

House of Assembly—No 136

As laid on the table and read a first time, 26 May 2021

South Australia

Criminal Law Consolidation (Driving at Extreme Speed) 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 (Driving at Extreme Speed) Amendment 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—Amendment of section 5AA—Aggravated offences

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

- 15 (1d) For the purposes of section 19ADA, an aggravated offence is—
 - (a) an offence that caused the death of, or serious harm to, a person; or
 - (b) an offence committed by the driver of a motor vehicle in 1 or more of the following circumstances:
 - 20 (i) the offender was, at the time of the offence, driving or using a motor vehicle that—

- 5
- (A) was stolen; or
- (B) was being driven or used without the consent of the owner of the vehicle,
- and the offender knew, or was reckless with respect to, that fact;
- (ii) the offender committed the offence in the course of attempting to escape pursuit by a police officer;
- 10 (iii) the offender committed the offence knowing that there were 1 or more passengers in or on the motor vehicle;
- (iv) the offender committed the offence while the offender was the holder of—
- (A) a provisional licence; or
- (B) a probationary licence; or
- 15 (C) a learner's permit; or
- (D) an interstate provisional licence; or
- (E) an interstate learner's permit,
- (as defined in the *Motor Vehicles Act 1959*) authorising the holder to drive a motor vehicle of the class driven by the offender at the time of the offence;
- 20 (v) the offender was not, at the time of the offence, the holder of—
- (A) a driver's licence; or
- 25 (B) a learner's permit; or
- (C) an interstate licence; or
- (D) an interstate learner's permit; or
- (E) a foreign licence,
- (as defined in the *Motor Vehicles Act 1959*) authorising the holder to drive a motor vehicle of the class driven by the offender at the time of the offence;
- 30 (vi) the offender was, at the time of the offence, driving a motor vehicle knowing that they were 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 their licence was suspended by notice given under the *Road Traffic Act 1961*;
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(vii) the offender committed the offence while there was present in the offender's blood a concentration of .08 grams or more of alcohol in 100 millilitres of blood;

(viii) the offender was, at the time of the offence, driving a motor vehicle in contravention of section 47 or 47BA of the *Road Traffic Act 1961*.

5—Amendment of section 19AAB—Interpretation

Section 19AAB—after the definition of *harm*, *physical harm* and *serious harm* insert:

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

6—Insertion of section 19ADA

After section 19AD insert:

19ADA—Extreme speed

(1) A person who drives a motor vehicle at an extreme speed is guilty of an offence.

Maximum penalty:

(a) for a basic offence—imprisonment for 3 years;

(b) for an aggravated offence—imprisonment for 5 years.

(2) For the purposes of subsection (1), a person drives a motor vehicle at an extreme speed if—

(a) the relevant speed limit is 60 kilometres an hour or less and the person drives the vehicle at a speed exceeding the relevant speed limit by 55 kilometres an hour or more; or

(b) the relevant speed limit is more than 60 kilometres an hour and the person drives the vehicle at a speed exceeding the relevant speed limit by 80 kilometres an hour or more.

(3) Subsection (1) does not apply to the driver of an emergency vehicle if—

(a) in the circumstances—

(i) the driver is taking reasonable care; and

(ii) it is reasonable that the provision should not apply; and

(b) if the vehicle is a motor vehicle that is moving—the vehicle is displaying a blue or red flashing light or sounding an alarm.

(4) Subsection (3)(b) does not apply to a vehicle used by a police officer if, in the circumstances, it is reasonable—

(a) not to display the light or sound the alarm; or

- (b) for the vehicle not to be fitted or equipped with a blue or red flashing light or an alarm.
- (5) If a court convicts a person of an offence against subsection (1), the following provisions apply:
- 5 (a) the court must order that the person is disqualified from holding or obtaining a driver's licence for the following period:
- (i) for a first offence—
- (A) if the offence is a basic offence—such period, being not less than 2 years, as the court thinks fit; or
- (B) if the offence is an aggravated offence—such period, being not less than 5 years, as the court thinks fit;
- (ii) for a subsequent offence—such period, being not less than 5 years, as the court thinks fit;
- (b) the disqualification prescribed by paragraph (a) cannot be reduced or mitigated in any way or be substituted by any other penalty or sentence;
- (c) if the person is the holder of a driver's licence—the disqualification operates to cancel the licence as from the commencement of the period of disqualification.
- (6) If a person is tried on a charge of an offence against section 29—
- 25 (a) the person may not be convicted of both the offence against section 29 and an offence against subsection (1) if the charge under subsection (1) arises out of the same set of circumstances that gave rise to the charge under section 29; and
- (b) an offence against subsection (1) is not available as an alternative verdict to the charge under section 29 unless the offence against subsection (1) was specified in the instrument of charge as an alternative offence.
- (7) In determining whether an offence is a first or subsequent offence for the purposes of this section—
- 35 (a) a previous offence against section 45A or 46 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
- 40 (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) This section is in addition to, and does not derogate from, any other provision relating to speed limits contained in the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* or any other Act or in any regulation, rule or by-law made under the *Road Traffic Act 1961* or the *Motor Vehicles Act 1959* or any other Act.

(9) Sections 22, 53B(5), 79B(10) and 175 of the *Road Traffic Act 1961* apply in relation to an offence against subsection (1) as if a reference in any of those sections to an offence against that Act was a reference to an offence against subsection (1).

(10) In this section—

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

relevant speed limit, for a person who drives a motor vehicle, means a speed limit that applies to the driver under—

(a) the *Road Traffic Act 1961* (other than section 82 or 83); or

(b) the *Motor Vehicles Act 1959*.

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

(1) Section 19AE(1)—delete "in the prescribed form"

(2) Section 19AE—after subsection (1) insert:

(1a) A notice of immediate licence disqualification or suspension under this section must—

(a) contain the prescribed particulars; and

(b) comply with any requirements specified by the regulations.

(3) Section 19AE—after subsection (10) insert:

(10a) If the Commissioner of Police is satisfied that a notice of licence disqualification or suspension under this section should not have been given because—

(a) the notice has been given to a particular person in error; or

(b) the notice is defective; or

(c) there is other proper cause for which the notice should not have been given,

the Commissioner may withdraw the notice.

(10b) A withdrawal referred to in subsection (10a) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner of Police, to the person to whom the notice of licence disqualification or suspension was given.

(10c) The notice of withdrawal must specify the reason for withdrawal.

(10d) If a notice of licence disqualification or suspension under this section is withdrawn, the Commissioner of Police may, if satisfied that there are proper grounds to give a fresh notice of licence disqualification or suspension to any person, give such a notice.

5 (4) Section 19AE(14), definition of *Registrar of Motor Vehicles*—delete the definition

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

(1) Section 19AF(1)—delete subsection (1) and substitute:

10 (1) If a police officer reasonably believes that a person has, after the commencement of this section, committed—

(a) an offence against section 19A(1) (being an offence where a motor vehicle was used in the commission of the offence);
or

15 (b) an offence against section 19ADA(1),
the police officer may give the person a notice of immediate licence disqualification or suspension.

(1a) A notice of immediate licence disqualification or suspension under this section must—

20 (a) contain the prescribed particulars; and
(b) comply with any requirements specified by the regulations.

(2) Section 19AF(10)—after "section 19A(1)" insert:
or 19ADA(1)

(3) Section 19AE—after subsection (13) insert:

25 (13a) If the Commissioner of Police is satisfied that a notice of licence disqualification or suspension under this section should not have been given because—

(a) the notice has been given to a particular person in error; or
(b) the notice is defective; or

30 (c) there is other proper cause for which the notice should not have been given,

the Commissioner may authorise the withdrawal of the notice.

35 (13b) A withdrawal referred to in subsection (13a) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner of Police, to the person to whom the notice of licence disqualification or suspension was given.

(13c) The notice of withdrawal must specify the reason for withdrawal.

(13d) If a notice of licence disqualification or suspension under this section is withdrawn, the Commissioner of Police may, if satisfied that there are proper grounds to give a fresh notice of licence disqualification or suspension to any person, authorise the giving of such a notice (provided that in the case of a notice relating to an offence against section 19ADA(1), the relevant period for the fresh notice must, if it is given to the same person as was given the withdrawn notice, be reduced by the period for which the withdrawn notice was (or purported to be) in operation).

(4) Section 19AF(17)—delete subsection (17) and substitute:

(17) For the purposes of this section, the *prescribed period* is a period that—

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

(b) ends—

(i) if the notice of immediate licence disqualification or suspension relates to an offence against section 19A(1)—

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

(B) 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

(C) 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; or

(ii) if the notice of immediate licence disqualification or suspension relates to an offence against section 19ADA(1)—

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

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

(C) if proceedings for the offence against section 19ADA(1) to which the notice relates are determined by a court or are withdrawn or otherwise discontinued; or

- (D) in any event—at the end of 12 months
from the commencement of the prescribed
period.

9—Amendment of section 19B—Alternative verdicts

- 5 (1) Section 19B(2)—after paragraph (b) insert:
 (ba) the offence constituted by section 19ADA(1);
- (2) Section 19B(3)—delete "subsection (2)(a) or (b)" and substitute:
 subsection (2)(a), (b) or (ba)