

South Australia

Expiation of Offences Regulations 2011

under the *Expiation of Offences Act 1996*

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1—Short title

These regulations may be cited as the *Expiation of Offences Regulations 2011*.

2—Commencement

These regulations will come into operation on 1 September 2011.

3—Interpretation

In these regulations—

Act means the *Expiation of Offences Act 1996*;

levy means the levy payable under the *Victims of Crime Act 2001*;

relevant motor vehicle register means—

- (a) in the case of a vehicle registered in this State—the register kept under the *Motor Vehicles Act 1959*; or
- (b) in the case of a vehicle registered in another State or a Territory of the Commonwealth—the corresponding register in that State or Territory.

4—Prescribed forms

Schedule 1 prescribes forms for the purposes of the Act.

5—Reminder notices

For the purposes of section 11(3) of the Act, the reminder notice fee is—

- (a) \$46; plus
- (b) if a vehicle was involved in the alleged offence to which the expiation notice relates and a fee incurred for searching the relevant motor vehicle register—the fee for 1 such search.

6—Expiation enforcement warning notices

For the purposes of section 11A of the Act, the warning notice fee is—

- (a) \$46; plus
- (b) if—
 - (i) a vehicle was involved in the alleged offence to which the expiation notice relates and a fee incurred for searching the relevant motor vehicle register; and
 - (ii) an expiation reminder notice has not been issued to the alleged offender,the fee for 1 such search.

7—Notices relating to more than 1 offence

- (1) If an expiation reminder notice relates to more than 1 offence, the issuing authority must not accept payment unless it comprises the reminder notice fee (except if it is waived) plus the expiation fees and levies (if any) for all offences except any for which the alleged offender elects to be prosecuted.
- (2) If an expiation enforcement warning notice relates to more than 1 offence, the issuing authority must not accept payment unless it comprises the warning notice fee (except if it is waived) plus, if a reminder notice fee is payable, the reminder notice fee (except if it is waived) plus the expiation fees and levies (if any) for all offences except any for which the alleged offender elects to be prosecuted.
- (3) However, failure to comply with subregulation (1) or (2) does not affect the authority's right under the Act to enforce the notice in relation to any offence remaining unexpiated.
- (4) If an order for relief is granted under section 9 of the Act in relation to an amount outstanding under an expiation reminder notice that relates to more than 1 offence, instalments paid under the order must be applied first in satisfaction of the reminder notice fee.
- (5) If an order for relief is granted under section 9 of the Act in relation to an amount outstanding under an expiation enforcement warning notice that relates to more than 1 offence, instalments paid under the order must be applied first in satisfaction of the warning notice fee and, if a reminder notice fee is payable, the reminder notice fee.
- (6) For the purposes of an enforcement order made in relation to more than 1 offence, an outstanding reminder notice fee or warning notice fee will be added to the outstanding amount of the expiation fee for the first offence to which the order relates.

8—Certificate for enforcement purposes

For the purposes of section 13(1) of the Act, the certificate to be sent by the issuing authority to the Court must contain the following particulars:

- (a) the identity of the issuing authority;
- (b) the name and address of the alleged offender;
- (c) the date on which the expiation notice was issued and the number of the notice;
- (d) the date on which a reminder notice (if any) was issued;
- (e) the date on which an expiation enforcement warning notice (if any) was issued;
- (f) the date of the certificate;
- (g) for each alleged offence that remains unexpiated—
 - (i) details of the offence, including the location, date and time of the offence and details identifying the category of offence; and
 - (ii) the outstanding amount of the expiation fee (with the outstanding amounts of a reminder notice fee or warning notice fee separately itemised); and
 - (iii) if a levy is payable in respect of the offence—a statement as to whether or not the levy has been paid; and
 - (iv) if the offence involved a vehicle—
 - (A) a statement as to whether the expiation notice was issued to a person in the capacity of registered owner or driver of the vehicle; and
 - (B) the vehicle registration number and the State or Territory in which the vehicle was registered at the time of the offence; and
 - (v) if the expiation notice was issued to a person in the capacity of driver of a vehicle—the class of driver's licence or permit (if any) held by the alleged offender, the number of the licence or permit and the State or Territory in which it was issued.

Schedule 1—Forms

1—Expiation notice

- (1) The prescribed form for an expiation notice is a form that complies with the following requirements:
 - (a) the form must include a heading identifying it as an expiation notice under the *Expiation of Offences Act 1996*;
 - (b) the form must specify—
 - (i) the expiation notice number; and
 - (ii) the date of issue of the expiation notice; and

- (iii) the name of the issuing officer or a code enabling the issuing authority to identify the issuing officer;
- (c) the form must contain an allegation that a person committed an offence or offences and specify—
 - (i) —
 - (A) if the notice is to be addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number;
 - (B) in any other case—the name and address of the person; and
 - (ii) the general nature of the alleged offence or offences; and
 - (iii) the time or times and date or dates of the alleged offence or offences (but if the time or date is the same as that of the notice, the time and date need not be separately identified); and
 - (iv) the place or places at which the alleged offence or offences were committed;
- (d) the form must inform the person that the offence or offences may be expiated and specify—
 - (i) the amount of the expiation fee for each offence; and
 - (ii) if a levy is payable, the amount of the levy for each offence; and
 - (iii) the total amount payable; and
 - (iv) to whom the amount must be paid; and
 - (v) the date by which the amount must be paid;
- (e) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for all offence(s) not disputed (including levies).
- Apply to the court to pay the amount of the fee(s) in instalments or for an extension of time in which to pay it.

You may make an application only if you owe \$50 or more in expiation fees (including fees under other notices). Obtain an application form from the Registrar of the Magistrates Court or Youth Court. The Registrar must be satisfied that payment of the fee(s) would cause you or your dependants hardship.

- If you think the offence(s) (or any of them) was trifling—apply to the *[issuing authority]* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

If applicable:

- If the offence(s) (or any of them) is a parking or traffic offence and you were not driving at the time of the alleged offence—send the *[issuing authority]* a statutory declaration stating the name and address of the driver or, if you had by the time of the offence transferred ownership of the vehicle, the owner.
- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made for an offence, 1 reminder notice will be sent (a reminder fee will apply). After that, you may (without a court hearing) be convicted of the offence and the unpaid fee will be your fine. Court costs will be added.

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

Note—

Under section 6(1)(k) of the Act, the expiation notice is required to 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 notice relates—see clause 4.

Certain Acts require—

- (a) 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; and
- (b) that an expiation notice given to a person named as the alleged driver in a statutory declaration must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver (excluding the address of the person who provided the statutory declaration).

2—Expiation reminder notice

- (1) The prescribed form for an expiation reminder notice is a form that complies with the following requirements:
- (a) the form must include a heading identifying it as an expiation reminder notice under the *Expiation of Offences Act 1996*;
 - (b) the form must specify—
 - (i) the expiation notice number; and
 - (ii) the date of issue of the expiation notice; and
 - (iii) the date of the reminder notice;
 - (c) the form must contain an allegation that a person committed an offence or offences and specify—
 - (i) the name and address of the person; and
 - (ii) if the expiation notice was addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number; and
 - (iii) the general nature of the alleged offence or offences; and

- (iv) the time or times and date or dates of the alleged offence or offences; and
 - (v) the place or places at which the alleged offence or offences were committed;
- (d) the form must inform the person that the offence or offences may be expiated and specify—
- (i) the amount of the expiation fee for each offence; and
 - (ii) if a levy is payable, the amount of the levy for each offence; and
 - (iii) the amount of the reminder notice fee; and
 - (iv) the total amount payable; and
 - (v) to whom the amount must be paid; and
 - (vi) the date by which the amount must be paid;
- (e) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment:

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for all offence(s) not disputed (including levies and reminder notice fees).
- Apply to the court to pay the amount of the fee(s) in instalments or for an extension of time in which to pay it.

You may make an application only if you owe \$50 or more in expiation fees (including fees under other notices). Obtain an application form from the Registrar of the Magistrates Court or Youth Court. The Registrar must be satisfied that payment of the fee(s) would cause you or your dependants hardship.

- If you think the offence(s) (or any of them) was trifling—apply to the *[issuing authority]* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

If applicable:

- If the offence(s) (or any of them) is a parking or traffic offence and you were not driving at the time of the offence—send the *[issuing authority]* the enclosed statutory declaration stating the name and address of the driver or, if you had by the time of the offence transferred ownership of the vehicle, the owner.

- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made for an offence, you may (without a court hearing) be convicted of the offence and the unpaid fee will be your fine. Court costs will be added.

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

Note—

Under section 11(1a)(b) of the Act, the expiation reminder notice is required to be accompanied by—

- (a) 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—see clause 4; and
- (b) 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.

3—Expiation enforcement warning notice

- (1) The prescribed form for an expiation enforcement warning notice is a form that complies with the following requirements:
- (a) the form must include a heading identifying it as an expiation enforcement warning notice under the *Expiation of Offences Act 1996*;
 - (b) the form must specify—
 - (i) the expiation notice number; and
 - (ii) the date of issue of the expiation notice; and
 - (iii) the date of the expiation enforcement warning notice;
 - (c) the form must contain an allegation that a person committed an offence or offences and specify—
 - (i) the name and address of the person; and
 - (ii) if the expiation notice was addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number; and
 - (iii) the general nature of the alleged offence or offences; and
 - (iv) the time or times and date or dates of the alleged offence or offences; and
 - (v) the place or places at which the alleged offence or offences were committed;
 - (d) the form must inform the person that the offence or offences may be expiated and specify—
 - (i) the amount of the expiation fee for each offence; and
 - (ii) if a levy is payable, the amount of the levy for each offence; and
 - (iii) if a reminder notice has been issued, the amount of the reminder notice fee; and
 - (iv) the amount of the warning notice fee; and

- (v) the total amount payable; and
 - (vi) to whom the amount must be paid; and
 - (vii) the date by which the amount must be paid;
- (e) the form must include a statement that the statutory declaration or other document is not accepted by the authority as a defence to the alleged offence or offences, for example—

A statutory declaration or other document has been received from you in accordance with a notice that accompanied the expiation notice or expiation reminder notice for the specified offence(s).

However, the declaration or other document is not accepted as a defence to the alleged offence(s).

- (f) the form must include a statement of the choices available to the alleged offender, for example—

YOUR CHOICES:

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for all offence(s) not disputed (including levies, warning notice fees and reminder notice fees).
- Apply to the court to pay the amount of the fee(s) in instalments or for an extension of time in which to pay it.

You may make an application only if you owe \$50 or more in expiation fees (including fees under other notices). Obtain an application form from the Registrar of the Magistrates Court or Youth Court. The Registrar must be satisfied that payment of the fee(s) would cause you or your dependants hardship.

- If you think the offence(s) (or any of them) was trifling—apply to the *[issuing authority]* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

- (g) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

If no choice is made for an offence, you may (without a court hearing) be convicted of the offence and the unpaid fee will be your fine. Court costs will be added.

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, a statement of the reasons for non-acceptance of the statutory declaration or other document, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

Note—

Under section 11A(2)(c) of the Act, the expiation enforcement warning notice is required to 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 notice relates—see clause 4.

4—Election to be prosecuted

- (1) The prescribed form for a notice by which an alleged offender may elect to be prosecuted for the offence or any of the offences to which an expiation notice relates is a form that provides for:
 - (a) the inclusion of—
 - (i) the name and address of the alleged offender; and
 - (ii) the number of the expiation notice; and
 - (b) a means of identifying the offence or offences for which the alleged offender elects to be prosecuted; and
 - (c) the signing and dating of the notice by the alleged offender.
- (2) The notice—
 - (a) may be combined with a payment slip for use if the person wishes to expiate the offence; and
 - (b) may include an invitation to provide reasons for disputing the offence, instructions for completion, or other information considered relevant by the issuing authority.
- (3) For the purposes of section 8 of the Act, the prescribed form is a completed form of the kind referred to in subclause (1).

Schedule 2—Revocation of *Expiation of Offences Regulations 1996*

The *Expiation of Offences Regulations 1996* are revoked.

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

with the advice and consent of the Executive Council
on 25 August 2011

No 209 of 2011

AGO0239/11CS