

South Australia

# Expiation of Offences Regulations 2011

under the *Expiation of Offences Act 1996*

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## Legislative history

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### 1—Short title

These regulations may be cited as the *Expiation of Offences Regulations 2011*.

### 3—Interpretation

In these regulations—

*Act* means the *Expiation of Offences Act 1996*;

*levy* means the levy payable under the *Victims of Crime Act 2001*;

*relevant motor vehicle register* means—

- (a) in the case of a vehicle registered in this State—the register kept under the *Motor Vehicles Act 1959*; or

- (b) in the case of a vehicle registered in another State or a Territory of the Commonwealth—the corresponding register in that State or Territory.

#### **4—Prescribed forms**

Schedule 1 prescribes forms for the purposes of the Act.

#### **4A—Fee to enter arrangement**

- (1) For the purposes of section 9(1) of the Act, the fee to enter into an arrangement is—
  - (a) in relation to an arrangement entered into on or before 30 June 2014—\$0; or
  - (b) in relation to an arrangement entered into after 30 June 2014—\$18.
- (2) A person who satisfies the Fines Enforcement and Recovery Officer that he or she is suffering financial hardship such that he or she cannot pay the fee to enter into an arrangement under section 9(1) of the Act is, however, exempt from the fee.

#### **4B—Community service requirements in arrangements**

For the purposes of section 9(4)(f) of the Act, the following provisions apply in relation to community service under an arrangement entered into between the Fines Enforcement and Recovery Officer and an alleged offender:

- (a) the number of hours of community service to be performed by the alleged offender is to be calculated at the rate of 7.5 hours for each \$100 to be converted to community service;
- (b) the minimum number of hours of community service that may be required under an arrangement is 7.5 hours;
- (c) the maximum number of hours of community service that may be required under an arrangement is 500 hours;
- (d) the arrangement must not specify a number of hours of community service to be performed by an alleged offender who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours currently being performed, or to be performed, would exceed 500;
- (e) the arrangement must specify a period, not exceeding 18 months, within which the community service is to be performed;
- (f) the alleged offender must report to a specified office of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* within 2 working days after the arrangement is entered into;
- (g) on reporting under paragraph (f), the alleged offender must be assigned to a community corrections officer by whom the alleged offender will be supervised while performing community service;
- (h) the alleged offender must perform community service for not less than 4 hours each week and on such day, or days, as the community corrections officer to whom the alleged offender is assigned may direct;

- (i) in performing community service the alleged offender must carry out certain projects or tasks as the assigned community corrections officer reasonably requires;
- (j) the alleged offender may not, except in circumstances approved by the Minister for Correctional Services, be required to perform community service for a continuous period exceeding 7.5 hours;
- (k) if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;
- (l) the alleged offender may not be required to perform community service at a time that would interfere with his or her remunerated employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, remunerated employment, or that would cause unreasonable disruption of the alleged offender's commitments in caring for his or her dependants;
- (m) the alleged offender may not be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises;
- (n) the attendance of the alleged offender at any educational or recreational course of instruction approved by the Minister for Correctional Services will be taken to be performance of community service;
- (o) the alleged offender will not be remunerated for the performance of any community service pursuant to the order;
- (p) the alleged offender must obey the lawful directions of the community corrections officer to whom he or she is assigned.

#### **4C—Arrangements with prescribed alleged offenders**

For the purposes of section 9(6)(c) of the Act, alleged offenders who have previously failed to comply with an arrangement under section 9 of the Act resulting in the termination of the arrangement under section 9(10) of the Act are prescribed.

#### **4D—Authority to obtain information**

For the purposes of section 9(6)(e) of the Act, an irrevocable authority to obtain financial and contact information about the alleged offender under that section must have effect (and may only be used by the Fines Enforcement and Recovery Officer), during the period that an amount due remains outstanding.

#### **4E—Exception to expiation on arrangement or enforcement**

An alleged offender will not be taken to have expiated an offence or offences in accordance with sections 9(14) and 13(3) of the Act for the purposes of the following laws:

- (a) the *Criminal Law (Sentencing) Act 1988*;
- (b) the *Victims of Crime Act 2001*;
- (c) the *Young Offenders Act 1993*.

## 5—Reminder notices

For the purposes of section 11(3) of the Act, the reminder notice fee is—

- (a) \$49; plus
- (b) if a vehicle was involved in the alleged offence to which the expiation notice relates and a fee incurred for searching the relevant motor vehicle register—the fee for 1 such search.

## 6—Expiation enforcement warning notices

For the purposes of section 11A of the Act, the warning notice fee is—

- (a) \$49; plus
- (b) if—
  - (i) a vehicle was involved in the alleged offence to which the expiation notice relates and a fee incurred for searching the relevant motor vehicle register; and
  - (ii) an expiation reminder notice has not been issued to the alleged offender,the fee for 1 such search.

## 7—Notices relating to more than 1 offence

- (1) If an expiation reminder notice relates to more than 1 offence, the issuing authority must not accept payment unless it comprises the reminder notice fee (except if it is waived) plus the expiation fees and levies (if any) for all offences except any for which the alleged offender elects to be prosecuted.
- (2) If an expiation enforcement warning notice relates to more than 1 offence, the issuing authority must not accept payment unless it comprises the warning notice fee (except if it is waived) plus, if a reminder notice fee is payable, the reminder notice fee (except if it is waived) plus the expiation fees and levies (if any) for all offences except any for which the alleged offender elects to be prosecuted.
- (3) However, failure to comply with subregulation (1) or (2) does not affect the authority's right under the Act to enforce the notice in relation to any offence remaining unexpiated.

## 8—Enforcement determination fee

- (1) For the purposes of section 13(1)(b) of the Act, the fee payable by an issuing authority for the enforcement of an expiation notice is—
  - (a) in relation to an expiation notice sent to the Fines Enforcement and Recovery Officer on or before 30 June 2014—\$0; or
  - (b) in relation to an expiation notice sent to the Fines Enforcement and Recovery Officer after 30 June 2014—\$18.
- (2) A public sector agency (within the meaning of the *Public Sector Act 2009*) is, however, exempt from the fee for the enforcement of an expiation notice under section 13(1)(b) of the Act.

## **9—Fee for application for revocation of enforcement determination**

- (1) For the purposes of section 13(5) of the Act, the fee for an application to the Fines Enforcement and Recovery Officer to revoke an enforcement determination is \$22.
- (2) A public sector agency (within the meaning of the *Public Sector Act 2009*) is, however, exempt from the fee to revoke an enforcement determination referred to in subregulation (1).

## **10—Notice of making, variation or revocation of enforcement determination**

- (1) For the purposes of section 13(11) of the Act, the following particulars must be included in a notice given to an alleged offender the subject of an enforcement determination:
  - (a) whether the enforcement determination is being made, varied or revoked and, if the determination is being made or varied, the terms of the determination or variation;
  - (b) the date on which the determination, variation or revocation takes effect;
  - (c) a list of all amounts owing in relation to the determination;
  - (d) details of each alleged offence to which the determination relates including—
    - (i) the date of each such offence; and
    - (ii) the issuing authority in relation to each such offence; and
    - (iii) a brief description of the particulars of each such offence;
  - (e) the reason for the variation or revocation of the determination.
- (2) For the purposes of section 13(11) of the Act, the following particulars must be included in a notice given to an issuing authority:
  - (a) the name, address and any other particulars necessary to identify the alleged offender;
  - (b) details of each alleged offence under the determination for which the issuing authority issued an expiation notice to the alleged offender;
  - (c) a list of all amounts owing under the determination in relation to expiation notices issued by the issuing authority;
  - (d) whether the enforcement determination is being made, varied or revoked and, if the determination is being made or varied, the terms of the determination or variation;
  - (e) the date on which the determination, variation or revocation takes effect;
  - (f) the reason for the variation or revocation of the determination.

## **11—Amounts unpaid or unrecovered for more than certain period**

- (1) For the purposes of section 14B(1) of the Act, the prescribed amount is \$255.
- (2) Section 14B(1) of the Act does not apply in circumstances where an enforcement determination has not been made in relation to the relevant expiation fee.

## 12—Disclosure of information to prescribed interstate authority

For the purposes of section 18D of the Act—

- (a) the following particulars are prescribed:
  - (i) name;
  - (ii) date of birth;
  - (iii) current residential address;
  - (iv) previous residential addresses;
  - (v) contact details, including contact telephone number and email address;
  - (vi) the name and address of the alleged offender's next of kin;
  - (vii) the employment details, including the name of an employer and the address of the place of employment;
  - (viii) the details of the pecuniary sum owed including a breakdown of the amounts owed specifying relevant dates and the offences to which the pecuniary sum relates;
  - (ix) the details of the pecuniary sum owed including a breakdown of the amounts owed specifying relevant dates and the offences to which the pecuniary sum relates; and
- (b) any person or body in another State or Territory of the Commonwealth with responsibility, under a law of that jurisdiction, for the collection of amounts due in relation to expiation notices (however described) issued in the jurisdiction or fines imposed by a court of the jurisdiction, is a prescribed interstate authority.

## 13—Transitional provisions

- (1) Section 14 of the Act as in force immediately before the commencement of Part 6 of the *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* continues to apply in relation to an application made under that section before the commencement day.
- (2) Subject to subregulation (1), the Act (as in force after the commencement of this regulation) applies in relation to an enforcement order made before the commencement day under section 13 of the Act as if—
  - (a) the order were an enforcement determination made by the Fines Enforcement and Recovery Officer; and
  - (b) in a case where the alleged offender has been given notice of the enforcement order—notice of the determination was given to the alleged offender under section 13 of the Act (as in force after the commencement day) on the day on which notice of the order was so given.
- (3) In this regulation—  
**commencement day** means 3 February 2014.

## Schedule 1—Forms

### 1—Expiation notice

- (1) The prescribed form for an expiation notice is a form that complies with the following requirements:
- (a) the form must include a heading identifying it as an expiation notice under the *Expiation of Offences Act 1996*;
  - (b) the form must specify—
    - (i) the expiation notice number; and
    - (ii) the date of issue of the expiation notice; and
    - (iii) the name of the issuing officer or a code enabling the issuing authority to identify the issuing officer;
  - (c) the form must contain an allegation that a person committed an offence or offences and specify—
    - (i) —
      - (A) if the notice is to be addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number;
      - (B) in any other case—the name and address of the person; and
    - (ii) the general nature of the alleged offence or offences; and
    - (iii) the time or times and date or dates of the alleged offence or offences (but if the time or date is the same as that of the notice, the time and date need not be separately identified); and
    - (iv) the place or places at which the alleged offence or offences were committed;
  - (d) the form must inform the person that the offence or offences may be expiated and specify—
    - (i) the amount of the expiation fee for each offence; and
    - (ii) if a levy is payable, the amount of the levy for each offence; and
    - (iii) the total amount payable; and
    - (iv) to whom the amount must be paid; and
    - (v) the date by which the amount must be paid;
  - (e) the form must include a statement of the choices available to the alleged offender, for example—

#### **YOUR CHOICES:**

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for the offence(s) not disputed (including levies).
- Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.
- If you think the offence(s) (or any of them) was trifling—apply to the [issuing authority] for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

*If applicable:*

- If the offence is a parking or traffic offence and you were not driving at the time of the offence you may be able to provide a statutory declaration in accordance with the *Road Traffic Act 1961* or other relevant legislation.
- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

**If no choice is made for an offence within the expiation period 1 reminder notice will be sent and a reminder fee will apply. After that, the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.**

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

**Note—**

Under section 6(1)(k) of the Act, the expiation notice is required to 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 notice relates—see clause 4.

Certain Acts require—

- (a) 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; and
- (b) that an expiation notice given to a person named as the alleged driver in a statutory declaration must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver (excluding the address of the person who provided the statutory declaration).

## **2—Expiation reminder notice**

- (1) The prescribed form for an expiation reminder notice is a form that complies with the following requirements:
- (a) the form must include a heading identifying it as an expiation reminder notice under the *Expiation of Offences Act 1996*;
  - (b) the form must specify—



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- (i) the expiation notice number; and
- (ii) the date of issue of the expiation notice; and
- (iii) the date of the reminder notice;
- (c) the form must contain an allegation that a person committed an offence or offences and specify—
- (i) the name and address of the person; and
- (ii) if the expiation notice was addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number; and
- (iii) the general nature of the alleged offence or offences; and
- (iv) the time or times and date or dates of the alleged offence or offences; and
- (v) the place or places at which the alleged offence or offences were committed;
- (d) the form must inform the person that the offence or offences may be expiated and specify—
- (i) the amount of the expiation fee for each offence; and
- (ii) if a levy is payable, the amount of the levy for each offence; and
- (iii) the amount of the reminder notice fee; and
- (iv) the total amount payable; and
- (v) to whom the amount must be paid; and
- (vi) the date by which the amount must be paid;
- (e) the form must include a statement of the choices available to the alleged offender, for example—

**YOUR CHOICES:**

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for the offence(s) not disputed (including levies and reminder notice fees).
- Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.
- If you think the offence(s) (or any of them) was trifling—apply to the *[issuing authority]* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

*If applicable:*

- If the offence is a parking or traffic offence and you were not driving at the time of the offence you may be able to provide a statutory declaration in accordance with the *Road Traffic Act 1961* or other relevant legislation.

- (f) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

**If no choice is made the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.**

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

**Note—**

Under section 11(1a)(b) of the Act, the expiation reminder notice is required to be accompanied by—

- (a) 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 notice relates—see clause 4; and
- (b) if the notice is issued to the owner of a motor vehicle involved in the alleged offence and the expiation reminder notice is required to be accompanied by a notice relating to the owner sending the issuing authority a statutory declaration—a form suitable for use as a statutory declaration.

### **3—Expiation enforcement warning notice**

- (1) The prescribed form for an expiation enforcement warning notice is a form that complies with the following requirements:
- (a) the form must include a heading identifying it as an expiation enforcement warning notice under the *Expiation of Offences Act 1996*;
  - (b) the form must specify—
    - (i) the expiation notice number; and
    - (ii) the date of issue of the expiation notice; and
    - (iii) the date of the expiation enforcement warning notice;
  - (c) the form must contain an allegation that a person committed an offence or offences and specify—
    - (i) the name and address of the person; and
    - (ii) if the expiation notice was addressed to the person as the owner or driver of a vehicle without naming or otherwise identifying the person—the vehicle registration number; and
    - (iii) the general nature of the alleged offence or offences; and
    - (iv) the time or times and date or dates of the alleged offence or offences; and

- (v) the place or places at which the alleged offence or offences were committed;
- (d) the form must inform the person that the offence or offences may be expiated and specify—
- (i) the amount of the expiation fee for each offence; and
  - (ii) if a levy is payable, the amount of the levy for each offence; and
  - (iii) if a reminder notice has been issued, the amount of the reminder notice fee; and
  - (iv) the amount of the warning notice fee; and
  - (v) the total amount payable; and
  - (vi) to whom the amount must be paid; and
  - (vii) the date by which the amount must be paid;

- (e) the form must include a statement that the statutory declaration or other document is not accepted by the authority as a defence to the alleged offence or offences, for example—

A statutory declaration or other document has been received from you in accordance with a notice that accompanied the expiation notice or expiation reminder notice for the specified offence(s).

**However, the declaration or other document is not accepted as a defence to the alleged offence(s).**

- (f) the form must include a statement of the choices available to the alleged offender, for example—

**YOUR CHOICES:**

You may on or before the due date for payment—

- Dispute the allegation that you committed the offence(s) (or any of them) and elect to be prosecuted for that offence (or offences).

If you elect to be prosecuted, you may get a summons. The summons will set out when and where to attend court.

- Pay the total amount due for all offence(s) not disputed (including levies, warning notice fees and reminder notice fees).
- Enter into a payment arrangement with the Fines Enforcement and Recovery Officer which may include payment of the amount of the fee(s) in instalments, an extension of time in which to pay or other options by agreement with the Fines Enforcement and Recovery Officer. A fee will apply to enter into an arrangement.
- If you think the offence(s) (or any of them) was trifling—apply to the *[issuing authority]* for a review of the expiation notice (for special meaning of trifling see section 4(2) *Expiation of Offences Act 1996*).

- (g) the form must include a statement of the outcome if no choice is made by the alleged offender, for example—

**If no choice is made for an offence within the expiation period the outstanding amount may be referred to the Fines Enforcement and Recovery Officer who may take enforcement action against you which may involve entering into a payment arrangement or property that you own (including motor vehicles and land) being seized and sold. An additional amount will become payable if enforcement action is taken.**

- (2) The notice may include payment details, a payment slip for use if the alleged offender wishes to expiate the offence, instructions for completion, a statement of the reasons for non-acceptance of the statutory declaration or other document, contact details for the obtaining of further information, or other information considered relevant by the issuing authority (and the information may be interspersed with the statements required to be included in the notice).

**Note—**

Under section 11A(2)(c) of the Act, the expiation enforcement warning notice is required to 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 notice relates—see clause 4.

#### **4—Election to be prosecuted**

- (1) The prescribed form for a notice by which an alleged offender may elect to be prosecuted for the offence or any of the offences to which an expiation notice relates is a form that provides for:
- (a) the inclusion of—
    - (i) the name and address of the alleged offender; and
    - (ii) the number of the expiation notice; and
  - (b) a means of identifying the offence or offences for which the alleged offender elects to be prosecuted; and
  - (c) the signing and dating of the notice by the alleged offender.
- (2) The notice—
- (a) may be combined with a payment slip for use if the person wishes to expiate the offence; and
  - (b) may include an invitation to provide reasons for disputing the offence, instructions for completion, or other information considered relevant by the issuing authority.
- (3) For the purposes of section 8 of the Act, the prescribed form is a completed form of the kind referred to in subclause (1).

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- 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](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Expiation of Offences Regulations 2011* revoked the following:

*Expiation of Offences Regulations 1996*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2011	209	<i>Gazette 25.8.2011 p3818</i>	1.9.2011: r 2
2012	90	<i>Gazette 31.5.2012 p2378</i>	1.7.2012: r 2
2013	143	<i>Gazette 6.6.2013 p2365</i>	1.7.2013: r 2
2014	29	<i>Gazette 30.1.2014 p454</i>	3.2.2014: r 2
<b>2014</b>	<b>57</b>	<b><i>Gazette 13.2.2014 p952</i></b>	<b>13.2.2014: r 2</b>
2014	120	<i>Gazette 19.6.2014 p2615</i>	1.7.2014: r 2
2014	156	<i>Gazette 19.6.2014 p2704</i>	1.7.2014: r 2

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2012</i>
rr 4A—4E	inserted by 29/2014 r 4	3.2.2014
r 5	varied by 90/2012 r 4	1.7.2012
	varied by 143/2013 r 4	1.7.2013
r 6	varied by 90/2012 r 5	1.7.2012
	varied by 143/2013 r 5	1.7.2013
r 7		
<i>r 7(4)—(6)</i>	<i>deleted by 29/2014 r 5</i>	<i>3.2.2014</i>

## Expiation of Offences Regulations 2011—13.2.2014 to 30.6.2014

### Legislative history

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r 8	substituted by 29/2014 r 6	3.2.2014
rr 9—12	inserted by 29/2014 r 6	3.2.2014
r 13		
r 13(1)	r 13 inserted by 29/2014 r 6	3.2.2014
	<b>r 13 varied and redesignated as r 13(1) by 57/2014 r 4(1), (2)</b>	<b>13.2.2014</b>
<b>r 13(2) and (3)</b>	<b>inserted by 57/2014 r 4(2)</b>	<b>13.2.2014</b>
Sch 1		
cl 1		
cl 1(1)	varied by 29/2014 r 7(1)	3.2.2014
cl 2		
cl 2(1)	varied by 29/2014 r 7(2)	3.2.2014
cl 3		
cl 3(1)	varied by 29/2014 r 7(3)	3.2.2014
Sch 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2012</i>

## Historical versions

1.7.2012

1.7.2013

3.2.2014