



# EXPIATION OF OFFENCES (DIVISIONAL FEES) AMENDMENT ACT 1992

No. 72 of 1992

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A.D. 1992

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No. 72 of 1992

**An Act to amend the Expiation of Offences Act 1987 and to make related amendments to the Acts Interpretation Act 1915.**

[Assented to 19 November 1992]

The Parliament of South Australia enacts as follows:

## Short title

1. (1) This Act may be cited as the *Expiation of Offences (Divisional Fees) Amendment Act 1992*.

(2) The *Expiation of Offences Act 1987* is referred to in this Act as “the principal Act”.

## Commencement

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

## Substitution of s. 3

3. Section 3 of the principal Act is repealed and the following section is substituted:

### Preliminary

3. (1) 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:

“responsible authority”, in relation to the issue of an expiation notice for an alleged offence, means—

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

or

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

(2) Where an officer or employee of a council is authorized by an Act to exercise powers as an inspector or other authorized officer or person for the enforcement of a provision of that Act, the council will be taken for the purposes of this Act to be responsible for the enforcement of the provision in addition to the Minister or statutory authority (if any) otherwise responsible for the enforcement of the provision.

**Amendment of s. 4—Expiation notice may be issued**

**4. Section 4 of the principal Act is amended—**

(a) by striking out subsection (1) and substituting the following subsections:

(1) Subject to this Act, where at the foot of a provision of an Act or regulation the words “Expiation Fee” appear, those words signify that an alleged offence against or under that provision, or against or under that provision in the indicated circumstances, may be expiated if an expiation notice is given to the alleged offender in accordance with this Act and the appropriate fee (as specified as an expiation fee under that provision) is paid in accordance with the requirements of the notice within 60 days of the date of the notice.

*(Note: Section 28a of the Acts Interpretation Act 1915 sets out a scale of fees for the purposes of this Act.)*

(1a) An expiation notice may relate to a number of alleged offences (not exceeding three) provided that all of the alleged offences arise out of the same incident.;

(b) by striking out from subsection (2) “subsection (1)” and substituting “subsection (1a)”;

(c) by striking out paragraphs (a) and (b) of subsection (3) and substituting the following paragraphs:

(a) must be in a form, based on the model form prescribed by the regulations, approved by the responsible authority;

(b) must specify to whom the expiation fee is payable;

(ba) may not be issued after the commencement of a prosecution for the alleged offence.;

(d) by striking out from paragraph (d) of subsection (3) “offence or offences” and substituting “alleged offence”;

(e) by inserting after “personally” in paragraph (e) (i) of subsection (3) “or by service on an employee or agent of the alleged offender”;

(f) by striking out from paragraph (e) (iii) of subsection (3) “offence or offences” and substituting “alleged offence”;

(g) by inserting after subsection (3) the following subsection:

(3a) Where 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.

Penalty: Division 12 fine.;

(h) by striking out paragraph (b) of subsection (4) and the word “or” appearing immediately before that paragraph and substituting the following paragraphs:

(b) a person who is authorized in writing by the responsible authority to issue expiation notices for the alleged offence;

or

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

and

(i) by inserting after subsection (4) the following subsection:

(5) A power under an Act to prescribe a penalty for the contravention of a regulation will be taken to include the power—

(a) to provide that an alleged offence against or under the regulation may be expiated in accordance with this Act;

and

(b) to prescribe an expiation fee not exceeding a Division 9 fee for that purpose.

#### **Amendment of s. 6—Expiation notice may be withdrawn**

5. Section 6 of the principal Act is amended by striking out paragraph (b) of subsection (6) and substituting the following paragraph:

(b) in any other case—a responsible authority for the issue of the expiation notice, or a person who is authorized in writing by that responsible authority to withdraw expiation notices issued under this Act.

#### **Insertion of s. 6a**

6. The following section is inserted after section 6 of the principal Act:

##### **Late payment**

6a. (1) The responsible authority, or a person authorized in writing by the responsible authority for the purposes of this section, may accept or authorize late payment of an expiation fee—

(a) if proceedings have been commenced in respect of the alleged offence—on payment of the fee and costs and expenses incurred in relation to the prosecution of those proceedings;

(b) in any other case—on payment of the fee and the prescribed late payment fee.

(2) For the purposes of subsection (1), the late payment 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.

(3) Where late payment of an expiation fee is accepted under subsection (1)—

(a) the alleged offender is not liable to prosecution for the alleged offence;

and

(b) any proceedings that have been commenced against him or her for the offence must be discontinued.

**Substitution of s. 7**

7. Section 7 of the principal Act is repealed and the following section is substituted:

**Application of payments**

7. (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 council is entitled to any fee paid under this Act in respect of an expiation notice issued by or on the authority of the council, or by an officer or employee of the council.

(3) If an expiation notice is issued by or on the authority of a council, or by an officer or employee of a 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 must be paid into the Consolidated Account.

**Insertion of s. 9**

8. The following section is inserted after section 8 of the principal Act:

**Regulations**

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

**Repeal of schedule**

9. The schedule to the principal Act is repealed.

**Amendment of Acts Interpretation Act**

10. The *Acts Interpretation Act 1915* is amended in the manner set out in the schedule of this Act.

## THE SCHEDULE

Amendments to the *Acts Interpretation Act 1915*

Provision Amended	How Amended	
Section 28a	(a) After the item: Division 6 fine	a fine not exceeding \$4 000
	insert: Division 6 fee	an expiation fee of \$300 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(b) After the item: Division 7 fine	a fine not exceeding \$2 000
	insert: Division 7 fee	an expiation fee of \$200 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(c) After the item: Division 8 fine	a fine not exceeding \$1 000
	insert: Division 8 fee	an expiation fee of \$150 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(d) After the item: Division 9 fine	a fine not exceeding \$500
	insert: Division 9 fee	an expiation fee of \$100 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(e) After the item: Division 10 fine	a fine not exceeding \$200
	insert: Division 10 fee	an expiation fee of \$75 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(f) After the item: Division 11 fine	a fine not exceeding \$100
	insert: Division 11 fee	an expiation fee of \$50 may be imposed under the <i>Expiation of Offences Act 1987</i>
	(g) After the item: Division 12 fine	a fine not exceeding \$50
	insert: Division 12 fee	an expiation fee of \$25 may be imposed under the <i>Expiation of Offences Act 1987</i>

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

ROMA MITCHELL Governor