

Legislative Council—No 105

As received from the House of Assembly and read a first time, 4 March 2021

South Australia

**Criminal Law Consolidation (Causing Death by
Use of Motor Vehicle) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Criminal Law Consolidation (Causing Death by Use of Motor Vehicle) Act 2021*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Insertion of sections 19AE and 19AF

After section 19AD insert:

15 19AE—Commissioner of police to impose immediate licence disqualification or suspension following certain charges against section 19A(1)

20 (1) If a person is, after the commencement of this section, charged with an offence against section 19A(1) (being an offence where a motor vehicle was used in the commission of the offence), the Commissioner of Police must, as soon as is reasonably practicable after the person is so charged and in accordance with any requirements set out in the regulations, give the person a notice of immediate licence disqualification or suspension in the prescribed form.

- 5
- (2) If a person is given a notice of immediate licence disqualification or suspension under this section—
- (a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the prescribed period; or
 - (b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the prescribed period.
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- (3) The Commissioner of Police must ensure that the prescribed particulars of a notice of immediate licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.
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- (4) The Registrar of Motor Vehicles must, on receiving particulars of a notice of immediate licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of immediate licence disqualification or suspension.
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- (5) The operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (4).
- 25
- (6) A court may, on the application of a person to whom a notice of immediate licence disqualification or suspension is given under this section, if the court is satisfied on the basis of evidence given on oath by or on behalf of the person that—
- (a) exceptional circumstances exist in relation to the person or the alleged offence such that it is, in all the circumstances, appropriate that an order be made under this subsection; and
 - (b) the person does not pose a substantial risk to other members of the public if an order is made under this subsection,
- 30
- order that the disqualification of the person from holding or obtaining a driver's licence be removed, or the suspension of the person's driver's licence end, (as the case requires) on the date specified in the order.
- 35
- (7) The Crown is entitled to be heard on an application under subsection (6).
- 40
- (8) Without limiting the evidence that may be adduced by the Crown on the question of whether a person poses a substantial risk to members of the public, the Crown may, in relation to an application under subsection (6)—
- (a) evidence of previous offences relating to the applicant's use of a motor vehicle for which the applicant has been found guilty or that the applicant has expiated; or

(b) adduce evidence of the alleged offence to which the notice of immediate licence disqualification or suspension under this section relates.

5 (9) A court must, as soon as is reasonably practicable after an order is made under subsection (6) and in a manner and form determined by the Registrar of Motor Vehicles, notify the Registrar of Motor Vehicles of the terms of the order.

(10) If—

10 (a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of immediate licence disqualification or suspension under this section; and

15 (b) a court convicts the person of the offence to which the notice relates or another offence arising out of the same course of conduct; and

(c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,

then—

20 (d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and

25 (e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose order that the period imposed be taken to have commenced on the day on which the licence disqualification or suspension commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification), and if the person is the holder of a driver's licence, the licence will be taken to have been cancelled from the day on which the order of the court is made.

30 (11) No compensation is payable by the Crown or the Commissioner of Police in respect of the exercise, or purported exercise, of powers under this section (however, nothing in this subsection protects the Commissioner of Police from liability in respect of the exercise, or purported exercise, of powers otherwise than in good faith).

35 (12) This section is in addition to, and does not derogate from, the *Road Traffic Act 1961* or any other Act or law.

(13) For the purposes of this section, a reference to the charging of a person with an offence against section 19A(1) will be taken to include a reference to the laying of an information charging a person with such an offence (and the person will be taken to have been charged at the time the information is laid in court in accordance with the *Criminal Procedure Act 1921*).

(14) In this section—

prescribed period means the period—

(a) commencing at the time that the person is given a notice of immediate licence disqualification or suspension under this section; and

(b) finishing—

(i) if a court makes an order under subsection (6)—on the date specified in that order; or

(ii) if the person is found guilty of the offence to which the disqualification or suspension relates—at the time that the person is sentenced in relation to the offence; or

(iii) if the person is acquitted of the offence, or the charge of the offence is withdrawn—at the time that person is so acquitted or the charge withdrawn (as the case requires);

Registrar of Motor Vehicles has the same meaning as in the *Road Traffic Act 1961*.

19AF—Power of police to impose immediate licence disqualification or suspension where offence against section 19A(1)

(1) If a police officer reasonably believes that a person has, after the commencement of this section, committed an offence against section 19A(1) (being an offence where a motor vehicle was used in the commission of the offence), the police officer may give the person a notice of immediate licence disqualification or suspension in the prescribed form.

(2) If a person is given a notice of immediate licence disqualification or suspension under this section—

(a) in the case of a person who does not hold a driver's licence—the person is disqualified from holding or obtaining a driver's licence for the prescribed period; or

(b) in the case of a person who holds a driver's licence—the person's driver's licence is suspended for the prescribed period.

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- (3) The Commissioner of Police must ensure that the prescribed particulars of a notice of immediate licence disqualification or suspension given to a person under this section are forwarded to the Registrar of Motor Vehicles.
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- (4) The Registrar of Motor Vehicles must, on receiving particulars of a notice of immediate licence disqualification or suspension from the Commissioner of Police, send, by post, a notice to the person of the name and address specified by the Commissioner containing the prescribed particulars of the notice of immediate licence disqualification or suspension.
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- (5) The operation of a notice of immediate licence disqualification or suspension is not affected by any failure to comply with subsection (4).
- 20
- (6) A court may, on the application of a person to whom a notice of immediate licence disqualification or suspension is given under this section, if the court is satisfied on the basis of evidence given on oath by or on behalf of the person that—
- (a) exceptional circumstances exist in relation to the person or the alleged offence such that it is, in all the circumstances, appropriate that an order be made under this subsection; and
- (b) the person does not pose a substantial risk to other members of the public if an order is made under this subsection,
- 25
- order that the disqualification of the person from holding or obtaining a driver's licence be removed, or the suspension of the person's driver's licence end, (as the case requires) on the date specified in the order.
- 30
- (7) The Crown is entitled to be heard on an application under subsection (6).
- (8) Without limiting the evidence that may be adduced by the Crown on the question of whether a person poses a substantial risk to members of the public, the Crown may, in relation to an application under subsection (6)—
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- (a) adduce evidence of previous offences relating to the applicant's use of a motor vehicle for which the applicant has been found guilty or that the applicant has expiated; or
- (b) adduce evidence of the alleged offence to which the notice of immediate licence disqualification or suspension under this section relates.
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- (9) The court must ensure that the prescribed particulars of an order under subsection (6) are forwarded to the Registrar of Motor Vehicles.

- 5 (10) If a person is given a notice of immediate licence disqualification or suspension under this section and a determination is later made that the person should not be charged with an offence against section 19A(1), the Commissioner of Police must ensure that the person is given, or sent by post, written notice of that determination containing the information required by the regulations.
- (11) The Commissioner of Police must ensure that the prescribed particulars of a determination referred to in subsection (10) are forwarded to the Registrar of Motor Vehicles.
- 10 (12) The laying of charges against a person is not prevented by a failure to comply with subsection (10) in relation to the person or by the making of a determination referred to in that subsection or the notification of such a determination.
- (13) If—
- 15 (a) a period of licence disqualification or suspension has applied to a person as a result of the person having been given a notice of immediate licence disqualification or suspension under this section; and
- 20 (b) a court convicts the person of the offence to which the notice relates or another offence arising out of the same course of conduct; and
- (c) a mandatory minimum period of disqualification would (apart from this subsection) be required to be imposed for the offence,
- 25 then—
- (d) the court must order that the person be disqualified from holding or obtaining a driver's licence for a period determined by the court (and if the person is the holder of a driver's licence, the disqualification operates to cancel the licence from the commencement of that period); and
- 30 (e) despite any other provision of this or any other Act, the court must, in determining the period, take into account the period of licence disqualification or suspension that has applied to the person as a result of the notice and may for that purpose order that the period imposed be taken to have commenced on the day on which the licence disqualification or suspension commenced (provided that the period imposed is not less than the mandatory minimum period of disqualification), and if the person is the holder of a driver's licence, the licence will be taken to have been cancelled from the day on which the order of the court is made.
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- 45 (14) No compensation is payable by the Crown or a police officer in respect of the exercise, or purported exercise, of powers under this section (however, nothing in this subsection protects a police officer from liability in respect of the exercise, or purported exercise, of powers otherwise than in good faith).

(15) This section is in addition to, and does not derogate from, the *Road Traffic Act 1961* or any other Act or law.

(16) For the purposes of this section, a reference to the charging of a person with an offence will be taken to include a reference to the laying of an information charging a person with such an offence (and the person will be taken to have been charged at the time the information is laid in court in accordance with the *Criminal Procedure Act 1921*).

(17) In this section—

prescribed period means the period—

(a) commencing at the time that the person is given a notice of immediate licence disqualification or suspension under this section; and

(b) finishing—

(i) if a court makes an order under subsection (6)—on the date specified in that order; or

(ii) at the time the person is charged with the offence against section 19A(1) to which the notice of immediate licence disqualification or suspension relates; or

(iii) if a determination is made that the person should not be charged with an offence against section 19A(1)—at the time the determination is made;

Registrar of Motor Vehicles has the same meaning as in the *Road Traffic Act 1961*.