

Legislative Council—No 66

As introduced and read a first time, 30 November 2022

South Australia

Statutes Amendment (Serious Vehicle and Vessel Offences) Bill 2022

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Harbors and Navigation Act 1993*, the *Motor Vehicles Act 1959* and the *Road Traffic Act 1961*.

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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 *Statutes Amendment (Serious Vehicle and Vessel Offences) Act 2022*.

2—Commencement

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

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

3—Amendment of section 5AA—Aggravated offences

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

(1ab) For the purposes of section 19ABA(1) or (2), an aggravated offence is an offence committed in 1 or more of the following circumstances:

- (a) 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*;
- (b) 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;
- (c) the offender was, at the time of the offence, driving a motor vehicle in contravention of section 44C, 47 or 47BA of the *Road Traffic Act 1961*;
- (d) the offender was, at the time of the offence, driving or using a motor vehicle knowing that it had a material defect and that material defect contributed to the commission of the offence.

(2) Section 5AA(1d)(a)—delete "the death of, or serious harm to" and substitute:

harm to

(3) Section 5AA(5)—after the definition of *cognitive impairment* insert:

harm has the same meaning as in section 21;

(4) Section 5AA(5)—after the definition of *major defect* insert:

material defect—a motor vehicle has a material defect if it has a defect that could affect the safe operation of the vehicle;

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

Section 19A, heading—after "harm by" insert:

dangerous

5—Insertion of section 19ABA

After section 19AB insert:

19ABA—Causing death or serious harm by careless use of vehicle or vessel

- 5 (1) A person who—
- (a) drives a vehicle or operates a vessel without due care or attention or without reasonable consideration for any person; and
 - (b) by that conduct, causes the death of another,
- 10 is guilty of an indictable offence.

Maximum penalty:

- (a) where a motor vehicle or motor vessel was used in the commission of the offence—
 - 15 (i) for 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;
 - 20 (ii) for 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;
 - (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 3 years.
- 25

- (2) A person who—
- (a) drives a vehicle or operates a vessel without due care or attention or without reasonable consideration for any person; and
 - (b) by that conduct, causes serious harm to another,
- 30 is guilty of an indictable offence.

Maximum penalty:

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

- 5 (ii) for 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;
- (b) where neither a motor vehicle nor motor vessel was used in the commission of the offence—imprisonment for 2 years.
- 10 (3) 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.
- 15 (4) 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 serious harm, in consequence of the same act or omission.
- 20 (5) It is a defence to a charge of an offence against this section for the defendant to prove that they were, at the time of the offence—
- (a) carrying out duties as an emergency worker; and
- (b) acting in accordance with the directions of their employing authority; and
- 25 (c) acting reasonably in the circumstances as they believed them to be.
- (6) Sections 22, 53B(5), 79B(10) and 175 of the *Road Traffic Act 1961* apply in relation to an offence against this section as if a reference in any of those sections to an offence against that Act was a reference to the offence against this section.
- 30 (7) In this section—
- emergency worker* has the same meaning as in section 19A;
- employing authority* has the same meaning as in section 19A.

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

- 35 (1) Section 19AE, heading—delete "against section 19A(1)"
- (2) Section 19AE(1)—delete "section 19A(1) (being an offence where a motor vehicle was used in the commission of the offence)" and substitute:
- 40 section 19A, section 19AB or section 19ABA (in any case being an offence where a motor vehicle was used in the commission of the offence and where the offence caused the death of, or serious harm to, a person)

- (3) Section 19AE(13)—delete "section 19A(1)" and substitute:
section 19A, section 19AB or section 19ABA

7—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, heading—delete "where offence against section 19A(1) or 19ADA(1)" and substitute:

for certain offences

- (2) Section 19AF(1)(a)—delete "section 19A(1)" and substitute:

section 19A

- (3) Section 19AF(1)—after paragraph (a) insert:

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

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

- (4) Section 19AF(10)—delete "section 19A(1) or 19ADA(1)" and substitute:

section 19A, section 19AB, section 19ABA or section 19ADA(1)

- (5) Section 19AF(17)(b)(i) and (ii)—delete subparagraphs (i) and (ii) and substitute:

(i) if the notice of immediate licence disqualification or suspension relates to an offence against section 19A, section 19AB or section 19ABA (in any case being an offence where a motor vehicle was used in the commission of the offence and where the offence caused the death of, or serious harm to, a person)—

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

(B) if the person is charged with such an offence—at the time the person is issued a notice of immediate licence disqualification or suspension under section 19AE in relation to the charge; or

(C) if a determination is made that the person should not be charged with such an offence—at the time the determination is made; or

(ii) if the notice of immediate licence disqualification or suspension relates to any other offence against section 19A, section 19AB or section 19ABA or 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 19A, section 19AB, section 19ABA or section 19ADA(1)—at the time the determination is made; or

- (C) if proceedings for the offence 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.

8—Amendment of section 19B—Alternative verdicts

- (1) Section 19B(1)—after "section 19A(1) or (3)" insert:
or section 19ABA(1) or (2)
- (2) Section 19B(2)—after paragraph (b) insert:
(baa) the offence constituted by section 19ABA(1);
(bab) the offence constituted by section 19ABA(2);
- (3) Section 19B(3)—before "or (ba)" insert:
, (baa), (bab)

Part 3—Amendment of *Harbors and Navigation Act 1993*

9—Amendment of section 69—Careless operation of a vessel

- (1) Section 69(2)(a)—delete "the death of, or serious harm to," and substitute:
harm to
- (2) Section 69(4), definition of *serious harm*—delete the definition and substitute:
harm has the same meaning as in section 21 of the *Criminal Law Consolidation Act 1935*.

Part 4—Amendment of *Motor Vehicles Act 1959*

10—Amendment of section 145—Regulations and fee notices

Section 145—after subsection (1a) insert:

- (1b) To avoid doubt, regulations made under subsection (1)(gc) or (gd) may require a person who holds a particular class of licence (the *original licence*) to obtain a different class of licence in order to drive a class of motor vehicle that they had been authorised to drive under the original licence.

Part 5—Amendment of *Road Traffic Act 1961*

11—Amendment of heading to Part 3 Division 4

Heading to Part 3 Division 4—after "misuse" insert:
etc

12—Insertion of section 44C

After section 44B insert:

44C—Driving ultra high powered vehicle with disabled automated intervention system

5 (1) A person must not drive an ultra high powered vehicle on a road if an automated intervention system of the vehicle is disabled.

Maximum penalty: \$5 000.

(2) It is a defence to a charge for an offence against this section if the person charged establishes that—

10 (a) the person—

(i) did not cause or contribute to the disablement of the automated intervention system of the ultra high powered vehicle; and

15 (ii) did not know and could not reasonably be expected to have known that the automated intervention system of the ultra high powered vehicle was disabled; and

20 (iii) could not reasonably be expected to have sought to ascertain whether the automated intervention system of the ultra high powered vehicle was disabled; or

(b) it was impracticable for the person to drive the ultra high powered vehicle with the automated intervention system enabled.

25 (3) In this section—

automated intervention system, of a vehicle, means a system or function that identifies a hazardous condition in relation to the vehicle and responds to the condition by overriding the driver's control of the vehicle so as to avoid the condition, and includes, for example, any of the following:

- (a) anti-lock braking;
- (b) automated emergency braking;
- (c) electronic stability control;
- (d) traction control,

35 but does not include a warning system;

disabled—an automated intervention system of a vehicle is disabled if it is permanently or temporarily destroyed, turned off, attenuated or otherwise rendered ineffective;

hazardous condition includes a potentially hazardous condition;

motor trike means a motor vehicle with 3 wheels, but does not include—

- (a) a 2 wheeled motor vehicle with a sidecar attached to it and supported by a third wheel; or
- (b) a motor vehicle with 3 wheels that has a body type commonly known as, or similar to, a sedan, station wagon, coupe, convertible, roadster, utility, tray top or van;

ultra high powered vehicle means a motor vehicle—

- (a) with a GVM not greater than 4.5 tonnes, but not including a bus or a motor bike or motor trike; and
- (b) with a power to weight ratio equal to or greater than 276 kilowatts per tonne;

warning system, of a vehicle, means a system or function that identifies a hazardous condition in relation to the vehicle and alerts the driver to the condition such that the driver can attempt to control the vehicle so as to avoid the condition, and includes, for example, any of the following:

- (a) a blind spot or lane change warning;
- (b) a forward collision warning;
- (c) a lane departure warning.

- (4) For the purposes of this section, the **power to weight ratio** of a motor vehicle is to be calculated by dividing the vehicle's engine power (in kilowatts) by its tare mass (in kilograms), and multiplying the product of that division by 1 000.

13—Amendment of section 45—Careless driving

- (1) Section 45(3)(a)—delete "the death of, or serious harm to," and substitute:
harm to

- (2) Section 45(5), definition of **serious harm**—delete the definition and substitute:

harm has the same meaning as in section 21 of the *Criminal Law Consolidation Act 1935*.

14—Amendment of section 45A—Excessive speed

- (1) Section 45A(4a)(a)—delete "the death of, or serious harm to," and substitute:
harm to

- (2) Section 45A(6)—after the definition of **basic offence** insert:

harm has the same meaning as in section 21 of the *Criminal Law Consolidation Act 1935*;