

South Australia

Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007

An Act to provide certain powers to seize and deal with motor vehicles in connection with certain offences and alleged offences; and for other purposes.

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3 Transitional provision

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007*.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

clamp, in relation to a motor vehicle, means immobilise the motor vehicle by means of wheel clamps (and **clamped** has a corresponding meaning);

Commissioner means the Commissioner of Police;

credit provider means—

- (a) a credit provider within the meaning of the *National Credit Code* in Schedule 1 to the *National Consumer Credit Protection Act 2009* of the Commonwealth; or
- (b) a person who, in the course of business, hires out goods under leasing agreements or hires out or agrees to sell goods under hire-purchase agreements;

designated liquor offence means an offence against section 21OB(1) or 21OC(1) of the *Summary Offences Act 1953*;

forfeiture offence means an indictable offence of a kind prescribed by regulation for the purposes of this definition or a designated liquor offence;

motor vehicle means a vehicle built to be propelled by a motor that forms part of the vehicle;

prescribed offence means a forfeiture offence or an offence of a kind prescribed by regulation for the purposes of this definition;

public place includes—

- (a) a place to which free access is permitted to the public, with the express or tacit consent of the owner or occupier of that place; and
- (b) a place to which the public are admitted on payment of money, the test of admittance being the payment of money only; and

- (c) a road, street, footway, court, alley or thoroughfare which the public are allowed to use, notwithstanding that that road, street, footway, court, alley or thoroughfare is on private property;

registered owner of a motor vehicle means a person recorded in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth as an owner of the motor vehicle;

relevant authority means—

- (a) in relation to the clamping or impounding of a motor vehicle under Part 2—a police officer or person authorised by the Commissioner to exercise the powers of a relevant authority; or
 - (b) in relation to the impounding or forfeiture of a motor vehicle in accordance with an order under Part 3—the Sheriff or a person authorised by the Sheriff to exercise the powers of a relevant authority.
- (2) For the purposes of this Act, proceedings relating to an offence are **finalised** if—
- (a) the charge of the offence is withdrawn or proceedings for the offence are otherwise discontinued; or
 - (b) a court has determined the charge.

4—Powers under Act in addition to other penalties

- (1) A power exercisable under this Act is exercisable in addition to any other penalty that may be imposed on a person in relation to a prescribed offence.
- (2) However, a court must, in imposing another penalty on a person in relation to a prescribed offence, have regard to any exercise of powers under this Act.

Part 2—Clamping and impounding of vehicles

4A—Interpretation

In this Part, unless the contrary intention appears—

business day means any day except Saturday, Sunday or a public holiday;

clamping or impounding fees means the fees prescribed in relation to the clamping or impounding of a motor vehicle under this Part (which, for the avoidance of doubt, may include fees for the storage of a motor vehicle beyond the clamping or impounding period for the motor vehicle);

clamping or impounding period, in relation to a motor vehicle, means the period for which the motor vehicle is liable to remain clamped or impounded under this Part;

ordinary business hours means the hours between 9 am and 5 pm on any day other than a Saturday, Sunday or public holiday;

person entitled to custody of a motor vehicle means—

- (a) an owner of the motor vehicle; or
- (b) a person authorised by an owner of the motor vehicle to take custody of the motor vehicle; or
- (c) a person legally entitled to possession of the motor vehicle.

5—Power to clamp or impound vehicle before proceedings finalised

- (1) If a person—
 - (a) is to be, or has been, reported for a prescribed offence and has been advised of that fact; or
 - (b) has been charged with, or arrested in relation to, a prescribed offence,a relevant authority may clamp or impound either—
 - (c) a motor vehicle allegedly used by the person in the commission of the offence; or
 - (d) any motor vehicle of which the person is a registered owner.
- (2) However, subsection (1) does not apply if the person is to be, or has been, given an expiation notice in respect of the prescribed offence (unless that notice is withdrawn or the person elects to be prosecuted in accordance with the *Expiation of Offences Act 1996*).
- (3) A power to clamp or impound a motor vehicle under this section may be exercised at any time before proceedings for the relevant prescribed offence have been finalised.
- (4) A relevant authority may, for the purpose of exercising a power under this section in relation to a motor vehicle, seize the motor vehicle and deal with it in accordance with this Act.
- (5) Except as provided in section 16(3), a motor vehicle must not be clamped on a public road or other area of a kind prescribed by regulation.
- (6) The Commissioner must ensure that reasonable attempts are made to contact all current registered owners of a motor vehicle that is, or is to be, subject to an exercise of powers under this section (or, if there are no current registered owners of the motor vehicle, to contact the last registered owners) and—
 - (a) advise the owners of the action taken, or proposed to be taken, under this section; and
 - (ab) advise the owners that an application may be able to be made to the Commissioner under section 8 for a determination bringing the clamping or impounding period to an end; and
 - (b) provide any information an owner requires in relation to removal of the clamps or release of the motor vehicle at the end of the clamping or impounding period,(and such attempts must be made no later than 4 days after the motor vehicle is clamped or impounded).

6—Period of clamping or impoundment

Subject to this Part or to an order under section 21, a motor vehicle that has been clamped or impounded under this Part is liable to remain clamped or impounded for a period of 28 days, commencing at the start of the day on which the motor vehicle is so clamped or impounded.

7—Extension of clamping period

- (1) If a motor vehicle is, or is to be, clamped under this Part, the Commissioner may apply to the Magistrates Court for an order extending the period for which the motor vehicle is liable to remain clamped.
- (2) On the making of an application under this section, the Magistrates Court may—
 - (a) order that, despite section 6, the motor vehicle is liable to remain clamped for a period specified in the order (which must be more than 28 days but must not exceed 90 days); and
 - (b) make any consequential or ancillary order that it thinks fit.
- (3) Notice of an application for an order under this section relating to a motor vehicle must be given to—
 - (a) each registered owner of the motor vehicle; and
 - (b) each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the motor vehicle is collateral; and
 - (c) if the Commissioner is aware that any other person claims ownership of the motor vehicle or is likely to suffer financial or physical hardship as a result of the making of an order under this section—that person.
- (4) The Court—
 - (a) must, if a person given notice of the application under subsection (3) so requests, hear representations from the person in relation to the application; and
 - (b) may, at the request of any other person who is likely to be affected by the making of the order, hear representations from that person in relation to the application.
- (5) In determining whether to make an order in relation to a motor vehicle under this section, the Court must have regard to the following matters:
 - (a) whether the person whose alleged offending forms the basis for the exercise of powers under this Part (the ***alleged offender***) has previously been found guilty of, or expiated, any prescribed offences;
 - (b) the seriousness of the allegations against the alleged offender;
 - (c) the likely effect of extending the period of clamping on the alleged offender's behaviour;
 - (d) whether the motor vehicle is owned by the alleged offender;
 - (e) if the motor vehicle is used by persons other than the alleged offender—the extent to which any extension of the period of clamping would affect the alleged offender as opposed to the other users of the motor vehicle;
 - (f) whether there is evidence that any person would suffer financial or physical hardship as a result of the making of the order;
 - (g) any other matters the Court thinks fit.

8—Early determination of clamping or impounding period

- (2) If, in relation to a motor vehicle clamped or impounded under this Part, the Commissioner is satisfied that—
- (a) in the case of a motor vehicle referred to in section 5(1)(c)—the motor vehicle was, at the time of the offence, stolen or otherwise unlawfully in the possession of the person or was being used by the person in circumstances prescribed by regulation; or
 - (b) in any case—grounds did not exist under section 5 to clamp or impound the motor vehicle,

the Commissioner must determine that the clamping or impounding period will be taken to have ended.

- (2a) If, in relation to a motor vehicle clamped or impounded under this Part, the Commissioner is satisfied that—
- (a) the offence occurred without the knowledge or consent of any person who was an owner of the motor vehicle at the time of the offence; or
 - (b) continued clamping or impounding of the motor vehicle would cause severe financial or physical hardship to a person other than the alleged offender or a person who was knowingly involved in, or who aided or abetted, the commission of the offence; or
 - (c) other grounds exist that warrant bringing the clamping or impounding period to an end,

the Commissioner may determine that the clamping or impounding period will be taken to have ended.

- (2b) The Commissioner may make a determination under subsection (2) or (2a) on the Commissioner's own initiative or on application and, if an application for a determination is made, the Commissioner must determine the application as soon as is reasonably practicable.
- (2c) However, an application may not be made under subsection (2a) by or on behalf of the alleged offender.
- (2d) If the Commissioner has not determined an application made under this section within 8 days after it is received, the Commissioner is to be taken to have refused the application.

9—Removal of clamps or release of impounded vehicle and fees

- (1) When the clamping or impounding period for a motor vehicle ends—
- (a) a person entitled to custody of the motor vehicle must, after the end of the period and during ordinary business hours, apply for removal of the clamps or release of the motor vehicle; and
 - (b) on the making of such an application and subject to this section, the relevant authority must release the motor vehicle, as soon as is reasonably practicable, into the custody of that person.

- (2) The clamping or impounding fees applying in relation to a motor vehicle are payable to the Commissioner and, unless the Commissioner determines that 1 or more of the following circumstances apply, must be paid before the motor vehicle is released under subsection (1):
 - (a) grounds did not exist under section 5 to clamp or impound the motor vehicle;
 - (b) the motor vehicle was, at the time of the offence in respect of which the motor vehicle was clamped or impounded, stolen or otherwise unlawfully in the possession of the person or was being used by the person in circumstances prescribed by regulation under section 8(2)(a);
 - (c) the offence in respect of which the motor vehicle was clamped or impounded, occurred without the knowledge or consent of any person who was an owner of the motor vehicle at the time of the offence;
 - (d) it is appropriate in the circumstances of the particular case to release the motor vehicle without payment of the clamping or impounding fees at the time of release because—
 - (i) the imposition of the fee or the continued clamping or impounding of the motor vehicle would cause severe financial hardship to a person other than the alleged offender or a person who was knowingly involved in, or who aided or abetted, the commission of the offence; or
 - (ii) other grounds exist that warrant the release of the motor vehicle without payment of the fees.
- (3) The Commissioner may make a determination under subsection (2) on the Commissioner's own initiative or on application and, if an application for a determination is made, the Commissioner must make a decision on the application as soon as is reasonably practicable.
- (4) If the Commissioner has not made a decision on an application for a determination under subsection (2) within 8 days after it is received, the Commissioner is to be taken to have refused the application.
- (5) A person who has paid clamping or impounding fees for a motor vehicle clamped or impounded under this Part in relation to a prescribed offence is, on application by the person, entitled to a refund of the amount paid if—
 - (a) a court has found the alleged offender not guilty of the prescribed offence (and the alleged offender has not been found guilty of another prescribed offence arising out of the same course of conduct); or
 - (b) the charge of the prescribed offence has been withdrawn (and no charge of another prescribed offence arising out of the same course of conduct has been laid); or
 - (c) proceedings for the prescribed offence have been otherwise discontinued (and no other criminal proceedings for a prescribed offence arising out of the same course of conduct have been commenced).

- (6) If a court finds a person guilty of a prescribed offence in respect of which a motor vehicle has been clamped or impounded under this Part, or guilty of another prescribed offence arising out of the same course of conduct, the person is, on being found guilty—
- (a) liable to pay to the Commissioner all outstanding clamping or impounding fees payable in relation to the clamping or impounding of the motor vehicle (including where the motor vehicle has been released without payment of fees under subsection (2)) and those fees are recoverable by the Commissioner as a debt; and
 - (b) liable to pay to any other person the amount that the other person has paid to the Commissioner in clamping or impounding fees in relation to the clamping or impounding of the motor vehicle and that amount is recoverable by the other person from the offender as a debt.
- (7) Despite any other provision of this section, no clamping or impounding fees are payable in respect of a motor vehicle impounded under this Part if, on application by an owner of the vehicle made to the Commissioner, a relevant authority causes the motor vehicle to be destroyed.
- (8) An application under subsection (7) in respect of a motor vehicle must—
- (a) be made within 7 business days of the impounding of the motor vehicle; and
 - (b) be in a manner and form determined by the Commissioner; and
 - (c) be accompanied by the prescribed fee.
- (9) The Commissioner must not approve an application under subsection (7) unless—
- (a) a registered owner of the motor vehicle who is not an applicant; and
 - (b) any person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the motor vehicle is collateral,
- has each agreed to the destruction of the motor vehicle.
- (10) On approval of an application under subsection (7), a relevant authority must, as soon as reasonably practicable—
- (a) surrender the number plates issued for the motor vehicle to the Registrar of Motor Vehicles; and
 - (b) cause the motor vehicle to be destroyed,
- and, despite any other Act or law, any interests in the motor vehicle existing prior to the destruction are, on its destruction, extinguished.
- (11) Nothing in this section—
- (a) prevents the relevant authority from removing clamps from a motor vehicle or releasing a motor vehicle before the end of the clamping or impounding period for administrative reasons; or
 - (b) obliges the relevant authority to remove clamps from a motor vehicle or release a motor vehicle outside of ordinary business hours; or

- (c) obliges the relevant authority to remove clamps from a motor vehicle or release a motor vehicle into the custody of a person if the relevant authority is not satisfied that the person who applied for removal or release is entitled to custody of the motor vehicle.

Part 3—Court orders for impounding or forfeiture

10—Interpretation

For the purposes of an application for an order under this Part, a person will be taken to have been found guilty of, or to have expiated, a prescribed offence if the person has been found guilty of, or has expiated, an offence that is, at the date of the application, a prescribed offence.

11—Application of Part

This Part applies to a conviction for a prescribed offence if—

- (a) the offence was committed after the commencement of this Part; and
- (b) either—
 - (i) the offence is a forfeiture offence; or
 - (ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and
- (c) either—
 - (i) a motor vehicle was used by the convicted person in the commission of the offence and that motor vehicle was not, at the time of the offence, stolen or otherwise unlawfully in the possession of the person or being used by the person in circumstances (if any) prescribed by regulation; or
 - (ii) the convicted person is a registered owner of a motor vehicle.

12—Court order for impounding or forfeiture on conviction of prescribed offence

- (1) Subject to section 13, if this Part applies to a conviction for a prescribed offence, the court that records the conviction must, on the application of the prosecution—
 - (a) order that the motor vehicle specified in the application is forfeited to the Crown if—
 - (i) the offence is a forfeiture offence; or
 - (ii) the convicted person has been found guilty of or expiated at least 1 other prescribed offence committed or allegedly committed within 12 months of the date of the offence; or
 - (iii) the convicted person has been found guilty of or expiated at least 2 other prescribed offences committed or allegedly committed within 10 years of the date of the offence; or
 - (b) order that the motor vehicle specified in the application be impounded by the relevant authority for a period not exceeding 6 months if—

- (i) the convicted person has been found guilty of or expiated 1 other prescribed offence committed or allegedly committed within 10 years of the date of the offence; and
 - (ii) paragraph (a) does not apply.
- (1a) If the court makes an order under subsection (1), it must also order that the convicted person pay to the relevant authority fees prescribed in relation to the forfeiture or impounding of the motor vehicle.

Note—

If a motor vehicle has been clamped or impounded under Part 2 in relation to the offence, the court must also, on the application of the prosecution, order the payment of fees under section 9.

- (2) Notice of an application for an order under this section relating to a motor vehicle must be given to—
 - (a) each registered owner of the motor vehicle; and
 - (b) if the prosecution is aware that any other person claims ownership of the motor vehicle or is likely to suffer financial or physical hardship as a result of the making of an order under this section—that person; and
 - (c) in the case of an application for an order for forfeiture of the motor vehicle—each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the motor vehicle is collateral.
- (3) A court hearing an application for an order under this section relating to a motor vehicle—
 - (a) must, if a person given notice of the application under subsection (2) so requests, hear representations from the person in relation to the application; and
 - (b) may, at the request of any other person who is likely to be affected by the making of the order, hear representations from that person in relation to the application.
- (4) A court making an order under this section may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.
- (5) If a court makes an order for the impounding or forfeiture of a motor vehicle under this section, the relevant authority is authorised to seize the motor vehicle and deal with it in accordance with this Act and the requirements (if any) specified in the order.

13—Court may decline to make order in certain circumstances

- (1) A court that records a conviction to which this Part applies may decline to make an order under this Part if satisfied that—
 - (a) the making of the order would cause severe financial or physical hardship to a person; or
 - (b) the offence occurred without the knowledge or consent of any person who was an owner of the motor vehicle at the time of the offence; or

- (c) the making of the order would significantly prejudice the rights of a credit provider; or
 - (d) the motor vehicle the subject of the application is a motor vehicle referred to in section 11(c)(i) and has, since the date of the offence, been sold to a genuine purchaser or otherwise disposed of to a person who did not, at the time of the sale or disposal, know or have reason to suspect that the motor vehicle might be the subject of proceedings under this section.
- (2) If—
- (a) a court declines to make an order under this Part; and
 - (b) the court is satisfied that it would be reasonably practicable for the convicted person to instead perform community service,
- the court must order the convicted person to perform not more than 240 hours of community service.
- (3) An order to perform community service under subsection (2) must be dealt with and enforced as if it were a sentence of community service (and in any enforcement proceedings the court may exercise any power that it could exercise in relation to a sentence of community service).

Part 4—Powers of relevant authorities

14—Commissioner may give notice prohibiting sale or disposal of vehicle

- (1) If the Commissioner reasonably believes that—
- (a) a power to clamp or impound a motor vehicle may be exercised under Part 2; but
 - (b) that power is not to be exercised immediately,
- the Commissioner may give the owner of the motor vehicle (or, if there is more than 1 owner of the motor vehicle, 1 or more of the owners of the motor vehicle) a notice in the prescribed form prohibiting any owner of the motor vehicle from selling or disposing of the motor vehicle until the power under Part 2 has been exercised.
- (2) If—
- (a) a person—
 - (i) is to be, or has been, reported for a prescribed offence and has been advised of that fact; or
 - (ii) has been charged with, or arrested in relation to, a prescribed offence; and
 - (b) the Commissioner reasonably believes that, if the person were convicted of the offence, an application could be made under Part 3 in relation to a motor vehicle,
- the Commissioner may give the owner of the motor vehicle (or, if there is more than 1 owner of the motor vehicle, 1 or more of the owners of the motor vehicle) a notice in the prescribed form prohibiting any owner of the motor vehicle—

- (c) if the Commissioner reasonably believes that, if the person were convicted of the offence, an application could be made under Part 3 for forfeiture of the motor vehicle—from selling or disposing of the motor vehicle, intentionally damaging or altering the motor vehicle or causing or permitting another person to damage or alter the motor vehicle; or
 - (d) in any other case—from selling or disposing of the motor vehicle,until proceedings relating to the offence have been finalised.
- (3) If—
 - (a) the Commissioner gives an owner of a motor vehicle a notice under subsection (2); and
 - (b) that owner is not the alleged offender,the Commissioner must make reasonable efforts to notify the owner when proceedings relating to the offence have been finalised.
- (4) If a notice has been served on an owner of a motor vehicle under this section, any owner of the motor vehicle who contravenes the prohibitions specified in the notice is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.
- (5) It is a defence to a charge of an offence under subsection (4) if the defendant proves that he or she—
 - (a) was not given a notice under this section in relation to the motor vehicle; and
 - (b) did not know, and could not reasonably be expected to have known, that a notice had been given under this section in relation to the motor vehicle.
- (6) If—
 - (a) a person is found guilty by a court of an offence against subsection (4); and
 - (b) the notice in relation to which the offence was committed was a notice described in subsection (2)(c); and
 - (c) the court is provided with evidence of—
 - (i) where the offence involved the sale or disposal of the motor vehicle—the value of the motor vehicle; or
 - (ii) where the offence involved damage to or alteration of the motor vehicle—the difference between the value of the motor vehicle before the damage or alteration and its value after the damage or alteration,the court may, in addition to any other penalty imposed in respect of the offence, require payment by the person of an amount determined by the court to be a reasonable estimate of the value specified in paragraph (c)(i) or the difference in value specified in paragraph (c)(ii) (as the case may require).
- (7) An amount paid in accordance with a requirement under subsection (6) must be paid into the Victims of Crime Fund established under the *Victims of Crime Act 2001*.

- (8) The Commissioner may, at any time, withdraw a notice under this section and must withdraw a notice if the Commissioner becomes aware that no charges are to be laid in respect of the relevant prescribed offence or that charges relating to the relevant prescribed offence are not to be proceeded with.
- (9) If the Commissioner withdraws a notice given under this section to the owner or 1 or more of the owners of a motor vehicle, the Commissioner must, as soon as practicable, give written notice of the withdrawal to the owner or owners.
- (10) Nothing in this section affects the rights of a credit provider to repossess a motor vehicle and sell it.
- (11) An alteration to a motor vehicle that has no effect on the value of the motor vehicle, or that enhances the value of the motor vehicle, will not be taken to be an alteration to the motor vehicle for the purposes of a notice under this section.

15—Relevant authority may require production of vehicle

- (1) A relevant authority may, for the purpose of exercising a power under this Act in relation to a motor vehicle, give an owner of the motor vehicle written notice in the prescribed form requiring the owner to produce the motor vehicle at a time and place specified in the notice.
- (2) An owner of a motor vehicle must not, without reasonable excuse (proof of which lies on the person), refuse or fail to comply with a notice given under this section in relation to the motor vehicle.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) This section is in addition to, and does not derogate from, any other powers of a relevant authority under this Act.

16—Seizure

- (1) A relevant authority that is authorised under this Act to seize a motor vehicle may seize the motor vehicle from—
 - (a) a public place; or
 - (b) a place occupied by the person whose offending, or alleged offending, forms the basis for the exercise of powers under this Act; or
 - (c) any other place if—
 - (i) the owner or occupier of the place consents; or
 - (ii) it can be seen that the motor vehicle is at the place; or
 - (iii) a warrant is issued under this Act authorising the seizure of the motor vehicle from the place.
- (2) A motor vehicle seized under this Act may—
 - (a) be moved to a place determined by the relevant authority and clamped or impounded there (and may, if the relevant authority so determines, be subsequently moved to and clamped or impounded at some other place); and
 - (b) be driven, towed or pushed, or moved in any other manner; and
 - (c) be moved by the relevant authority or by other persons acting at the direction of the relevant authority.

- (3) A relevant authority may do anything reasonably necessary for the purpose of seizing and moving a motor vehicle under this Act, including exercising any of the following powers:
- (a) requiring the motor vehicle to stop;
 - (b) entering into and searching a place occupied by the offender or alleged offender and using reasonable force to break into or open any garage or other structure in which the motor vehicle may be stored at that place;
 - (ba) entering into a place from which a motor vehicle can be seized in accordance with subsection (1)(c)(ii) and using reasonable force to break into or open any garage or other structure in which the motor vehicle can be seen to be stored at the place;
 - (c) causing a locking device or other feature of the motor vehicle to be removed, dismantled or neutralised;
 - (d) if the driver or any other person will not surrender the keys to the vehicle, starting the vehicle by other means;
 - (e) temporarily affixing clamps or any other locking device to the motor vehicle on a public road or in any other place in order to secure the vehicle until it can be seized and moved.

17—Warrants for seizure etc

- (1) If a relevant authority is authorised under this Act to seize a motor vehicle in relation to an offence or an alleged offence, the relevant authority may, in order to seize the motor vehicle from a place (other than a place from which the motor vehicle may be seized without warrant in accordance with section 16), apply to a magistrate for a warrant under this section.
- (2) If a magistrate is satisfied that—
- (a) a relevant authority is authorised under this Act to seize a motor vehicle; and
 - (b) there are reasonable grounds to suspect that the motor vehicle is at a place,
- the magistrate may issue a warrant authorising the relevant authority—
- (c) to enter the place; and
 - (d) to search the place for the motor vehicle; and
 - (e) to use reasonable force to break into or open any garage or other structure in which the motor vehicle may be stored at the place; and
 - (f) to seize the motor vehicle, and otherwise deal with it, in accordance with this Act.
- (3) An application under this section for the issue of a warrant may be made either personally or by telephone.
- (4) The grounds of an application for a warrant must be verified by affidavit.
- (5) An application for a warrant cannot be made by telephone unless, in the opinion of the applicant, a warrant is urgently required and there is not enough time to make the application personally.

- (6) If an application for a warrant is made by telephone—
- (a) the applicant must inform the magistrate of the purpose for which the warrant is required and the grounds on which it is sought; and
 - (b) if it appears to the magistrate from the information given by the applicant that there are proper grounds to issue a warrant, the magistrate must inform the applicant of the facts that justify, in the magistrate's opinion, the issue of the warrant, and must not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
 - (c) if the applicant gives such an undertaking, the magistrate may then make out and sign a warrant, noting on the warrant the facts that justify, in the magistrate's opinion, the issue of the warrant; and
 - (d) the warrant is taken to have been issued, and comes into force, when signed by the magistrate; and
 - (e) the magistrate must inform the applicant of the terms of the warrant; and
 - (f) the applicant must fill out and sign a warrant form (the duplicate warrant) that—
 - (i) sets out the name of the magistrate who issued the original and the terms of the warrant; and
 - (ii) complies with any other requirements prescribed by regulation; and
 - (g) the applicant must, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (b) and a copy of the duplicate warrant.
- (7) A magistrate by whom a warrant is issued under this section must file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.
- (8) A relevant authority may, in exercising powers in accordance with a warrant issued under this section, be accompanied by such assistants as are reasonably necessary for the purpose.
- (9) A warrant issued under this section, if not executed at the expiration of 1 month from the date of its issue, then expires.

Part 5—Miscellaneous

18—Offences

- (1) A person must not hinder or obstruct a relevant authority exercising powers under this Act.
- Maximum penalty: \$2 500 or imprisonment for 6 months.
- (2) A person (other than a relevant authority acting under this Act) must not interfere with any wheel clamps affixed to a motor vehicle in accordance with this Act.
- Maximum penalty: \$2 500 or imprisonment for 6 months.

- (3) A person (other than a relevant authority acting under this Act) must not interfere with an impounded motor vehicle, or any item or equipment in or on an impounded motor vehicle, while the motor vehicle remains in the custody of a relevant authority in accordance with this Act.

Maximum penalty: \$2 500 or imprisonment for 6 months.

19—Liability of the Crown

- (1) Subject to subsection (2), no compensation is payable by the Crown or a relevant authority in respect of the exercise or purported exercise of powers by a relevant authority under this Act.
- (2) This section does not protect—
- (a) a relevant authority from liability in respect of the exercise or purported exercise of powers otherwise than in good faith; or
 - (b) the Crown from liability in respect of damage to a motor vehicle caused otherwise than by the proper exercise of powers under this Act.

20—Disposal of vehicles

- (1) The Sheriff may dispose of a motor vehicle that is the subject of an order for forfeiture under this Act.
- (2) Despite this or any other law, if a motor vehicle that has been impounded under this Act is not collected by a person legally entitled to possession of the motor vehicle within 10 days of the motor vehicle ceasing to be liable to be so impounded, the Sheriff or, in the case of a motor vehicle impounded under Part 2, the Commissioner, may dispose of the motor vehicle.
- (3) A motor vehicle must not be disposed of under subsection (2) unless, not less than 7 days before the disposal, notice of the disposal was given to—
- (a) each registered owner of the motor vehicle; and
 - (b) each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the motor vehicle is collateral.
- (4) Subject to subsection (5), a disposal of a motor vehicle under this section is to be by sale by public auction or public tender.
- (5) A forfeited or impounded motor vehicle may be disposed of otherwise than by sale if—
- (a) the Sheriff or the Commissioner (as the case may be) believes on reasonable grounds that the motor vehicle has no monetary value or that the proceeds of the sale would be unlikely to exceed the costs of the sale; or
 - (b) the motor vehicle has been offered for sale and was not sold; or
 - (c) the Commissioner directs (on such grounds as the Commissioner thinks fit) that the motor vehicle be destroyed or disposed of in some other way.
- (6) The proceeds of the sale of a motor vehicle under this section must be dealt with as follows:
- (a) in the case of the sale of a forfeited motor vehicle, the Sheriff—

- (i) must deduct from the proceeds the costs of the sale of the motor vehicle and any fees ordered to be paid in accordance with this Act; and
 - (ii) if an amount remains after the deduction of those costs and fees and the Magistrates Court has made an order under section 21(1)(c)—must make a payment in accordance with the order; and
 - (iii) any remaining amount must be paid into the Victims of Crime Fund established under the *Victims of Crime Act 2001*;
- (b) in the case of the sale of an impounded motor vehicle, the Sheriff or the Commissioner (as the case may be)—
 - (i) must deduct from the proceeds—
 - (A) the costs of the sale of the motor vehicle and any fees ordered to be paid in accordance with this Act; and
 - (B) any other costs resulting from the failure to collect the motor vehicle; and
 - (ii) if an amount remains after the deduction of those costs and fees and the Magistrates Court has made an order under section 21(1)(c)—must make any payment required in accordance with the order; and
 - (iii) any remaining amount must be dealt with in accordance with section 7A of the *Unclaimed Moneys Act 1891* as money the owner of which cannot be found.
- (7) Despite any other Act or law, if a motor vehicle is sold, destroyed or otherwise disposed of under this section—
 - (a) any interests in the motor vehicle existing prior to the sale, destruction or disposal are extinguished; and
 - (b) any purchaser of the motor vehicle, or of any part of the motor vehicle, acquires a good title.
- (8) The regulations may make further provision in relation to the sale, destruction or disposal of impounded or forfeited motor vehicles in accordance with this section.

21—Credit provider may apply to Magistrates Court for relief

- (1) A credit provider may apply to the Magistrates Court for an order requiring—
 - (a) the removal of clamps affixed to a motor vehicle under this Act; or
 - (b) the release to the credit provider of a motor vehicle impounded under this Act; or
 - (c) the payment to the credit provider of an amount out of any proceeds of sale of a motor vehicle under this Act (provided that such amount will only be payable if sufficient proceeds remain after the deduction of costs and fees in accordance with section 20(6)).

- (2) The Magistrates Court may make an order under this section if satisfied—
 - (a) in the case of an application for an order under subsection (1)(a) or (b)—that the rights of the credit provider would be significantly prejudiced if the order were not made; or
 - (b) in the case of an application for an order under subsection (1)(c)—that the credit provider has suffered, or will suffer, loss as a result of the exercise of powers under this Act.
- (3) Notice of an application for an order under this section relating to a motor vehicle must be given to the following persons:
 - (a) if the motor vehicle is clamped or impounded under Part 2—the Commissioner;
 - (b) if the motor vehicle is impounded or has been forfeited under Part 3—the Sheriff;
 - (c) each registered owner of the motor vehicle;
 - (d) each person registered under the *Personal Property Securities Act 2009* of the Commonwealth as a secured party in relation to a security interest for which the motor vehicle is collateral;
 - (e) if the credit provider is aware that any other person claims ownership of the motor vehicle—that person.
- (4) A court hearing an application for an order under this section relating to a motor vehicle must, if a person given notice of the application under subsection (3) so requests, hear representations from the person in relation to the application.
- (5) A court making an order under this section may make any consequential or ancillary order or direction that it considers necessary or expedient in the circumstances of the case.

22—Evidentiary

An apparently genuine document purporting to be an extract from, or copy of, an entry contained in the register of motor vehicles kept under the *Motor Vehicles Act 1959* and purporting to be certified as such an extract or copy by the Registrar of Motor Vehicles indicating that a person is recorded on that register as an owner of a motor vehicle must be accepted in any proceedings under this Act as proof that the person is an owner of the motor vehicle in the absence of proof to the contrary.

23—Service of notices

- (1) A notice required or authorised to be given to, or served on, a person for the purposes of this Act may—
 - (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) at the person's address for service; or
 - (c) be left for the person at the person's last known address or address for service with someone apparently over the age of 16 years; or

- (d) be given to, or served on, the person in a manner prescribed by regulation.
- (2) If, in any proceedings, it is proved (on evidence by affidavit or otherwise) that a notice required to be given to, or served on, a registered owner of a motor vehicle under this Act was sent by ordinary prepaid post in an envelope addressed to the owner at the address recorded in relation to the owner in a register kept under the *Motor Vehicles Act 1959* or the law of another State or Territory of the Commonwealth, the notice will be conclusively presumed to have been given to the owner at the time when it would, in the ordinary course of post, reach the address to which it was posted.

24—Regulations and fee notices

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) prescribe fees for the purposes of this Act; and
 - (b) provide for the remission of fees in specified circumstances; and
 - (c) specify procedures or prescribe guidelines to be followed by relevant authorities in the exercise of powers under this Act.
- (3) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Sheriff.
- (4) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time.
- (5) If a code, standard or other document is referred to or incorporated in the regulations—
 - (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.
- (6) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.

Schedule 1—Transitional provision

Part 3—Transitional provision

3—Transitional provision

Part 14A of the *Summary Offences Act 1953*, as in force immediately before the commencement of this Act, continues to apply in relation to an offence committed or allegedly committed before the commencement of this Act.

Legislative history

Notes

- 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 this Act (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.

Legislation amended by principal Act

The *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* amended the following:

Summary Offences Act 1953

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2007	29	<i>Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007</i>	2.8.2007	16.12.2007 (<i>Gazette</i> 6.12.2007 p4734)
2009	74	<i>Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009</i>	10.12.2009	Pt 2 (ss 15 & 16) & Sch 1 Pt 2—14.2.2010 (<i>Gazette</i> 12.2.2010 p766); ss 4—14—31.10.2010 (<i>Gazette</i> 30.9.2010 p4990)
2010	3	<i>Credit (Transitional Arrangements) Act 2010</i>	24.6.2010	Sch 1 (cl 3)—1.7.2010 (<i>Gazette</i> 1.7.2010 p3337)
2011	11	<i>Statutes Amendment (Personal Property Securities) Act 2011</i>	14.4.2011	Pt 7 (ss 24—27)—30.1.2012 (<i>Gazette</i> 15.12.2011 p4988)
2018	40	<i>Summary Offences (Liquor Offences) Amendment Act 2018</i>	13.12.2018	Sch 1 (cl 2)—13.12.2020 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2021	5	<i>Statutes Amendment and Repeal (Budget Measures) Act 2021</i>	25.2.2021	Pt 3 (ss 5 to 11)—1.7.2021 (<i>Gazette</i> 24.6.2021 p2260)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	14.2.2010
Pt 1		

s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	14.2.2010
s 3		
s 3(1)		
credit provider	amended by 3/2010 Sch 1 cl 3	1.7.2010
designated liquor offence	inserted by 40/2018 Sch 1 cl 2(1)	13.12.2020
forfeiture offence	inserted by 74/2009 s 4(1)	31.10.2010
	amended by 40/2018 Sch 1 cl 2(2)	13.12.2020
prescribed offence	amended by 74/2009 s 4(2)	31.10.2010
Pt 2		
s 4A	inserted by 5/2021 s 5	1.7.2021
s 5		
s 5(5)	amended by 74/2009 s 5(1)	31.10.2010
s 5(6)	amended by 74/2009 s 5(2), (3)	31.10.2010
s 6	amended by 74/2009 s 6	31.10.2010
s 7		
s 7(2)	amended by 74/2009 s 7	31.10.2010
s 7(3)	amended by 11/2011 s 24	30.1.2012
s 8		
s 8(1)	<i>substituted by 74/2009 s 8(1)</i>	31.10.2010
	deleted by 5/2021 s 6(1)	1.7.2021
s 8(2)	amended by 74/2009 s 8(2)	31.10.2010
s 8(2a)—(2d)	inserted by 74/2009 s 8(3)	31.10.2010
s 8(3)	<i>amended by 74/2009 s 8(4), (5)</i>	31.10.2010
	deleted by 5/2021 s 6(2)	1.7.2021
<i>s 8(4) before deletion by 5/2021</i>		
<i>person entitled to custody of a motor vehicle</i>	<i>inserted by 74/2009 s 8(6)</i>	31.10.2010
s 8(4)	deleted by 5/2021 s 6(2)	1.7.2021
s 9	substituted by 5/2021 s 7	1.7.2021
Pt 3		
s 11	amended by 74/2009 s 9	31.10.2010
s 12		
s 12(1)	amended by 74/2009 s 10(1)	31.10.2010
s 12(1a)	inserted by 74/2009 s 10(2)	31.10.2010
	amended by 5/2021 s 8	1.7.2021
s 12(2)	amended by 11/2011 s 25	30.1.2012
Pt 4		
s 14		
s 14(1)	amended by 74/2009 s 11(1)	31.10.2010
s 14(2)	substituted by 74/2009 s 11(2)	31.10.2010

s 14(4)	substituted by 74/2009 s 11(3)	31.10.2010
s 14(6)	substituted by 74/2009 s 11(4)	31.10.2010
s 14(11)	inserted by 74/2009 s 11(5)	31.10.2010
s 16		
s 16(1)	amended by 74/2009 s 12(1)	31.10.2010
s 16(3)	amended by 74/2009 s 12(2), (3)	31.10.2010
s 17		
s 17(1)	amended by 74/2009 s 13	31.10.2010
Pt 5		
s 18		
s 18(3)	inserted by 74/2009 s 14	31.10.2010
s 20		
s 20(1)	amended by 74/2009 s 15(1)	14.2.2010
s 20(2)	amended by 74/2009 s 15(1) amended by 5/2021 s 9(1)	14.2.2010 1.7.2021
s 20(3)	amended by 74/2009 s 15(2), (3) amended by 11/2011 s 26 amended by 5/2021 s 9(2)	14.2.2010 30.1.2012 1.7.2021
s 20(4)	substituted by 74/2009 s 15(4)	14.2.2010
s 20(5)	amended by 74/2009 s 15(5)	14.2.2010
s 20(7)	substituted by 74/2009 s 15(6)	14.2.2010
s 20(8)	amended by 74/2009 s 15(7)	14.2.2010
s 21		
s 21(1)	amended by 74/2009 s 16	14.2.2010
s 21(3)	amended by 11/2011 s 27	30.1.2012
s 24		
s 24(6)	inserted by 5/2021 s 10	1.7.2021
Sch 1		
Pts 1 and 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	14.2.2010

Transitional etc provisions associated with Act or amendments

Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) (Miscellaneous) Amendment Act 2009, Sch 1 Pt 2

3—Transitional provision

The amendments to sections 20 and 21 of the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* effected by this Act apply in relation to an impounded or forfeited motor vehicle whether the impounding or forfeiture occurred before or after the commencement of those amendments.

Statutes Amendment and Repeal (Budget Measures) Act 2021, Pt 3

11—Transitional provision

The *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* as amended by this Part applies only in respect of the clamping or impounding of a motor vehicle for an offence committed after the commencement of this Part.

Historical versions

14.2.2010
1.7.2010
31.10.2010
30.1.2012
13.12.2020