

Legislative Council—No 36A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 30 September 2010

South Australia

Statutes Amendment (Driving Offences) Bill 2010

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*; the *Road Traffic Act 1961*; and the *South Australian Motor Sport Act 1984*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

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

- 4 Amendment of section 5AA—Aggravated offences
- 5 Amendment of section 19A—Causing death or harm by use of vehicle or vessel
- 6 Insertion of section 19AD
 - 19AD Street racing
- 7 Amendment of section 19B—Alternative verdicts

Part 3—Amendment of *Road Traffic Act 1961*

- 8 Amendment of section 44B—Misuse of motor vehicle
- 9 Amendment of section 45—Careless driving
- 10 Amendment of section 46—Reckless and dangerous driving

Part 4—Amendment of *South Australian Motor Sport Act 1984*

- 11 Amendment of section 25—Non-application of certain laws
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Driving Offences) Act 2010*.

2—Commencement

- 5 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 *Criminal Law Consolidation Act 1935*

10 4—Amendment of section 5AA—Aggravated offences

- (1) Section 5AA(1)—delete "committed in the following" and substitute:
 - committed in 1 or more of the following
- (2) Section 5AA(1a)—delete "committed in the following" and substitute:
 - committed in 1 or more of the following

(3) Section 5AA(1a)—after paragraph (a) insert:

(ab) the offender was, at the time of the offence, driving a motor vehicle in a street race;

(4) Section 5AA(1b)—delete "committed in the following" and substitute:

committed in 1 or more of the following

(5) Section 5AA—after subsection (1b) insert:

(1c) For the purposes of section 19AD, an aggravated offence is an offence committed by the driver of a motor vehicle in 1 or more of the following circumstances:

(a) the offender knew that, at the time of the offence, he or she was driving the motor vehicle in circumstances of heightened risk;

(b) the offender committed the offence knowing that there were 1 or more passengers in or on the motor vehicle;

(c) the offender knew, or ought reasonably to have known, that, at the time of the offence, he or she was driving a motor vehicle that had a major defect.

(6) Section 5AA(5)—after the definition of *child* insert:

circumstances of heightened risk, in relation to the driving of a motor vehicle, means—

(a) driving the motor vehicle between sunset on one day and sunrise on the next day; or

(b) driving the motor vehicle in circumstances where traction between the vehicle and the surface being driven on is adversely affected; or

(c) driving the motor vehicle in circumstances where visibility is adversely affected;

major defect—a motor vehicle has a major defect if use of the motor vehicle constitutes a serious risk to the safety of any person;

street race has the meaning given in section 19AD.

5—Amendment of section 19A—Causing death or harm by use of vehicle or vessel

(1) Section 19A(5)—delete subsection (5) and substitute:

(5) In determining whether an offence is a first or subsequent offence for the purposes of this section a previous offence against—

(a) this section; or

(b) section 19AC; or

(c) section 46 of the *Road Traffic Act 1961*; or

(d) section 69A of the *Harbors and Navigation Act 1993*,

for which the defendant has been convicted will be taken into account.

(2) Section 19A—after subsection (9) insert:

- 5 (10) It is a defence to a charge of an offence against this section for the defendant to prove that he or she was, at the time of the offence—
- (a) carrying out duties as an emergency worker; and
 - (b) acting in accordance with the directions of his or her employing authority; and
 - 10 (c) acting reasonably in the circumstances as he or she believed them to be.

(11) In this section—

emergency worker means a police officer or a person who is an emergency worker as defined by the regulations for the purposes of this section;

15 *employing authority* means—

- (a) in relation to a police officer—the Commissioner of Police; or
- (b) in relation to a person who is an emergency worker as defined by the regulations for the purposes of this section—
20 the person defined by the regulations as the employing authority for that person.

6—Insertion of section 19AD

After section 19AC insert:

19AD—Street racing

- 25 (1) A person who participates in a street race, or in preparations for a proposed street race, is guilty of an offence.

Maximum penalty:

- 30 (a) for a first offence that is a basic offence—imprisonment for 3 years and disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;
- (b) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for 5 years and disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders.

- 35 (2) For the purposes of this section, a person participates in a street race, or in preparations for a proposed street race, if the person—

- 40 (a) drives a motor vehicle in the street race; or
- (b) promotes, or assists in the promotion of, the street race or proposed street race in any way; or

- (c) engages in any other conduct that assists, or is intended to assist, in the street race or proposed street race taking place.
- (3) However, subsection (1) does not apply to a street race that occurs in a place with the consent of the owner or occupier of the place or the person who has the care, control and management of the place.
- (5) Where a person is, on conviction of an offence against this section, disqualified from holding or obtaining a driver's licence—
- (a) the disqualification operates to cancel any driver's licence held by the convicted person as at the commencement of the period of disqualification; and
- (b) the disqualification may not be reduced or mitigated in any way or be substituted by any other penalty or sentence.
- (6) For the avoidance of doubt, a person may be found guilty of an offence against this section relating to a proposed street race whether or not the street race in fact took place.
- (7) In determining whether an offence is a first or subsequent offence for the purposes of this section—
- (a) a previous offence against section 45A, 46, 47 or 47B (other than a category 1 offence against that section) of the *Road Traffic Act 1961* for which the defendant has been convicted and that was committed within the period of 5 years immediately preceding the commission of the offence under consideration will be taken into account; and
- (b) a previous offence (whenever occurring) against this section or another provision of this Division, or a corresponding previous enactment, for which the defendant has been convicted will be taken into account.
- (8) In this section—
- promote***, in relation to a street race or proposed street race, includes—
- (a) organise or conduct the street race; or
- (b) offer an inducement to another person to participate in the street race;
- road*** and ***road-related area*** have the same meaning as in the *Road Traffic Act 1961*;
- street race*** means any or all of the following when conducted on a road or a road-related area:
- (a) a race between 2 or more motor vehicles (whether the race is a drag race or otherwise, and whether the race is over a predetermined or indeterminate course);
- (b) a trial to determine how quickly a motor vehicle can cover the distance between 2 points;

(c) a competition between, or display involving, 2 or more motor vehicles consisting of or including the production of sustained wheel spin;

(d) a trial of a motor vehicle's speed or performance, or of a driver's skill,

but does not include conduct declared by the regulations not to be included within the ambit of this definition.

(9) A regulation made for the purposes of the definition of *street race* may confer a discretionary power on the Attorney-General, the Commissioner of Police or any other specified person or body.

7—Amendment of section 19B—Alternative verdicts

Section 19B—after subsection (4) insert:

(4a) If at the trial of a person for an offence against section 19A(1) or (3) that is alleged to be an aggravated offence committed whilst the person was driving a motor vehicle in a street race, the jury is not satisfied that the accused is guilty of the aggravated offence charged but is satisfied that the accused is guilty of an offence against section 19AD, the jury may bring in a verdict that the accused is guilty of an offence against section 19AD.

Part 3—Amendment of *Road Traffic Act 1961*

8—Amendment of section 44B—Misuse of motor vehicle

(1) Section 44B(1)—delete subsection (1) and substitute:

(1) For the purposes of this section, a person *misuses* a motor vehicle if the person—

(a) operates a motor vehicle so as to produce sustained wheel spin; or

(b) drives a motor vehicle so as to cause engine or tyre noise, or both, that is likely to disturb persons residing or working in the vicinity; or

(c) drives a motor vehicle onto an area of park or garden or other road related area so as to break up the ground surface or cause other damage.

(2) Section 44B—after subsection (5) insert:

(6) The power of a court under subsection (5) is in addition to, and does not derogate from, any powers of the court under the *Criminal Law (Sentencing) Act 1988*.

9—Amendment of section 45—Careless driving

(1) Section 45—after subsection (4) insert:

(4a) It is a defence to a charge of an offence against this section for the defendant to prove that he or she was, at the time of the offence—

- (a) carrying out duties as an emergency worker; and
- (b) acting in accordance with the directions of his or her employing authority; and
- (c) acting reasonably in the circumstances as he or she believed them to be.

(2) Section 45(5)—before the definition of *serious harm* insert:

emergency worker means a police officer or a person who is an emergency worker as defined by the regulations for the purposes of this section;

employing authority means—

- (a) in relation to a police officer—the Commissioner of Police; or
- (b) in relation to a person who is an emergency worker as defined by the regulations for the purposes of this section—the person defined by the regulations as the employing authority for that person;

10—Amendment of section 46—Reckless and dangerous driving

Section 46—after subsection (4) insert:

(5) It is a defence to a charge of an offence against this section for the defendant to prove that he or she was, at the time of the offence—

- (a) carrying out duties as an emergency worker; and
- (b) acting in accordance with the directions of his or her employing authority; and
- (c) acting reasonably in the circumstances as he or she believed them to be.

(6) In this section—

emergency worker means a police officer or a person who is an emergency worker as defined by the regulations for the purposes of this section;

employing authority means—

- (a) in relation to a police officer—the Commissioner of Police;
or
- (b) in relation to a person who is an emergency worker as defined by the regulations for the purposes of this section—the person defined by the regulations as the employing authority for that person;

Part 4—Amendment of *South Australian Motor Sport Act 1984*

11—Amendment of section 25—Non-application of certain laws

Section 25(1a)—delete subsection (1a) and substitute:

- (1a) The provisions of the *Road Traffic Act 1961*, the *Motor Vehicles Act 1959* and Part 3 Division 6 of the *Criminal Law Consolidation Act 1935* do not apply to or in relation to a vehicle or its driver while the vehicle is being driven in a motor sport event within the declared area and during the declared period for the event.

5