

South Australia



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A.D. 2002

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) ACT 2002

No. 37 of 2002

[Assented to 28 November 2002]

An Act to amend the Civil Aviation (Carriers' Liability) Act 1962, 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**

Short title

1. This Act may be cited as the *Statutes Amendment (Transport Portfolio) Act 2002*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF CIVIL AVIATION (CARRIERS' LIABILITY) ACT 1962**

Amendment of s. 3—Interpretation

4. Section 3 of the principal Act is amended by inserting after the definition of "State" in subsection (1) the following definition:

"State authority" means an authority or officer of this State.

Amendment of s. 7A—Administration of Commonwealth/State scheme as Commonwealth Act

5. Section 7A of the principal Act is amended—

- (a) by inserting in subsection (2)(b) "as laws of South Australia" after "apply";
- (b) by inserting in subsection (2)(b) "and not offences against the laws of South Australia" after "Commonwealth Regulations";
- (c) by inserting after subsection (2) the following subsections:

(3) For the purposes of this section, a reference in a Commonwealth law to a provision of that or another Commonwealth law will be taken to be a reference to that provision as applying by virtue of this section.

(4) Without limiting subsection (2)(b), the laws of the Commonwealth that apply to offences against the applied provisions under that subsection will be taken to include the following Acts (including an Act enacted in substitution for one of the following Acts), as amended from time to time:

- (a) *Acts Interpretation Act 1901*;
- (b) *Crimes Act 1914*;
- (c) *Director of Public Prosecutions Act 1983*;
- (d) *Evidence Act 1995*.

(5) Nothing in this Act derogates from the powers of State authorities to enforce the applied provisions.

(6) Without limiting the generality of subsection (5)—

- (a) the Minister may apply to a court of competent jurisdiction for an injunction restraining a carrier from engaging in prohibited carriage; and
- (b) for that purpose, a reference in section 41J of the Commonwealth Act, as applied and incorporated in this Act, to a Commonwealth authority will be taken to include a reference to the Minister.

PART 3

AMENDMENT OF HARBORS AND NAVIGATION ACT 1993

Amendment of s. 14—Powers of an authorised person

6. Section 14 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) Subject to any conditions specified in the instrument of appointment, an authorised person may give expiation notices under the *Expiation of Offences Act 1986* for alleged offences against this Act.

Amendment of s. 47—Requirement for certificate of competency

7. Section 47 of the principal Act is amended by inserting after subsection (3) the following subsection:

(3a) A person must not cause, suffer or permit another to operate a recreational vessel to which this Part applies unless the other person holds—

- (a) a certificate of competency of the appropriate class (a boat operator's licence); or
- (b) an exemption from the requirement to hold a certificate of competency of the relevant class; or
- (c) a special permit granted under the regulations.

Maximum penalty: \$2 500.

Expiation fee: \$105.

Amendment of s. 72—Police to facilitate blood test at request of incapacitated person, etc.

8. Section 72 of the principal Act is amended by striking out from subsection (2) "officer" and substituting "person".

Repeal of s. 88

9. Section 88 of the principal Act is repealed.

PART 4
AMENDMENT OF MOTOR VEHICLES ACT 1959

Amendment of s. 5—Interpretation

10. Section 5 of the principal Act is amended by inserting after the definition of "owner" in subsection (1) the following definition:

"photograph" includes an image produced from an electronic record made by a digital or other electronic camera;

Amendment of s. 75A—Learner's permit

11. Section 75A of the principal Act is amended—

- (a) by inserting in subsection (3)(d)(i) "probationary licence or" before "provisional";
- (b) by inserting in subsection (3)(d)(ii) "probationary licence or" before "provisional";
- (c) by inserting in subsection (8)(a)(ii) "probationary licence or" before "provisional".

Insertion of s. 77BA

12. The following section is inserted after section 77B of the principal Act:

Use of photographs by Registrar

77BA. (1) This section applies to a photograph of a person taken or supplied for inclusion on a licence or learner's permit.

(2) A photograph to which this section applies may be used by the Registrar only for one or more of the following purposes:

- (a) for inclusion on a licence, learner's permit or proof of age card;
- (b) to assist in determining the identity of a person applying for—
 - (i) the issue or renewal of a licence or learner's permit; or
 - (ii) the issue of a duplicate licence or learner's permit; or
 - (iii) the issue of a proof of age card; or
 - (iv) the registration of a motor vehicle;
- (c) in connection with the investigation of a suspected offence against this Act;
- (d) for the purposes of any legal proceedings arising out of the administration of this Act or the *Road Traffic Act 1961*;
- (e) for a purpose prescribed by the regulations.

(3) A photograph to which this section applies may be used for a purpose set out in subsection (2) at the time that the photograph is taken or supplied or at any later time.

(4) The Registrar must ensure that a photograph to which this section applies is not released except in accordance with a request of a person or body responsible under the law of another State or a Territory of the Commonwealth for the registration or licensing of motor vehicles or the licensing of drivers, where the photograph is required for the proper administration of that law.

(5) In this section—

"proof of age card" means a card that may be used for the purposes of identifying the cardholder and providing evidence of the age of the cardholder.

Amendment of s. 81B—Consequences of contravening prescribed conditions, etc. while holding learner's permit, probationary licence or provisional licence

13. Section 81B of the principal Act is amended by inserting in the definition of "relevant prescribed conditions" in subsection (9a) "or allegedly committed" after "committed".

Amendment of s. 98A—Instructors' licences

14. Section 98A of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) On surrender of an instructor's licence, the person surrendering the licence is, subject to the regulations, entitled to a refund of a proportion of the licence fee determined in accordance with the regulations.

Amendment of s. 116—Claim against nominal defendant where vehicle uninsured

15. Section 116 of the principal Act is amended by striking out subsection (7) and substituting the following subsections:

(7) Where—

- (a) a sum is properly paid by the nominal defendant to satisfy a claim made or judgment obtained in respect of death or bodily injury caused by or arising out of the use of an uninsured motor vehicle; and
- (b) the driver of the uninsured vehicle was wholly or partly liable for the death or bodily injury; and
- (c) the driver of the uninsured vehicle—
 - (i) drove the vehicle, or did or omitted to do anything in relation to the vehicle, with the intention of causing the death of, or bodily injury to, a person or damage to another's property, or with reckless indifference as to whether such death, bodily injury or damage results; or
 - (ii) drove the vehicle while so much under the influence of intoxicating liquor or a drug as to be incapable of exercising effective control of the vehicle; or

- (iii) drove the vehicle while there was present in his or her blood a concentration of .15 grams or more of alcohol in 100 millilitres of blood,

the nominal defendant may, by action in a court of competent jurisdiction, recover that sum together with costs from the driver or a person liable in respect of the acts or omissions of the driver.

(7a) A finding of a court in proceedings for an offence as to—

- (a) the incapacity of the driver of the uninsured vehicle to exercise effective control of the vehicle at the relevant time owing to the influence of intoxicating liquor or a drug; or
- (b) the concentration of alcohol present in 100 millilitres of the blood of the driver of the uninsured vehicle at the relevant time,

will be treated as determinative of the issue in an action by the nominal defendant under subsection (7).

(7b) Where—

- (a) a sum is properly paid by the nominal defendant to satisfy a claim made or judgment obtained in respect of death or bodily injury caused by or arising out of the use of an uninsured motor vehicle; and
- (b) the driver of the uninsured vehicle was wholly or partly liable for the death or bodily injury; but
- (c) the driver of the uninsured vehicle did not drive the vehicle as referred to in subsection (7)(c)(i), (ii) or (iii) or do or omit anything as referred to in subsection (7)(c)(i),

the nominal defendant may, by action in a court of competent jurisdiction, recover that sum, or such part of that sum as the court thinks just and reasonable in the circumstances, together with costs from the driver or a person liable in respect of the acts or omissions of the driver.

(7c) It is a defence to an action under subsection (7b) if the defendant proves that—

- (a) the motor vehicle was being used at the relevant time by or with the consent of the owner; and
- (b) the defendant did not know and had no reason to believe that the vehicle was an uninsured motor vehicle.

(7d) The defence in subsection (7c) does not apply if it is proved that the driver of the uninsured motor vehicle—

- (a) drove the vehicle while not duly licensed or otherwise permitted by law to drive the vehicle; or

- (b) drove the vehicle while the vehicle was overloaded, or in an unsafe, unroadworthy or damaged condition.

PART 4
AMENDMENT OF ROAD TRAFFIC ACT 1961

Amendment of s. 47E—Police may require alcotest or breath analysis

16. Section 47E of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

- (a) has committed an offence of a prescribed class of which the driving of a vehicle is an element;

Amendment of s. 160—Defect notices

17. Section 160 of the principal Act is amended—

(a) by striking out subsections (1a) and (1b) and substituting the following subsections:

(1a) For the purposes of this section—

(a) a vehicle has deficiencies if—

- (i) it does not comply with the vehicle standards; or
- (ii) it has not been maintained in a condition that enables it to be driven or towed safely; or
- (iii) it does not have an emission control system fitted to it of each kind that was fitted to it when it was built; or
- (iv) an emission control system fitted to it has not been maintained in a condition that ensures that the system continues operating essentially in accordance with the system's original design; and

(b) a vehicle is not maintained in a condition that enables it to be driven or towed safely if driving or towing the vehicle would endanger the person driving or towing the vehicle, anyone else in or on the vehicle or a vehicle attached to it or other road users.

(1a) A member of the police force or an inspector may direct the driver of a vehicle to stop the vehicle and may examine the vehicle where the vehicle has deficiencies or the member or inspector suspects on reasonable grounds that the vehicle has deficiencies.

(1b) Despite subsection (1a), a member of the police force or an inspector may direct the driver of a vehicle of a prescribed class to stop the vehicle and may examine the vehicle for the purposes of determining whether the vehicle has deficiencies (whether or not there is reason to suspect that the vehicle has deficiencies).;

(b) by striking out from subsection (2) "does not comply with one or more of the requirements of the vehicle standards or may, if driven on roads, constitute a safety risk" and substituting "has deficiencies";

- (c) by striking out from subsection (2a) "does not comply with one or more of the requirements of the vehicle standards or may, if driven on roads, constitute a safety risk" and substituting "has deficiencies";
- (d) by striking out from subsection (4a) "does not comply with the vehicle standards" and substituting "has deficiencies";
- (e) by striking out paragraph (d) of subsection (4c) and substituting the following paragraph:
- (d) state details of the vehicle's deficiencies and the repairs that should be made to the vehicle to remedy those deficiencies;;
- (f) by striking out from subsection (5) "does not comply with the vehicle standards" and substituting "has deficiencies";
- (g) by striking out from subsection (5a)(b) "in the case of a major vehicle defect notice—";
- (h) by striking out paragraph (e) of subsection (5c) and substituting the following paragraph:
- (e) state details of the vehicle's deficiencies and the repairs that are required to be made to the vehicle to remedy those deficiencies;;
- (i) by striking out subparagraph (iii) of paragraph (g) of subsection (5c) and substituting the following subparagraph:
- (iii) a member of the police force, an inspector or a vehicle registration authority has caused the defective vehicle label affixed to the vehicle under subsection (5a) to be defaced or removed from the vehicle;;
- (j) by striking out from subsection (5d) "defects such that the vehicle does not comply with the vehicle standards" and substituting "deficiencies";
- (k) by striking out from subsection (5f) "or alter" and substitute ", alter or obscure";
- (l) by striking out subsection (5g) and substituting the following subsections:
- (5g) A member of the police force or inspector—
- (a) may at any time vary or withdraw a defect notice; and
- (b) must cause notice of the withdrawal of a defect notice to be sent to the Registrar of Motor Vehicles and the registered operator of the vehicle in relation to which the defect notice was given.