

South Australia

## **Road Traffic (Miscellaneous) Variation Regulations 2009**

under the *Road Traffic Act 1961*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Road Traffic (Miscellaneous) Variation Regulations 2009*.

#### **2—Commencement**

These regulations will come into operation on the day on which section 28 of the *Statutes Amendment (Transport Portfolio) Act 2008* comes into operation.

#### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## **Part 2—Variation of *Road Traffic (Miscellaneous) Regulations 1999***

### **4—Variation of regulation 4—Interpretation**

- (1) Regulation 4(1)—after the definition of *level crossing offence* insert:

*reckless or dangerous driving offence* means an offence against section 46(1) of the Act;
- (2) Regulation 4(1)—after the definition of *red light offence* insert:

*registration offence* has the same meaning as in section 79B of the Act;
- (3) Regulation 4—after subregulation (1) insert:
  - (2) In these regulations, *intersection*, *level crossing*, *marked foot crossing*, *stop line* and *traffic lights* have the same respective meanings as in the *Australian Road Rules*.

### **5—Variation of regulation 14—Apparatus approved as photographic detection devices**

- (1) Regulation 14(1)(a)—delete "an offence against section 46(1) of the Act," and substitute:

a reckless or dangerous driving offence, a registration offence,
- (2) Regulation 14(1)(c)—delete "an offence against section 46(1) of the Act" and substitute:

a reckless or dangerous driving offence, a registration offence
- (3) Regulation 14(1)(d)—delete "an offence against section 46(1) of the Act," and substitute:

a reckless or dangerous driving offence, a registration offence,

### **6—Variation of regulation 17—Operation and testing of photographic detection devices referred to in regulation 14(1)(a) for offences committed at intersections, marked foot crossings or level crossings**

- (1) Regulation 17(1)(a)—delete paragraph (a)
- (2) Regulation 17—after subregulation (2) insert:
  - (3) Where a photographic detection device referred to in regulation 14(1)(a) is used to provide evidence of reckless or dangerous driving offences or registration offences committed at an intersection, marked foot crossing or level crossing, the provisions of subregulation (2) must be complied with.

**7—Variation of regulation 19—Operation and testing of photographic detection devices referred to in regulation 14(1)(c)**

Regulation 19—after its present contents (now to be designated as subregulation (1)) insert:

- (2) Where a photographic detection device referred to in regulation 14(1)(c) is used to provide evidence of reckless or dangerous driving offences or registration offences, the provisions of subregulation (1) must be complied with.

**8—Insertion of regulation 19AA**

After regulation 19 insert:

**19AA—Operation and testing of photographic detection devices referred to in regulation 14(1)(d) for certain offences**

Where a photographic detection device referred to in regulation 14(1)(d) is used to provide evidence of reckless or dangerous driving offences or registration offences, the provisions of regulation 19A must be complied with.

## 9—Substitution of Schedule 4

Schedule 4—delete Schedule 4 and substitute:

### Schedule 4—Notice

(Section 79B(5) and (6))

#### Road Traffic Act 1961, Notice under section 79B(5) & (6) Photographic detection devices – Your questions answered

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| <p><b>Q1.</b> There is more than one vehicle in the photograph. How do you know it is my vehicle that was speeding?</p> <p><b>A1.</b> There will often be more than one vehicle travelling in the same direction in the photograph. However, this does not mean that your vehicle cannot be accurately identified as being involved in an alleged offence.</p> <p>If the photograph was taken by a mobile speed camera, a template is used to mark the detection zone of the camera so that the infringing vehicle can be pinpointed and identified.</p> <p>If the photograph was taken by a fixed speed camera, the infringing vehicle is identified by its position on the road and its lane of travel. A detection area, or 'loop', has been installed in each traffic lane and a photograph is taken as the vehicle crosses that loop.</p> <p><b>Q2.</b> What type of cameras will be able to detect unregistered and uninsured vehicles?</p> <p><b>A2.</b> ALL safety cameras including Safe-T-Cam, red light and speed. These cameras are constantly being installed in South Australia.</p> <p><b>Q3.</b> What happens with unregistered and uninsured offences detected by camera if I drive through a camera more than once?</p> <p><b>A3.</b> There will be a grace period of 7 days from the first offence detected by camera. If your vehicle is detected by camera again <i>after</i> the grace period, you will have to pay an expiation fee or fine for each offence until you register and insure your vehicle. The grace period ends before 7 days if you are detected road-side and charged with or given an expiation notice for driving the vehicle unregistered or uninsured. The grace period will not apply if you have been charged with or given an expiation notice for driving the vehicle unregistered or uninsured, since it was last registered.</p> <p><b>Q4.</b> Can I be issued with an expiation notice if I am speeding through a green or yellow (amber) traffic light, or only through a red traffic light?</p> <p><b>A4.</b> At intersections, junctions or crossings where combined red light and speed cameras have been installed, you can be detected speeding through all phases of the traffic lights (green, yellow or red). If you are speeding through a red light, a single</p> | <p>expiation notice listing both the speeding and red light offences will be issued to you.</p> <p><b>Q5.</b> If I pay the expiation fee, will I also incur demerit points?</p> <p><b>A5.</b> Yes. Demerit points will be incurred for speeding, red light or level crossing offences detected by a camera. No demerit points will be incurred for unregistered and uninsured offences. If you accumulate 12 or more demerit points in a 3 year period you will face a period of disqualification from driving. Provisional licence holders will face a period of disqualification if they breach their licence conditions or accumulate 4 or more demerit points. If a provisional licence holder incurs one or more demerit points before reaching the age of 19, the period for which their provisional conditions apply may be extended.</p> <p><b>Q6.</b> If the offence is minor or there are extenuating circumstances, can demerit points be reduced or not imposed?</p> <p><b>A6.</b> Only a court can reduce the number of demerit points. You are advised to seek independent legal advice to consider your options.</p> <p><b>Q7.</b> What if I did not see the speed limit sign?</p> <p><b>A7.</b> It is your responsibility as a driver to be aware of and obey the speed limit at all times. Failure to be aware of the speed limit is not a ground for the withdrawal of an expiation notice or summons.</p> <p><b>Q8.</b> If I want to see the photographic evidence, what do I need to do?</p> <p><b>A8.</b> You are entitled to see the photographic evidence. A copy of the photographic evidence on which the allegation is based:</p> <p>(a) will, if you complete the Request for Photographic Evidence form at the foot of this page and forward it by post to <b>Commissioner of Police Expiation Notice Branch, GPO Box 2029 Adelaide SA 5001</b> (or by fax to (08) 8463 4361) be sent by post to you at the address nominated by you on the form (or in the absence of a nominated address, to your last known address); and</p> <p>(b) may be viewed by appointment with the Expiation Notice Branch by telephoning (08) 8463 4388.</p> |
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REQUEST FOR PHOTOGRAPHIC EVIDENCE Please forward a copy of the Traffic Camera Photograph relating to the following:  
 (Note the Expiation Notice DUE DATE WILL NOT BE EXTENDED upon request for photographic evidence)

Expiation Notice Number	<input type="text"/>	Vehicle Registration	<input type="text"/>
TO: Name	<input type="text"/>	Signature	<input type="text"/>
Address	<input type="text"/>		
Suburb/Town	<input type="text"/>		
State	<input type="text"/>	Date	<input type="text"/>
Postcode	<input type="text"/>		

**Defences available to registered owners**

- Q9. What if I was not driving the vehicle at the time?**  
**A9.** If the vehicle is registered in your name, an expiation notice or summons will automatically be sent to you. If you were not driving the vehicle at the time of the alleged offence, you can nominate the driver by completing a Statutory Declaration (as the registered owner of the vehicle) and forwarding it to the Commissioner of Police. The Statutory Declaration must state that you were not driving the vehicle and provide the name and address of the person who was driving.  
Depending on the information you have provided, the expiation notice or summons may be withdrawn and an expiation notice or summons issued to the driver you have named.
- Q10. What if I don't know who was driving my vehicle at the time?**  
**A10.** If you do not know who the driver was at the time of the alleged offence and can show that you have tried to find out his or her identity 'by the exercise of reasonable diligence', you can send a Statutory Declaration to the Commissioner of Police, stating the reasons why the driver's identity is unknown to you and what inquiries (if any) you have made to find out who was driving the vehicle.  
The Commissioner may ask you for further evidence in support of your claim and, in relation to the question of withdrawal of the expiation notice or summons, will give due consideration to the evidence you have provided.  
**However,** owners who lend their vehicle or allow it to be taken for a test drive should record the driver's details. Failure to identify the driver in these circumstances will not be considered as grounds for withdrawal of an expiation notice or summons.
- Q11. What if I have sold the vehicle to someone else and I receive an expiation notice or summons?**  
**A11.** You can send a completed Statutory Declaration to the Commissioner of Police, stating the name and address of the person or company to whom you sold the vehicle.
- Q12. What if the vehicle is registered to a company?**  
**A12.** If an expiation notice or summons is issued to a company, the expiation fee or fine that may be imposed is higher than that payable by a natural person. Where the registered owner of the vehicle is a company, an officer of the company acting with the authority of the company must forward a Statutory Declaration to the Commissioner of Police stating the name and address of the person who was driving the vehicle at the time of the alleged offence.  
If the vehicle was not being driven at the time by any officer or employee of the company acting in the ordinary course of his or her duties as such, and the company does not know and could not, 'by the exercise of reasonable diligence', have known who was driving the vehicle at the time, the officer of the company must forward a Statutory Declaration stating the reasons why the identity of the driver is not known to the company and what inquiries (if any) the company has made to find out who was driving the vehicle.  
The Commissioner may ask for further evidence in support of the claim and, in relation to the question of withdrawal of the expiation notice or summons, will give due consideration to the evidence you have provided.  
**However,** a company is expected to keep records of people who use company vehicles. Failure to nominate the driver in this circumstance will not be considered as grounds for withdrawal of an expiation notice or summons.
- Q13. If I will be sending a Statutory Declaration should I also pay the expiation notice?**  
**A13.** No. If you nominate another person as the driver of the vehicle at the time of the alleged offence, *do not* forward any payment on behalf of that person.  
An expiation notice or summons will be sent to the nominated person.  
If you are unable to send a completed Statutory Declaration, you must pay the expiation fee unless you choose to defend the allegation in court.
- Q14. What if my vehicle appears to have been involved in the alleged speeding, red light, level crossing, unregistered or uninsured offence, but no such offence was in fact committed?**  
**A14.** You will have a defence if you can prove that your vehicle was not used in the commission of the alleged offence.

**How to complete a Statutory Declaration**

If you believe you have a defence to the offence alleged in the enclosed expiation notice, expiation reminder notice or summons, you must complete a Statutory Declaration and forward it to the Commissioner of Police by post to **Commissioner of Police Expiation Notice Branch GPO Box 2029 Adelaide SA 5001** or by fax to **(08) 8463 4361**

**You must provide the following information:**

- your full name and address;
- expiation notice number;
- motor vehicle registration number; **and,**
- the full name and address of the person or company you wish to nominate or the reasons why the driver's identity is not known and what enquiries you have made to ascertain the driver's identity; or,
- information about the defence you have to the allegation; or,
- the full name and address of the person to whom you sold the vehicle.

**The Statutory Declaration must be witnessed by one of the following:**

- Justice of the Peace (including ID No.)
- Proclaimed Manager
- Proclaimed Police Officer
- Commissioner for taking affidavits

The Statutory Declaration must be received by the Commissioner of Police *before the due date for payment specified in the enclosed expiation notice or expiation reminder notice or, if the enclosed document is a summons, within 21 days after the date of issue of the summons.* The Commissioner of Police will, in relation to the question of withdrawal of the expiation notice, reminder notice or complaint, give due consideration to any exculpatory evidence that is verified by statutory declaration and furnished to the Commissioner within these periods.

**NOTE:** It is an offence to make a Statutory Declaration that you know to be untrue in a material particular. Maximum penalty is 4 years imprisonment.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor's Deputy**

with the advice and consent of the Executive Council  
on 30 April 2009

No 49 of 2009