



ANNO VICESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1979

No. 26 of 1979

An Act to amend the Road Maintenance (Contribution) Act, 1963-1975.

[Assented to 15th March, 1979]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Road Maintenance (Contribution) Act Amendment Act, 1979". Short title.

(2) The Road Maintenance (Contribution) Act, 1963-1975, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Road Maintenance (Contribution) Act, 1963-1979".

2. Section 3 of the principal Act is amended by inserting after the definition of "commercial goods vehicle" the following definition:— Amendment of principal Act, s. 3— Definitions.

"director", in relation to a body corporate, includes each person occupying the position of director of the body corporate (by whatever name called) and includes—

- (a) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act;
- (b) any person who has the control or management of the business of the body corporate:.

3. Section 10 of the principal Act is amended by striking out subsection (3) and inserting in lieu thereof the following subsection:— Amendment of principal Act, s. 10— Offences.

(3) Where a body corporate is guilty, or has been convicted, of an offence against this Act, each director of the body corporate shall also be guilty of an offence against this Act and liable to a penalty not exceeding five hundred dollars unless he proves that he could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

Amendment of
principal Act,
s. 12—
Recovery of
charges.

4. Section 12 of the principal Act is amended by inserting after the passage “paid to the Commissioner by way of charge under this Act” the passage “(whether the amount is payable by the convicted person, or by a body corporate of which he is, or was, a director)”.

Enactment of
s. 12a of
principal Act.

5. The following section is enacted and inserted in the principal Act after section 12 thereof:—

Reciprocal
enforcement
of orders.

12a. (1) Where by order of a reciprocating court a pecuniary sum is payable by a body corporate in respect of proceedings under a corresponding law and the clerk of the Adelaide Magistrates' Court receives a request in writing from the clerk or other corresponding officer of that reciprocating court for the enforcement of the order accompanied by—

- (a) a certified copy of the order;
- (b) a certificate purporting to be signed by the clerk or corresponding officer making the request certifying the amount outstanding under the order;
- (c) a certificate purporting to be signed by an officer employed in the administration of this Act or of a corresponding law certifying that—
 - (i) a person or persons named in the certificate is or are in this State, or normally resident in this State;
 - and
 - (ii) that person was a director, or those persons were directors, of the body corporate against which the order was made when the liability to which the order relates was incurred, or the offence to which the order relates was committed,

he shall register the order in the Adelaide Magistrates' Court by filing in the Court a certified copy of the order and shall note the date of registration on the copy.

(2) Upon the registration of an order under subsection (1) of this section—

- (a) the order shall for the purpose of this section be deemed to be an order of the Adelaide Magistrates' Court requiring payment by the director or directors mentioned in subsection (1) of this section of the amount stated in the certificate referred to in that subsection as being outstanding;
- (b) the clerk shall give notice in writing by post to the director or directors by whom payment is required of the registration of the order and of his intention to issue a warrant of commitment at the expiration of fourteen days after the date of registration of the order.

(3) Upon the expiration of fourteen days from the registration of the order—

- (a) the clerk shall unless the amount stated in the certificate is paid issue a warrant of commitment against the director or each of the directors of the body corporate committing

him or each of them to gaol in default of payment of that amount for a period of one day in respect of each twenty dollars or part thereof then remaining unpaid (but not in any case for a period exceeding one year);

and

(b) the warrant so issued shall be deemed to be a warrant of commitment issued under the Justices Act, 1921-1977, and the provisions of that Act shall with all necessary adaptations apply and extend to the enforcement of that warrant.

(4) Where an order has been registered in pursuance of this section, a director of the body corporate may apply to a magistrate in chambers for an order—

(a) forbidding the issue of a warrant of commitment against the director;

or

(b) setting aside a warrant of commitment issued against the director.

(5) Where, upon an application under subsection (4) of this section, the magistrate is satisfied that—

(a) grounds for the issue of a warrant of commitment against the director under this section do not exist;

or

(b) the director exercised reasonable diligence to ensure that the body corporate would meet its obligations under the corresponding law,

the magistrate shall make an order forbidding the issue of a warrant of commitment, or setting aside a warrant of commitment, against the director.

(6) Where an order is made in pursuance of subsection (5) of this section, a director on whose application the order was made shall be discharged from liability under the registered order.

(7) Where after the request for the enforcement of the order has been made but before the warrant has been executed the clerk receives a notification from the clerk or other corresponding officer of the reciprocating court of payment by or on behalf of the body corporate or by a director of the body corporate of an amount in satisfaction in whole or in part of the amount outstanding he shall—

(a) note the particulars of the payment on the certified copy of the order filed in the court;

and

(b) arrange for the return of the warrant issued under subsection (3) of this section and—

(i) withdraw it if the amount has been paid in full;

or

(ii) if part of the amount remains outstanding, amend the amount stated in the warrant to show the amount still outstanding (and thereafter

the warrant may be enforced in respect of the altered amount).

(8) Where pursuant to this section more than one person is obliged to pay a pecuniary sum the obligation imposed under this section shall be deemed to have been discharged if the obligation is performed or expiated by any one of those persons.

(9) Where a director or former director of a body corporate discharges a liability under a registered order he is entitled to contribution from the other persons who were directors of the body corporate when the liability to which the order relates was incurred, or the offence to which the order relates was committed.

(10) Any moneys paid to or received by the clerk of the Adelaide Magistrates' Court in satisfaction in whole or in part of an order registered under this section shall be remitted forthwith to the clerk or other corresponding officer of the reciprocating court by which the order was made.

(11) A sum of money paid to or received by a clerk of a Court in this State from a reciprocating court in satisfaction in whole or in part of an order enforced by the reciprocating court shall be paid to or received by and applied by the clerk of the Court as if the sum had been paid to him by the body corporate by which the sum was payable in satisfaction in whole or in part of the order.

(12) The clerk of a court of summary jurisdiction shall, at the request of an officer employed in the administration of this Act, issue any request, certificate or other document that may be necessary under the law of another State or Territory of the Commonwealth for enforcement of an order, made under this Act against a body corporate, against directors of the body corporate in that State or Territory.

(13) In this section—

“corresponding law” means—

- (a) the Road Maintenance (Contribution) Act, 1958, as amended from time to time or as re-enacted and amended from time to time, of New South Wales;
- (b) Part II of the Commercial Goods Vehicles Act, 1958, as amended from time to time or as re-enacted and amended from time to time, of Victoria;
- (c) the Roads (Contribution to Maintenance) Act of 1957, as amended from time to time or as re-enacted and amended from time to time of Queensland;

or

- (d) the Road Maintenance (Contribution) Act, 1965, as amended from time to time or as re-enacted and amended from time to time of Western Australia:

“pecuniary sum” includes a fine and costs:

“reciprocating court” means a court that has jurisdiction to make an order for the payment of a pecuniary sum in pursuance of a corresponding law.

(14) This section does not apply where the order of the reciprocating court relates to—

(a) an offence committed before the commencement of the Road Maintenance (Contribution) Act Amendment Act, 1979;

or

(b) a liability incurred before the commencement of the Road Maintenance (Contribution) Act Amendment Act, 1979.

6. Section 13 of the principal Act is amended—

Amendment of
principal Act,
s. 13—
Evidentiary
provision.

(a) by striking out the passage “prosecution or proceedings for an offence against this Act in respect of any vehicle” and inserting in lieu thereof the passage “prosecution for an offence against this Act, or any other proceedings instituted in pursuance of this Act”;

(b) by inserting after the word “stating” in paragraph (a) the passage “in respect of a vehicle”;

(c) by striking out from subparagraph (ii) of paragraph (a) the passage “the records described therein” and inserting in lieu thereof the passage “records referred to therein and received by the Commissioner on a specified date or on specified dates.”;

(d) by inserting in subparagraph (iii) of paragraph (a) after the passage “stated therein to have been made” the passage “on a specified date or on specified dates”;

(e) by striking out from paragraph (b) the passage “the vehicle” first occurring and inserting in lieu thereof the passage “a vehicle”;

(f) by striking out from paragraphs (c) and (ca) the passage “the motor vehicle or trailer” wherever it occurs and inserting in lieu thereof, in each case, the passage “a motor vehicle or trailer”;

(g) by striking out from paragraph (ca) the passage “such motor vehicle or trailer” and inserting in lieu thereof the passage “a motor vehicle or trailer”;

and

(h) by striking out from subparagraphs (i) and (ii) of paragraph (e) the passage “the vehicle” wherever it occurs and inserting in lieu thereof, in each case, the passage “a vehicle”.

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

K. D. SEAMAN, Governor