

South Australia

**Criminal Law Consolidation (Serious Vehicle and Vessel Offences) Amendment Bill 2005**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*; and to make related amendments to the *Road Traffic Act 1961*.

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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 *Criminal Law Consolidation (Serious Vehicle and Vessel Offences) Amendment Act 2005*.

#### 5 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 *Criminal Law Consolidation Act 1935*

### 4—Amendment of section 5—Interpretation

- (1) Section 5(1)—after the definition of *court* insert:

*drive* includes ride;

5 *driver's licence* includes a learner's permit;

- (2) Section 5(1)—after the definition of *local government body* insert:

*motor vehicle* means a vehicle that is propelled by a motor;

*motor vessel* means a vessel that is propelled by a motor;

- (3) Section 5(1)—after the definition of *sexual intercourse* insert:

10 *vehicle* includes an animal;

*vessel* has the same meaning as in the *Harbors and Navigation Act 1993*.

### 5—Amendment of section 5AA—Aggravated offences

- (1) Section 5AA(1)—delete "An" and substitute:

Subject to subsection (1a), an

15 (2) Section 5AA—after subsection (1) insert:

- (1a) For the purposes of section 19A, an aggravated offence is an offence committed in the following circumstances:

(a) the offender committed the offence in the course of attempting to escape pursuit by a police officer;

20 (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, by order of a court in this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence;

25 (c) the offender committed the offence as part of a prolonged, persistent and deliberate course of very bad driving or vessel operation;

(d) the offender committed the offence while there was present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood;

30 (e) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A or 47 of the *Road Traffic Act 1961* or operating a vessel in contravention of section 70(1) of the *Harbors and Navigation Act 1993*.

## 6—Amendment of section 13—Manslaughter

Section 13—after its present contents (now to be designated as subsection (1)) insert:

- 5
- (2) If a court convicting a person of manslaughter is satisfied that the convicted person used a motor vehicle in the commission of the offence, the court must order that the person be disqualified from holding or obtaining a driver's licence for 10 years or such longer period as the court orders.
- (3) Where a convicted person is disqualified from holding or obtaining a driver's licence—
- 10
- (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.

## 7—Substitution of heading

Heading to Part 3 Division 6—delete the heading and substitute:

### Division 6—Serious vehicle and vessel offences

## 8—Insertion of section 19AAB

Before section 19A insert:

### 19AAB—Interpretation

In this Division—

*consumption* in relation to a drug includes injection and any other form of administration;

*harm, physical harm* and *serious harm* have the same meanings as in section 21.

## 9—Amendment of section 19A—Causing death or harm by dangerous use of vehicle or vessel

- (1) Section 19A(1)(a)—delete "drives a motor vehicle" and substitute:

drives a vehicle or operates a vessel

- (2) Section 19A(1)—after subsection (1) insert:

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence—
- (i) for a first offence—

- 5 (A) if it is a basic offence—imprisonment for 10 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;
- (B) if it is an aggravated offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- 10 (ii) for a second offence—
- (A) if it is a basic offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- 15 (B) if it is an aggravated offence—imprisonment for 20 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- 20 (iii) for a third or subsequent offence—imprisonment for 20 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- 25 (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 7 years.
- (3) Section 19A(2)—delete subsection (2)
- 30 (4) Section 19A(3)(a)—delete "or rides a vehicle or an animal" and substitute:  
a vehicle or operates a vessel
- (5) Section 19A(3)(b)—delete "bodily"
- (6) Section 19A(3)—after subsection (3) insert:  
Maximum penalty:
- 35 (a) where a motor vehicle or motor vessel was used in the commission of the offence and serious harm was caused to a person—
- (i) for a first offence—
- 40 (A) if it is a basic offence—imprisonment for 10 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;

(B) if it is an aggravated offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;

(ii) for a second offence—

(A) if it is a basic offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;

(B) if it is an aggravated offence—imprisonment for 20 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;

(iii) for a third or subsequent offence—imprisonment for 20 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;

(b) where a motor vehicle or motor vessel was used in the commission of the offence but serious harm was not caused to any person—

(i) for a first offence—

(A) if it is a basic offence—imprisonment for 5 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;

(B) if it is an aggravated offence—imprisonment for 7 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;

(ii) for a subsequent offence—imprisonment for 7 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;

(c) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 5 years.

(7) Section 19A(4)—delete subsection (4)

(8) Section 19A(5)—after "motor vehicle" insert:

or the operation of a motor vessel

- (9) Section 19A(5)—delete "subsection (2) or (4)(a) unless it resulted in the death of," and substitute:

subsection (1), or an offence against subsection (3) in which serious harm was caused to a person, unless it resulted in the death of, or grievous bodily

- 5 (10) Section 19A(7)—after "omission" insert:

(but in determining whether an offence arising out of a particular act or omission is a first or subsequent offence for the purposes of this section, a conviction for an offence arising out of the same act or omission cannot be taken into account)

- 10 (11) Section 19A(10)—delete subsection (10)

### **10—Insertion of section 19AB**

After section 19A insert:

#### **19AB—Leaving accident scene after causing death or harm by careless use of vehicle or vessel**

- 15 (1) A person who—

- (a) drives a vehicle or operates a vessel without due care or attention; and
- (b) by that conduct, causes the death of another; and
- (c) having so caused death, fails to stop the vehicle or vessel and give all possible assistance,

is guilty of an offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence—
  - 25 (i) for a first offence—imprisonment for 10 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;
  - 30 (ii) for a subsequent offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;
- 35 (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 7 years.

- (2) A person who—

- (a) drives a vehicle or operates a vessel without due care or attention; and
- 40 (b) by that conduct, causes physical harm to another; and

- (c) having so caused physical harm, fails to stop the vehicle or vessel and give all possible assistance,

is guilty of an offence.

Maximum penalty:

- 5 (a) where a motor vehicle or motor vessel was used in the commission of the offence and the physical harm caused to a person amounts to serious harm—

10 (i) for a first offence—imprisonment for 10 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;

15 (ii) for a subsequent offence—imprisonment for 15 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders;

- 20 (b) where a motor vehicle or motor vessel was used in the commission of the offence but the physical harm caused to any person does not amount to serious harm—

25 (i) for a first offence—imprisonment for 5 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 1 year or such longer period as the court orders;

30 (ii) for a subsequent offence—imprisonment for 7 years and, in the case of an offence involving the use of a motor vehicle, disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;

- (c) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 5 years.

- 35 (3) It is a defence to a charge of an offence against this section to prove that—

(a) the defendant was unaware that the accident had occurred and that the defendant's lack of awareness was reasonable in the circumstances; or

(b) the defendant—

40 (i) genuinely believed on reasonable grounds that stopping and giving assistance would endanger his or her physical safety, or the physical safety of another person; and



- (ii) at the earliest opportunity notified police,  
ambulance or some other authority responsible for  
providing emergency services of the accident.
- 5 (4) In determining whether an offence is a first or subsequent offence for  
the purposes of this section, all previous offences against this section  
or section 19A that involved the driving of a motor vehicle or  
operation of a motor vessel must be taken into account except that  
such an offence will not be taken to be a previous offence for the  
10 purposes of subsection (1), or an offence against subsection (2) in  
which serious harm was caused to a person, unless it resulted in the  
death of, or grievous bodily or serious harm to, the victim.
- (5) Where a convicted person is disqualified from holding or obtaining a  
driver's licence—
- 15 (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.
- 20 (6) A person is liable to be charged with and convicted of an offence  
against subsection (1) in respect of each person killed, and of an  
offence against subsection (2) in respect of each person who suffers  
physical harm, in consequence of the same act or omission (but in  
determining whether an offence arising out of a particular act or  
25 omission is a first or subsequent offence for the purposes of this  
section, a conviction for an offence arising out of the same act or  
omission cannot be taken into account).

### 11—Amendment of section 19B—Alternative verdicts

- (1) Section 19B(2)(c)—after "*Road Traffic Act 1961*" insert:  
or section 69(1) of the *Harbors and Navigation Act 1993*
- 30 (2) Section 19B(2)(d)—after "*Road Traffic Act 1961*" insert:  
or section 69(2) of the *Harbors and Navigation Act 1993*
- (3) Section 19B—after subsection (3) insert:
- 35 (4) If at the trial of a person for an offence against section 19AB(1) or  
(2) the jury is not satisfied that the accused is guilty of that offence  
but is satisfied that the accused is guilty of another offence against  
the *Road Traffic Act 1961* or the *Harbors and Navigation Act 1993*  
(the *lesser offence*) with which the person has been charged, the jury  
must find the accused not guilty of the offence against section  
19AB(1) or (2), but may find the accused guilty of the lesser offence.

## 12—Amendment of section 29—Acts endangering life or creating risk of serious harm

Section 29—after subsection (3) insert:

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- (4) If a court convicting a person of an offence against this section is satisfied that the convicted person used a motor vehicle in the commission of the offence, the court must order that the person be disqualified from holding or obtaining a driver's licence for 5 years or such longer period as the court orders.
- 10
- (5) Where a convicted person is 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
- 15
- (b) the disqualification may not be reduced or mitigated in any way or be substituted by any other penalty or sentence.

## Schedule 1—Related amendments to *Road Traffic Act 1961*

### 1—Amendment of section 43—Duty to stop and give assistance where person killed or injured

- 20
- (1) Section 43(1), penalty provision, (a)—delete paragraph (a) and substitute:
- (a) imprisonment for 5 years; and
- (2) Section 43(3)—delete subsection (3) and substitute:
- (3) It is a defence to a charge of an offence against subsection (1) to prove that—
- 25
- (a) the defendant was unaware that the accident had occurred and that the defendant's lack of awareness was reasonable in the circumstances; or
- (b) the defendant—
- 30
- (i) genuinely believed on reasonable grounds that compliance with subsection (1) would endanger his or her physical safety, or the physical safety of another person; and
- (ii) at the earliest opportunity notified police, ambulance or some other authority responsible for providing emergency services of the accident.

### 2—Repeal of section 164

Section 164—delete the section

### 3—Insertion of section 169B

After section 169A insert:

#### **169B—Effect of imprisonment on disqualification**

- 5 (1) If, in sentencing a convicted person for an offence under this or any other Act, the court imposes a sentence of imprisonment (other than a suspended sentence) and orders that the person be disqualified from holding or obtaining a driver's licence for a specified period, the person will be taken to be so disqualified for a period commencing at the time the order is made and ending—
- 10 (a) on the expiration of the specified period after the person's release from a period of imprisonment served by the person that consists of or includes a period attributable to the court's sentence; or
- 15 (b) if, on the person's release from such a period of imprisonment, the person would, apart from this subsection, already be disqualified from holding or obtaining a driver's licence or holds a driver's licence that is suspended—on the expiration of the specified period after the end of that period of disqualification or suspension.
- 20 (2) Subsection (1) applies despite the terms of the court's order and despite the fact that it will or might result in the convicted person being disqualified from holding or obtaining a driver's licence for a period exceeding the maximum period (if any) prescribed under this or another Act in relation to the relevant offence.