



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 91 of 1986

An Act to amend the Criminal Law Consolidation Act, 1935.

[Assented to 4 December 1986]

The Parliament of South Australia enacts as follows:

1. (1) This Act may be cited as the “Criminal Law Consolidation Act Amendment Act (No. 2), 1986”. Short title.

(2) The Criminal Law Consolidation Act, 1935, is in this Act referred to as “the principal Act”.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Sections 14 and 14a of the principal Act are repealed. Repeal of ss. 14 and 14a.

4. The following heading and sections are inserted after section 19 of the principal Act: Insertion of new heading and ss. 19a and 19b.

Death and Injury arising from Reckless Driving, etc.

19a. (1) A person who—

(a) drives a motor vehicle in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public;

and

(b) by that culpable negligence, recklessness or other conduct, causes the death of another,

is guilty of an indictable offence.

(2) The penalty for an offence against subsection (1) is as follows:

(a) for a first offence—imprisonment for a term not exceeding 10 years and disqualification from holding or obtaining a driver’s licence for 5 years or such longer period as the court orders;

Death and injury arising from reckless driving, etc.

(b) for a subsequent offence—imprisonment for a term not exceeding 15 years and disqualification from holding or obtaining a driver's licence for 10 years or such longer period as the court orders.

(3) A person who—

(a) drives or rides a vehicle or an animal in a culpably negligent manner, recklessly, or at a speed or in a manner dangerous to the public;

and

(b) by that culpable negligence, recklessness or other conduct, causes bodily harm to another,

is guilty of an indictable offence.

(4) The penalty for an offence against subsection (3) is as follows:

(a) where a motor vehicle was used in commission of the offence and grievous bodily harm was caused to a person—

(i) for a first offence—imprisonment for a term not exceeding 10 years and disqualification from holding or obtaining a driver's licence for 5 years or such longer period as the court orders;

(ii) for a subsequent offence—imprisonment for a term not exceeding 15 years and 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 was used in commission of the offence but grievous bodily harm was not caused to any person—

(i) for a first offence—imprisonment for a term not exceeding 4 years and disqualification from holding or obtaining a driver's licence for one year or such longer period as the court orders;

(ii) for a subsequent offence—imprisonment for a term not exceeding 6 years and disqualification from holding or obtaining a driver's licence for 3 years or such longer period as the court orders;

(c) where a motor vehicle was not used in commission of the offence—imprisonment for a term not exceeding 2 years.

(5) In determining whether an offence is a first or subsequent offence for the purposes of this section all previous offences against subsection (1) or (3), or a corresponding previous enactment, that involved the driving of a motor vehicle, shall be taken into account except that such an offence shall not be taken to be a previous offence for the purposes of subsection (2) or (4) (a) unless it resulted in the death of, or grievous bodily harm to, the victim.

(6) 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 shall not be regarded as a sentence or the imposition of a penalty for the purposes of the Offenders Probation Act, 1913.

(7) 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 (3) in respect of each person who suffers bodily harm, in consequence of the same act or omission.

(8) Where at the trial of a person for an offence against this section it appears that the defendant was, or may have been, in a state of self-induced intoxication at the time of the alleged offence but the evidence adduced at the trial would, assuming that the defendant had been sober, be sufficient to establish the mental elements of the alleged offence, the mental elements of the alleged offence shall be deemed to have been established against the defendant.

(9) For the purposes of subsection (8), intoxication shall be taken to be self-induced if it results from the voluntary consumption of alcohol or a drug (not being a drug supplied on the prescription of, and consumed in accordance with the directions of, a legally qualified medical practitioner).

(10) In this section—

“consumption” in relation to a drug includes injection and any other form of administration:

“motor vehicle” means—

(a) a vehicle, tractor or mobile machine driven or propelled or ordinarily capable of being driven or propelled by a steam engine, internal combustion engine, electricity or any other power, not being human or animal power;

and

(b) a caravan or trailer,

but does not include a mobile machine controlled and guided by a person walking, or a vehicle run upon a railway or tramway:

“vehicle” means—

(a) a motor vehicle;

(b) a vehicle drawn by an animal;

or

(c) a bicycle, tricycle or other similar vehicle for which the rider provides the motive force.

19b. (1) If at the trial of a person for murder or manslaughter the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of the offence constituted by section 19a (1) or (3), the jury may bring in a verdict that the accused is guilty of that offence.

Alternative
verdicts.

(2) The following offences (which are listed in order of seriousness) are offences to which subsection (3) applies:

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- (a) the offence constituted by section 19a (1);
 - (b) the offence constituted by section 19a (3);
 - (c) the offence constituted by section 46 of the Road Traffic Act, 1961;
 - (d) the offence constituted by section 45 of the Road Traffic Act, 1961.

(3) If at the trial of a person for an offence to which this subsection applies (being an offence mentioned in subsection (2) (a) or (b)) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of a less serious offence to which this subsection applies, the jury may bring in a verdict that the accused is guilty of that less serious offence.

Repeal of ss. 38
and 38a.

5. Sections 38 and 38a of the principal Act are repealed.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor