is not satisfied that the person who applied for removal or release is entitled to custody of the motor vehicle.
- (6) Section 8(4)—after the definition of *ordinary business hours* insert:
person entitled to custody of a motor vehicle means—
- (a) an owner of the motor vehicle; or
- (b) a person authorised by an owner of the motor vehicle to take custody of the motor vehicle; or
- (c) a person legally entitled to possession of the motor vehicle.

9—Amendment of section 11—Application of Part

Section 11(b)—delete paragraph (b) and substitute:

- (b) either—
- (i) the offence is a forfeiture offence; or
- (ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and

10—Amendment of section 12—Court order for impounding or forfeiture on conviction of prescribed offence

- (1) Section 12(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:
- (a) order that the motor vehicle specified in the application is forfeited to the Crown if—
- (i) the offence is a forfeiture offence; or
- (ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 12 months of the date of the offence; or
- (iii) the convicted person has been found guilty of or expiated at least 2 other prescribed offences committed or allegedly committed within 10 years of the date of the offence; or
- (b) order that the motor vehicle specified in the application be impounded by the relevant authority for a period not exceeding 6 months if—
- (i) the convicted person has been found guilty of or expiated 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and

(ii) paragraph (a) does not apply.

(2) Section 12—after subsection (1) insert:

(1a) If the court makes an order under subsection (1), it must also order that the convicted person pay to the relevant authority fees calculated in accordance with the regulations in relation to the forfeiture or impounding of the motor vehicle.

Note—

If a motor vehicle has been clamped or impounded under Part 2 in relation to the offence, the court must also, on the application of the prosecution, order the payment of fees under section 9.

11—Amendment of section 14—Commissioner may give notice prohibiting sale or disposal of vehicle

(1) Section 14(1)—delete "the sale or disposal" and substitute:

any owner of the motor vehicle from selling or disposing

(2) Section 14(2)—delete the subsection and substitute:

(2) If—

(a) a person—

(i) is to be, or has been, reported for a prescribed offence and has been advised of that fact; or

(ii) has been charged with, or arrested in relation to, a prescribed offence; and

(b) the Commissioner reasonably believes that, if the person were convicted of the offence, an application could be made under Part 3 in relation to a motor vehicle,

the Commissioner may give the owner of the motor vehicle (or, if there is more than 1 owner of the motor vehicle, 1 or more of the owners of the motor vehicle) a notice in the prescribed form prohibiting any owner of the motor vehicle—

(c) if the Commissioner reasonably believes that, if the person were convicted of the offence, an application could be made under Part 3 for forfeiture of the motor vehicle—from selling or disposing of the motor vehicle, intentionally damaging or altering the motor vehicle or causing or permitting another person to damage or alter the motor vehicle; or

(d) in any other case—from selling or disposing of the motor vehicle,

until proceedings relating to the offence have been finalised.

- (3) Section 14(4)—delete the subsection and substitute:
- (4) If a notice has been served on an owner of a motor vehicle under this section, any owner of the motor vehicle who contravenes the prohibitions specified in the notice is guilty of an offence.
Maximum penalty: \$2 500 or imprisonment for 6 months.
- (4) Section 14(6)—delete the subsection and substitute:
- (6) If—
- (a) a person is found guilty by a court of an offence against subsection (4); and
- (b) the notice in relation to which the offence was committed was a notice described in subsection (2)(c); and
- (c) the court is provided with evidence of—
- (i) where the offence involved the sale or disposal of the motor vehicle—the value of the motor vehicle; or
- (ii) where the offence involved damage to or alteration of the motor vehicle—the difference between the value of the motor vehicle before the damage or alteration and its value after the damage or alteration,
- the court may, in addition to any other penalty imposed in respect of the offence, require payment by the person of an amount determined by the court to be a reasonable estimate of the value specified in paragraph (b)(i) or the difference in value specified in paragraph (b)(ii) (as the case may require).
- (5) Section 14—after subsection (10) insert:
- (11) An alteration to a motor vehicle that has no effect on the value of the motor vehicle, or that enhances the value of the motor vehicle, will not be taken to be an alteration to the motor vehicle for the purposes of a notice under this section.

12—Amendment of section 16—Seizure

- (1) Section 16(1)(c)—delete paragraph (c) and substitute:
- (c) any other place if—
- (i) the owner or occupier of the place consents; or
- (ii) it can be seen that the motor vehicle is at the place; or
- (iii) a warrant is issued under this Act authorising the seizure of the motor vehicle from the place.

- (2) Section 16(3)—after paragraph (b) insert:
- (ba) entering into a place from which a motor vehicle can be seized in accordance with subsection (1)(c)(ii) and using reasonable force to break into or open any garage or other structure in which the motor vehicle can be seen to be stored at the place;
- (3) Section 16(3)—after paragraph (d) insert:
- (e) temporarily affixing clamps or any other locking device to the motor vehicle on a public road or in any other place in order to secure the vehicle until it can be seized and moved.

13—Amendment of section 17—Warrants for seizure etc

Section 17(1)—delete "referred to in section 16(1)(a) or (b)) without the consent of the owner or occupier of the place" and substitute:

from which the motor vehicle may be seized without warrant in accordance with section 16)

14—Amendment of section 18—Offences

Section 18—after subsection (2) insert:

- (3) A person (other than a relevant authority acting under this Act) must not interfere with an impounded motor vehicle, or any item or equipment in or on an impounded motor vehicle, while the motor vehicle remains in the custody of a relevant authority in accordance with this Act.

Maximum penalty: \$2 500 or imprisonment for 6 months.

15—Amendment of section 20—Disposal of vehicles

- (1) Section 20(1) and (2)—delete "sell" wherever occurring and substitute in each case:
dispose of
- (2) Section 20(3)—delete "sold" and substitute:
disposed of
- (3) Section 20(3)—delete "sale" wherever occurring and substitute in each case:
disposal
- (4) Section 20(4)—delete the subsection and substitute:
- (4) Subject to subsection (5), a disposal of a motor vehicle under this section is to be by sale by public auction or public tender.
- (5) Section 20(5)(b)—delete paragraph (b) and substitute:
- (b) the motor vehicle has been offered for sale and was not sold; or
 - (c) the Commissioner directs (on such grounds as the Commissioner thinks fit) that the motor vehicle be destroyed or disposed of in some other way.

(6) Section 20(7)—delete subsection (7) and substitute:

- (7) Despite any other Act or law, if a motor vehicle is sold, destroyed or otherwise disposed of under this section—
- (a) any interests in the motor vehicle existing prior to the sale, destruction or disposal are extinguished; and
 - (b) any purchaser of the motor vehicle, or of any part of the motor vehicle, acquires a good title.

(7) Section 20(8)—delete "sale or disposal" and substitute:

sale, destruction or disposal

16—Amendment of section 21—Credit provider may apply to Magistrates Court for relief

Section 21(1)(c)—delete "the proceeds" and substitute:

any proceeds

Schedule 1—Related amendments and transitional provisions

Part 1—Related amendment to *Summary Offences Act 1953*

1—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *minor* insert:

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

2—Insertion of section 17AA

After section 17 insert:

17AA—Misuse of a motor vehicle on private land

- (1) For the purposes of this section, a person *misuses* a motor vehicle if the person, in a place other than a road or road related area—
- (a) drives a motor vehicle in a race between vehicles, a vehicle speed trial, a vehicle pursuit or any competitive trial to test drivers' skills or vehicles; or
 - (b) operates a motor vehicle so as to produce sustained wheel spin; or
 - (c) drives a motor vehicle so as to cause engine or tyre noise, or both, that is likely to disturb persons residing or working in the vicinity; or
 - (d) drives a motor vehicle onto an area of park or garden so as to break up the ground surface or cause other damage.
- (2) However, conduct of a type described in subsection (1) does not constitute misuse of a motor vehicle if it occurs in a place with the consent of the owner or occupier of the place or the person who has the care, control and management of the place.

- (3) A person who misuses a motor vehicle is guilty of an offence.
Maximum penalty: \$2 500.
- (4) Where a court convicts a person of an offence against this section, the court must, if satisfied that the offending caused damage to, or the destruction of, any property or damage to an area of park or garden or a road related area, order the convicted person to pay to the owner of the property, or the owner, occupier or person who has the care, control and management of the area, such compensation as the court thinks fit.
- (5) The power of a court under subsection (4) is in addition to, and does not derogate from, any powers of the court under the *Criminal Law (Sentencing) Act 1988*.
- (6) In this section—
road and *road related area* have the same meaning as in the *Road Traffic Act 1961*.

Part 2—Transitional provision

3—Transitional provision

The amendments to sections 20 and 21 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* effected by this Act apply in relation to an impounded or forfeited motor vehicle whether the impounding or forfeiture occurred before or after the commencement of those amendments.