

Legislative Council—No 133

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South Australia

**Statutes Amendment (Vehicle and Vessel Offences)
Bill 2005**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*; the *Bail Act 1985*; the *Harbors and Navigation Act 1993*; and 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 *Statutes Amendment (Vehicle and Vessel Offences) Act 2005*.

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;

driver's licence includes a learner's permit;

15 (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:

vehicle includes an animal;

20 *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

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

25 (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;

30 (b) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under the *Road Traffic Act 1961*;

- 5
- (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;
- 10 (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:

- 15 (2) If a court convicting a person of manslaughter is satisfied that the victim's death was caused by the convicted person's use of a motor vehicle, 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—
- 20 (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;

35 *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 that 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;

(ii) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for life 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 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)

(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:

(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 that 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;

(ii) for a first offence that is an aggravated offence or for any subsequent offence—imprisonment for life 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 that 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;

(ii) for a first offence that is an aggravated offence or for any 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

(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)

(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

(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) fails to satisfy the statutory obligations of a driver of a vehicle or an operator of a vessel (as the case may be) in relation to the incident,

is guilty of an offence.

Maximum penalty:

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

(i) for a first 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 subsequent offence—imprisonment for life 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;

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(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

10

(b) by that conduct, causes physical harm to another; and

(c) fails to satisfy the statutory obligations of a driver of a vehicle or an operator of a vessel (as the case may be) in relation to the incident,

15

is guilty of an offence.

Maximum penalty:

(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—

20

(i) for a first 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;

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(ii) for a subsequent offence—imprisonment for life 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;

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(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—

(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;

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(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;

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

- 5
- (3) For the purposes of subsection (1) and (2)—
- (a) a person fails to satisfy the statutory obligations of a driver of a vehicle in relation to an incident if the person commits an offence against section 43 of the *Road Traffic Act 1961* in relation to the incident; and
- (b) a person fails to satisfy the statutory obligations of an operator of a vessel in relation to an incident if the person commits an offence against section 75 or 76 of the *Harbors and Navigation Act 1993* in relation to the incident.
- 10
- (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 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.
- 15
- (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
- (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 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).
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11—Amendment of section 19B—Alternative verdicts

- (1) Section 19B(2)(c)—after "*Road Traffic Act 1961*" insert:
- 35 or section 69A of the *Harbors and Navigation Act 1993*
- (2) Section 19B(2)(d)—after "*Road Traffic Act 1961*" insert:
- or section 69 of the *Harbors and Navigation Act 1993*

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

Section 29—after subsection (3) insert:

- 5 (4) If a court convicting a person of an offence against this section is satisfied that the act or omission constituting the offence was done or made by the convicted person in the course of the convicted person's use of a motor vehicle, 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.

Part 3—Amendment of *Bail Act 1985*

13—Insertion of section 10A

After section 10 insert:

20 10A—Presumption against bail in certain cases

- (1) Despite section 10, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.
- (2) In this section—
- 25 ***prescribed applicant*** means an applicant taken into custody in relation to any of the following offences if committed, or allegedly committed, by the applicant in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit:
- 30 (a) an offence against section 13 of the *Criminal Law Consolidation Act 1935* in which the victim's death was caused by the applicant's use of a motor vehicle; or
- (b) an offence against section 19A of the *Criminal Law Consolidation Act 1935*; or
- 35 (c) an offence against section 29 of the *Criminal Law Consolidation Act 1935* if the act or omission constituting the offence was done or made by the applicant in the course of the applicant's use of a motor vehicle.

Part 4—Amendment of *Harbors and Navigation Act 1993*

14—Substitution of section 69

Section 69—delete the section and substitute:

69—Careless operation of a vessel

- 5 (1) A person who operates a vessel without due care for the safety of any person or property is guilty of an offence.

Maximum penalty:

- (a) for an aggravated offence—12 months imprisonment; or
(b) for any other offence—\$2 500.

- 10 (2) For the purposes of this section, an aggravated offence is—

- (a) an offence that caused the death of, or serious harm to, a person; or
(b) an offence committed in any of the following circumstances:
15 (i) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
(ii) the offender was, at the time of the offence, operating the vessel in contravention of section 70(1).

- 20 (3) If a person is charged with an aggravated offence against this section, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.

- (4) In this section—

serious harm means—

- 25 (a) harm that endangers, or is likely to endanger, a person's life; or
(b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
30 (c) harm that consists of, or is likely to result in, serious disfigurement.

69A—Dangerous operation of a vessel

A person who operates a vessel at a dangerous speed or in a dangerous manner is guilty of an offence.

35 Maximum penalty: Imprisonment for 2 years.

15—Amendment of section 71—Requirement to submit to alcotest or breath analysis

Section 71(1)—delete "two hours" wherever occurring and substitute in each case:

8 hours

5 **16—Amendment of section 73—Evidence**

Section 73(2a)—delete subsection (2a) and substitute:

(2a) If, in any proceedings for an offence, it is proved—

(a) that the defendant—

(i) operated a vessel; or

10 (ii) was a member of the crew of a vessel that was being operated and was or ought to have been engaged in duties affecting the safe operation of the vessel; and

15 (b) that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis performed within the period of 2 hours immediately following the conduct referred to in paragraph (a),

20 it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood at the time of the conduct referred to in paragraph (a).

17—Amendment of section 76—Duty to give assistance and provide particulars

(1) Section 76(1)—delete "it is the duty of a person who is in a position to do so to" and substitute:

25 a person who is in a position to do so must

(2) Section 76(1)—after subsection (1) insert:

Maximum penalty:

(a) in the case of a person who was the operator of a vessel involved in the accident—imprisonment for 5 years;

30 (b) in any other case—\$2 500.

(3) Section 76(2)—delete "it is the duty of the person who was in charge of the vessel at the time of the accident to" and substitute:

the person who was in charge of the vessel at the time of the accident must

(4) Section 76(2)—after subsection (2) insert:

35 Maximum penalty: \$1 250.

(5) Section 76(3)—delete subsection (3)

Part 5—Amendment of *Road Traffic Act 1961*

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

(1) Section 43(1)—delete subsection (1) and substitute:

- 5 (1) The driver of a vehicle involved in an accident in which a person is killed or injured must—
- (a) immediately after the accident—
 - 10 (i) stop the vehicle; and
 - (ii) give all possible assistance; and
 - (b) not more than 90 minutes after the accident, present himself or herself to a member of the police force at the scene of the accident or at a police station for the purpose of providing particulars of the accident and submitting to any requirement to undergo a test relating to the presence of alcohol or a drug in his or her blood or oral fluid.

Penalty:

- 15 (a) imprisonment for 5 years; and
- (b) disqualification from holding or obtaining a driver's licence for such period, being not less than 1 year, as the court thinks fit.
- 20

(2) Section 43(3)—delete subsection (3) and substitute:

- 25 (3) It is a defence to a charge of an offence against subsection (1) 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) in relation only to a failure to comply with subsection (1)(a), the defendant—
 - 30 (i) genuinely believed on reasonable grounds that compliance with subsection (1)(a) 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; or
 - (c) in relation only to a failure to comply with subsection (1)(b), the defendant—
 - 35 (i) had a reasonable excuse for the failure to comply; and

- (ii) presented himself or herself to a member of the police force as soon as possible after the accident.

19—Amendment of section 45—Careless driving

Section 45—after its present contents (now to be designated as subsection (1)) insert:

- 5 (2) If a court convicts a person of an offence against this section that is an aggravated offence, the following provisions apply:
 - (a) the maximum penalty for the offence is 12 months imprisonment; and
 - 10 (b) the court must order that the person be disqualified from holding or obtaining a driver's licence for such period, being not less than 6 months, as the court thinks fit; and
 - (c) the disqualification prescribed by paragraph (b) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence.
- 15 (3) For the purposes of this section, an aggravated offence is—
 - (a) an offence that caused the death of, or serious harm to, a person; or
 - (b) an offence committed in any of the following circumstances:
 - 20 (i) the offender committed the offence in the course of attempting to escape pursuit by a member of the police force;
 - (ii) the offender was, at the time of the offence, driving a vehicle knowing that he or she was disqualified, under the law of this State or another State or Territory of the Commonwealth, from holding or obtaining a driver's licence or that his or her licence was suspended by notice given under this Act;
 - 25 (iii) the offender committed the offence while there was present in his or her blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;
 - 30 (iv) the offender was, at the time of the offence, driving a vehicle in contravention of section 45A or 47.
- 35 (4) If a person is charged with an aggravated offence against this section, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.
- (5) In this section—

serious harm means—

 - 40 (a) harm that endangers, or is likely to endanger, a person's life; or

- (b) harm that consists of, or is likely to result in, loss of, or serious and protracted impairment of, a part of the body or a physical or mental function; or
- (c) harm that consists of, or is likely to result in, serious disfigurement.

20—Amendment of section 46—Reckless and dangerous driving

Section 46(1), penalty provision—delete the penalty provision and substitute:

Penalty: Imprisonment for 2 years.

21—Amendment of section 47E—Police may require alcotest or breath analysis

Section 47E(2b)—delete subsection (2b) and substitute:

- (2b) Without derogating from section 47DA or 47EA, an alcotest or breath analysis to which a person has been required to submit under subsection (1) may not be commenced more than 8 hours after the conduct of the person giving rise to the requirement.

22—Amendment of section 47EAA—Police may require drug screening test, oral fluid analysis and blood test

Section 47EAA(5)—delete subsection (5) and substitute:

- (5) Without derogating from section 47DA or 47EA, a drug screening test, oral fluid analysis or blood test to which a person has been required to submit under this section may not be commenced more than 8 hours after the conduct of the person giving rise to the requirement that the person submit to the alcotest or breath analysis.

23—Amendment of section 47GA—Breath analysis where drinking occurs after driving

Section 47GA(2)(c)—after "duties" insert:

required under section 43 and any other duties

24—Amendment of section 47K—Evidence etc

Section 47K(1ab)—delete subsection (1ab) and substitute:

- (1ab) If, in any proceedings for an offence, it is proved—
- (a) that the defendant drove a vehicle, or attempted to put a vehicle in motion; and
- (b) that a concentration of alcohol was present in the defendant's blood at the time of a breath analysis performed within the period of 2 hours immediately following the conduct referred to in paragraph (a),

it must be conclusively presumed that that concentration of alcohol was present in the defendant's blood at the time of the conduct referred to in paragraph (a).

25—Repeal of section 164

Section 164—delete the section

26—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 at a time calculated as if the specified period commenced—
- 10
- (a) on 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 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.
- 25