

South Australia

Railways (Operations and Access) (Evidentiary Provisions) Regulations 1998

under the *Railways (Operations and Access) Act 1997*

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1—Short title

These regulations may be cited as the *Railways (Operations and Access) (Evidentiary Provisions) Regulations 1998*.

2—Commencement

These regulations will come into operation on the day on which they are made.

3—Interpretation

In these regulations, unless the contrary intention appears—

Act means the *Railways (Operations and Access) Act 1997*;

owner, in relation to a motor vehicle, means—

- (a) a person registered or recorded as the owner or an owner of the vehicle under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth; or
- (b) if the vehicle is registered in the name of a business under the *Motor Vehicles Act 1959* or a similar law of the Commonwealth or another State or a Territory of the Commonwealth—any person carrying on that business; or
- (c) a person to whom a trader's plate, a permit or other authority has been issued under the *Motor Vehicles Act 1959*, or a similar law of the Commonwealth or another State or a Territory of the Commonwealth, by virtue of which the vehicle is permitted to be driven on roads,

and includes—

- (d) if the ownership of the vehicle has been transferred but the transferee has not yet been registered or recorded as the owner of the vehicle—a person to whom ownership of the vehicle has been transferred; or
- (e) if a person has possession of the vehicle by virtue of the hire or bailment of the vehicle—that person.

4—Evidentiary provision—section 13

- (1) Subject to this regulation, in proceedings for an offence against section 13(2) of the Act an allegation in the complaint that, at the time of the alleged offence, a person named in the complaint as the owner of a motor vehicle referred to in the complaint was the driver of the motor vehicle will be accepted as proved in the absence of proof to the contrary.
- (2) Before reliance may be placed on the operation of subregulation (1), a notice must be sent to the owner of the relevant motor vehicle by the person who proposes to commence the proceedings (the *complainant*)—
 - (a) setting out particulars of the alleged offence; and
 - (b) inviting the owner, if he or she was not the driver at the time of the alleged offence, to provide the complainant, within 21 days of the date of the notice, with a statutory declaration—
 - (i) setting out the name and address of the driver; or
 - (ii) if he or she had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer—setting out details of the transfer (including the name and address of the transferee).
- (3) Subject to subregulation (4), in proceedings against the owner of a motor vehicle for an offence against section 13(2) of the Act it is a defence to prove that the owner provided a statutory declaration in accordance with an invitation under this .
- (4) The defence in subregulation (3) does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.
- (5) If—
 - (a) in accordance with an invitation under this regulation the owner of a motor vehicle names a person, other than someone who is also an owner of the vehicle, as the driver of the vehicle at the time of the alleged offence; and
 - (b) it is proposed that proceedings be taken against the alleged driver for the alleged offence,

the person who proposes to commence the proceedings must, before doing so, send to the alleged driver a notice setting out particulars of the alleged offence and of the statutory declaration naming the alleged driver.

- (6) Subject to complying with subregulation (5), in proceedings for an offence against section 13(2) of the Act against a person named in a statutory declaration in accordance with an invitation under this regulation, it will be presumed, in the absence of proof to the contrary, that the person was the driver of the relevant motor vehicle at the time at which the alleged offence was committed.
- (7) In proceedings against a person for an offence against section 13(2) of the Act, an allegation in a complaint that a notice was given under this regulation on a specified day will be accepted as proof of the facts alleged in the absence of proof to the contrary.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Revocation of regulations

The *Railways (Operations and Access) (Evidentiary Provisions) Regulations 1998* were revoked by r 3 of the *Railways (Operations and Access) (Evidentiary Provisions) Revocation Regulations 2011* on 31.3.2011.

Principal regulations

Year	No	Reference	Commencement
1998	43	<i>Gazette 7.5.1998 p2142</i>	7.5.1998: r 2