
ONLINE UPDATE – EDITION I

Thursday, 15 November 2012



Welcome

Welcome to the first edition of the Fabbian Lawyers' Online Update.

With the establishment of Fabbian Lawyers, we will be producing regular online updates in relation to criminal, traffic and disciplinary law in South Australia. The updates are for both practitioners and people within the wider community who wish to receive a snapshot of current law news.

Please email Craig Fabbian if you would like to be added to mailing list for future editions: - craig@fabbianlawyers.com.au

Bell v Police – Motor Vehicle Forfeiture Legislation Invalid

The Supreme Court recently held that legislation requiring the forfeiture of motor vehicles is invalid. His Honour, Chief Justice Kourakis upheld the argument that:

...s 12(1)(a)(iii) of the Forfeiture Act (the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007) is invalid because it requires the courts of this State to exercise powers, on the application of prosecution, which are incompatible with, and repugnant to, the exercise of judicial power under the Constitution.

It is understood that an appeal against the decision has now been lodged on behalf of Police. Currently cases involving an application for forfeiture are being adjourned pending the outcome of the appeal to the Full Court of the Supreme Court.

Interestingly, prior to the judgment, it was reported in the SAPOL Annual Report for 2011-2012 that:

Police continued using powers under the Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007 to penalise hoon drivers. The Act allows police to seek the forfeiture of vehicles where the owner has been convicted of a forfeiture offence or other prescribed offences. Vehicles can be sold at auction,

publicly crushed and disposed as scrap metal. For the reporting period, 7932 vehicles have been clamped or impounded, 26 vehicles sold by auction, 178 destroyed, and 6 vehicles publicly crushed.

To view the full judgment on the Austlii website click [here](#).

To view the SAPOL Annual Report 2011-12 click [here](#).

Changes to Speeding Penalties

A reminder that speeding offence penalties changed on 1 September 2012. The change involves increased demerit points for offences including low level speeding offences. Demerit points have doubled from 1 to 2 for exceeding the speed limit by less than 10km/h. Furthermore, demerit points have tripled from 1 to 3 for exceeding the speed limit by 10km/h but less than 15km/h.

The change is expected to lead to an increase in licence disqualifications resulting from the accumulation of demerit points. The change will particularly affect drivers with licenses subject to good behaviour agreements and probationary conditions. Currently, these drivers face licence disqualifications if they incur 2 or more demerit points. With even the lowest level speeding offence now attracting 2 demerit points, it will mean that these drivers will face disqualification for simply committing one offence.

It is anticipated the change, which can result in harsh consequences, will lead to more individuals electing to be prosecuted and contesting alleged speeding offences. Furthermore, applications to reduce demerit points and appeals against disqualifications on the basis of severe and unusual hardship may also increase.

Penalties that apply to offences committed from 1 September 2012			
Exceeding the speed limit	Demerit Points	Expiation Fee	Expiation Fee (Road Trains)
By less than 10km/h	2	\$150	\$400
By 10km/h but less than 20km/h	3	\$330	\$500
By 20km/h but less than 30km/h	5	\$670	\$770
By 30km/h but less than 45km/h	7	\$800	\$900
By 45km/h or more (excessive speed)	9	\$900	\$1000

Note: A \$60 victims of crime levy also applies in addition to the expiation fee.

For further information regarding the change in speeding offence penalties on the DPTI website click [here](#).

The Surveillance Devices Bill 2012

The Surveillance Devices Bill is currently before the South Australian Parliament. The Bill proposes law changes regarding the use of listening, surveillance and tracking devices. Some changes have recently been subject to public criticism and media attention. Currently, circumstances require police officers to obtain warrants from the Supreme Court to use listening and surveillance devices. The Bill proposes changes whereby police officers, in emergency circumstances, may seek authority from the Commissioner of Police rather than the Court.

To view the Surveillance Devices Bill click [here](#).

To view the Second Reading Speech click [here](#) – starting at page 2789 (pg 45 of 75).



Comments & Feedback

We welcome your comments and feedback regarding our online update.

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