

South Australia



**EXPIATION OF OFFENCES ACT 1996**

**No. 27 of 1996**

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ANNO QUADRAGESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1996

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No. 27 of 1996

**An Act to provide for the expiation of minor offences.**

[Assented to 2 May 1996]

The Parliament of South Australia enacts as follows:

**Short title**

1. This Act may be cited as the *Expiation of Offences Act 1996*.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Application of Act**

3. This Act applies only in relation to an expiation notice issued after the commencement of this Act.

**Interpretation**

4. In this Act, unless the contrary intention appears—

"**child**", in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed;

"**council**" means a council established under the *Local Government Act 1934* and includes a controlling authority established under that Act;

"**Court**" means—

(a) in relation to an expiation notice issued to a person who was under the age of 18 years at the time of the alleged offence—the Youth Court;

(b) in relation to any other expiation notice—the Magistrates Court;

"**expiation period**" means the period specified in an expiation notice for payment of the expiation fee;

"issuing authority" means—

- (a) if an expiation notice is given by a member of the police force—the Commissioner of Police;
- (b) in any other case—the Minister, statutory authority or council on whose behalf an expiation notice is given;

"Registrar" means—

- (a) in relation to an expiation notice issued to a person who was under the age of 18 years at the time of the alleged offence—Registrar of the Youth Court;
- (b) in relation to any other expiation notice—Registrar as defined in the *Magistrates Court Act 1991*.

#### **Certain offences may be expiated**

5. (1) If an expiation fee is fixed by or under an Act, regulation or by-law in respect of an offence, an expiation notice may be given under this Act to a person alleged to have committed the offence and the alleged offence may accordingly be expiated in accordance with this Act.

*[Note: The Criminal Injuries Compensation Act 1978 s. 13(5) provides that an offence is not expiated until the levy imposed by that Act is paid.]*

(2) Subsection (1) applies in relation to offences committed before or after the commencement of this Act.

(3) Subject to subsection (4), a power under an Act to impose a penalty for the contravention of a regulation or by-law will be taken to include the power—

- (a) to provide that an alleged offence against the regulation or by-law may be expiated in accordance with this Act; and
- (b) to fix for that purpose an expiation fee not exceeding—
  - (i) if the maximum fine prescribed for the offence is expressed as a divisional fine—a divisional expiation fee of the same division; or
  - (ii) in any other case—
    - (A) \$315; or
    - (B) 25% of the maximum fine prescribed for the offence,
 whichever is the lesser.

(4) An offence against a regulation or by-law that is an offence involving violence is not and cannot be, despite subsection (3) or the provisions of any other Act, an expiable offence.

*[Note: Various other Acts (e.g., the Controlled Substances Act 1984) provide that certain offences may be expiated in accordance with this Act.]*

*Section 28A of the Acts Interpretation Act 1915 sets out a scale of divisional expiation fees for use when an expiation fee is expressed as a divisional fee (i.e., not in dollars).]*

**Expiation notices****6. (1) An expiation notice—**

- (a) may relate to up to 3 alleged offences arising out of the same incident (i.e., if they are committed contemporaneously, or in succession, one following immediately upon another); and
- (b) must be in the prescribed form; and
- (c) must specify that the expiation fee is to be paid within—
  - (i) if the amount of the fee, or the total amount of the fees, does not exceed \$50—30 days of the date of the notice;
  - (ii) in any other case—60 days of the date of the notice; and
- (d) must specify to whom the expiation fee is payable; and
- (e) cannot be given after the expiry of the period of 6 months from the date on which the offence was, or offences were, alleged to have been committed; and
- (f) cannot be given to a person if a prosecution has been commenced against the person for the alleged offence or offences; and
- (g) cannot (except where some other Act provides otherwise) be given to a child; and
- (h) cannot, if the regulations or some other Act so provides in relation to a particular offence, be given to a person under the age of 18 years; and
- (i) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—may be addressed to the owner or driver of the vehicle without naming or otherwise identifying him or her; and
- (j) may be given—
  - (i) personally or by service on an employee or agent of the alleged offender; or
  - (ii) by post addressed to the alleged offender's last known place of business or residence; or
  - (iii) if a vehicle is involved in the commission of the alleged offence or offences and is found unattended—by affixing or placing the notice on that vehicle; and

- (k) must 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 expiation notice relates.

[*Note: Certain other Acts (e.g., the Local Government Act 1934 s. 789D and the Road Traffic Act 1961 s. 79B) require 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.*]

(2) If an expiation notice is served on an employee or agent of the alleged offender, the employee or agent must, as soon as is reasonably practicable after receiving the notice, give the notice to his or her employer or principal.

Maximum penalty: \$50.

(3) An expiation notice may only be given by—

(a) a member of the police force; or

(b) a person who is authorised in writing by—

(i) the Minister responsible for the administration of the Act against which the offence is alleged to have been committed; or

(ii) the statutory authority or council responsible for the enforcement of the provision against which the offence is alleged to have been committed,

to give expiation notices for the alleged offence; or

(c) a person who is authorised to give expiation notices for the alleged offence by or under the Act against which the offence is alleged to have been committed.

(4) If an officer or employee of a council is authorised by or under an Act to exercise powers as an inspector (or other authorised person) for the purposes of the enforcement of a provision of that Act, the officer or employee—

(a) is authorised to give an expiation notice for an alleged offence against that provision; and

(b) in giving such a notice, will be taken to be doing so on behalf of the council.

(5) If an expiation notice is given to an alleged offender, no further expiation notice can be given to that person in respect of any other alleged expiable offence arising out of the same incident, except in the following circumstances:

- if the expiation notice already given to the alleged offender relates to an offence, or offences, against the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959*, a further expiation notice may be given to him or her in respect of an alleged offence against section 74, 75A, 81 or 81A of the *Motor Vehicles Act 1959*.

#### **Payment by credit card or debit card**

7. Any amount payable under an expiation notice may be paid by using a credit card or debit card, if credit card or debit card facilities are available at the place at which the payment is to be made.

**Alleged offender may elect to be prosecuted**

8. (1) An alleged offender may, by notice in the prescribed form given personally or by post to the issuing authority, elect to be prosecuted for the offence or any of the offences to which the expiation notice relates.

(2) An election to be prosecuted for an offence cannot be made after—

- (a) if the alleged offender is granted an order for relief under section 9—the granting of the order;
- (b) in any other case—the making of an enforcement order under section 13 in respect of the offence.

(3) If an election is made under this section, the expiation notice will be taken to have been withdrawn in respect of the offence to which the election relates.

**Options in cases of hardship**

9. (1) A person who has been given an expiation notice may apply to a Registrar for relief under this section.

(2) An application under this section must be in the form approved by the Minister and the information it contains must be verified by statutory declaration.

(3) The Registrar is not obliged to conduct an inquiry on the application, but may require the applicant to provide further information or records.

(4) If the Registrar is satisfied that the applicant or his or her dependants would suffer hardship if the expiation fee under the notice were to be paid in full, the Registrar may make an order permitting the applicant—

- (a) to pay the fee to the Registrar in instalments; or
- (b) to work off the fee by community service.

(5) For the purposes of making an order under this section, the Registrar may aggregate the fees under any number of expiation notices given to the alleged offender, whether by the same issuing authority or not.

(6) The Registrar cannot make an order under this section in respect of an expiation notice—

- (a) unless the levy (or levies) payable under the *Criminal Injuries Compensation Act 1978* and specified in the notice have been paid; or
- (b) if an enforcement order has been made under this Act in respect of the notice.

(7) The Registrar—

- (a) cannot make an order for payment in instalments if the amount of the expiation fee (or the total amount of fees when aggregated) is less than \$50; and
- (b) cannot make an order for community service if the amount of the expiation fee (or the total amount of fees when aggregated) is less than \$150 or more than \$3 000; and

(c) should not make an order for community service if the alleged offender is able to pay the due amount in instalments.

(8) If an order for community service is made under this section—

(a) the period of community service is to be calculated at the rate of 8 hours for each prescribed unit of the amount to which the order relates (ignoring any resulting part of an hour); and

(b) the community service must be performed over a specified period not exceeding 6 months; and

(c) the terms of the order must not be inconsistent with this Act or the regulations, and the community service must be performed in accordance with those terms.

(9) The Registrar must, on making a decision on an application for relief—

(a) give the applicant, personally or by post, written notice of the decision; and

(b) if an order for payment in instalments or community service is made, give written notice of the order to the relevant issuing authority.

(10) A decision of a Registrar made on an application for relief is not subject to appeal.

(11) An order under this section remains in force until discharged or cancelled, despite the fact that the time for commencement of a prosecution for the offence or offences to which the order relates has expired.

(12) If a person contravenes or fails to comply with an order under this section, a Registrar may, by notice in writing given personally or by post to that person, cancel the order.

(13) If an order for payment of an amount in instalments is cancelled, the whole of the balance of the amount becomes liable to enforcement action under this Act.

(14) The Registrar must give written notice of the cancellation to the relevant issuing authority.

(15) If a person complies with an order for payment in instalments, or pays to a Registrar at any time the amount then outstanding, the order is discharged and the offence, or offences, to which it related will be taken to be expiated.

(16) If a person in respect of whom an order for community service has been made performs all the service required under the order, or pays to a Registrar at any time the amount then outstanding, the order is discharged and the offence, or offences, to which it related will be taken to be expiated.

*[Note: The Criminal Injuries Compensation Act 1978 s. 13(5) provides that an offence is not expiated until the levy imposed by that Act is paid.]*

(17) A Registrar must give written notice of the discharge of an order under this section to the relevant issuing authority.

(18) In this section—

"prescribed unit" means—

- (a) \$150; or
- (b) if some other amount is prescribed, that amount.

#### **Review of cancellation of order for relief**

10. (1) A decision of the Registrar to cancel an order for relief is not subject to appeal, but the person the subject of the order may apply to the Court for a review of the decision within 30 days of being given notice of the cancellation.

(2) The Court may entertain an application made out of time if it thinks that good reason exists for doing so.

(3) The Court is not obliged to conduct an inquiry on the application, but may require the applicant to provide further information or records.

(4) The Court, after reviewing the decision of the Registrar, may—

- (a) confirm the decision;
- (b) revoke the decision;
- (c) make any ancillary order.

(5) A decision of the Court made on a review is not subject to appeal.

#### **Expiation reminder notices**

11. (1) If, by the end of the expiation period, an alleged offender has neither paid the expiation fee nor been granted relief under this Act, the issuing authority must, before it takes any action under this Act to enforce the expiation notice, send an expiation reminder notice, in the prescribed form, to the alleged offender by post.

*[Note: Certain other Acts and regulations (e.g., the Local Government Act 1934 s. 789D and the Road Traffic Act 1961 s. 79B) require that the expiation reminder notice sent 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.]*

(2) No enforcement action can be taken under this Act in respect of an expiation notice until 14 clear days have elapsed from the date of the reminder notice.

(3) If a reminder notice is given to an alleged offender, the prescribed reminder notice fee will be added to the unpaid expiation fee and, for the purposes of this Act, forms part of that fee.

(4) The prescribed reminder notice fee may consist of two components—

- (a) one being a prescribed amount payable in every case; and
- (b) the other being an amount attributable to costs and expenses of a prescribed class (if any) incurred in relation to the matter.



**Late payment**

12. The issuing authority may accept late payment of an expiation fee (together with the levy under the *Criminal Injuries Compensation Act 1978*) at any time before an enforcement order is made under this Act.

**Enforcement procedures**

13. (1) An expiation notice may be enforced against the alleged offender by the issuing authority by sending to the Court a certificate that contains the prescribed particulars relating to—

- (a) the alleged offender; and
- (b) the offence or offences that remain unexpiated; and
- (c) the amount payable under the notice; and
- (d) compliance by the authority with the requirements of this Act and any other Act.

(2) Subject to subsection (3), a Registrar may make an order against a person for enforcement of an expiation notice if the Registrar—

- (a) has received a certificate under subsection (1); or
- (b) has cancelled an order for payment by instalments or community service under this Act.

(3) The Registrar—

- (a) cannot make an order pursuant to subsection (2)(a) if the time for commencement of a prosecution against the person for the unexpiated offence or offences has expired; but
- (b) may make an order pursuant to subsection (2)(b) despite the fact that the time for commencement of a prosecution against the person for the unexpiated offence or offences has expired, provided that the enforcement order is made—
  - (i) within 30 days of the cancellation; or
  - (ii) if an application for review of the cancellation has been lodged—within 30 days of the application being dismissed or withdrawn.

(4) A Registrar is not required to conduct a hearing for the purposes of making an enforcement order.

(5) The costs of making an enforcement order will be included in the order.

(6) On an enforcement order being made—

- (a) the alleged offender will be taken to have been convicted by the Court on that day of the offence or offences to which the order relates; and
- (b) the order will be taken to be an order of the Court imposing a fine, payable immediately, of an amount equivalent to the unpaid expiation fee and is enforceable under the *Criminal Law (Sentencing) Act 1988* accordingly; and
- (c) the Registrar must cause a copy of the order to be given personally or by post to the alleged offender.

**Enforcement orders are not subject to appeal but may be reviewed**

14. (1) An enforcement order is not subject to appeal, but the person liable under the order may apply to the Court for a review of the order within 30 days of being given notice of the order.

(2) The Court may entertain an application made out of time if it thinks good reason exists for doing so.

(3) An application can only be made on the ground that—

- (a) the expiation notice should not have been given to the applicant in the first instance; or
- (b) the procedural requirements of this Act or any other Act were not complied with; or
- (c) the applicant failed to receive a notice required by this Act or any other Act; or
- (d) the applicant has expiated the offence, or offences, under the notice; or
- (e) the amount shown as due under the order has not taken into account the payment of an instalment or the performance of community service.

(4) The Court, after conducting a review of an enforcement order, may—

- (a) confirm the order;
- (b) vary or revoke the order;
- (c) make any ancillary order.

(5) If the Court revokes an enforcement order on the ground that the applicant failed to receive a particular notice, the applicant will be taken (for the purposes of this Act and any other Act) to have been given that notice on the day on which the order is revoked.

(6) A decision of the Court made on a review of an enforcement order is not subject to appeal by the person liable under the order (but nothing in this section affects the person's right of appeal against the conviction of the offence or offences to which the order relates).

**Effect of expiation**

15. (1) Subject to this Act, if the offence, or offences, to which an expiation notice relates are expiated in accordance with this Act, the alleged offender is not liable to prosecution for that offence or those offences or any other expiable offence arising out of the same incident.

(2) Subject to this Act, if an expiation notice is given in respect of an offence, or offences, arising out of the use of a motor vehicle and that offence, or those offences, are expiated in accordance with this Act, no person is liable to prosecution for that offence, or those offences, or any other expiable offence arising out of the same incident except for an offence that is the subject of another expiation notice.

[Note: • *The Criminal Injuries Compensation Act 1978 s. 13(5) provides that an offence is not expiated until the levy imposed by that Act is paid.*

• *Section 6(5) of this Act provides for the giving of further expiation notices for offences arising out of the same incident in certain circumstances.]*

(3) If—

- (a) an expiation notice relates to more than one offence; and
- (b) the alleged offender expiates one or more of those offences but not all of them,

the alleged offender is liable to prosecution for any offence that is not expiated.

(4) The expiation of an offence under this Act (or an application for relief under this Act)—

- (a) does not constitute an admission of guilt or of any civil liability; and
- (b) will not be regarded as evidence tending to establish guilt or any civil liability; and
- (c) cannot be referred to in any report furnished to a court for the purposes of determining sentence for any offence.

(5) However, if anything seized under an Act in connection with the alleged offence would be liable to forfeiture in the event of a conviction, that thing is, on expiation of the alleged offence under this Act, forfeited to the Crown.

#### **Expiation notice may be withdrawn**

**16.** (1) The issuing authority may withdraw an expiation notice with respect to all or any of the alleged offences to which the notice relates if—

- (a) the authority is of the opinion that the notice should not have been given with respect to the offence, or offences; or
- (b) the authority decides that the alleged offender should be prosecuted for the offence, or offences.

(2) An expiation notice may be withdrawn notwithstanding payment of an expiation fee or an instalment, but in that event the amount paid must be refunded.

(3) An expiation notice cannot be withdrawn for the purposes of prosecuting the alleged offender for an offence if—

- (a) an order for community service has been made and the alleged offender has performed some of the hours of service under the order; or
- (b) the period of 90 days from the date of the notice has expired.

(4) The withdrawal of an expiation notice is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.

(5) If an expiation notice is withdrawn, a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee or an instalment or applied for relief under this Act is not admissible in those proceedings as evidence against the defendant.

#### **Application of payments**

**17.** (1) Unless a contrary intention is indicated in a particular Act and subject to subsection (2), money received by way of expiation fees will be paid into the Consolidated Account.

(2) Subject to subsection (3), a statutory authority or council is entitled to any expiation fee paid under this Act pursuant to an expiation notice, or recovered on enforcement of an expiation notice, that was issued by or on behalf of the authority or council.

(3) If an expiation notice is issued by or on behalf of a statutory authority or council as a result of the reporting of an offence by a member of the police force or other officer of the Crown, half of the amount of any expiation fee paid pursuant to the notice or recovered on enforcement of the notice must be paid into the Consolidated Account.

#### **Giving of certain notices and certificates**

18. Where a written notice is to be given under this Act by a Registrar to an issuing authority, or an enforcement certificate is to be sent by an issuing authority to a Registrar, the notice or certificate may be given or sent in an electronic form that is acceptable to the recipient, provided that a printed copy of the notice or certificate can be produced if required.

#### **Non-derogation**

19. This Act does not derogate from the provisions of any other Act that relate to the expiation of offences.

#### **Regulations**

20. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor