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South Australia

Motor Vehicles (Learner's Permits and Provisional Licences) Amendment Bill 2013

A BILL FOR

An Act to amend the *Motor Vehicles Act 1959*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Motor Vehicles (Learner's Permits and Provisional Licences) Amendment Act 2013*.

2—Commencement

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

3—Amendment provisions

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 *Motor Vehicles Act 1959*

4—Amendment of section 5—Interpretation

(1) Section 5(1), definitions of ***P1 licence***, ***P1 licence conditions***, ***P2 licence*** and ***P2 licence conditions***—delete the definitions and substitute:

> ***P1 licence*** means a provisional licence that is taken to be a P1 licence in accordance with section 81A(2);
>
> ***P2 licence*** means a provisional licence other than a P1 licence;

(2) Section 5(1), definition of ***provisional licence conditions***—delete the definition and substitute:

> ***provisional licence conditions*** means the conditions referred to in section 81A(4);

5—Amendment of section 75—Issue and renewal of licences

Section 75(1)(aa)—delete "16 years and 6 months" and substitute:

> 17 years

6—Amendment of section 75AAA—Term of licence and surrender

Section 75AAA(6)—delete subsection (6) and substitute:

> (6) A provisional licence expires at the end of the period for which the provisional licence conditions are effective but may be renewed as a licence not subject to provisional licence conditions.

7—Amendment of section 75A—Learner's permit

(1) Section 75A(1)—after the definition of ***prescribed concentration of alcohol*** insert:

> ***prescribed learner's permit holder*** means a person who—
>
> (a) holds a learner's permit in relation to a motor bike; and
>
> (b) is under the age of 25 years; and

(c) does not hold and had not, at some time during the period of 5 years immediately before applying for the permit, held—

(i) a non-provisional licence; or

(ii) an interstate non-provisional licence; or

(iii) a P2 licence; or

(iv) a complying interstate provisional licence (within the meaning of section 81A);

(2) Section 75A(10)(c)—delete paragraph (c) and substitute:

(c) a condition that the holder of the permit must not drive a motor vehicle on a road—

(i) if the motor vehicle is not a motor bike—unless the holder of the permit is accompanied by a person acting as a qualified supervising driver for the holder of the permit; or

(ii) if the motor vehicle is a motor bike—unless any person who is carried by the holder of the permit (as a passenger on the motor bike or in a sidecar attached to the motor bike) is acting as a qualified supervising driver for the holder of the permit;

(3) Section 75A—after subsection (19) insert:

(20) A prescribed learner's permit holder must not drive a motor bike on a road between the hours of midnight and 5.00 am unless carrying a passenger (on the motor bike or in a sidecar attached to the motor bike) who is acting as a qualified supervising driver for the holder of the permit.

Maximum penalty: $1 250.

(21) It is a defence to a charge of an offence against subsection (20) if the defendant establishes that he or she was driving the vehicle in the circumstances prescribed—

(a) in Schedule 2; or

(b) by the regulations; or

(c) by notice in the Gazette under subsection (22).

(22) The Registrar may, by notice in the Gazette, prescribe circumstances that will constitute a defence for the purposes of subsection (21)(c) and may, by further notice in the Gazette, vary or revoke such a notice.

(23) A notice prescribing circumstances that will constitute a defence for the purposes of subsection (21)(c) has effect for the period specified in the notice (which must be not longer than 6 months).

8—Amendment of section 79—Examination of applicant for licence or learner's permit

(1) Section 79(1)(a)—delete "produces" and substitute:

has produced

(2) Section 79(1)(a)—delete "examiner" wherever occurring and substitute in each case:

tester

(3) Section 79(1a)—delete subsection (1a)

(4) Section 79(3), definition of ***examiner***—delete the definition and substitute:

tester means—

(a) a police officer; or

(b) a person appointed by the Registrar as a tester for the purposes of conducting a theoretical examination for the purposes of this section.

9—Amendment of section 79A—Driving experience

(1) Section 79A(1)(a)(i)(A)—delete "for a period of at least 15 months or for periods totalling at least 15 months" and substitute:

for periods totalling at least 12 months of which there must be a continuous period of not less than 3 months since the end of the period of disqualification

(2) Section 79A(1)(a)(i)(B)—delete "for a period of at least 9 months or for periods totalling at least 9 months" and substitute:

for periods totalling at least 6 months of which there must be a continuous period of not less than 3 months since the end of the period of disqualification

(3) Section 79A(1)(a)(ii)—delete "produces" and substitute:

has produced

(4) Section 79A(1)(a)—after subparagraph (ii) insert:

(iia) has produced to the Registrar a certificate signed by a tester certifying that the applicant has, in the manner required by the Registrar, passed a hazard perception test conducted by the tester; and

(5) Section 79A(1)(a)(iii)—delete "produces" and substitute:

has produced

(6) Section 79A(3)(c)—after paragraph (c) insert:

(ca) the applicant has produced to the Registrar a certificate signed by a tester certifying that the applicant has, since the end of the period of disqualification, passed a hazard perception test conducted by the tester; and

(7) Section 79A(3)(d)—delete "produces" and substitute:

has produced

(8) Section 79A(4)—delete subsection (4) and substitute:

(4) In this section—

hazard perception test means a test approved by the Registrar as a hazard perception test for the purposes of this Act;

tester means—

(a) a police officer; or

(b) a person appointed by the Registrar as a tester for the purposes of conducting a hazard perception test.

10—Amendment of section 81—Restricted licences and learner's permits

Section 81(2)—delete ", to pass a driving test under section 79A or to pass a hazard perception test under section 81A" and substitute:

or to pass a driving test or a hazard perception test under section 79A

11—Substitution of section 81A

Section 81A—delete the section and substitute:

81A—Provisional licences

(1) In this section—

complying interstate provisional licence—an interstate provisional licence is a complying interstate provisional licence if it has been in force for a period of at least 12 months;

P1 qualifying period means the period, or total period, for which a person has held a P1 licence (excluding, if the person had been disqualified from holding or obtaining a licence in this State or in another State or Territory of the Commonwealth, any period preceding the period of disqualification);

P2 qualifying period means the period, or total period, for which a person has held a P2 licence (excluding, if the person had been disqualified from holding or obtaining a licence in this State or in another State or Territory of the Commonwealth, any period preceding the period of disqualification);

peer passenger means a passenger in a motor vehicle who is aged not less than 16 years and not more than 20 years;

prescribed concentration of alcohol means any concentration of alcohol in the blood.

(2) Without derogating from any other provision of this Act, if an applicant for the issue of a licence—

(a) has not held a non-provisional licence or interstate non-provisional licence at some time during the period of 5 years immediately preceding the application; or

(b) holds an interstate provisional licence; or

(c) holds an interstate non-provisional licence or a foreign licence but is under the age of 20 years; or

(d) —

(i) has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere) while the holder of a P1 licence or interstate provisional licence; and

(ii) has not held a P2 licence or a complying interstate provisional licence since the end of the period of disqualification,

a licence issued to the applicant is a provisional licence and will be taken to be a P1 licence until he or she has completed a P1 qualifying period of 12 months (and thereafter will be taken to be a P2 licence).

(3) Without derogating from any other provision of this Act, if an applicant for the issue of a licence has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of an offence committed or allegedly committed (whether in this State or elsewhere)—

(a) while the holder of a P2 licence or a complying interstate provisional licence; or

(b) after the expiry of such a licence but before obtaining a non-provisional licence or an interstate non-provisional licence,

and has not held a non-provisional licence or an interstate non-provisional licence since the end of the period of disqualification, a licence issued to the applicant is a provisional licence and will be taken to be a P2 licence.

(4) The provisional licence conditions are as follows:

(a) a condition that the holder of the licence must not drive a motor vehicle or attempt to put a motor vehicle in motion on a road while the prescribed concentration of alcohol is present in his or her blood, or a prescribed drug is present in his or her oral fluid or blood;

(b) a condition that the holder of the licence must not drive a motor vehicle at a speed exceeding by 10 kilometres an hour or more a speed limit that applies under the *Road Traffic Act 1961* or this Act.

(5) Subject to this Act, the Registrar must not grant a non-provisional licence to an applicant unless the applicant—

(a) will be aged 20 years or over at the commencement of the term of the licence; and

(b) will, at the commencement of the term of the licence, have completed a P2 qualifying period of at least 2 years; and

(c) is not the holder of a provisional licence that is subject to alcohol interlock scheme conditions.

(6) If a court disqualifies a person from holding or obtaining a licence or learner's permit the court may order—

(a) that any provisional licence to be issued to the person at the end of the period of disqualification will be taken to be a P1 licence for an extended period; or

(b) that the period referred to in subsection (5)(b) be extended in relation to any such provisional licence.

(7) Despite any other provision of this Act, if an applicant for the issue of a driver's licence—

(a) holds or has previously held a foreign licence; or

(b) is of a class of applicants prescribed by regulation,

the Registrar may, if of the opinion that there is proper cause to do so, do 1 or more of the following:

(c) issue a licence not subject to the conditions that would otherwise be imposed under this section;

(d) reduce the period for which the person will be taken to hold a P1 licence under this section or the period referred to in subsection (5)(b).

(8) If an applicant is not willing to accept a provisional licence, the Registrar must refuse to issue a licence to the applicant.

(9) The holder of a provisional licence must not contravene a condition of the licence.

Maximum penalty: $1 250.

(10) Sections 47C, 47D, 47E, 47EAA, 47GA, 47GB and 47K and Schedule 1 of the *Road Traffic Act 1961* apply in relation to an offence against subsection (9) of contravening the condition referred to in subsection (4)(a) as if—

(a) a reference in any of those sections to an offence against that Act was a reference to an offence against subsection (9); and

(b) a reference in any of those sections to the prescribed concentration of alcohol as defined in section 47A of that Act was a reference to the prescribed concentration of alcohol as defined in this section.

(11) The holder of a provisional licence must not drive a motor vehicle on a road in any part of the State at a speed exceeding 100 kilometres an hour.

Maximum penalty: $1 250.

(12) Section 175 of the *Road Traffic Act 1961* applies in relation to—

(a) an offence against subsection (9) of contravening the condition referred to in subsection (4)(b); or

(b) an offence against subsection (11),

as if a reference in that section to an offence against that Act was a reference to an offence against subsection (9) or (11).

(13) The holder of a provisional licence must not, if he or she is under the age of 25 years, drive a high powered vehicle.

Maximum penalty: $1 250.

(14) Subject to the regulations, the Registrar may, on application by the holder of a provisional licence and payment of the fee (if any) prescribed by regulation, grant the holder an exemption from subsection (13) for such a term and subject to such conditions as the Registrar thinks fit.

(15) The holder of a P1 licence must not—

(a) drive a motor bike on a road unless a plate bearing the letter "P" is affixed to the bike in accordance with the regulations; or

(b) drive any other motor vehicle on a road unless 2 plates bearing the letter "P" are affixed to the vehicle in accordance with the regulations.

Maximum penalty: $1 250.

(16) The holder of a P1 licence who is under the age of 25 years must not drive a motor vehicle on a road between the hours of midnight and 5.00 am unless the driver is accompanied by a person acting as a qualified supervising driver for the holder of a licence.

Maximum penalty: $1 250.

(17) It is a defence to a charge of an offence against subsection (16) if the defendant establishes that he or she was driving the vehicle in the circumstances prescribed—

(a) in Schedule 2; or

(b) by the regulations; or

(c) by notice in the Gazette under subsection (20).

(18) The holder of a P1 licence who is under the age of 25 years must not drive a motor vehicle on a road while 2 or more peer passengers are present in the vehicle unless the driver is also accompanied by a person acting as a qualified supervising driver for the holder of a licence.

Maximum penalty: $1 250.

(19) It is a defence to a charge of an offence against subsection (18) if the defendant establishes that he or she was driving the vehicle in the circumstances prescribed—

(a) in Schedule 2; or

(b) by the regulations; or

(c) by notice in the Gazette under subsection (20).

(20) The Registrar may, by notice in the Gazette, prescribe circumstances that will constitute a defence for the purposes of subsection (17)(c) or subsection (19)(c) and may, by further notice in the Gazette, vary or revoke such a notice.

(21) A notice prescribing circumstances that will constitute a defence for the purposes of subsection (17)(c) or subsection (19)(c) has effect for the period specified in the notice (which must be not longer than 6 months).

12—Amendment of section 81BA—Safer Driver Agreements

(1) Section 81BA(3)(c)—delete "subject to paragraph (e),"

(2) Section 81BA(3)(d) and (e)—delete paragraphs (d) and (e)

(3) Section 81BA(4)(a), (b) and (c)—delete "or (e)" wherever occurring

(4) Section 81BA(6), definition of ***serious disqualification offence***—delete the definition and substitute:

red light offence has the same meaning as in section 79B of the *Road Traffic Act 1961*;

serious disqualification offence means—

(a) an offence against the *Criminal Law Consolidation Act 1935*; or

(b) an offence that attracts 4 or more demerit points; or

(c) a speeding offence that attracts 3 or more demerit points, if committed by the holder of a licence who has, while holding that licence, previously been convicted of, or expiated, another speeding offence that attracted 3 or more demerit points; or

(d) a combination of a red light offence and a speeding offence arising out of the same incident; or

(e) any offence committed by the holder of a licence who has previously been disqualified from holding or obtaining a licence or learner's permit in this State;

speeding offence has the same meaning as in section 79B of the *Road Traffic Act 1961*.

13—Amendment of section 81BB—Appeals to Magistrates Court

(1) Section 81BB(7)(c)—delete "subject to paragraph (e),"

(2) Section 81BB(7)(d), (e) and (f)—delete the paragraphs and substitute:

(d) this Act applies in relation to the person when applying for the licence as if, despite the removal of the disqualification, the person had been disqualified from holding or obtaining a licence as a consequence of the offence and were making the application at the end of the period of disqualification;

(3) Section 81BB(8)(a), (b) and (c)—delete "or (f)" wherever occurring

14—Repeal of section 81BC

Section 81BC—delete the section

15—Amendment of section 81C—Disqualification for certain drink driving offences

Section 81C(2)—after "the Registrar must" insert:

, on becoming aware of that fact,

16—Amendment of section 81D—Disqualification for certain drug driving offences

Section 81D(2)—after "the Registrar must" insert:

, on becoming aware of that fact,

17—Amendment of section 98BD—Notices to be sent by Registrar

Section 98BD(2)—after "the Registrar must" insert:

on becoming aware of that fact

18—Amendment of section 98BE—Disqualification and discounting of demerit points

Section 98BE(2a)—after "the Registrar must" insert:

, on becoming aware of that fact,

19—Amendment of section 141—Evidence by certificate etc

Section 141(1)(aa)—delete "section 81A(16)" and substitute:

section 81A(14)

20—Amendment of section 145—Regulations

Section 145(1)(gf)—delete "section 81A(17)" and substitute:

section 81A(14)

21—Insertion of Schedule 2

After Schedule 1 insert:

Schedule 2—Prescribed circumstances (sections 75A(21), 81A(17) and 81A(19))

1—Driving with immediate family members

(1) For the purposes of section 81A(19), a motor vehicle is driven in prescribed circumstances if all the peer passengers, or all but 1 of the peer passengers, in the vehicle are immediate family members of the driver.

(2) In this clause—

Aboriginal or Torres Strait Islander means a person who—

(a) is descended from an Aboriginal or Torres Strait Islander person; and

(b) regards himself or herself as an Aboriginal or Torres Strait Islander; and

(c) is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Islander community;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

immediate family member of a driver means—

(a) the driver's spouse or domestic partner; or

(b) a child of whom the driver has custody as a parent or guardian; or

(c) a guardian or step-parent of the driver; or

(d) the spouse of a grandparent of the driver; or

(e) a brother or sister of the driver; or

(f) a stepbrother or stepsister of the driver; or

(g) a child of whom a parent, guardian or step-parent of the driver has custody as a parent or guardian; or

(h) a person held to be related to the driver according to Aboriginal or Torres Strait Islander kinship rules and observances (if the driver is an Aboriginal or Torres Strait Islander);

spouse—a person is the spouse of another if they are legally married.

2—Emergency workers

(1) For the purposes of sections 75A(21), 81A(17) and 81A(19), driving a motor vehicle while engaged in official duties as an emergency worker is driving the vehicle in prescribed circumstances.

(2) In this clause—

emergency worker means a member of the police force or a person who is an emergency worker as defined by the regulations for the purposes of this clause.

3—Driving to attend education or training

(1) For the purposes of sections 75A(21) and 81A(17), driving a motor vehicle by the shortest practicable route between—

(a) a place at which the driver resides (whether temporarily or permanently); and

(b) a place at which the driver participates in recognised education or training,

for the purposes of participating in the recognised education or training is driving the vehicle in prescribed circumstances.

(2) In this clause—

recognised education or training means a course of education or training provided by a secondary or tertiary education provider or a vocational education and training provider and in which participants must be enrolled (other than a course of a kind declared by the regulations to be excluded from this definition).

4—Driving to participate in sports

(1) For the purposes of sections 75A(21) and 81A(17), driving a motor vehicle by the shortest practicable route between—

(a) a place at which the driver resides (whether temporarily or permanently); and

(b) a place at which the driver engages in recognised sports participation,

for the purposes of the recognised sports participation is driving the vehicle in prescribed circumstances.

(2) In this clause—

recognised sports participation means participation in a sporting event, or training, that is provided or organised by a sporting association or club (other than participation of a kind declared by the regulations to be excluded from this definition).

5—Driving for work purposes

(1) For the purposes of sections 75A(21) and 81A(17), driving a motor vehicle—

(a) by the shortest practicable route between—

(i) a place at which the driver resides (whether temporarily or permanently); and

(ii) a place at which the driver undertakes work; or

(b) as required in the course of undertaking work,

is driving the vehicle in prescribed circumstances.

(2) For the purposes of section 81A(19), driving a motor vehicle as required in the course of undertaking work (other than work that is unpaid work experience or other work as a volunteer) is driving the vehicle in prescribed circumstances.

(3) In this clause—

work means work, in any capacity, for a person conducting a business or undertaking, or as a self-employed person conducting a business or undertaking, and includes work as an apprentice or trainee, work in the form of unpaid work experience or work as a volunteer.

Schedule 1—Transitional provisions

1—Interpretation

(1) In this Schedule—

disqualified provisional licence holder means a person who, immediately before the commencement of section 11, was—

(a) a prescribed provisional licence holder; or

(b) the holder of a provisional licence issued to an applicant referred to in section 81A(2)(d);

prescribed provisional licence holder means a person who, immediately before the commencement of section 11, was the holder of a P1 licence that was issued on an application made in accordance with section 81BA(3) or 81BB(7);

principal Act means the *Motor Vehicles Act 1959*.

(2) All other words and phrases used in this Schedule have the same meaning as in the principal Act (unless the contrary intention appears).

2—General application of principal Act as amended

(1) Subject to clauses 3 and 4, the principal Act as in force after the commencement of this Act applies in relation to a licence or learner's permit issued, renewed or in force after the commencement of this Act.

(2) For the avoidance of doubt—

(a) if a provisional licence is to come into effect after the commencement of section 11 as a result of a safer driver agreement entered into under section 81BA of the principal Act before such commencement, section 81BA of the principal Act as in force after such commencement will be taken to apply in relation to the licence; and

(b) if a provisional licence is issued to a person after the commencement of section 11 as a result of an appeal determined under section 81BB of the principal Act before such commencement, section 81BB of the principal Act as in force after such commencement will be taken to apply in relation to the licence.

3—Principal Act as in force before commencement to continue to apply in certain circumstances

Subject to clause 4, the principal Act as in force immediately before the commencement of this Act continues to apply in relation to—

(a) a P1 or P2 licence or a learner's permit in force immediately before the commencement of this Act; and

(b) the renewal of a licence or permit referred to in paragraph (a) (and in relation to a P1 or P2 licence or a learner's permit as so renewed) other than where the renewal occurs on application made more than 12 months after expiry of the previous licence or permit; and

(c) the issue of a P2 licence after the commencement of this Act (and in relation to the P2 licence as so issued) to a person who was the holder of a P1 licence—

(i) immediately before the commencement of this Act; and

(ii) at some time during the period of 12 months immediately preceding the application for the P2 licence; and

(d) the issue of a non-provisional licence after the commencement of this Act to a person who was the holder of a P1 or P2 licence—

(i) immediately before the commencement of this Act; and

(ii) at some time during the period of 12 months immediately preceding the application for the non-provisional licence.

4—Transitional modifications of principal Act

Despite clauses 2 and 3—

(a) on and from the commencement of section 7, section 75A(20) and (21) of the principal Act apply to a prescribed learner's permit holder (within the meaning of section 75A of that Act) whether the permit was issued (or renewed) before or after that commencement; and

(b) on and from the commencement of section 11, section 81A(16), (17), (18) and (19) of the principal Act apply to the holder of a P1 licence who is under the age of 25 years whether the P1 licence was issued (or renewed) before or after that commencement; and

(c) on and from the commencement of section 11 any condition referred to in section 81A(3)(c) of the principal Act (as in force immediately before the commencement of section 11) will cease to apply to a provisional licence; and

(d) on and from the commencement of section 11, section 81A(5)(a) of the principal Act (as in force immediately before the commencement of section 11) will apply as if subparagraph (iv) were deleted; and

(e) on and from the commencement of section 11, section 81A(8)(b) of the principal Act (as in force immediately before the commencement of section 11) will not apply in relation to any applicant for a licence; and

(f) section 81A (as in force immediately before the commencement of section 11) applies to a disqualified provisional licence holder as if—

(i) the references in section 81A(5)(b)(i) to 2 years were references to 12 months; and

(ii) the prescribed period (for the purposes of section 81A) was—

(A) in relation to a prescribed provisional licence holder—2 years; and

(B) in relation to any other disqualified provisional licence holder—18 months; and

(g) a P1 licence referred to in clause 3 may be renewed as a non-provisional licence if—

(i) the holder of the P1 licence—

(A) has not been disqualified from holding or obtaining a driver's licence or learner's permit as a result of an offence committed or allegedly committed while the holder of a P1 licence; and

(B) has held a P1 licence for periods totalling at least 2 years; or

(ii) the holder of the P1 licence is a disqualified provisional licence holder and has held the P1 licence for a period of—

(A) in the case of a prescribed provisional licence holder—at least 3 years; or

(B) in any other case—at least 2 years and 6 months.

5—Examiners taken to be testers

(1) A person who is, immediately before the commencement of section 8, an examiner appointed by the Registrar for the purposes of section 79 of the principal Act is, on the commencement of section 8, taken to be appointed by the Registrar as a tester for the purposes of that section of the principal Act as amended by section 8.

(2) A person who is, immediately before the commencement of section 11, an examiner appointed by the Registrar for the purposes of conducting a hazard perception test under section 81A of the principal Act is, on the commencement of section 11—

(a) taken to continue to be so appointed for the purposes of section 81A of the Act (as in force before the commencement of section 11) as that provision continues to apply in accordance with this Schedule; and

(b) taken to be appointed by the Registrar as a tester for the purposes of section 79A of the principal Act as amended by section 9.