No 46 of 2024 assented to 24.10.2024

South Australia

Statutes Amendment (Transport Portfolio) Act 2024

An Act to amend the *Heavy Vehicle National Law (South Australia) Act 2013*, the *Highways Act 1926*, the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

Contents

Part 1—Preliminary

1 Short title
2 Commencement
3 Amendment provision

Part 2—Amendment of *Heavy Vehicle National Law (South Australia) Act 2013*

4 Amendment of section 8—Definition of generic terms and terms having meaning provided by this Act
5 Repeal of section 11
6 Amendment of section 16—Modification of Law for certain purposes
7 Amendment of section 24—Proof of lawful authority or lawful or reasonable excuse
8 Repeal of Part 4 Division 1

Part 3—Amendment of *Highways Act 1926*

9 Amendment of section 7—Interpretation
10 Amendment of section 30DA—Access to property
11 Insertion of sections 30DB and 30DC
30DB Roadside service centre means of access
30DC Required works for roadside service centre means of access

Part 4—Amendment of *Motor Vehicles Act 1959*

12 Amendment of section 28—Payments into National Heavy Vehicle Regulator Fund
13 Amendment of section 71C—Powers of Registrar in relation to offensive material displayed on motor vehicles
14 Amendment of section 80—Ability or fitness to be granted or hold licence or permit

Part 5—Amendment of *Road Traffic Act 1961*

15 Amendment of section 45B—Power of police to impose licence disqualification or suspension
16 Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension
17 Amendment of section 47IAB—Application to Court to have disqualification or suspension lifted

18 Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices
19 Insertion of section 82A
82A Speed limit while passing breakdown services vehicle
20 Amendment of section 175—Evidence

Schedule 1—Transitional provision

1 Transitional provision—continuation of permits under *Highways Act 1926*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Transport Portfolio) Act 2024*.

2—Commencement

(1) This Act comes into operation on a day to be fixed by proclamation.

(2) Section 27(6) of the *Legislation Interpretation Act 2021* does not apply to this Act.

3—Amendment provision

In this Act, a provision in Part 2 amends the local application provisions of the *Heavy Vehicle National Law (South Australia) Act 2013*.

Part 2—Amendment of *Heavy Vehicle National Law (South Australia) Act 2013*

4—Amendment of section 8—Definition of generic terms and terms having meaning provided by this Act

(1) Section 8—after the definition of ***police officer*** insert:

registration authority, for the registration of a heavy vehicle in this State, means the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959*;

(2) Section 8—after the definition of ***responsible Minister*** insert:

Supreme Court means the Supreme Court of South Australia;

5—Repeal of section 11

Section 11—delete the section

6—Amendment of section 16—Modification of Law for certain purposes

(1) Section 16(a)—delete paragraph (a)

(2) Section 16—after paragraph (e) insert:

(ea) section 711 (*Evidence by certificate by Regulator generally*)—as if the following subsection were inserted after subsection (1):

(1a) A certificate purporting to be issued by the Registrar of Motor Vehicles under the *Motor Vehicles Act 1959* of South Australia (the ***Motor Vehicles Act***) and stating that, at a stated time or during a stated period—

(a) a stated vehicle was or was not registered under the Motor Vehicles Act; or

(b) a stated vehicle was or was not registered under the Motor Vehicles Act on the basis it is a heavy vehicle; or

(c) a stated vehicle registered under the Motor Vehicles Act was or was not registered as a heavy vehicle of a stated category; or

(d) a stated person was or was not the registered operator of a stated vehicle registered under the Motor Vehicles Act; or

(e) a stated exemption or authorisation under the Motor Vehicles Act applied or did not apply to a stated person or a stated heavy vehicle; or

(f) a stated person is the holder of a stated permit or other authority under the Motor Vehicles Act; or

(g) a stated registration, exemption, authorisation, permit or other authority under the Motor Vehicles Act was or was not amended, suspended or cancelled under the Motor Vehicles Act; or

(h) a stated penalty, fee, charge or other amount was or was not, or is or is not, payable under the Motor Vehicles Act by a stated person; or

(i) a stated fee, charge or other amount payable under the Motor Vehicles Act was or was not paid to the Registrar; or

(j) a stated person has or has not notified the Registrar of any, or a stated, change of the person's address,

is evidence of the matter.;

7—Amendment of section 24—Proof of lawful authority or lawful or reasonable excuse

Section 24—after "reasonable excuse," insert:

unless a provision of the Heavy Vehicle National Law (South Australia) provides to the contrary,

8—Repeal of Part 4 Division 1

Part 4 Division 1—delete Division 1

Part 3—Amendment of *Highways Act 1926*

9—Amendment of section 7—Interpretation

(1) Section 7—before the definition of ***Commissioner*** insert:

biodiesel means a diesel fuel obtained by esterification of oil derived from plants or animals;

(2) Section 7—after the definition of ***financial year*** insert:

fuel means any of the following:

(a) a petroleum product within the meaning of the *Petroleum Products Regulation Act 1995*;

(b) biodiesel;

(c) compressed gas;

(d) liquified natural gas;

(e) a fuel of a kind prescribed by regulation;

(3) Section 7—after the definition of ***privately owned land*** insert:

retail sale means a sale in retail quantity for the purposes of use or consumption;

(4) Section 7—after the definition of ***road*** insert:

roadside service centre means a building, place or premises where—

(a) fuel is offered and supplied for retail sale; or

(b) charging facilities for vehicles powered by electricity are available,

but does not include a building, place or premises or a class of building, place or premises prescribed by the regulations for the purposes of this definition;

10—Amendment of section 30DA—Access to property

(1) Section 30DA(4)—after "road" second occurring insert:

(not being land on which a roadside service centre is, or is to be, located)

(2) Section 30DA(5)(b)—after "be" insert:

suspended,

11—Insertion of sections 30DB and 30DC

After section 30DA insert:

30DB—Roadside service centre means of access

(1) Consent to the construction and use of a means of access to a controlled-access road from land on which a roadside service centre is, or is to be, located may be given by the Commissioner on the basis that the person who will benefit from the means of access enters into an agreement with the Commissioner in relation to that access.

(2) An agreement referred to in subsection (1) must be in writing and may include—

(a) arrangements for the means of access to the controlled-access road; and

(b) provision for payment of amounts to the Commissioner in relation to the access.

30DC—Required works for roadside service centre means of access

If there is a means of access to a controlled-access road available for use from land on which a roadside service centre is located, the Commissioner may require a person who is the owner or occupier (in the Commissioner's absolute discretion) of the land, by notice in writing, to carry out specified works or actions in connection with the means of access within a period set out in the notice, and if the person given the notice fails to complete such work, or take such action, within the specified period, the Commissioner may—

(a) impose monetary penalties on the person for the failure (and such penalties will be recoverable by the Commissioner as a debt); or

(b) carry out the works or actions specified in the notice and recover the costs of doing so, as a debt, from the person.

Part 4—Amendment of *Motor Vehicles Act 1959*

12—Amendment of section 28—Payments into National Heavy Vehicle Regulator Fund

Section 28(3), definition of ***road use component***—delete the definition and substitute:

regulatory component of the prescribed registration fee means that component of the registration fee prescribed by the regulations or a fee notice under the *Legislation (Fees) Act 2019* as the regulatory component of the registration fee;

road use component of the prescribed registration fee means that component of the registration fee prescribed by the regulations or a fee notice under the *Legislation (Fees) Act 2019* as the road use component of the registration fee.

13—Amendment of section 71C—Powers of Registrar in relation to offensive material displayed on motor vehicles

(1) Section 71C(6), definition of ***Ad Standards***—delete the definition and substitute:

Ad Standards means—

(a) if the regulations prescribe a body for the purposes of this definition—that body; or

(b) if the regulations do not prescribe a body for the purposes of this definition—the Australian Association of National Advertisers (ACN 003 179 673);

(2) Section 71C(6), definition of ***advertising code breach determination***—delete "the Board" and substitute:

Ad Standards (or, if a body has been appointed by Ad Standards to make such a determination, that body)

(3) Section 71C(6), definition of ***Board***—delete the definition

14—Amendment of section 80—Ability or fitness to be granted or hold licence or permit

(1) Section 80(1)—after "motor vehicle" insert:

, or a motor vehicle of a particular class,

(2) Section 80(1)—delete "tested" and substitute:

assessed

(3) Section 80(1)—delete "tests" and substitute:

assessments

(4) Section 80(1a)—after "class" insert:

, or all holders of a licence or learner's permit who are of a particular class,

(5) Section 80(1a)—delete "tests" and substitute:

assessments

(6) Section 80—after subsection (1a) insert:

(1b) The Registrar may, in directing a person to undergo an assessment under this section, require that the assessment be undertaken at a particular location or by a particular person or body determined by the Registrar.

(7) Section 80(2)—delete subsection (2) and substitute:

(2) For the purposes of this section, an assessment undertaken to assess a person's ability or fitness to drive a motor vehicle, or motor vehicle of a particular class, must comply with guidelines published or adopted by the Minister by notice in the Gazette and the results of such an assessment must be applied by the Registrar in accordance with any policies published or adopted by the Minister by notice in the Gazette.

(8) Section 80(2a)(b)(i)—delete "tests" and substitute:

assessments

(9) Section 80(3)—delete "tests" and substitute:

assessments

Part 5—Amendment of *Road Traffic Act 1961*

15—Amendment of section 45B—Power of police to impose licence disqualification or suspension

(1) Section 45B(1)—delete subsection (1) and substitute:

(1) This section applies to the following offences:

(a) an offence against section 45A;

(b) an offence against section 79B constituted of being the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in the commission of an offence against section 45A (***a section 79B offence***).

(1a) Subject to this section—

(a) if a person is given an expiation notice for an offence to which this section applies, a police officer may give the person a notice of licence disqualification or suspension that includes the prescribed particulars; or

(b) if a police officer reasonably believes that a person has committed an offence to which this section applies, the police officer (or another police officer authorised to do so on behalf of that officer) may give the person such a notice.

(1b) The notice must specify the offence to which the notice relates.

(2) Section 45B(2)—delete "subsection (1)" and substitute:

subsection (1a)

(3) Section 45B(3)—after "Registrar of Motor Vehicles" insert:

, and if such a notice of licence disqualification or suspension is subsequently withdrawn, the Commissioner must ensure that notice of the withdrawal is forwarded to the Registrar

(4) Section 45B—after subsection (5) insert:

(6) If a person is given a notice of immediate licence disqualification or suspension under this section, but is not given an expiation notice for the offence to which the notice relates or another offence to which this section applies arising out of the same course of conduct (or such an expiation notice is withdrawn or the person elects to be prosecuted in accordance with the *Expiation of Offences Act 1996*), the Commissioner of Police must ensure—

(a) that a determination is made, within a reasonable time, as to whether to charge the person with an offence to which this section applies or give the person an expiation notice in respect of such an offence; and

(b) if a determination is made that the person should not be charged with, or given an expiation notice in respect of, an offence to which this section applies, that—

(i) the person is given, or sent by post, written notice of that determination (which notice should include any prescribed particulars relating to the effect of the determination on the notice of licence disqualification or suspension); and

(ii) written notice of the determination is forwarded to the Registrar of Motor Vehicles.

(6a) The laying of charges against a person, or the giving of an expiation notice, is not prevented by a failure to comply with subsection (6) in relation to the person or by the making of a determination referred to in that subsection or the notification of such a determination.

(6b) Subject to the making of an order under section 47IAB(2)(a)(ii), the operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (6).

(5) Section 45B(7)(e)—delete paragraph (e) and substitute:

(e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose—

(i) if the relevant period of licence disqualification or suspension under the notice has not ended, order that the period imposed be taken to have commenced on the day on which the relevant period commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification); or

(ii) if the relevant period of licence disqualification or suspension under the notice has ended, impose a period that is less than the mandatory period of disqualification (provided that the period imposed is not less than the difference between the mandatory minimum period of disqualification and the period that has applied as a result of the notice),

and if the person is the holder of a driver's licence and the mandatory minimum period of disqualification required to be imposed operates to cancel the licence, the licence will be taken to have been cancelled—

(iii) where subparagraph (i) applies—from the day on which the order of the court is made; or

(iv) where subparagraph (ii) applies—from the commencement of the period of disqualification ordered by the court.

(6) Section 45B(10)(a)(i)—delete "in the case of a notice given to a person who has been given an expiation notice for an offence against section 79B" and substitute:

in the case of a notice of licence disqualification or suspension under this section for a section 79B offence

(7) Section 45B(10)(a)(ii)—delete "subsection (1)" and substitute:

subsection (1a)

(8) Section 45B(12)—delete "subsection (1)" and substitute:

subsection (1a)

(9) Section 45B(16)—after "give such a notice" insert:

(provided that the relevant period for the fresh notice must, if it is given to the same person as was given the withdrawn notice, be reduced by the period for which the withdrawn notice was (or purported to be) in operation)

(10) Section 45B—after subsection (16) insert:

(17) The Commissioner of Police must establish procedures to be followed by police officers giving notices of licence disqualification or suspension under this section for the purpose of determining whether the commencement of the relevant period should be postponed under section 45B(10)(a)(ii).

16—Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension

(1) Section 47IAA(5)—after "Registrar of Motor Vehicles" insert:

, and if such a notice of licence disqualification or suspension is subsequently withdrawn, the Commissioner must ensure that notice of the withdrawal is forwarded to the Registrar

(2) Section 47IAA(22)—after "give such a notice" insert:

(provided that the relevant period for the fresh notice must, if it is given to the same person as was given the withdrawn notice, be reduced by the period for which the withdrawn notice was (or purported to be) in operation)

17—Amendment of section 47IAB—Application to Court to have disqualification or suspension lifted

(1) Section 47IAB(1)—delete "section 45B(1)(b)" and substitute:

section 45B(1a)

(2) Section 47IAB(2)(a)(i)(B)—delete "section 45B(1)(b)" and substitute:

section 45B(1a)

18—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

Section 79B(11)(c)—delete "furnished" and substitute:

given

19—Insertion of section 82A

After section 82 insert:

82A—Speed limit while passing breakdown services vehicle

(1) A person must not drive a vehicle at a greater speed than 25 kilometres per hour while passing a breakdown services vehicle that has stopped on the road and is displaying a flashing amber light (whether or not it is also displaying other lights).

Editorial note—

The penalty for a contravention against this section is set out in section 164A.

(2) In this section—

breakdown services include repairing a disabled vehicle, or providing other assistance to enable a disabled vehicle to be driven or to be removed from the road, or assisting a person to gain access to the person's vehicle;

breakdown services vehicle means a vehicle apparently used for the purposes of providing breakdown services, and includes—

(a) a towtruck (within the meaning of the *Motor Vehicles Act 1959*); and

(b) any other vehicle or vehicle of a class prescribed by the regulations for the purposes of this definition.

20—Amendment of section 175—Evidence

Section 175(3)(ba)—delete paragraph (ba) and substitute:

(ba) a document produced by the prosecution and purporting to be signed by the Commissioner of Police, or by any other police officer of or above the rank of inspector, and purporting to certify that a specified traffic speed analyser that is a photographic detection device that was, at the time of measurement, mounted in a fixed housing had been tested on a specified day and was shown by the test to be accurate to the extent indicated in the document constitutes, in the absence of proof to the contrary, proof of the facts certified and that the traffic speed analyser was accurate to that extent on the day on which it was so tested and, for the purpose of measuring the speed of any motor vehicle during the period of 1 year immediately following that day whether or not the speed measured differed from the speed in relation to which the analyser was tested or the circumstances of the measurement differed in any other respect from the circumstances of the test;

(baaa) a document produced by the prosecution and purporting to be signed by the Commissioner of Police, or by any other police officer of or above the rank of inspector, and purporting to certify that a specified traffic speed analyser that is a photographic detection device that was not, at the time of measurement, mounted in a fixed housing had been tested on a specified day in accordance with—

(i) the appropriate Australian Standard for testing the analyser as in force on the day of testing; or

(ii) if there was no appropriate Australian Standard for testing the analyser in force on the day of testing—the manufacturer's specifications,

and was shown by the test to be accurate to the extent indicated in the document constitutes, in the absence of proof to the contrary, proof of the facts certified and that the traffic speed analyser was accurate to that extent on the day on which it was so tested and, for the purpose of measuring the speed of any motor vehicle on the day following that day whether or not the speed measured differed from the speed in relation to which the analyser was tested or the circumstances of the measurement differed in any other respect from the circumstances of the test;

Schedule 1—Transitional provision

1—Transitional provision—continuation of permits under *Highways Act 1926*

(1) A permit granted under section 30DA of the *Highways Act 1926* in operation immediately before the commencement of the amendments to that Act (as effected by sections 10 and 11 of this Act) authorising the construction and use of a means of access to a controlled-access road from land on which a roadside service centre is, or is to be, located is not affected by those amendments.

(2) Nothing in subclause (1) affects the Commissioner's power to suspend, revoke or amend a permit under section 30DA(5)(b) of the *Highways Act 1926* (as amended by section 10 of this Act).