

South Australia

# Road Traffic (Drug Driving and Careless or Dangerous Driving) Amendment Act 2021

An Act to amend the *Road Traffic Act 1961* and to make related amendments to the *Motor Vehicles Act 1959*.

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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 *Road Traffic (Drug Driving and Careless or Dangerous Driving) Amendment Act 2021*.

### **2—Commencement**

This Act comes 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 *Road Traffic Act 1961***

### **4—Amendment of section 45—Careless driving**

(1) Section 45(3)(b)(iv)—delete "or 47" and substitute:

, 47 or 47BA

(2) Section 45(3)(b)—after subparagraph (iv) insert:

(v) the offender was, at the time of the offence, driving or using a motor vehicle that—

(i) was stolen; or

(ii) 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;

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

(vii) the offender committed the offence while the offender was the holder of—

(A) a provisional licence; or

(B) a probationary licence; or

(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;

(viii) the offender committed the offence while the offender was not, at the time of the offence, the holder of—

- (A) a driver's licence; or
- (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.

## 5—Amendment of section 45A—Excessive speed

- (1) Section 45A(1)—delete "speed limit that applies under this Act or the *Motor Vehicles Act 1959*" and substitute:
  - relevant speed limit
- (2) Section 45A(1), penalty provision—delete the penalty provision and substitute:
  - Maximum penalty:
    - (a) in the case of a first offence—
      - (i) if the offence is a basic offence—a fine of not less than \$3 000 and not more than \$5 000; or
      - (ii) if the offence is an aggravated offence—2 years imprisonment;
    - (b) in the case of a subsequent offence—2 years imprisonment.
- (3) Section 45A(3)(a)—delete paragraph (a) and substitute:
  - (a) the court must order that the person be disqualified from holding or obtaining a driver's licence—
    - (i) in the case of a first offence—
      - (A) if the offence is a basic offence—for such period, being not less than 6 months, as the court thinks fit; or
      - (B) if the offence is an aggravated offence—for such period, being not less than 2 years, as the court thinks fit;
    - (ii) in the case of a subsequent offence—for such period, being not less than 2 years, as the court thinks fit;
- (4) Section 45A—after subsection (4) insert:
  - (4a) 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:
      - (i) the offender committed the offence in the course of attempting to escape pursuit by a police officer;

- (ii) the offender was, at the time of the offence, driving a vehicle knowing that the offender 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 the offender's licence was suspended by notice given under this Act;
- (iii) 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;
- (iv) the offender was, at the time of the offence, driving a vehicle in contravention of section 47 or 47BA;
- (v) the offender was, at the time of the offence, driving or using a motor vehicle that—
  - (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;
- (vi) the offender committed the offence knowing that there were 1 or more passengers in or on the motor vehicle;
- (vii) the offender committed the offence while the offender was the holder of—
  - (A) a provisional licence; or
  - (B) a probationary licence; or
  - (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;
- (viii) the offender committed the offence while the offender was not, at the time of the offence, the holder of—
  - (A) a driver's licence; or
  - (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.

(4b) If a person is charged with an aggravated offence against  
subsection (1), the circumstances alleged to aggravate the offence  
must be stated in the instrument of charge.

(5) Section 45A—after subsection (5) insert:

(6) In this section—

***basic offence*** means an offence against subsection (1) that is not an  
aggravated offence;

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

- (a) this Act (other than section 82 or 83); or
- (b) the *Motor Vehicles Act 1959*.

## **6—Amendment of section 45B—Power of police to impose licence disqualification or suspension**

(1) Section 45B(1)—delete subsection (1) and substitute:

(1) Subject to this section, a police officer may give a person a notice of  
licence disqualification or suspension that includes the prescribed  
particulars if—

- (a) the police officer reasonably believes that the person has  
committed an offence against section 45A; or
- (b) the person has been given an expiation notice for an offence  
against section 79B constituted of being the owner of a  
vehicle that appears from evidence obtained through the  
operation of a photographic detection device to have been  
involved in the commission of an offence against  
section 45A.

(2) Section 45B(6)—delete subsection (6)

(3) Section 45B(10)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) the ***relevant period*** commences—

- (i) in the case of a notice given to a person who has been given  
an expiation notice for an offence against  
section 79B—28 days after the notice of licence  
disqualification or suspension is given to the person; or

- (ii) in any other case—at the time at which the person is given the notice of licence disqualification or suspension or, if a police officer referred to in subsection (1) is satisfied that, in the circumstances, it would be appropriate to postpone the commencement of the relevant period and the notice indicates that the commencement is to be postponed, 48 hours after the time at which the person is given the notice;
- (b) the *relevant period* ends—
  - (i) when proceedings for the offence to which the notice relates are determined by a court or are withdrawn or otherwise discontinued; or
  - (ii) in any event—at the end of 6 months from the commencement of the relevant period.
- (4) Section 45B(12)—delete "was completed in the prescribed form" and substitute:  
includes the prescribed particulars
- (5) Section 45B—after subsection (12) insert:
  - (13) 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 authorise the withdrawal of the notice.
  - (14) A withdrawal referred to in subsection (13) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner, to the person to whom the notice of licence disqualification or suspension was given.
  - (15) The notice of withdrawal must specify the reason for withdrawal.
  - (16) 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.

**7—Amendment of section 45D—Power of police to impose licence disqualification or suspension for section 45C etc offences**

- (1) Section 45D(2)(a)—delete "in the prescribed form" and substitute:  
that includes the prescribed particulars

- (2) Section 45D(15)(a)(i)—delete subparagraphs (i) and (ii) substitute:
- (i) in the case of a notice of licence disqualification or suspension under this section for an offence against section 45C—at the time at which the person is given the notice of licence disqualification or suspension or, if a police officer referred to in subsection (2) is satisfied that, in the circumstances, it would be appropriate to postpone the commencement of the relevant period and the notice indicates that the commencement is to be postponed, 48 hours after the time at which the person is given the notice; or
  - (ii) in the case of a notice of licence disqualification or suspension under this section for a section 79B offence—28 days after the notice of licence disqualification or suspension is given to the person;
- (3) Section 45D(16)—delete "subsection (15)(a)(i)(A)" and substitute:  
subsection (15)(a)(i)

### **8—Amendment of section 46—Reckless and dangerous driving**

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

Maximum penalty:

- (a) in the case of a first offence—\$5 000 or imprisonment for 2 years;
- (b) in the case of a subsequent offence—imprisonment for 3 years.

### **9—Amendment of section 47D—Payment of costs incidental to apprehension etc**

- (1) Section 47D(1)—delete subsection (1) and substitute:
- (1) The court by which a person is found guilty of a prescribed offence on the information of a police officer may, in addition to imposing any other penalty, make, on the application of the informant, an order requiring the defendant to pay to the informant (or to a person or body nominated by the informant) a reasonable sum to cover the cost of all or any of the following:
    - (a) apprehending the defendant;
    - (b) conveying the defendant to a police station;
    - (c) keeping the defendant in custody until trial;
    - (d) medically examining the defendant;
    - (e) facilitating the taking of a sample of the defendant's oral fluid and providing for the presence of a police officer;
    - (f) facilitating the taking of a sample of the defendant's blood and providing for the presence of a police officer;
    - (g) any oral fluid analysis of a sample taken of the defendant's oral fluid;
    - (h) any blood test of a sample taken of the defendant's blood.

- (2) Section 47D—after subsection (2) insert:
- (3) In this section—
- prescribed offence*** means an offence against—
- (a) section 47(1) or (1a); or
  - (b) section 47B(1) or (1a); or
  - (c) section 47BA(1) or (1a); or
  - (d) section 47E(3) or (3a); or
  - (e) section 47EAA(9) or (9a); or
  - (f) section 47I(7) or (14).

**10—Amendment of section 47IAA—Power of police to impose immediate licence disqualification or suspension**

- (1) Section 47IAA(1)—after paragraph (b) insert:
- (ba) an offence against section 46;
  - (bb) an offence against section 47BA(1) or (1a);
- (2) Section 47IAA(2)—delete subsection (2) and substitute:
- (2) Subject to this section, a police officer may give a person a notice of immediate licence disqualification or suspension that includes the prescribed particulars if—
- (a) the police officer reasonably suspects that the person has committed an offence against section 47BA(1) or (1a); or
  - (b) the police officer reasonably believes that the person has committed an offence (other than an offence against section 47BA(1) or (1a)) to which this section applies.
- (3) Section 47IAA(12)(a)—delete paragraph (a) and substitute:
- (a) the ***relevant period*** commences—
    - (i) in the case of a notice of immediate licence disqualification or suspension for an offence against section 47BA(1) or (1a)—at the time at which the person is given the notice of immediate licence disqualification or suspension or, if a police officer referred to in subsection (2) is satisfied that, in the circumstances, it would be appropriate to postpone the commencement of the relevant period and the notice indicates that the commencement is to be postponed, 28 days after the time at which the person is given the notice; or

- (ii) in any other case—at the time at which the person is given the notice of immediate licence disqualification or suspension or, if the police officer giving the notice is satisfied that, in the circumstances, it would be appropriate to postpone the commencement of the relevant period and indicates in the notice that the commencement is to be postponed, 48 hours after the time at which the person is given the notice; and
- (4) Section 47IAA(12)(b)(iv)—after subparagraph (A) insert:
  - (AB) if the offence to which the notice relates is an offence against section 47BA(1) or (1a)—at the end of 3 months from the commencement of the relevant period; or
- (5) Section 47IAA(14)—delete "subsection (12)(a)(i)" and substitute:
  - subsection (12)(a)(i) or (ii)
- (6) Section 47IAA—after subsection (18) insert:
  - (19) If the Commissioner of Police is satisfied that a notice of immediate 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 authorise the withdrawal of the notice.
  - (20) A withdrawal referred to in subsection (19) is effected by giving notice of the withdrawal, in a manner and form determined by the Commissioner, to the person to whom the notice of immediate licence disqualification or suspension was given.
  - (21) The notice of withdrawal must specify the reason for withdrawal.
  - (22) If a notice of immediate 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 immediate licence disqualification or suspension to any person, give such a notice.

### **11—Amendment of section 47IAB—Application to Court to have disqualification or suspension lifted**

- (1) Section 47IAB(1)—after "notice of" insert:
  - licence disqualification or suspension under section 45B(1)(b) or

- (2) Section 47IAB(2)(a)(i)—delete "another offence to which section 47IAA applies; or" and substitute:

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- (A) in the case of a notice of immediate licence disqualification or suspension under section 47IAA—another offence to which section 47IAA applies; or
  - (B) in the case of a notice of licence disqualification or suspension under section 45B(1)(b)—an offence to which section 47IAA applies; or

- (3) Section 47IAB(2)(a)(ii)—after "to which section 47IAA applies" insert:

or an offence against section 45A

## **12—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices**

Section 79B—after subsection (4) insert:

- (4a1) Subsection (4) does not apply in the case of an expiable offence against this section if the prescribed offence that the vehicle has appeared to have been involved in is an offence against section 45A.

## **Schedule 1—Related amendments**

### **Part 1—Amendment of *Motor Vehicles Act 1959***

#### **1—Amendment of section 74—Duty to hold licence or learner's permit**

Section 74(6)—after "section 91(5)" insert:

or (5a)

#### **2—Amendment of section 79B—Alcohol and drug dependency assessments and issue of licences**

- (1) Section 79B(2)(a)—delete paragraph (a) and substitute:

- (a) an applicant for the issue of a licence—
  - (i) has been disqualified from holding or obtaining a licence or learner's permit in this State, or in another State or Territory of the Commonwealth, as a consequence of a drug driving offence or an alleged drug driving offence (whether committed, or allegedly committed, in this State or in another State or Territory of the Commonwealth); or
  - (ii) has had their licence or permit cancelled under section 81D(2)(a); and

- (2) Section 79B(2)(b)—after "period of disqualification" insert:

or the cancellation of the applicant's licence or permit under section 81D(2)(a) (as the case requires)

### 3—Amendment of section 81AB—Probationary licences

Section 81AB(1)—delete subsection (1) and substitute:

- (1) Without derogating from any other provision of this Act, if a person applies for the issue of a licence following—
  - (a) a period of disqualification from holding or obtaining a licence imposed in prescribed circumstances; or
  - (b) cancellation of the person's licence under section 81D(2)(a),

a licence issued to the applicant is subject to the following conditions:

- (c) a condition that the holder of the licence must carry the licence at all times while driving a motor vehicle on a road pursuant to the licence;
- (d) a condition that the holder of the licence must not drive a motor vehicle or attempt to put a motor vehicle in motion on a road while the prescribed concentration of alcohol is present in the holder's blood, or a prescribed drug is present in the holder's oral fluid or blood.

### 4—Amendment of section 81D—Disqualification for certain drug driving offences

Section 81D(2)—delete subsection (2) and substitute:

- (2) If a person expiates an offence to which this section applies the following provisions apply:
  - (a) if the person was given a notice of immediate licence disqualification or suspension under section 47IAA of the *Road Traffic Act 1961* in respect of the offence and the offence is a first offence, the Registrar must, on becoming aware of the expiation of the offence, give the person written notice that, if the person holds any licence or learner's permit when the notice is given, the licence or permit is cancelled;
  - (b) if the person was given a notice of immediate licence disqualification or suspension under section 47IAA of the *Road Traffic Act 1961* in respect of the offence (and it is not a first offence), the Registrar must, on becoming aware of the expiation of the offence, give the person written notice—
    - (i) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a licence or learner's permit for—
      - (A) if the offence is a second offence—9 months; or
      - (B) if the offence is a third offence—1 year and 9 months; or

- (C) if the offence is a subsequent offence—2 years and 9 months; and
- (ii) that, if the person holds any licence or learner's permit when the notice takes effect, the licence or permit is cancelled;
- (c) in any other case—the Registrar must, on becoming aware of the expiration of the offence, give the person written notice—
  - (i) that, commencing on the day on which the notice takes effect in accordance with section 139BD, the person is disqualified from holding or obtaining a licence or learner's permit for—
    - (A) if the offence is a first offence—3 months; or
    - (B) if the offence is a second offence—12 months; or
    - (C) if the offence is a third offence—2 years; or
    - (D) if the offence is a subsequent offence—3 years; and
  - (ii) that, if the person holds any licence or learner's permit when the notice takes effect, the licence or permit is cancelled.

## **5—Amendment of section 91—Effect of suspension and disqualification**

- (1) Section 91(5)—delete subsection (5) and substitute:
  - (5) A person must not drive a motor vehicle on a road while the person's licence or learner's permit is suspended under section 38 of the *Fines Enforcement and Debt Recovery Act 2017*.  
Maximum penalty:
    - (a) in the case of a first offence—imprisonment for 6 months; or
    - (b) in the case of a subsequent offence—imprisonment for 2 years.
  - (5a) A person must not drive a motor vehicle on a road while the person's licence or learner's permit is suspended (other than under section 38 of the *Fines Enforcement and Debt Recovery Act 2017*) or while disqualified in this State or another State or Territory of the Commonwealth from holding or obtaining a licence or learner's permit.  
Maximum penalty:
    - (a) in the case of a first offence—imprisonment for 12 months; or

(b) in the case of a subsequent offence—imprisonment for 3 years.

(2) Section 91(6)—delete "Subsection (5)" and substitute:

Subsection (5a)

**6—Amendment of section 139BD—Service and commencement of notices of disqualification**

Section 139BD(11), definition of *notice of disqualification*—delete "81D(2)" and substitute:

81D(2)(b) or (c)