

South Australia

## **Road Traffic (Miscellaneous) Variation Regulations 2011**

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 2011*.

#### **2—Commencement**

These regulations will come into operation on the day on which section 36 of the *Statutes Amendment (Transport Portfolio-Alcohol and Drugs) Act 2009* 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 6F—Prescribed particulars of notice of immediate licence disqualification or suspension—section 47IAA**

- (1) Regulation 6F(1)(f)—after subparagraph (iii) insert:
  - (iia) an offence against section 47EAA(9) of the Act; or


- (2) Regulation 6F(2)(f)—after subparagraph (iii) insert:
- (iia) an offence against section 47EAA(9) of the Act; or

## 5—Substitution of Schedule 1AAA

Schedule 1AAA—delete Schedule 1AAA and substitute:

### **Schedule 1AAA—Notice of licence disqualification or suspension**

(Section 45B and section 47IAA of Act)

 <p><b>Schedule 1AAA Road Traffic (Miscellaneous) Regulations 1999</b></p> <p><b>NOTICE OF LICENCE DISQUALIFICATION OR SUSPENSION</b> under section 47IAA or section 45B Road Traffic Act 1961</p>	<p>NOTICE NUMBER: _____</p> <p>AP/TIN REF: _____</p>
<p>FAMILY NAME: _____ LICENCE NUMBER: _____ STATE OF ISSUE: _____ PHONE: _____</p> <p>GIVEN NAMES: _____ DATE OF BIRTH: [ ][ ][ ][ ][ ][ ][ ][ ][ ] SEX: M / F</p> <p>ADDRESS: _____ SUBURB / TOWN: _____ POST CODE: _____</p>	
<p><b>Notice under section 47IAA Road Traffic Act 1961 (category 2 or 3 offences and refuse/fail to comply offences)</b></p>	
<p>It is alleged that at about..... am/pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ] at .....(location) you committed the offence of:</p>	
<p><input type="checkbox"/> category 2 offence - blood alcohol concentration of 0.08 to 0.149 <i>(Section 47B(1) Road Traffic Act 1961)</i></p> <p><input type="checkbox"/> refuse/fail to comply with directions in relation to drug screening test, oral fluid analysis or blood sample <i>(Section 47EAA(9) Road Traffic Act 1961)</i></p>	<p><input type="checkbox"/> category 3 offence - blood alcohol concentration of or above 0.15 <i>(Section 47B(1) Road Traffic Act 1961)</i></p> <p><input type="checkbox"/> refuse/fail to comply with directions in relation to alcotest or breath analysis <i>(Section 47E(3) Road Traffic Act 1961)</i></p> <p><input type="checkbox"/> refuse/fail to comply with request for blood sample <i>(Section 47(14) Road Traffic Act 1961, as a driver of a motor vehicle involved in an accident)</i></p>
<p><b>As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 47IAA of the Act, being a period of up to:</b></p> <p><input type="checkbox"/> <b>6 months</b></p>	
<p><b>As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 47IAA of the Act, being a period of up to:</b></p> <p><input type="checkbox"/> <b>12 months</b></p>	
<p><b>The licence suspension or disqualification commences:</b></p> <p><input type="checkbox"/> forthwith - at the time the notice is given to you</p> <p><input type="checkbox"/> 48 hours after the notice is given to you</p> <p><input type="checkbox"/> If your driver's licence is already suspended or you are already disqualified from holding or obtaining a driver's licence, this notice will take effect at the conclusion of that suspension or disqualification.</p>	
<p><b>Notice under section 45B Road Traffic Act 1961 (excessive speed offences)</b></p>	
<p>At about..... am/pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ] at .....(location) an offence was allegedly committed in respect of which you have been given an expiation notice for an offence against:</p>	
<p><input type="checkbox"/> Section 45A of the <i>Road Traffic Act 1961 (Excessive speed)</i> <b>As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45B of the Act being a period of up to 6 months.</b></p> <p><input type="checkbox"/> The licence suspension or disqualification commences 24 hours after this notice is given to you</p> <p><input type="checkbox"/> If your driver's licence is already suspended or you are already disqualified from holding or obtaining a driver's licence, this notice will take effect at the conclusion of that suspension or disqualification.</p>	<p><input type="checkbox"/> Section 79B of the <i>Road Traffic Act 1961 (Being owner of a vehicle that appears from evidence obtained by a photographic detection device to have been involved in an offence against section 45A of that Act)</i> <b>As a result of this allegation, your driver's licence is suspended or you are disqualified from holding or obtaining a driver's licence for the relevant period as defined in section 45B of the Act being a period of up to 6 months.</b></p> <p><input type="checkbox"/> The licence suspension or disqualification commences 28 days after this notice is given to you</p> <p><input type="checkbox"/> If your driver's licence is already suspended or you are already disqualified from holding or obtaining a driver's licence, this notice will take effect at the conclusion of that suspension or disqualification.</p>
<p style="text-align: center;">It is an offence punishable by imprisonment to drive a motor vehicle whilst your licence is suspended or you are disqualified.</p>	
<p><b>TIME AND DATE NOTICE GIVEN:</b></p> <p>This notice was given at ..... am / pm on [ ][ ][ ][ ][ ][ ][ ][ ][ ]</p> <p>Issuing Officer's Signature ..... Name: ..... Rank: ..... ID [ ][ ][ ][ ][ ][ ][ ][ ][ ]</p>	
<p><b>ACKNOWLEDGEMENT OF RECEIPT OF NOTICE:</b></p> <p>I acknowledge receipt of this notice at the time and date recorded above.</p> <p>Signature ..... Name: .....</p> <p>Witness's Signature ..... Name: ..... Rank ..... ID [ ][ ][ ][ ][ ][ ][ ][ ][ ]</p> <p><input type="checkbox"/> DRIVER / OCCUPANT OF VEHICLE REFUSED / UNABLE TO SIGN / ACCEPT ORDER (delete as applicable)</p>	
<p>CHECKED BY ..... RANK ..... ID [ ][ ][ ][ ][ ][ ][ ][ ][ ] DATE ..... / ..... / .....</p>	

ORIGINAL: EXPIATION NOTICE BRANCH (178) WITHIN 24 HOURS. DUPLICATE: OFFENDER TRIPLICATE: AP QUADRUPPLICATE: TO BE RETAINED IN BOOK

### ADVICE TO NOTICE RECIPIENT

#### CATEGORY 2 OR 3 OFFENCE OR REFUSE/FAIL TO COMPLY (Alcohol or Drug) – Section 47IAA of the Road Traffic Act 1961

##### Review of Licence Suspension / Disqualification - Road Traffic Act 1961, Section 47IAB

- (1) A person who has been given a notice of immediate licence disqualification or suspension under section 47IAA or who has been sent particulars of such a notice by the Registrar of Motor Vehicles may apply to the Magistrates Court for an order—
  - (a) that the person is not disqualified, or the person's driver's licence is not suspended, by the notice; or
  - (b) reducing the period of disqualification or suspension applicable under the notice.
- (2) The Magistrates Court may, on an application under subsection (1), make an order—
  - (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
  - (b) reducing the period of disqualification or suspension applicable under the notice if—
    - (i) the offence to which the notice relates is a category 2 or category 3 offence that is a first offence and 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 might, in proceedings for the offence to which the notice relates, successfully argue that the offence was trifling (in which case the Court must order that the period of disqualification or suspension be reduced to a period of 1 month); or
    - (ii) the offence to which the notice relates is a category 3 offence and 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 but the evidence before the Court suggests that the applicant may be guilty of a category 2 offence (in which case the Court must order that the period be reduced to a period of 6 months).
- (3) The application must be commenced by lodging written application with the Magistrates Court, in the form prescribed by rules of the Court, setting out the grounds on which the application is made and particulars of the evidence that will be relied on by the applicant.
- (4) The Commissioner of Police—
  - (a) must be served, by an applicant for an order under this section, with a copy of the application as soon as practicable after the application is made; and
  - (b) is a party to the application; and
  - (c) may (but is not required to) appear at the hearing represented by legal counsel or a police officer.

To apply for a review go to website [www.courts.sa.gov.au](http://www.courts.sa.gov.au), Magistrates Court section, obtain an application form and information on how to lodge your application or contact the Magistrates Court Call Centre on 8204 2444 between 8.30 am and 5.30 pm Monday to Friday.

#### EXCEED SPEED BY 45 KM/H OR MORE - Section 45B of the Road Traffic Act 1961

##### Cancellation of Licence Suspension / Disqualification - Road Traffic Act 1961, Section 45B

- (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);

If you seek a **withdrawal** of the expiation notice, please provide evidence verified by statutory declaration and forward to Manager, Expiation Notice Branch, GPO Box 2029, Adelaide 5001. The evidence must be received by the Expiation Notice Branch before the due date for payment specified in the expiation notice or expiation reminder notice.

If you wish to **elect to be prosecuted**, please complete, sign and post the appropriate portion of the expiation notice to the Manager, Expiation Notice Branch, GPO Box 2029, Adelaide, 5001. The election form must be received by the Expiation Notice Branch before the due date for payment specified in the expiation notice or expiation reminder notice.

The notice of suspension or disqualification will remain in force unless the expiation notice is withdrawn or until a correctly completed election to be prosecuted form is received at Expiation Notice Branch.

**For exceed speed enquiries** contact the Expiation Notice Branch between 8.30 am and 4.00 pm Monday to Friday, on the telephone number accessible at website [www.police.sa.gov.au](http://www.police.sa.gov.au) or write to the Manager, Expiation Notice Branch, South Australia Police, GPO Box 2029, Adelaide SA 5001.

#### 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 27 January 2011

No 7 of 2011